Climate Change (Emissions Trading and Renewable Preference) Bill

Government Bill

Explanatory note

General policy statement

Climate change, and how we deal with it, is one of the most important issues of our time. The introduction of this Bill is a critical step toward New Zealand playing its part to address climate change.

The Bill's principal purpose is to amend the Climate Change Response Act 2002 to introduce a greenhouse gas Emissions Trading Scheme in New Zealand (**NZ ETS**). The Bill also amends the Electricity Act 1992 to create a preference for renewable electricity generation by implementing a moratorium on new fossil-fuelled thermal electricity generation, except to the extent necessary to ensure the security of New Zealand's electricity supply.

Emissions trading schemes are increasingly being established in a number of countries and regions around the globe. Over time, the NZ ETS will cover all gases and all sectors, in order to minimise overall costs to the economy and operate with efficiency and equity. The scheme will apply an economy-wide price signal to activities that contribute to climate change.

Climate change is a global problem and New Zealand is reliant on international action to mitigate the risks associated with increased concentrations of greenhouse gases in the atmosphere. The design of the NZ ETS is compatible with the United Nations Framework Convention on Climate Change (the **Convention**) and the Kyoto Protocol (the **Protocol**), but is designed to endure under a range of possible future scenarios for international climate change agreements.

The objective that guided the design of the NZ ETS is:

That a New Zealand Emissions Trading Scheme support and encourage global efforts to reduce greenhouse gas emissions by:

- *reducing New Zealand's net emissions below business-as-usual levels; and*
- *complying with our international obligations, including our Kyoto Protocol obligations;*

while maintaining economic flexibility, equity, and environmental integrity at least cost in the long term.

The NZ ETS is designed to operate as an integral part of the government's broader climate change, sustainable development, and economic transformation agendas.

The preference for renewable electricity generation augments the NZ ETS goal of reducing New Zealand's net greenhouse gas emissions below business-as-usual levels. It does this by implementing a moratorium on investment in new fossil-fuelled thermal generation, except to the extent required to ensure security of supply. This will reduce the potential for fossil-fuelled thermal electricity generation to increase the level of New Zealand's greenhouse gas emissions.

The NZ ETS and the renewable generation preference are part of New Zealand's wider effort to meet its international commitments under the Convention and Protocol to implement policies and measures to reduce greenhouse gas emissions.

Consultation and Engagement Process

This Bill was developed after an extensive process of consultation and engagement.

In December 2006, the government released five energy and climate change discussion documents, and embarked on a significant consultation process on a number of policy options. The high level of public engagement and feedback showed that New Zealanders take energy and land use sustainability seriously, and are keen to be part of the solution. Over 3 000 submissions were received and over 150 public meetings and hui with Māori held.

Following this consultation, the government established a cross-departmental Emissions Trading Group (**ETG**) to develop a proposal for an NZ ETS. The ETG includes representatives from the Treasury and the following agencies: Ministry for the Environment,

Ministry of Economic Development, Ministry of Transport, and the Ministry of Agriculture and Forestry. The ETG also works closely with the Department of Prime Minister and Cabinet, Te Puni Kōkiri, the Ministry of Foreign Affairs and Trade, the Department of Conservation, the Ministry of Science, Research and Technology, and the Inland Revenue Department.

On 20 September 2007, the government released its proposal for an NZ ETS, and began an intensive period of engagement on the core design features, and with particular regard to Māori and to those sectors entering the scheme first (forestry and liquid fossil fuels).

The engagement also included the establishment of a Climate Change Leadership Forum, to facilitate communication between the government and the broader community on the proposed design of the NZ ETS. The Forum will continue until mid-2008 and its considerations will be taken into account through the legislative process. Issues that are likely to be discussed include the treatment of pre-1990 forests, the type of emission units allowed into the NZ ETS, phase-out of free allocation, and whether an intensity-based approach can be included within an absolute cap of free allocation.

Engagement process will continue throughout 2008, including on those aspects of the NZ ETS that are to be governed by regulations. A number of mechanisms are in place to achieve robust input, including technical advisory groups for energy and industry, and agriculture. A "Peak Group" for the agriculture component of the NZ ETS has been established. These groups will provide input on a range of matters.

In the longer term, the government will continue to engage with the broader community on the future evolution of the NZ ETS in light of changes to New Zealand's obligations under international climate change agreements. The Bill provides a process for review of the NZ ETS, prior to the end of the Protocol's first commitment period and each subsequent commitment period.

In October 2007, the government released the New Zealand Energy Strategy (**NZES**) and adopted a target for renewable electricity generation of 90% 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.

The development of the NZES involved a large number of organisations, associations, interest groups and individuals offering comment on the ideas and options contained in the strategy.

Structure of the Bill

Part 1

Part 1 of the Bill contains amendments to the Climate Change Response Act 2002 to introduce the NZ ETS.

Clause 4 of the Bill sets out the dates from which certain provisions of the Climate Change Response Act 2002, once amended, will apply. Individuals and firms within different sectors will first assume NZ ETS obligations from the date when the relevant parts of Schedules 3 and 4 apply.

The entry of sectors into the NZ ETS is based on sectors' preparedness for trading, administrative feasibility and consideration of price effects through the economy.

The table below reports when each sector first assumes obligations and first must comply with those obligations under the NZ ETS. Subsequent compliance periods for each sector extend from 1 January to 31 December in each calendar year.

Staged entry of sectors into the NZ ETS

Sector	Commencement of obligations	End of initial compliance period
Forestry	Date the Act comes into force (but first compliance period starts from 1 January 2008)	31 December 2009
Liquid fossil fuels	1 January 2009	31 December 2009
Stationary energy	1 January 2010	31 December 2010
Industrial processes	1 January 2010	31 December 2010
Agriculture	1 January 2013	31 December 2013
Waste	1 January 2013	31 December 2013

By 2013, all sectors and all six major greenhouse gases will be covered by the NZ ETS, so that all major sectors of the New Zealand economy will be exposed to the international price of emissions, at the margin, for all operations.

The existing provisions in Part 2 of the Climate Change Response Act relating to the Crown's trading in Kyoto units are amended to allow for the introduction of the NZ ETS. These amendments are mostly contained in *clauses 6 to 28* of the Bill.

The core provisions that implement the NZ ETS are contained in a new *Part 4* of the Climate Change Response Act 2002, inserted by *clause 43*. *Part 4* covers participants, participants' obligations, allocation of New Zealand units, compliance and enforcement, offences and penalties, review and appeals, future development and Ministerial review of the scheme.

The NZ ETS is based on the concept that "participants" incur obligations by doing "activities".

The NZ ETS reduces compliance costs by ensuring that the activities giving rise to obligations are as high in the supply chain as possible. The activities that bring a participant into the NZ ETS are listed in *new Schedules 3 and 4*. Where possible, "activity" is defined with reference to other regulatory regimes to which participants might be subject.

Activities listed in *Schedule 3* are those activities undertaken in New Zealand that will automatically give rise to obligations under the NZ ETS—a person who does one of these activities must register as a participant under the scheme and comply with their obligations in respect of that activity.

Although some sectors will not be brought into the NZ ETS for some years, the Bill contains the activities for all sectors. The dates are included now to give certainty to the "all sectors, all gases" principle that underlies the NZ ETS.

Persons can also elect to become participants if they do activities listed in Schedule 4. Schedule 4 covers:

- owners of, or holders of forestry rights/leases over, forests planted after 1989:
- producers who embed carbon in their products:
- major users of jet fuel used for domestic aviation:
- major users of coal and natural gas.

There are likely to be less than 200 participants in the NZ ETS not including those in the forestry sector. The number of forestry participants could range from 2 000 to 9 000, depending on the number of post-1989 forest owners or forestry right/lease holders who decide to become participants in the scheme.

The main obligation that participants will have under the NZ ETS is to surrender emission units to match the emissions from their activities in each annual compliance period. Participants are also obliged to:

- calculate their level of emissions, using prescribed methodologies:
- retain sufficient records to allow verification of emissions calculations:
- report their level of emissions:
- provide information, if required by the chief executive (NZ ETS administrator), to allow the chief executive to verify compliance.

The methodologies prescribed in regulations will include formulas to calculate emissions, such as scientifically-determined factors that relate activities to emissions (eg, the quantity of carbon dioxide emitted when a litre of fuel is burned). They will also include methods for measuring activities directly or indirectly resulting in emissions.

Participants undertaking "removal activities" will also be able to earn emission units. Post-1989 forest land participants, and participants who embed carbon in their products, may elect to account for both their emissions (if any) and removals, and receive one New Zealand unit for each tonne of carbon dioxide stored in their trees or products.

The primary unit of trade in the NZ ETS is a New Zealand unit (NZU), issued by the government. For the first commitment period of the Protocol (2008–2012), each NZU issued by the government will be backed by a Kyoto unit held in a Crown holding account in the Registry.

Participants may surrender Kyoto units to meet their NZ ETS obligations (subject to some restrictions). Kyoto units can be acquired overseas or domestically. The Bill itself does not contain a provision to limit the volume of Kyoto units that can enter the NZ ETS, but gives the responsible Minister the ability to place restrictions on which classes or subclasses of Kyoto units may enter the NZ ETS and what transactions may or may not be registered in respect of those units.

The government has already decided to exclude certain units (eg, Certified Emission Reduction units from nuclear projects). The government is still seeking feedback on the need for other restrictions. The Bill places no restriction on the entry of AAUs into the NZ ETS; this has been welcomed by some and criticised by other domestic stakeholders, who have expressed concerns about potentially damaging the integrity of the NZ ETS, and reducing New

Zealand's prospects of linking with other countries' schemes. Consideration of these views needs to be weighed against the costs of compliance without AAUs entering the NZ ETS and recognition of the fact that all Parties have agreed to the provisions of the Protocol. Maintaining the spirit of the Protocol is critical to negotiating future inclusive agreements.

The amendments to Part 2 of the principal Act are designed to permit bilateral linkages with other countries' domestic trading schemes in the future.

In terms of trading, the NZ ETS is designed to allow flexibility in how participants trade units in the market, whether trading occurs via trading platforms, or via direct exchange. Any person eligible to open a holding account in the Registry (not just participants) will be able to hold and trade emission units).

Subpart 2 of *new Part 4* contains provisions for the free allocation of emission units to the forestry, and to trade-exposed industry and agriculture sectors.

New section 69 establishes the level of allocation to pre-1990 forest land owners at 55 million New Zealand units. The treatment of pre-1990 forests relative to post-1989 forests (particularly the free allocation of emission units equivalent to 55 million tonnes of emissions to owners of pre-1990 forests) has been criticised by elements of the forestry industry. Further advice is being prepared for Ministers on options for targeting of free allocation for pre-1990 exotic forests, such as on the basis of restrictions on land-use change since 2002 (when the government first signalled there would obligations associated with deforestation).

Electricity generators and liquid fossil fuel providers are not likely to suffer major (negative) impacts on their profitability through the introduction of the NZ ETS, as they are likely to pass on any extra costs imposed by an ETS to consumers down the supply chain. Consequently, they will not receive transitional assistance.

The approach to assistance to industry and agriculture (*sections 70 and 71*) is to limit the total level of assistance to be provided by firstly identifying the initial level of assistance to be provided, and secondly, by defining the way forward (including phase-out of assistance by 2025):

- The initial level of assistance to eligible trade-exposed industrial firms is 90% of their 2005 emissions from direct use of

coal, natural gas or geothermal stream; direct consumption of electricity; and non-energy industrial processes.

- The initial level of assistance to agricultural firms is 90% of their 2005 emissions of methane and nitrous oxide from eligible activities.

The government is continuing to engage with sectors on allocation plans and the emission abatement paths. This will occur via the Climate Change Leadership Forum, the Māori Leadership and Reference Groups, the Peak Group, and the Technical Advisory Groups.

New section 68 provides for the making of allocation plans by Order in Council. The plans will set out a maximum free allocation for each sector over 2008–2012 and 2013–2025 and specify who is eligible for a free allocation of NZUs.

Sections 72 and 73 contain the process to govern the making of allocation plans. Before recommending that an Order be made to issue an allocation plan, the Minister must notify his or her intention to make the allocation plan, gather information from people who may be eligible for an allocation of NZUs, and seek public submissions on the draft plan.

Provisions dealing with compliance and enforcement are in *Subparts 3 to 5* of *new Part 4*.

The NZ ETS follows a self-assessment model. Under this approach, all the obligations placed on participants are clearly set out in legislation. Participants are required to submit annual emissions returns. Since this information will be of a commercial nature it will not be publicly available; nonetheless, certain information will be disclosed in aggregated form. The government is engaging on whether firms would be willing to report more frequently.

The chief executive will have the ability to audit the compliance of emissions returns submitted by participants. If participants fail to meet their obligations, or are shown to have failed to comply following an audit, financial and make-good penalties will apply, and will increase with the degree of culpability. To aid compliance, the chief executive will be able to issue advance rulings (called "emission rulings"), which will bind the chief executive to a particular interpretation of the legislation.

Ministers and departmental chief executives are the principal decision-makers under the NZ ETS. The Bill creates the right to seek

District Court review of decisions. Appeals on questions of law will lie with the High Court.

New Part 5 of the Climate Change Response Act 2002 contains the provisions specific to the forestry, transport and stationary energy sectors.

The forestry-specific provisions in *Subpart 1 of Part 5* cover:

- The designation of forest land as either "pre-1990 forest land" or "post-1989 forest land".
- Changing the land use of pre-1990 forest land gives rise to mandatory obligations under the NZ ETS. Exemptions are available for deforestation on land-holdings of less than 50 hectares and of land containing tree weeds.
- Owners of post-1989 forest land, or the holders of forestry rights/leases over post-1989 forest land, may elect to join the scheme (Schedule 4) to receive New Zealand units when their forest grows and surrender units when carbon mass decreases.
- Registration as a participant in respect of post-1989 forest land, possible deregistration, and the associated entitlements and liabilities.

The transport-specific provisions (*Subpart 2* of *Part 5*) cover the ability of major jet fuel users to assume obligations under the NZ ETS if they wish. The stationary energy-specific provisions (*Subpart 3* of *Part 5*) mirror these provisions in respect of major coal and gas users.

Part 1 of the Bill also provides for the consequential amendments that are required to ensure other statutes are consistent with, and support, the introduction of the NZ ETS.

The *Income Tax Act 2004* and the *Income Tax Act 2007* are amended to provide for the taxation treatment of the forestry sector of the NZ ETS. Provisions relating to the tax treatment of the NZ ETS for other sectors will be included in a tax bill scheduled to be introduced in early 2008.

The *Forests Act 1949* is amended to provide for the potential use under that Act of verifiers recognised under the Climate Change Response Act 2002 and methodologies prescribed under the Climate Change Response Act 2002 (as provided for in this Bill).

The *Forestry Rights Registration Act 1983* is amended to remove certain definitions that are superseded by definitions in this Bill.

The *Personal Property Securities Act 1999* is also amended to allow security interests over emission units to be registered in the Personal Property Securities Register.

Regulations

The principal features of the NZ ETS, including obligations on participants, are provided for in primary legislation. Regulations (as provided for in *new section 148*) will supply further technical details. The areas that will be covered by regulations include:

- certain definitions where the definition may need updating on a regular basis (such as "obligation fuel"):
- specification of the methodologies to be used to calculate emissions and removals:
- exemptions from the NZ ETS:
- the manner and form in which information is to be provided to the chief executive:
- fees.

Part 2

Part 2 of the Bill amends the Electricity Act 1992 to create a preference for renewable electricity generation by implementing a moratorium on new fossil-fuelled electricity generation, except to the extent necessary to ensure the security of New Zealand's electricity supply.

To help meet the government's climate change objectives, the New Zealand Energy Strategy (**NZES**) contains a target for 90% renewable electricity generation by 2025, and states a clear preference that all new electricity generation be renewable, except to the extent necessary to maintain security of supply.

Modelling undertaken to support the NZES indicates that renewable generation is expected to be cost competitive with fossil-fuelled thermal generation, particularly under the range of potential carbon prices envisioned under the NZ ETS. It is feasible, however, that a combination of factors, such as a high exchange rate and low gas price (as could arise from a major gas discovery) could mean that, even with emissions pricing, fossil-fuelled thermal generation may become more economic. Unexpected high costs or other barriers to new renewables could also make fossil-fuelled thermal generation more economic.

Due to the economies of scale involved in electricity generation investment, any significant investment in fossil-fuelled generation could "crowd-out" renewable investment for a number of years. This would jeopardise the government's climate change and NZES objectives and undermine public confidence in the climate change policy.

To minimise these risks, this Bill implements a 10-year legislative moratorium on new fossil-fuelled thermal baseload generation. This moratorium applies equally to all generators, whether state-owned or private, thereby ensuring competitive neutrality between generators with regard to the type of investments they can undertake. It is designed to influence generators' investment decisions towards renewables in the short-term, allowing time for the full introduction of an emissions price via the NZ ETS, which will influence investment decisions over the longer term.

Part 2 of the Bill inserts a new Part 6A into the Electricity Act 1992 providing for a 10-year moratorium on new fossil-fuelled thermal generation. The moratorium will apply to all fossil-fuelled generation greater than 10MW in capacity. Nevertheless, because a moratorium on new baseload fossil-fuelled generation has the potential to adversely affect security of supply, the Bill provides for exemptions for specific fossil-fuelled generation proposals that address concerns over security of supply.

Applications for exemptions from the moratorium will be judged against a set of criteria aimed at addressing concerns over security of supply. Exemptions will be granted by the Minister of Energy on the recommendation of the Electricity Commission.

Clause by clause analysis

Clause 1 relates to the Title.

Clause 2 relates to commencement.

Part 1
Amendments to Climate Change Response Act 2002

Clause 3 provides that the principal Act amended is the Climate Change Response Act 2002.

Clause 4 inserts *new section 2A*, which concerns the application of various Parts of new *Schedules 3 and 4*.

Clause 5 amends section 3, which concerns the purpose of the principal Act. The amendment augments the principal Act's purpose, providing that it includes implementing a greenhouse gas emissions trading scheme.

Clause 6 amends section 4, which concerns interpretation. The amendments account for the use of new defined terms.

Clause 7 amends section 7, which concerns the Minister of Finance giving directions to the Registrar regarding accounts and units. The amendments add surrender accounts and conversion accounts to the accounts for which the Minister of Finance may give directions.

Clause 8 amends section 10, which concerns the purpose of the Registry. The amendments specify the purpose of the Registry in relation to various units and the recording of certain information.

Clause 9 amends section 11, which concerns the appointment of the Registrar. The amendment omits the phrase "of the Ministry responsible for the Registry".

Clause 10 amends section 14, which requires the Registrar to give effect to directions. The amendments provide that the chief executive may not give certain directions relating to certain operations in the Registry unless certain conditions are met.

Clause 11 amends section 15, which requires the Registrar to allocate unique numbers. The amendments account for New Zealand units and approved overseas units.

Clause 12 amends the heading to section 16, which concerns the carry-over of units. The amendment changes "units" to "certain Kyoto units".

Clause 13 amends section 17, which concerns the commitment period reserve. The amendments account for the use of new defined terms.

Clause 14 amends section 18, which concerns the form and content of the unit register. The amendments account for the surrender and conversion of units.

Clause 15 amends section 18B, which concerns the closing of holding accounts. The amendments clarify the matters that are relevant to the chief executive when giving a direction to close a holding account, and replace the definition of reasonable notice.

Clause 16 amends section 18C, which concerns the transfer of units. The amendment clarifies that section 18C(3) applies to Kyoto units.

Clause 17 inserts *new sections 18CA and 18CB. New section 18CA* sets out the effect of surrendering, retiring, converting, and cancelling units except in accordance with *section 30E(4)(c). New section 18CB* provides that certain Kyoto units may not be surrendered.

Clause 18 repeals section 19 and substitutes *new section 19*, which provides for the retirement of Kyoto units by the Crown.

Clause 19 amends section 20, which provides that transactions must be registered. The amendments account for the use of new defined terms.

Clause 20 amends section 21, which concerns the registration procedure. The amendments account for the use of new defined terms, and clarify aspects of the registration procedure for Kyoto units in relation to the international transaction log.

Clause 21 inserts *new section 21AA*, which sets out the registration procedure for New Zealand units and approved overseas units.

Clause 22 amends section 23, which concerns receiving units from overseas registries. The amendments account for the use of new defined terms, and clarify that the section concerns Kyoto units.

Clause 23 inserts *new section 23A*, which concerns receiving New Zealand units and approved overseas units from overseas registries.

Clause 24 amends section 25, which concerns correction of the unit register. The amendments account for the international transaction log and overseas registries.

Clause 25 amends section 27, which requires certain information to be accessible by search. The amendments augment the categories of information that must be accessible by search.

Clause 26 amends section 30, which concerns the recovery of fees. The amendments omit the phrase "of the Ministry responsible for the Registry".

Clause 27 amends section 30A, which provides that the Crown or Registrar are not liable in relation to searches in certain cases. The amendments take account of the use of new defined terms, and extend the application of section 30A(b) to include errors in the unit register resulting from reasonable reliance on information received from overseas registries or third parties.

Clause 28 inserts *new sections 30E to 30J. New section 30E* provides for the conversion of New Zealand units into assigned amount units for sale overseas. *New section 30F* sets out restrictions on the

surrender and conversion of certain New Zealand units allocated in respect of pre-1990 forest land. *New section 30G* sets out a regulation making power with respect to various matters. *New section 30H* provides for the incorporation by reference in regulations made under *new section 30G*. *New section 30I* creates an offence for signing false declarations with respect to regulations made under *new section 30G* (a fine not exceeding $5,000). *New section 30J* creates an offence for providing false or misleading information to the Registrar with respect to regulations made under *new section 30G* (a fine not exceeding $50,000 for an individual and $200,000 for body corporate $200,000).

Clause 29 inserts a *new Part 3* heading above section 31.

Clause 30 amends section 33, which provides that the inventory agency is under the direction of the relevant Minister. The amendments omit the phrase "responsible for the inventory agency".

Clause 31 replaces the Part 3 heading and cross heading above section 36 with a new cross-heading.

Clause 32 amends section 36, which concerns the authorisation of inspectors. The amendment clarifies that powers are exercised and duties are carried out.

Clause 33 amends section 37, which concerns the power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases. The amendments omit the phrase "responsible for the inventory agency".

Clause 34 amends section 38, which concerns limitations on the power of entry under section 37. The amendment omits the phrase "responsible for the inventory agency".

Clause 35 inserts *new section 45A*, which provides protection for persons acting under the authority of the Act.

Clause 36 amends section 47, which concerns an offence for obstructing, hindering, resisting, or deceiving a person exercising a power. The amendments change "Act" to "Part" wherever it appears.

Clause 37 amends section 48, which concerns an offence for signing false declarations. The amendment changes the title of the section to indicate that the offence is in respect of regulations made under section 50.

Clause 38 repeals section 48A.

Clause 39 amends section 49, which concerns reporting. The amendment inserts the phrase "responsible for the administration of this Act" after "Minister" in the first place where it appears.

Clause 40 amends section 50, which concerns regulations. The amendments delete matters for which regulations may be made under the Act that have been moved into *Part 2* (*section 30G*).

Clause 41 repeals section 51 and substitutes *new section 51*, which provides for the incorporation of material by reference in regulations made under section 50.

Clause 42 amends section 52, which concerns reporting by the inventory agency on certain matters to the relevant Minister. The amendments omit the phrase "responsible for the inventory agency".

Clause 43 inserts *new Parts 4 and 5*. *New Part 4*, which consists of 6 subparts, sets out the provisions that establish the New Zealand greenhouse gas emissions trading scheme. *New subpart 1* establishes who must or may be a participant. *New subpart 2* concerns the allocation of New Zealand units. *New subpart 3* sets out the principal powers, duties, and functions of the chief executive. *New subpart 4* sets out the relevant offences and penalties. *New subpart 5* sets out the review and appeal provisions. *New subpart 6* sets out a number of miscellaneous provisions.

New Part 5, which consists of 3 subparts, sets out the sector specific provisions. *New subpart 1* concerns the forestry sector. *New subpart 2* concerns the liquid fossil fuels sector. *New subpart 3* concerns the stationary energy sector.

Clause 44 adds *new Schedules 3 and 4*, which are set out in the Schedule of this Bill. *New Schedule 3* sets out the emissions trading scheme activities relevant to persons who must be participants. *New Schedule 4* sets out the emissions trading scheme activities relevant to persons who may elect to be participants.

Clause 45 amends section 67Y(1) of the Forests Act 1949, which concerns the making of regulations with respect to forest sinks. The amendments clarify that the methodologies or mechanisms prescribed under section 67Y(1)(b) of the Forests Act 1949 may be those methodologies or mechanisms prescribed under section 148(1) of the Climate Change Response Act 2002. The amendment also provides for the making of regulations that prescribe the persons or

organisations that may carry may carry out verification functions in relation to a forest sink or forest sink covenant.

Clause 46 amends section 2 of the Forestry Rights Registration Act 1983 by repealing the definitions of **carbon sequestration**, **forest sink**, and **greenhouse gas**. It also amends section 2A(2)(b) by replacing the phrase "units based on carbon sequestration that are received in accordance with a forest sink covenant" with the phrase "the right to receive and the obligation to surrender units".

Clause 47 states that *clauses 48 to 55* amend the Income Tax Act 2004.

Clause 48 inserts a *new clause CB 29* into that Act, providing for the extent to which the disposal of a unit gives rise to an amount of income, including disposal by way of surrender or conversion. Generally, a disposal of a unit to a third party (other than on surrender) gives rise to an amount of income for income tax purposes.

Clause 49 inserts a *new clause CW 3B* into that Act that provides that any income arising on acquisition or disposal of a unit issued by the Crown free of charge in respect of pre-1990 forest land is exempt income.

Clause 50 inserts a *new section CX 44F* into that Act that provides that any income arising on issue by the Crown of a unit without charge in respect of post-1989 forest land is excluded income.

Clause 51 inserts *new sections DB 46 and 47* into that Act. *New clause DB 46* deals with the treatment of the cost (if any) of acquisition of a unit, including issue of forest land units the Crown without charge and an acquisition of a Kyoto unit on conversion. Generally, a deduction is allowed for the cost of acquisition if a unit is acquired from another person and it is not a forest land unit issued by the Crown without charge. *New clause DB 47* treats a person that has surrendered a pre-1990 forest land unit in respect of post-1989 forest land as having acquired the unit from a third party for its market value at the time, in order to allow the person a deduction for that value.

Clause 52 inserts a *new section EA 2B* into that Act and generally requires a first in first out cost flow method to be used to identify which units are held by a person at any time and specifically requires that approach in relation to forest land units issued by the Crown without charge.

Clause 53 amends *section EB 2(3)(g)* of that Act to provide that units are not subject to the trading stock valuation rules in that Act.

Clause 54 inserts *new section GD 16* into that Act, which provides that, if a unit is disposed of to another person for less than market value and the disposal is not a surrender or conversion, the disposal is treated as having been for market value.

Clause 55 inserts new defined terms into that Act that are used in the other inserted provisions of that Act and generally refer to new defined terms in the principal Act. The clause also amends the definition of revenue account property and inserts a new definition of replacement ETS unit. Those latter amendments provide that the deduction for the cost of a unit (other than a unit that merely replaces a forest land unit that was issued without charge by the Crown and then sold) is deferred until the unit is disposed of.

Clause 56 states that *clauses 57 to 64* amend the *Income Tax Act 2007*.

Clause 57 inserts a *new clause CB 36* into that Act, providing for the extent to which the disposal of a unit gives rise to an amount of income, including disposal by way of surrender or conversion. Generally, a disposal of a unit to a third party (other than on surrender) gives rise to an amount of income for income tax purposes.

Clause 58 inserts a *new clause CW 3B* into that Act that provides that any income arising on acquisition or disposal of a unit issued by the Crown free of charge in respect of pre-1990 forest land is exempt income.

Clause 59 inserts a *new section CX 48B* into that Act that provides that any income arising on issue by the Crown of a unit without charge in respect of post-1989 forest land is excluded income.

Clause 60 inserts *new sections DB 60 and 61* into that Act. *New clause DB 60* deals with the treatment of the cost (if any) of acquisition of a unit, including issue of forest land units by the Crown without charge and an acquisition of a Kyoto unit on conversion. Generally, a deduction is allowed for the cost of acquisition if a unit is acquired from another person and it is not a forest land unit issued by the Crown without charge. *New clause DB 61* treats a person that has surrendered a pre-1990 forest land unit in respect of post-1989 forest land as having acquired the unit from a third party for its market value at the time, in order to allow the person a deduction for that value.

Clause 61 inserts a *new section EA 2B* into that Act and generally requires a first in first out cost flow method to be used to identify which units are held by a person at any time and specifically requires that approach in relation to forest land units issued by the Crown without charge.

Clause 62 amends *section EB 2(3)(g)* of that Act to provide that units are not subject to the trading stock valuation rules in that Act.

Clause 63 inserts *new section GC 4B* into that Act, which provides that, if a unit is disposed of to another person for less than market value and the disposal is not a surrender or conversion, the disposal is treated as having been for market value.

Clause 64 inserts new defined terms into that Act that are used in the other inserted provisions of that Act and generally refer to new defined terms in the principal Act. The clause also amends the definition of revenue account property and inserts a new definition of replacement ETS unit. Those latter amendments provide that the deduction for the cost of a unit (other than a unit that merely replaces a forest land unit that was issued without charge by the Crown and then sold) is deferred until the unit is disposed of.

Clause 65 consequentially amends the Personal Property Securities Act 1999.

Part 2
Amendments to Electricity Act 1992

Clause 66 provides that the principal Act amended is the Electricity Act 1992.

Clause 67 inserts *new Part 6A*. The purpose of this Part is to reduce the impact of fossil-fuelled thermal electricity generation on climate change by creating a preference for renewable electricity generation through the implementation of a 10-year moratorium on new fossil-fuelled thermal electricity generation capacity, except where an exemption is appropriate (for example, to ensure security of supply).

Under *new Part 6A*—

- no person may connect a new fossil-fuelled thermal electricity generation plant (a **specified generation plant**) to the national grid or a distribution network, or operate a specified generation plant, unless—

- the person has an exemption granted under the Part; and
- the plant is connected and operated in accordance with the exemption:

- every person who breaches this prohibition commits an offence and is liable on summary conviction to a fine not exceeding $500,000. In addition, a penalty of up to 3 times the value of any commercial gain resulting from the breach may be imposed:
- the Minister of Energy on the recommendation of the Electricity Commission (the **Commission**) may, by notice in the *Gazette*, exempt a person from the prohibition.

An exemption may be granted if the Minister of Energy is satisfied that the specified generation plant—

- is a non-baseload plant that has a load factor or emissions level below or less than prescribed limits; or
- is necessary or desirable for 1 or more of the following purposes:
  - for the purpose of mitigating the effects of an emergency:
  - for the purpose of providing reserve energy:
  - for the purpose of providing electricity to a small isolated community that does not have a reasonable non-fossil fuel based alternative:
  - for the purpose of forming part of a co-generation process to improve the overall energy efficiency of the process above a prescribed level; or
- uses an acceptable combination of renewable energy sources and fossil fuels as prescribed in regulations; or
- is based on waste material; or
- will be connected and operated in circumstances where an existing thermal electricity generation plant will be retired in whole or in part and the specified generation plant together with any part of the existing thermal electricity generation plant that is not retired—
  - will significantly decrease emissions of greenhouse gases; and
  - will not reduce security of supply margins.

An exemption must be granted on the terms and conditions that the Minister of Energy considers are reasonably necessary to ensure that the specified generation plant is operated in accordance with any

purpose for which the exemption was granted and for no other purpose. The public must be consulted in relation to draft exemptions. Exemptions may be suspended or revoked.

New Part 6A also provides for the Commission to monitor compliance with the Part.

Clause 68 consequentially amends section 169(1)(30) (which relates to regulations that authorise the waiver, refund, or remission of fees).

Clause 69 consequentially amends section 172KB (which requires industry participants to co-operate with Commission investigations). The amendment extends the provision to apply to investigations carried out for the purposes of monitoring or enforcing *new Part 6A*.

Clause 70 consequentially amends section 172O (which relates to the functions of the Commission).

Regulatory impact statement

A proposed New Zealand emissions trading scheme

Executive summary

Human induced climate change is a real and serious phenomenon that the world must take action to address. New Zealand has ratified the Kyoto Protocol and consequently is liable for New Zealand's greenhouse gas emissions above 1990 levels over the period 2008–2012.

Action to address climate change and to meet ongoing international obligations will incur economic costs and benefits. The government has a range of tools available to meet these challenges—some mechanisms will be significantly less costly and disruptive to the New Zealand economy than others. The government wants New Zealand's future net emissions to be below business as usual levels and to meet international obligations in a least-cost manner over the long term.

On 20 September, the government released the document *A Framework for a New Zealand Emissions Trading Scheme*. This document noted that, subject to engagement with stakeholders and Maori, the government had decided in principle to introduce a New Zealand Emissions Trading Scheme (**NZ ETS**). The proposed transition period of the NZ ETS differs for each sector depending on their readiness and other factors. The main impact of the NZ ETS will be

that the price of emissions will be reflected in prices throughout the economy. The government is working on an assistance package for firms and households to help manage some of these potential impacts.

The Cabinet paper recommending the NZ ETS, attached a Regulatory Impact Statement (**RIS**), which was publicly released. This current RIS updates the analysis of the original RIS and is to be read alongside the Cabinet paper *A New Zealand Emissions Trading Scheme: 2007 Decisions*.

Adequacy statement

The Regulatory Impact Analysis Unit has reviewed the RIS and considers the RIS is adequate according to the adequacy criteria.

Status quo and problem statement

Human induced climate change is a real and serious phenomenon that the world must take action to address. New Zealand greenhouse gas (**GHG**) emissions comprise a very small proportion of the global total and we are reliant on effective international action to reduce total GHG emissions, and thereby reduce the extent of future climate change. Our biologically-based economy relies on a benign and stable climate for production, and therefore effective international action on climate change where all nations play their part is crucial for New Zealand's long-term economic, social and environmental wellbeing. Moreover, New Zealand's clean green image is part of the international brand, which underpins important sectors of the economy, such as tourism, as well as the premium prices New Zealand exporters seek for the country's products and services in overseas markets. A failure to act sustainably and responsibly could reduce New Zealand's international credibility and influence in international forums. A failure to act now would see costs for New Zealand rise over the long term.

Status quo

New Zealand is party to the United Nations Framework Convention on Climate Change (**UNFCCC**) and its Kyoto Protocol. The major feature of the Kyoto Protocol is that it sets mandatory targets on GHG emissions for developed countries and economies in transition listed in Annex 1 to the UNFCCC. In New Zealand's case, our

commitment is to take responsibility for emissions above 1990 levels during the period 2008–2012.

New Zealand GHG emissions (excluding emissions from deforestation) are projected to grow to around 30 percent above 1990 levels by 2010.

The government has yet to implement an economy-wide mechanism to reduce GHG emissions. However, the government has undertaken and will undertake more specific policy interventions for selected sectors. These have been funded either directly from government via tax revenue (eg, solar water heating) or through compliance costs of legislation and regulations (eg, building standards). The emissions reduction expected from these measures is relatively small, and based on current projections, business as usual emissions levels in New Zealand are expected to continue to grow strongly.

New Zealand's emissions profile has two major elements. Firstly, there is an underlying emissions path that rises steadily at approximately 1 percent per year in the period through to 2045. Secondly, it has a forest sink trend running through it. As the forests planted in the 1990s are due to be harvested (through the mid to late 2020s to mid 2030s), New Zealand's overall emissions (including forest sinks) spike significantly.

It is estimated that under the business as usual model, New Zealand's net emissions in 2023–2027 will be over 60 percent higher than in commitment period one (**CP1**) of the Kyoto Protocol (2008–2012).

The status quo (business as usual) is not a sensible option. It would leave the government to fund emissions above 1990 levels by purchasing units on the international market through general taxation. Firms would have little incentive to reduce emissions as they would not be directly incurring the costs of their emissions. Thus, emissions would continue to rise and thus become increasingly costly for government (ie, taxpayers), especially as the international agreements are expected to become more stringent.

Costs and benefits of climate change mitigation

There is a significant body of international work describing the range of costs and benefits of climate change mitigation and the cost of global action.

Action to address climate change is likely to incur real economic costs. Working Group III of the Intergovernmental Panel on Climate Change (**IPCC**) has concluded that in 2030, the macroeconomic costs for multi-gas mitigation, consistent with emissions trajectories towards stabilisation between 445 and 710 ppm CO_2-eq, are estimated at between a 3 percent decrease of global GDP and a small increase, compared with emissions with the level of GDP that would have occurred under a business as usual scenario (note, with projected rates of GDP growth, levels of GDP per head will be significantly greater than they are today, even with these estimated reductions).

The question, therefore, is whether the costs of action are justified by the benefits.

In deciding whether to reduce GHG emissions in New Zealand, the appropriate question is not whether it can be demonstrated that climate change will harm New Zealand and whether the damage to New Zealand averted by the reduction exceeds the costs it would impose. This question does not recognise that New Zealand is a participant in the international climate change policy process and has ratified the Kyoto Protocol. New Zealand has assumed specific obligations under that Protocol and has consistently stated that it is prepared to undertake commitments beyond 2012 in the context of the broadest international agreement to do so. Under international agreements, harm is not directly defined in environmental terms, but in terms of the cost to New Zealand of meeting these international commitments.

International studies have estimated the global potential for climate change mitigation. These studies suggest that there is a significant potential for mitigation, some of which have "negative cost" (ie, the savings in energy costs outweigh the costs of the investment). Even though some of these studies are not directly relevant to New Zealand, they show that there are abatement activities available around the globe which, through linking to the international market, will help to limit the cost of emissions in New Zealand.

Objectives

Specific climate change initiatives sit within New Zealand's broader sustainability and climate change goals and objectives. These are outlined in the report "*New Zealand's climate change solutions: An*

overview". The government's guiding principles for its climate change policies are that they:

(a) are long term and strategic:

(b) balance durable efforts to reduce emissions with preparations for the impacts of a more variable climate:

(c) engage with the wider public, industry and business to inspire their willing, effective and long-term involvement:

(d) focus on international engagement that advances New Zealand's national interests.

The government's current policy development process is underpinned by some key assumptions that are consistent with the approach it has taken to climate change over the past few years. These include:

(a) Faced with sufficient consensus on climate change science, responsible government must act to address the risks for New Zealand's vulnerable environment, economy and way of life. While action to reduce greenhouse gas emissions over the long term will have a cost, the predicted costs and risks of inaction are expected to be unacceptably high.

(b) Effective international action is needed to reduce global greenhouse gas emissions. To support and encourage international action, New Zealand needs to play its part in reducing emissions, as well as encouraging other countries, especially the major emitters, to act.

(c) New Zealand's response should maximise the economic advantages of using energy and resources more efficiently and facilitate our involvement in the development or adaptation of low emission technologies relevant to our needs.

(d) Our policy response should start with the most achievable options and seek least-cost solutions.

(e) All sectors of the economy should play a fair and equitable part in the national response to climate change, reflecting the fact that some sectors will be able to achieve emissions reductions more easily than others.

Key in a decision to implement specific climate change initiatives is an assessment that New Zealand will continue to operate in a carbon-constrained world.

These principles and assumptions (outlined above) have been synthesised to provide a more detailed NZ ETS objective to frame policy development in this area as follows:

- to develop climate change initiatives that support and encourage global efforts to reduce greenhouse gas emissions by:
  - reducing New Zealand's net emissions below business-as-usual levels;
  - complying with our international obligations, including our Kyoto Protocol obligations;

  while maintaining economic flexibility, equity, and environmental integrity at least cost in the long term.

Alternative options

There are a number of possible policy approaches to reducing emissions including:

(a) **Direct regulation**: this could include requiring a certain proportion of liquid fuels to be biofuels; prohibiting certain activities (eg, certain fuels in certain circumstances); imposing restrictions on certain activities (eg, requiring all new electricity generation to be from renewable sources). Some of these have already been implemented; others have been discounted or are still being considered . Overall, the regulatory options alone will not optimise New Zealand's climate change response.

(b) **Information and promotion**: initiatives that give consumers and businesses better information about the GHG emissions that their actions lead to, and encourage them to change their behaviour, can be effective in some areas. New Zealand already has a number of such initiatives in place (eg, energy efficiency labelling and promotional activities undertaken by the Energy Efficiency and Conservation Authority (**EECA**)).

(c) **Emission reduction incentives**: the incentive option is problematic as in order to calculate the level of incentive to pay a particular firm, it is necessary for the government to estimate the level of emissions a firm would have emitted in the absence of the incentive. Due to the practical difficulties in establishing this emissions baseline, widespread use of an incentive approach is not likely to be effective. However, incentives can still be effective in certain key areas (eg, provision of subsidies for household insulation and solar heating).

(d) **Broad price-based carbon tax**: a broad price-based mechanism, such as a carbon tax, results in the price of emissions

being reflected throughout the economy. Although the government can control the overall stringency, decisions on which abatement activities occur are made at the firm and consumer level. In general, firms and consumers are better placed to make these decisions than central government. The effectiveness of taxes in reducing emissions is dependent on the sensitivity of consumers and firms to prices. If consumers and firms are not very sensitive to prices (in economic jargon, if demand is "inelastic"), then a large increase in price is required to induce even a small reduction in emissions.

Preferred option

A cap and trade ETS with a transitional introductory phase is the preferred option for meeting the detailed objectives set out above. The ETS, while an important element of New Zealand's proposed climate change response sits within a suite of policies including direct regulatory measures, improved information and specific initiatives (eg, increased funding for relevant agricultural research).

The key difference between a carbon tax and an ETS is that with a tax, the government sets the price of emissions, while with an ETS they set the quantity of emissions. Under a tax, there would be an inevitable degree of uncertainty around the level of emissions that would result, and that the government would be responsible for, in any one year or commitment period. A tax would provide greater emissions price certainty to emitters. However, it would subject the government and taxpayers to potentially very large fiscal costs if the tax was set too low. Adjusting taxes to changing circumstances and to improve efficiency and effectiveness can also be problematic; as decisions by governments can be influenced by wider considerations than simply the narrow purpose for which the tax was designed.

An ETS allows greater flexibility in terms of price adjustments. Prices adjust automatically in an ETS as international carbon prices adjust, whereas tax-based systems tend to be sticky as they can only be increased by an explicit government decisions. Inevitability, under a tax-based system that the price of emissions in New Zealand would not reflect the international price of emissions. This would increase the cost New Zealand incurs to meet its international obligations. Having said this, it is important to note that price volatility as implied by an ETS is not costless. A permit system has considerable advantages when it comes to small open economies like New

Zealand if there is a well-functioning international market for carbon, especially if the international price is subject to shocks. This is because under a tax, unless the government continually adjusted the tax in response to these shocks, government would face fiscal risk and New Zealand would either over or under invest in emission reducing activities.

It is proposed the NZ ETS be internationally linked. The NZ ETS will operate within the international cap on emissions that is agreed through international negotiations (currently Kyoto).

One of the key advantages of an ETS is that it is consistent with the nature of our international obligations (the Kyoto Protocol is a global cap and trade system). More generally, there is considerable strategic and economic benefit in taking the same broad approach to reducing emissions as some of our key trading partners.

The proposed NZ ETS would work by placing an obligation on participants to surrender emissions units to cover their emissions. Firms would have the flexibility to choose their best response to this obligation. Participating firms who value their emissions producing activities more than the cost of reducing them have the option to purchase units, while firms who value their emission less than the cost of purchasing units may choose to reduce their emission output. In this way, trading would result in emission reductions being made by firms who can do so most cheaply and encourages innovation.

By internationally linking the scheme, trading can occur in the much larger and more liquid international market. This effectively allows NZ firms to take advantage of low cost abatement opportunities offshore. The market would determine the level of domestic versus international abatement that would occur.

A key element of the preferred option is a transitional period that will allow affected parties time to adjust and help address equity issues. These are different, recognising varying levels of readiness. The dates of entry are set out in the table below.

The core obligation placed on participating firms will be defined in absolute terms, (tonnes of CO_2-e per year), rather then an intensity based measure (tonnes of CO_2-e per unit of activity). This will mean that participants must surrender one emission unit for every metric tonne of CO_2-e emitted each year. Adopting an absolute approach provides certainty over the (global) environmental outcome and is relatively simple to implement.

Staged entry of sectors into the NZ ETS

Sector	Commencement of obligations	End of initial compliance period
Forestry (includes deforestation of pre-1990 land and afforestation post-1989	1 January 2008	31 December 2009 (first compliance period is 2 years)
Liquid fossil fuels	1 January 2009	31 December 2009
Stationary energy (includes coal, natural gas, and geothermal)	1 January 2010	31 December 2010
Industrial process (non-energy) emissions	1 January 2010	31 December 2010
Agriculture (includes pastoral and arable farming and horticulture)	1 January 2013	31 December 2013
Waste	1 January 2013	31 December 2013
All other emissions	1 January 2013	31 December 2013

In each sector, there are a range of options for where to place the point of obligation. Points of obligations are designed to:

(a) Keep compliance and administration costs low.

(b) Capture as many of sectors' emissions as practicable.

(c) Reflect the feasibility of monitoring and verifying emissions at each point.

(d) Create appropriate incentives to reduce emissions while not unduly deterring worthwhile economic activity and investment.

Impacts and Sector Specifics

The fundamental impact of an ETS is that it changes prices in the economy to reflect the cost of emissions. Price changes will incentivise abatement activity, which should see net emissions reducing from business as usual. Given the stringency of the Kyoto agreement, the overall macro impacts on the economy will be small over 2008–2012 . However the impacts on particular sectors of the economy (ie, the microeconomic effects) could be more significant due to emissions being concentrated around certain activities and sectors. To give a sense of magnitude, some indicative price changes are shown in the table below. These assume no assistance or compensation has been provided. These changes would be the same under a carbon tax set at the corresponding emission price.

Price changes due to an ETS assuming no assistance or compensation	**Emission price scenarios**		
	$15/t CO_2–e	**$25/t CO_2–e**	**$50/t CO_2–e**
Households			
Increase in household expenditure (per annum)	$100–$200 pa	$170–$330 pa	$330–$660 pa
Approximate % of total household expenditure	0.3–0.5%	0.5–0.8%	1–1.6%
Liquid fuels (transport)			
Petrol c/litre GST incl. (% increase over current price)	3.7 c (2.5%)	6.1 c (4%)	12.2 c (8%)
Diesel c/litre GST incl. (% increase over current price)	4 c (4%)	6.7 c (7%)	13.3 c (14%)
Transport sector emission reductions in the medium-term (relative to business-as-usual)	0.3%	0.6%	1.1%
Electricity			
Wholesale c/kwh (% increase over business-as-usual)	0.7 c (9%)	1.4 c (19%)	2.9 c (37%)
Retail c/kwh GST incl. (% increase over business-as-usual)	1 c (5%)	2 c (10%)	4 c (20%)
Long-term (2020 and beyond) Electricity Generation Emission levels	Emissions at about current levels—improvement over business-as-usual (around 6.5 million tons pa)		1990 levels (around 3.5 million tons pa)
Other fossil fuels			
Wholesale gas $/GJ	$0.8 (11%)	$1.4 (18%)	$2.6 (35%)
Retail gas $/GJ (GST incl.)	$0.8 (11%)	$1.7 (4%)	$2.8 (6.5%)
Wholesale coal $/GJ	$1.5 (40%)	$2.5 (67%)	$4.9 (134%)
Agriculture (methane and nitrous oxide emissions only)			
Dairy: reduction in payout if facing full cost (relative to payout of $4.56 kg/ms)	-3.5%	-5.9%	-11.8%
Beef: reduction in payout if facing full cost (relative to current payout)	-6.3%	-10.4%	-20.9%
Sheepmeat: reduction in payout if facing full cost (relative to current payout)	-10.1%	-16.9%	-33.8%
Venison: reduction in payout if facing full cost (relative to current payout)	-12.8%	-21.4%	-42.8%

Macroeconomic modelling

The Emissions Trading Group (**ETG**) commissioned economic consultants Infometrics to update their previous analysis of the effect of various policy instruments on the New Zealand economy.

Impact over Kyoto period

The macroeconomic impact, as represented by a variety of indicators is very small. This is consistent with the previous message that the impact under Kyoto would be around 0.1 percent of GDP. It should be noted that New Zealand faces an impact, regardless of having an ETS as we have already signed up to Kyoto. In fact, under an ETS New Zealand's net emissions should reduce; this will work to further reduce the macroeconomic impacts over the status quo.

Infometrics has pointed out that GDP is not a particularly good indicator of welfare or living standards. In fact, its modelling of the ETS indicates the impact on GDP would be zero, however, this would be a misleading figure to use, because there will be a real reduction (albeit small) in living standards as measured by the level of private consumption.

The macroeconomic impact over the Kyoto period is small because:

(a) The "shock" to the economy of introducing an emission price into the economy is small compared to the size of the economy. In any case, this "shock" involves a transfer of resources within the economy from taxpayers to sectors that produce emissions. This transfer of resources does not represent a loss to the economy as a whole.

(b) The resources that are required to pay for the emission units that must be purchased offshore (as a result of the country having a net emissions deficit) do represent a loss to the economy. However, under Kyoto the country's net position is small compared to the size of the economy. Given the assumptions behind the model, this loss does not actually cause a reduction in GDP (in world prices), as the volume of goods and services produced by NZ does not change. It is simply that more resources need to go into exporting, leaving less for private consumption. The reduction in private consumption does represent a reduction in living standards relative to business as usual.

Potential impact over longer term

The longer term impacts of an ETS will be driven by the stringency of international agreements going forward. As international agreements become more stringent , the impacts will increase. However, these could be moderated by technology improvements and by the degree to which international agreements become more comprehensive (ie, the degree to which imbalances in global competitiveness between firms can be reduced).

Modelling in 2025 under a range of different scenarios was carried out by Infometrics to give insights into the potential impacts over the longer term. The modelling shows that the impact on the NZ economy would increase if international agreements become more stringent and the price of emissions rises. Given a range of speculative but plausible scenarios, the impact is still not large when compared to the underlying growth in living standards expected over time (eg, we might have living standards in 2030 that we would otherwise have expected in 2028 or 2029). The modelling has also shown how:

(a) An ETS reduces the impact of meeting our international obligations over the case where the government remains responsible for all emissions. For example private consumption fell by 1.0 percent in a scenario where the government is responsible but only 0.7 percent under an ETS.

(b) Stringency of international agreements (ie, how many emission units NZ gets allocated for free) is a key driver to the size of the impact.

(c) The coverage and nature of international agreements is very important. For example a scenario with key international trade prices reflecting the price of emissions (ie, if our international competitors also faced a price of emission) reduces the impacts.

Independent analysis of carbon markets

ETG commissioned two reports from Point Carbon, a world-leading provider of independent analysis on carbon markets based in Norway:

(a) *Issues in the International Carbon Market 2008–2012 and Beyond*

(b) *Functionality in the International Carbon Reduction Project.*

Issues in the International Carbon Market 2008–2012 and Beyond covers price ranges in the international emissions trading market

price risk management tools and the relationship between transaction costs and size of participants. The key points that arise from this report are:

(a) There is a range of prices in the international carbon market. These vary by risk of project and type of unit—Kyoto credits range between NZ $10 and $33.

(b) Uncertainties exist in the carbon market going forward. A major source of that uncertainty surrounds the prospect of assigned amount units (**AAU**s) entering the market.

(c) It is not yet clear how the AAU market will evolve but it is possible this will involve occasional, large volume intergovernmental transactions rather than a more liquid market with many private sector participants. The first intergovernmental transaction is expected in 2008.

(d) Prices in the secondary Certified Emission Reduction (**CER**) market (units with guaranteed delivery from the Clean Development Mechanism) are influenced by prices in the EU ETS. Yet, short-term volatility in the EU market does not affect the primary CER market.

(e) The international carbon market is evolving rapidly but is not yet as developed as other more established commodity markets. The emerging financial products and routes to the market are likely to increase the ability of participants to manage their exposure to price fluctuations in the carbon market.

(f) Although the growth of the financial services sector within the carbon market presents opportunities for smaller players to enter the carbon market, smaller players may be disadvantaged in terms of their ability to invest in the primary CER market, and in terms of brokerage and exchange fees.

Functionality in the International Carbon Reduction Project Market report covers issues related to the carbon market offset project market such as additionality, incentives to own high quality units, and validation processes. Key points arising from this report are:

(a) It is impossible to be definitive about the environmental veracity of processes such as the Clean Development Mechanism. The nature of the mechanism, especially the need for an additionality criterion, is such that environmental integrity cannot always be guaranteed.

(b) The tendency is for increasingly stringent rules and probity checks and it is expected that processes will continue to improve.

(c) There is evidence that buyers are exerting some control over the quality of the credits that they own.

(d) In the secondary CER market, it is not possible to identify the type of project that the credit originated from (eg, it is possible that credits associated with HFC-23 credits may be resold without being identified as such).

Firms

Most New Zealand firms will face costs and benefits under the ETS. Increased costs will occur under an ETS as a result of firms being required to surrender New Zealand Units (NZUs) to cover their emissions, or due to them facing higher energy and fuel prices. Many firms will be able to pass a portion of these costs down the supply chain, reducing the impact on their profitability. However, some firms will not be able to pass costs on, resulting in greater profit impact and a loss of competitiveness. The loss of competitiveness would be exacerbated if these firms competed with overseas firms that were not subject to the same price for emissions.

These impacts could be significant for some firms. In particular this disproportionate impact raises equity concerns. But most importantly it may also lead to long term regrets if the ETS resulted in reduced output, or closure of a firm, that would have been competitive if its competitors faced similar greenhouse gas measures and there were a good chance that these competitors will face such a charge in the foreseeable future. There would also be a concern if particularly large or concentrated job losses resulted or New Zealand's reputation as a good place to do business relative to its neighbours and trading was damaged.

For these reasons, the government is proposing an industry assistance package. The exact shape and nature of this package is the subject of engagement between industry and government. This assistance could be in the form of free allocation (where the government gives free units to firms) and/or some form of progressive obligation where the obligation to surrender units gradually increases through time.

Direct emission reductions from New Zealand industry over the next 10–15 years under an ETS will be somewhat constrained by the nature of the existing facilities, although there are still promising opportunities to reduce emissions. These include:

(a) Switching from using coal to using gas or biomass for industrial heat wherever possible.
(b) Increasing the use of cogeneration in conjunction with industrial heat production (cogeneration technology allows heat that is generated for industrial processes to be used to produce electricity as well).

Over the longer term, there are many new technologies that could allow for dramatic improvements in industrial energy efficiency and emission reductions. The actual level of emission reductions will be determined by the price of emissions relative to the cost of the abatement activities.

Households

Households will face higher energy prices (eg, petrol and electricity). The government is particularly concerned about impacts of electricity price increases on consumers and is considering compensation outside of the ETS.

Transport

There will be relatively small emission reductions, relative to business as usual, in the transport sector as consumption does not change much when the price rises. In fact, transport emissions are still expected to rise significantly over the long term (with key drivers being GDP and population growth). Pricing emissions will improve the cost effectiveness of new technologies for emission reduction to make them more widely available (and thus make them economic sooner than would have been the case).

Electricity

Emissions from the electricity sector will not decrease in the short term , but in the medium to longer term there should be significant emission reductions relative to business as usual. This occurs as old thermal plant is replaced by plant with lower emissions (in particular new renewable generation capacity). Emission reductions would not be materially effected by compensation offered to consumers outside of the ETS, as generators will still face the correct price signals when building new plant.

Forestry

This sector is a priority for the government as the sector can be a significant driver behind NZ net total emissions (both in a positive and negative sense). There are both benefits and costs for participants to be in the NZ ETS. Significant emissions could occur if this sector does not face the correct price signals for their deforestation of pre-1990 forests. On the other hand, the reduction of deforestation is likely to be one of the lower cost abatement options in the domestic economy in CP1.

It is currently estimated that for every 12 months that deforestation remains outside the ETS after 1 January 2008, increased emissions of 12-24Mt CO_2-e are likely to occur, resulting in increased costs to the Crown of $180–$600 m. This reflects an assumption that owners would bring forward deforestation to avoid likely future controls. Current analysis suggests that deforestation would reduce substantially, and in many cases stop entirely, if the parties faced the full cost of the emissions involved.

Thus there will be compulsory entry for pre-1990 forests, but with a threshold to avoid high transaction costs. Yet the ETS will be voluntary for post 1990 forest. That is, the owners of these forests will be given the choice to enter the ETS and receive all of the relevant sink credits and future liabilities. This is expected to be more attractive for most investors than the existing (and ongoing) Permanent Forest Sinks Initiative (**PFSI**), because of restrictions under that initiative (although officials understand that these restrictions are seen by some investors as adding value).

Agriculture

Agricultural sector emissions represent almost half of New Zealand's total GHG emissions and are currently a significant source of emissions growth. Any ETS that did not include agriculture emissions would be inconsistent with a least-cost approach to emissions reduction, as the cost of these emissions would need to be absorbed elsewhere in the economy. This makes agriculture a priority for inclusion in the ETS. It is also important that the sector faces the full marginal price of emissions as the current growth in emissions is largely driven by conversion and intensification. These decisions would be influenced by facing the full marginal price of emissions.

The effects of the ETS on the agriculture sector are difficult to accurately predict for a number of reasons. Firstly, the government is signalling a preference for a processor/company level point of obligation, in which case the price signals reaching farmers will likely be weak or distorted in some cases. Secondly, the agriculture sector is highly dynamic due to the ability for some farmers to readily change land use, the cyclical nature of commodity prices, and the apparent resilience of farm businesses and their ability to adapt to new conditions.

In the short term, it is unlikely to expect strong emission reductions from the agricultural sector as current opportunities for abatement are limited, particularly around methane, which represents about two-thirds of agriculture's emissions. However, some opportunities exist around nitrogen inhibitors. In fact, it appears likely that aggregate emissions from agriculture (and from the dairy sector in particular) will rise in the near term at least. The dairy industry would be taking into account the price of emissions when decisions are made that result in increases in emissions.

The farming sector is characterised by a large number of sellers producing relatively homogenous and perishable product, meaning that farmers are also price takers. All costs introduced into the agriculture value chain (eg, CO_2 related costs introduced at the processor level) are generally absorbed at the farm level. Introducing emissions trading in this sector may, therefore, have significant impacts on farm profitability and raise equity concerns at the farm level. In recognition of equity concerns, the government is proposing to use allocation policy to partially compensate farmers for lost profits.

There are over 30 000 pastoral farmers in NZ and many potential difficulties in bringing them into an ETS. Further engagement with the sector is required before the details of the scheme are finalised, and various mechanisms have been put in place for this (eg, Peak Group on Agriculture and the ETS).

Impact on the stock of regulation

While the ETS will operate as a new set of regulations that apply to GHG emissions, officials have designed a scheme that, to the greatest extent possible, utilises existing legislation and regulations.

The existence of an ETS will mean that some interventions that have been discussed in consultation documents to reduce emissions will

no longer be required (eg, RMA standards on land use/deforestation, and nitrogen tax).

Risk assessment

Risk

High levels of volatility in the price of emissions result in increased uncertainty (and thus cost) for business.

Mitigation

The NZ government will play an active role in international agreements to help ensure that the global carbon market develops in an orderly manner.

Enable the development of financial instruments to allow firms to reduce their exposure to the volatility in the price of emissions.

Consider measures to reduce the initial volatility that may be present during the establishment of a new market.

Ensure as much liquidity as possible by linking to international markets.

Consider the effects of government allocation decisions on market volatility.

Risk

There is a gap in international agreements after 2012.

Mitigation

The NZ government will actively participant in international negotiations with a view to reaching international agreement on arrangements post-2012.

Ensure flexibility in the design so that the operation of the scheme is not directly linked to any particular international agreement and can operate as a stand alone scheme if needed.

Need to ensure adequate liquidity in the case of a stand alone scheme or maybe look at a price cap or floor.

Risk

Potential for market failure in certain sectors resulting in less emission reduction occurring then should given the price.

Mitigation

Complementary measures (eg, energy efficient homes) can be targeted at areas where the price signal does not achieve the desired level of emission reduction.

Risk

Businesses have difficulty accessing the market.

Mitigation

Ensure that the registry is "business friendly" including low transaction fees.

Enable competition between a range of emission markets both within NZ and overseas (as a result of the scheme being internationally linked).

Consider the nature of the firm when setting points of obligation (eg, large firms, who have established trading desks should find it easier to participate in the market then a Small to Medium Business).

Risk

The international price of emissions rises to very high levels causing significant harm to NZ economy.

Mitigation

Governments will need to make ongoing decisions about what further international commitments NZ is prepared to sign up to post-2012, including the stringency of emission reductions. New Zealand's position on this could consider factors such as the extent and nature of participation by other countries.

Risk

Transitioning to the new regime will be difficult and/or expensive.

Mitigation

Have a transitional period and different dates of entry to recognise different levels of readiness.

Risk

Increased uncertainty and market volatility during the start up phase of the scheme.

Mitigation

Signal policies in advance as much as practical.

Education and training for participants.

Link to international markets to increase market liquidity.

Risk

Loss of firms with long term regrets.

Mitigation

Government will look to provide an industry assistance package to reduce risk of firms shifting operations offshore as a result of the ETS.

Risk

Future international agreements are based around a carbon tax.

Mitigation

Ensure the ETS is easily modified to act as a tax (this would simply require the govt to provide unlimited units at a particular price—points of obligation, reporting and monitoring etc, could remain unchanged) if this becomes necessary given global developments.

Establish a regular review process for the scheme to take into account international developments.

Risk

Future international agreements move towards an intensity base approach.

Mitigation

Ensure the ETS can easily be modified to adopt an intensity based approach.

Establish a regular review process for the scheme to take into account international developments.

Risk

Breach of commitment period reserve (a requirement under the Kyoto Protocol that all party nations retain at least 90% of their initial assigned amount of AAUs within their emissions unit register).

Mitigation

Breach is unlikely due to the expected net inflow of Kyoto units over CP1 and can be managed by allocation decisions and staggered sectoral entry into the NZ ETS.

Risk

Required systems, processes or the administering agency are not fully functioning by the commencement of the scheme.

Mitigation

Implementation is discussed in the section below.

Implementation and review

The compliance and enforcement system for the NZ ETS is based on a "self-assessment" methodology like that used in the New Zealand tax system. Under this system, ETS participants will be responsible for complying with their obligations under the ETS and assumed to be in compliance unless subsequently challenged by the chief executive of the department with responsibility for administration of the NZ ETS ("Chief Executive"). This system should result in far lower compliance costs for both participants and for the Chief Executive than a full-regulation model and is consistent with the nature of the regulatory regime being imposed. In order to meet all the requirements of the compliance system, participants will need to undertake a number of activities including:

(a) surrender one emissions unit for each tonne of CO_2-e emitted in each compliance period

(b) calculate their level of emissions using approved methodologies

(c) retain sufficient records to allow verification of emission calculations
(d) report their level of emissions, and emission units surrendered at the end of each compliance period, to the Chief Executive
(e) comply with any directions of the Chief Executive.

Participants' emission levels will be determined by multiplying the volume of an emitting activity by an emissions factor in a particular time period. Emissions factors will be provided, or approved, by the Chief Executive. The Chief Executive will be given adequate rights to check the validity of information provided to it. Any failure to meet the core obligation will result in:

(a) a requirement to make up the surrender shortfall within 90 days of a determination by the Chief Executive that a participant is in breach and at a ration of 1:1
(b) a financial penalty of NZ $30 per tonne of CO_2-e emitted for which emission units have not been surrendered
(c) the publication of the participant's identity and nature of the compliance failure.

Where a participant knowingly fails to meet the core obligation, the make-up requirement will increase to a ratio of 1:2. Also, the financial penalty will rise to NZ$60 per tonne of CO_2-e emitted and participants will face the possibility of criminal conviction. Failure to meet other obligations (eg, the requirement to monitor and report emissions) will result in a financial penalty of up to $4,000 for the third infringement, $8,000 for the second, and $12,000 for the third. Where a participant fails to meet these obligations knowingly, it will be subject to larger fines and possibly criminal conviction. This penalty structure is similar to that imposed under the self-assessment approach in the Tax Administration Act 1994.

Generally, feedback on the compliance and enforcement provisions has been accepting of the self-assessment compliance system. It is expected that detailed submissions will be received during the Select Committee process. However, some changes are proposed now in order to assist the development of the New Zealand carbon market. The accompanying paper asks Cabinet to consider a revised approach for the requirements around the surrendering of units when sectors first enter the ETS, variants of which have arisen during the engagement process. The revised approach is (note, forestry and transport enter at point b):

(a) for firms to monitor and report their emissions for the year (two years for agriculture) prior to entry to the NZ ETS on a voluntary basis (penalties for errors in reporting in that year would not apply):

(b) for firms to monitor and report for their year of entry into the ETS (with reporting penalties applying) and to surrender units for that year (without applying penalties other than a make good provision for under-surrender of units):

(c) for firms to monitor, report and surrender units for subsequent years with the full penalty regime applying.

In addition, the government will make it clear that any changes to the rules on what units can be used for compliance purposes will not apply retrospectively.

It is proposed the legislation for the NZ ETS proceed as a new part of the Climate Change Response Act 2002. The Climate Change Response Act 2002 implements New Zealand's obligations under the Kyoto Protocol to establish a national registry system. Many of the features for a New Zealand ETS already exist under the Climate Change Response Act 2002, although some require modification. The purpose of the Climate Change Response Act 2002 will also need to be amended to provide for a New Zealand ETS that continues beyond 2012. The bill to amend the Climate Change Response Act 2002 is called the Climate Change (Emissions Trading and Renewable Preference) Bill.

Implementation of the NZ ETS will establish the business operations required to give effect to the government's emissions trading policies described in The Framework for a New Zealand Emissions Trading Scheme and the Climate Change (Emissions Trading and Renewable Preference) Bill.

The key business operations will be delivered by a group of Ministries governed by the respective chief executive officers and senior officials to ensure effective cross government integration. These functions comprise:

(a) **Policy Advice**: providing policy and economic advice, establishing emissions factors, developing allocation plans, undertaking international negotiations and gateway management, and management of the Crown's obligations.

(b) **Administration**: providing the registry, sector administration, compliance and enforcement.

(c) **Education and communications**: providing the integrated delivery of information and training.

Cross government governance

To implement these business operations, an implementation programme covering the following functions is underway:

Policy advisory functions

Policy advice and co-ordination:

- legislative development and statutory review:
- policy and economic advice:
- cross government policy co-ordination.

Emission factors:

- emission factor development by sector.

Future allocation:

- allocation policy and national allocation plans.

International linking:

- international negotiations, cap setting, and gateway management.

Crown obligations:

- purchasing Kyoto units:
- buying and selling NZUs.

Education, communication, and consultation:

- Management Advisory Groups:
- consultation with iwi:
- public consultation:
- information and guidance about:
    - NZ ETS start up phase:
    - climate change policy.

Administrative functions

Registry and sector administration:

- ETS register including allocation, verification, reporting, and banking:
- assessments and registration of participants and traders.

Compliance and enforcement:

- monitoring compliance requirements of participants:

- enforcement of compliance requirements.

Crown obligations:

- purchasing and trading role of Government.

Education and communication:

- public guidance about:
  - registry start up phase:
  - administration of Registry.

NZ ETS education and communication functions

Communications strategy—cross government.

Education programme—cross government.

The key implementation dates over the next two years are likely to be:

- 20 November 2007—Bill approved by caucus and tabled in the House
- December 2007—New Zealand Emissions Unit Register for Kyoto units goes live
- 1 January 2008—ETS obligations commence for forest land owners
- 1 March 2008—Carbon Accounting Standards for forests documented
- 1 April 2008—Draft regulations for carbon measurement, carbon certifiers and cost recovery
- 1 April 2008—Draft regulations for NZ ETS administration and NZU Registry operation
- 1 July 2008—NZ ETS Registry operational
- 1 July 2008—Carbon calculators available to calculate pre 1990 forest deforestation liabilities and post 1989 forest credits and liabilities
- 1 July 2008—Forestry Carbon Certifiers trained and able to be registered
- 1 July 2008—Forestry Participants with pre 1990 forests can apply for exemptions and those with post 1989 forests can apply for inclusion into the NZ ETS
- 31 July 2008—Forestry GIS goes live
- 1 December 2008—NZ ETS compliance and enforcement processes operational
- 1 January 2009—ETS obligations commence for liquid fossil fuel providers

- 30 June 2009—Deadline for applications by landowners of less than 50 hectares of pre 1990 forest land for exemptions
- 31 December 2009—First deforestation returns lodged with the Administrator
- 31 December 2009—First liquid fossil fuel emission returns lodged with the Administrator
- 31 December 2009—Allocation of NZUs to pre 1990 forest Participants
- 31 December 2009—First date for surrender of NZUs
- 31 December 2009—Deadline for applications by people wishing to be participants in respect of post-1989 forest land (until 1 January 2013).

The Administration role of the NZ ETS established by the Ministry of Economic Development will be reviewed by the accountable chief executives within three years of establishment (December 2010).

The NZ ETS will need to evolve to reflect changes in future international arrangements. It is also likely that ongoing refinement of the details of the ETS will be necessary as firms and administrators gain more experience of the ETS. It is therefore proposed that the NZ ETS undergo a regular policy review. The Minister responsible for the Administration of the Climate Change Response Act 2002 will be responsible for this review, examining the operation and effectiveness of the Act within 9 months of the end of each commitment period or at the end of each five year period, with the first period beginning on 1 January 2013.

Consultation

Ministers and officials have undertaken an extensive engagement process with stakeholders and Maori since the release of the NZ ETS on 20 September, including:

(a) 3 cross-sector emissions trading workshops
(b) 13 regional hui
(c) A national hui for Maori
(d) 7 regional forestry meetings
(e) 4 workshops for firms that may be 'participants' in the ETS
(f) An NGO forum
(g) Numerous 'one on one' meetings with key stakeholders
(h) The establishment of a Climate Change Leadership Forum.

During engagement, a distinction was made between the "2007 decisions" (those that pertain to items to be contained in the legislation introduced this year) and "2008 decisions" (those decisions that will be made next year after the initial legislation is considered, including decisions about allocation within the agricultural and industrial sectors).

Feedback on the NZ ETS framework has generally been positive—in particular, many groups have vocalised their support for an emissions trading scheme over a tax. The engagement has been notable for the lack of opposition; and the all sectors, all gases approach of the NZ ETS has been well-supported. Further to this, many stakeholders are improving their knowledge of the NZ ETS proposals through the engagement process and, as a result, are becoming more interested in the workings of the scheme as opposed to being critical of the design. The major policy issues arising from engagement can be classified as follows:

(a) Allocation—the timing of possible phase-out of free allocation.
(b) Allocation—intensity compared with absolute obligations and the treatment of growth in emissions.
(c) Allocation—whether to provide assistance to firms for increases in costs associated with liquid fossil fuels (or other inputs such as wood-waste used in boilers).
(d) Unit of trade and liquidity in the market.
(e) Options for accounting for pre-1990 forests.

Allocation: timing of possible phase-out of free allocation: stakeholders from both energy-intensive industry and agriculture have expressed concern about the current proposal (phase out free allocation by 2025, starting from 2013, to be reviewed once the shape of international negotiations becomes clear). Their underlying concern is that international competitiveness will be eroded as they will face a price of carbon that many of their international competitors do not.

The signals sent around future levels of free allocation will affect investment decisions in emissions-intensive industries going forward. Yet it is important to recognise that support for one business or sector comes at a cost for the rest of the economy. It is not in New Zealand's interests to attempt to shield certain domestic firms from the impact of imperfections in the design and coverage of the Kyoto

Protocol and its successors, unless these imperfections are clearly expected to be temporary. Otherwise, New Zealand's interests are best served by ensuring our business environment encourages growth in areas of the economy that maximise New Zealand's economic advantages, taking into account the carbon-footprint of specific activities.

The current proposal is still the preferred approach. However, the generality of the argument is being raised with the Climate Change Leadership Forum to provide some initial thinking on different options that exist, including a more moderate phase-out and a gentle phase-out. These are discussed more in the accompanying Cabinet paper.

Allocation: intensity of absolute obligations and the treatment of growth in emissions: some stakeholders have suggested the best approach for addressing competitiveness and leakage concerns would be to adopt an intensity-based approach for key sectors, such as agriculture. Under this approach, participants would only be responsible for meeting their emissions over and above a "best practice" benchmark level of emissions per unit of output.

This approach has not been favoured because intensity-based approaches, in addition to being administratively difficult, provide an incentive inconsistent with New Zealand's economic signal received under the Kyoto Protocol (expressed in absolute terms). It is therefore recommended that there be no change to the proposed policy (obligations are to be on an absolute basis as opposed to intensity-basis and that growth in emissions from all sectors should face the full cost of emissions).

Allocation: assistance for increases in costs associated with liquid fossil fuels (or wood waste): a concern was raised by some sectors with a particular exposure to price increases in liquid fossil fuels (eg, tourism, fishing, and mining industries), that the assistance package does not equitably reflect cost increases throughout the economy. However, as noted above the price increase for liquid fossil fuels arising from the ETS is expected to be relatively small. Furthermore, the administrative challenge would increase significantly if assistance were to be provided for increases in costs of liquid fossil fuels, due in large to the numbers of firms potentially

affected, the variable size of the firms, and the operational structures of the firms (eg, high use of contractors and external providers).

A similar concern was raised in regard to the use of wood waste as a source of fuel or an input into the production of wood products. The potential price increase for wood waste could be significant for a small number of affected firms. However, the price increase is not a direct result of the price of emission units, but rather wood waste being used as a fuel is a "second round" response to the increase in other fuel choices (ie, coal). The valuation of the impact is therefore fraught and difficult. Coverage of assistance for "second round price increases" such as wood waste would almost certainly mean that firms would lobby for other price increases to be covered by the assistance policy package.

Unit of trade and liquidity in the market: stakeholders expressed concerns that there may be insufficient liquidity in the New Zealand market and that firms will be poorly placed in the international carbon market, thus forcing New Zealand firms up towards the top of the price scale. Concerns have also been raised from an environmental and reputational perspective on whether there should be greater constraints on the types of units allowed into the NZ ETS, such as AAUs from Russia and the Ukraine.

It is preferable to have New Zealand firms operating effectively within the international carbon market, rather than relying on the government. Yet it is important to ensure the NZ ETS operates effectively and price-based distortions are avoided, especially in the short term. The accompanying paper recommends Cabinet consider a number of areas to assist the development of the New Zealand carbon market (underpinning this is a desire to set the rules as quickly as possible for what types of Kyoto units are able to be surrendered in the NZ ETS).

In terms of acceptability of certain AAUs into the ETS, clear trade-offs emerge. Placing no restriction on the entry of AAUs into the NZ ETS could potentially reduce the cost of compliance for New Zealand. The open nature of the NZ ETS has also been welcomed by some domestic stakeholders. No restriction would, at the very minimum, come with some reputational risk, as well as reducing the prospects of linking with other ETSs in the future. Further, to the extent that there is the ability to restrict certain AAUs from the Kyoto system in the future, allowing those units into the NZ ETS

would, to some extent, undermine its environmental integrity. Although it is difficult to predict, a very large inflow of AAUs (with a resultant significant decrease in the price) appears unlikely at this stage.

One option for Cabinet to consider is clarification that under the NZ ETS, direct private sector purchases of AAUs be limited to selected jurisdictions such as the European Union, Norway, Switzerland, Iceland and Japan. This would effectively exclude the import of AAUs from countries where a very significant proportion of these AAUs were not generated by emission-reducing activities. This would enhance the reputation of the NZ ETS with some stakeholders and may leave open an option value to link to other ETSs in the future, but comes at a potential cost to the economy. The ability to change the list of countries from which private sector purchases of AAUs are permitted should be left open. Such an approach would leave open the possibility of government-to-government arrangements if so desired.

Options for accounting for pre-1990 forests: the proposal for assistance to owners of pre-1990 forest land has been relatively heavily criticised by elements of the forestry industry. There are a small number of key underlying elements to the criticisms:

(a) The proposed level of compensation per hectare (through free allocation) is insufficient where landowners have viable alternative commercial land uses available.

(b) Owners of pre-1990 forest should be able to receive credit for increasing the level of carbon in their forests.

(c) Owners of pre-1990 forest will in practice be "locked in" to their current land use in perpetuity.

(d) Some owners were not aware these changes were coming, or were unable to deforest prior to 2008 due to being tied into long-term forest contracts.

(e) The relative treatment of post-1989 forest owners is considered by some to be substantially more generous.

There is validity in some of these criticisms. However, the government is limited in its ability to address them given the current Kyoto Protocol rules, fiscal constraints, and administrative difficulties in targeting assistance to those likely to suffer the greatest costs, and its desire to maintain inter and intra sector equity. The costs of the ETS will not fall equally on all owners of pre-1990 forest land; those with high value alternative uses will be most affected. However, under

the in-principle decisions the assistance will be allocated equally across all landowners regardless of the quality of their land. This approach was taken because it is difficult to identify those parties most likely to be affected. It can also be argued that it is fair because the value of all pre-1990 forest land is likely to be affected to some degree. In addition, if a more generous total allocation was given to pre-1990 forests, it is arguably should be a deduction against allocation to post-1989 forests. In addition, a more generous total allocation for pre-1990 forests would undermine the government's objective of maintaining equity of treatment between the forestry, agriculture and industrial sectors. If an increase in assistance to pre-1990 forests was given, it should therefore arguably be funded through a reduction in the generosity of treatment of post-1989 forests under the ETS.

Further advice is being prepared on options to ameliorate concerns with the treatment of pre-1990 exotic forests (such as targeting assistance on the basis of land-use capability or alternatively, targeting on key characteristics). All of these options have weaknesses. Engagement is continuing on the issue of whether to include indigenous forests in the NZ ETS and if a policy change is desirable, Ministers will report this to Cabinet as well as on any further issues arising out of the national Maori forestry hui on 8 November.

Feedback on 2007 decisions is discussed in more detail in the accompanying Cabinet paper. The Cabinet paper does not recommend any fundamental changes to the ETS design previously agreed in principle by Cabinet, although some specific measures aimed at improving levels of liquidity in the New Zealand market are proposed.

A separate consultation programme has been run by the Department of Inland Revenue on some of the potential income tax and GST implications of the NZ ETS. Consequently, the Climate Change (Emissions Trading and Renewable Preference) Bill will include consequential amendments to tax legislation to provide certainty on the tax treatment of income and expenditure arising from the ETS for the forestry sector.

The ETG also arranged for three external reviews of the NZ ETS by:

(a) The International Energy Agency (**IEA**). IEA is an autonomous body within the framework of the Organisation for Economic Cooperation and Development (**OECD**). IEA promotes rational energy policies in a global context.

(b) The International Emissions Trading Association (**IETA**). IETA is an international association of companies from around the world and across all sectors involved in emissions trading. IETA's aim is to provide a neutral platform for its members to meet and interact to promote effective market based trading systems for greenhouse gas emissions.

(c) Dr Suzi Kerr Motu Economic and Public Policy Research, Wellington. Dr Kerr has considerable experience in New Zealand and abroad as an academic scholar in the subject area of market based instruments.

The IEA review has been received and released; other reviews will be released once received. The IEA praised New Zealand for "a well-integrated strategy", which takes a "very realistic approach". The IEA noted the NZ ETS framework seeks to introduce as broad a price signal as possible, including through its allocation of emission obligations to fossil fuel producers and importers, who will pass the cost onto consumers through (higher) fuel prices. It commented that this should further encourage adoption of a more rational use of energy. The IEA is particularly interested in the way the NZ ETS links to existing Kyoto Protocol mechanisms, which it says offers a "lower cost" method for reducing New Zealand's emissions.

In regard to 2008 decisions, possible changes to the discussion of allocation and the phase-out of free allocation are signalled in the accompanying Cabinet paper. These and other 2008 decisions will be the subject of ongoing dialogue with those sectors that are later entrants to the NZ ETS. Key mechanisms for this are:

(a) Climate Change Leadership Forum: the Forum is comprised of 32 senior representatives of sectors and firms subject to the ETS, community and NGO, academics and the chief executives of the government departments responsible for advising on the ETS. At its first meeting on 8 November, the Forum formed two cluster groups to consider a) markets, international linking and units of trade; and b) equity and assistance. Ministers will consider any feedback from the Forum on these issues and the major policy issues (as noted below). The Forum will continue into 2008 and their considerations will be taken into account through the legislative process.

(b) Peak Group on Agriculture and the ETS: the Peak Group will consist of key representatives from Maori, the forestry and agriculture sectors and local government. Its members will set

the strategic direction on the development and implementation of the Sustainable Land Management and Climate Change Plan of Action and advise on the implementation of the Forestry and Agriculture components of the ETS.

(c) Technical Advisory Group on the Agriculture Component of the ETS: this is the principal tool for engaging with the agricultural sector on the technical design elements of the NZ ETS. It will be an independently chaired group of 12 or fewer policy and technical experts appointed by the Director General of the Ministry of Agriculture and Forestry (MAF).

The government is also proposing another Technical Advisory Group for the stationary energy and industrial process component of the NZ ETS. It would comprise technical and policy specialists from the industry and energy sectors, science/technical community and government. Many of the challenges for these sectors are highly technical in nature and are attributable to issues such as the complex and specialised nature of industrialised processes, complexities in markets and distribution networks for electricity and gas, and associated issues of measurement and verification. The goal is to ensure that the NZ ETS functions in a sensible a nd practical manner for the stationary energy and industrial process sectors.

Regulatory impact statement

Limit on new thermal capacity

Executive summary

In the New Zealand Energy Strategy (**NZES**), the government has stated a clear preference that all new electricity generation be renewable, except to the extent necessary to maintain security of supply. In support of this principle, and providing time for the full introduction of a price on greenhouse gas emissions, the government's view is that there should not be a need for any new baseload fossil fuel generation investment for the next 10 years.

The government expects all generators, including state-owned enterprises, to take its views into account when considering new generation investments, and the government has recently advised state-owned enterprises that it expects them to follow this guidance.

Cabinet [CAB (07) 34/18 refers] invited the Minister of Energy to report back on the desirability of amending the Electricity Act 1992

to reinforce the government's objectives for limiting baseload fossil-fuelled thermal generation.

A legislative moratorium applying to all generators in the electricity sector would restore competitive neutrality between the state-owned generators and private generators.

Because this is a significant policy that will affect the investment options available to electricity market participants, it should be implemented in the Electricity Act 1992 as primary legislation. However, the operational details of the policy should be able to be created in delegated legislation (regulations).

Even with emissions pricing, fossil-fuelled thermal generation investment may in certain future circumstances (such as a major gas find) become more economic, which could lead to the construction of additional fossil-fuelled generation that could jeopardise the 90% renewable energy target.

A moratorium will augment the Emissions Trading Scheme (**ETS**) by limiting investment in thermal generation. The direct costs of this intervention are the additional compliance costs that will accrue for the Electricity Commission to administer the policy. These costs will be minor.

The indirect costs of the proposal are the foregone opportunity cost of cheaper gas generation should a substantive gas find be made and/or if it proves relatively expensive to develop wind and geothermal generation. This risk is difficult to quantify.

The policy is not expected to materially increase electricity prices over and above price changes attributed to the ETS, because modelling indicates a sufficient supply of economic renewable generation exists to meet demand growth in the medium term.

A moratorium on new baseload fossil-fuelled generation may potentially affect security of supply. This risk is managed through the design of the moratorium, which will allow exemptions for new non baseload fossil-fuelled generation.

Adequacy statement

A regulatory impact statement was prepared and the Regulatory Impact Analysis Unit considers the analysis on the design and implementation of the proposed moratorium adequate. The RIAU

notes that policy decisions on the proposal itself are discussed elsewhere and that further consultation with affected stakeholder will follow.

Status quo and problem

One of the strengths of an ETS is that it allows the market to seek out the lowest cost ways of achieving an economy-wide emissions objective. However, an ETS that is broad-based and linked to international markets is not designed to ensure specific levels of abatement or types of investment within specific sectors. In particular, an ETS does not preclude the possibility of investment in a new fossil-fuelled power station occurring during the early years of an ETS (or at any other time) if the overall economics are sufficiently attractive.

The prospect of a new fossil-fuelled power station being built during the early years prior to the full introduction of an ETS could jeopardise public confidence in the climate change policy.

The government has therefore announced in the NZES that it expects all generators, including state-owned enterprises, to take its view that all new electricity generation be renewable, except to the extent necessary to maintain security of supply when considering new generation investments.

In addition, the government has recently advised state-owned enterprises directly that it expects them to follow this guidance. Such advice if taken only by state-owned generators places them at a comparative disadvantage relative to private energy companies.

As state-owned generators have been directly advised of this policy requirement, introducing legislation is the logical method to ensure that the policy requirement applies to all generators in the electricity sector.

Cabinet [CAB (07) 34/18 refers] has directed the Minister of Energy to report back on the desirability of amending the Electricity Act 1992 to reinforce the government's objectives for limiting baseload fossil-fuelled thermal generation.

Objectives

Cabinet has previously considered the issues and risks around implementing a thermal moratorium [CBC Min (07) 20/3 refers]. The significant concern highlighted in this risk analysis was the risk to security of supply that a thermal moratorium could create.

The policy objective is to identify a mechanism to prohibit the construction of baseload fossil-fuelled thermal plant over the next 10 years. The design considered in this paper addresses the security of supply concerns raised above [CBC Min (07) 20/3 refers].

Cabinet directive has requested that the desirability of using the Electricity Act 1992 to achieve this policy is evaluated [CAB Min (07) 34/18 refers].

Cost and benefits of intervention using Electricity Act 1992

Modelling in the NZES suggests that renewable generation is expected to be cost-competitive with fossil-fuelled thermal generation, particularly under the range of potential carbon prices envisioned under the Emissions Trading Scheme as indicated in Figure 3 (as included in the copy of this statement on the Ministry of Economic Development's website www.med.govt.nz).

It is feasible, however, that a combination, for example, of a high exchange rate and low gas price (as could arise from a major gas discovery) could mean that, even with emissions pricing, fossil-fuelled generation investment may become more economic than is indicated in Figure 3 (as included in the copy of this statement on the Ministry of Economic Development's website www.med.govt.nz). Unexpected high costs or other barriers to consenting new renewables could also make thermal generation more economic.

New Zealand is a small electricity market by international standards. In this scenario, if gas investment becomes more economic relative to renewable investment options, then the advent of a small number of new baseload thermal plants in the early years of the ETS could effectively displace or crowd out a significant volume of renewable generation.

Such an expansion of thermal operation could place the government's 90% renewable target in jeopardy, and could result in a significant increase in greenhouse gas emissions (leaving aside the long-term possibility of emissions reduction if carbon capture and storage prove viable).

The scenario described is a sensitivity case to the expected outcomes for the ETS. While it represents a worst case in terms of emissions reductions, because it is a plausible outcome of a major gas find, and because future gas supply is so uncertain, steps are necessary to mitigate this risk.

The policy is not expected to materially increase electricity prices because during the 10-year period of its operation modelling from the NZES indicates that a sufficient supply of economic renewable generation exists. However, a moratorium could increase electricity prices if the assumptions underpinning the NZES were to prove to be overly optimistic.

The identifiable direct costs of this measure are the additional costs for the Electricity Commission and participants to comply with the process. These costs are expected to be comparatively small.

The indirect costs of the measure are the forgone opportunity costs of cheaper fossil-fuelled generation if a major gas find is made. Whether these forgone opportunity costs are potentially significant or not will depend on the extent and duration of the gas find, and any flow-on to reduced hydrocarbon exploration and development.

Cabinet has previously considered the issues and risks around implementing a thermal moratorium (CBC Min (07) 20/3 refers).

Alternative options

Status quo

State-owned generators have been advised in writing of the government's policy not to build thermal plant. Privately owned electricity companies, while aware of the government's views through the NZES, will not be bound by the same level of compulsion as the state-owned enterprises, and therefore there is a risk that private energy companies may continue to construct baseload thermal plant over the next 10 years as economic circumstances allow.

Even with emissions pricing, thermal generation investment may in certain future circumstances (such as a major gas find) become more economic. As the status quo does not limit private generators from constructing thermal generation plant in these circumstances, there is a risk that this construction would occur.

While the construction of significant volumes of baseload thermal plant could be economic relative to renewable alternatives, this outcome would depend on the extent and duration of the gas find and the contracts entered into. Irrespective of such price considerations, the construction of significant volumes of new thermal generation would jeopardise the 90% renewable energy target.

The status quo of doing nothing therefore will not meet the policy requirement to prohibit the construction of baseload fossil-fuelled

thermal plant over the next 10 years, as it does not restrict a significant proportion of the energy sector from constructing fossil-fuelled baseload plant and increasing greenhouse gas emissions.

Ex post moratorium

Under this design, the Electricity Commission would have an ongoing compliance role to monitor the annual load factor of all fossil-fuelled thermal plant. Operating prohibited new fossil-fuelled thermal plant of a size above the *de minimis* capacity threshold that exceeded a permitted load factor threshold would be an offence under the Electricity Act 1992.

The Electricity Commission would, however, be able to recommend operations in excess of the permitted load factor for security of supply in an emergency situation in accordance with predefined criteria.

The practical effect of this design is that by placing a significant penalty on non-compliance, it creates an economic disincentive on investors to construct and operate prohibited (baseload) thermal stations.

The advantage of the ex post method is its comparative simplicity largely because the lack of a complex application process will reduce compliance costs.

The disadvantage of the ex post method is that it is wholly reliant on ex post enforcement for compliance, based on historical calculation of load factor or emissions. While the ex ante method also uses enforcement for compliance purposes, this is secondary to the prechecking of exemptions that will provide greater certainty that prohibited generation plant will not be built and ex post enforcement will not be required.

Preferred option

Ex ante moratorium

The ex ante moratorium is the preferred option. This method provides greater certainty that the policy objective can be met by banning all thermal generation above the *de minimis* level and requiring all banned generation to apply for an exemption to the Electricity Commission.

Under this method, all plant above the *de minimis* capacity threshold would be required to apply for an exemption under one of the available categories. Prohibited plant would be plant above the *de minimis* capacity threshold that had not received a specific exemption, while permitted plant would be plant above the *de minimis* capacity threshold that did receive a specific exemption, or plant below the *de minimis*.

The categories under which an exemption may be granted would be defined in legislation, with the criteria to be considered by the body granting the exemptions defined in regulations.

The Electricity Act 1992 should provide that operation of a plant under an exemption may only be in accordance with the purpose for which the exemption was granted. The Electricity Act 1992 should also allow the grant of exemptions subject to conditions to achieve this purpose. For example, these provisions should prevent approved "peaking plant" being operated as de facto baseload plant.

The scope of the power to grant an exemption would be limited to that required to ensure that the exempted plant is used only for the purpose of the exemption. Effectively, this would require the grantor to impose conditions on the scope of an exemption. For example a plant to be used for short-term emergency purposes should have a time-limited exemption, while a plant intended for peaking purposes should have a limit placed on its frequency of operation (or load factor).

The Electricity Commission is the proposed agent to process exemptions. This is appropriate because the Electricity Commission is the party best able to make an assessment that takes into account security of supply. Exemptions would be assessed by the Electricity Commission against the criteria defined in regulations recommended by the Minister of Energy.

The proposed categories for exemption, to be set out in primary legislation, are that the plant—

- is required for the purpose of short-term local supply in an emergency:
- is required for security of supply purposes and has been procured under contract by the Electricity Commission:
- has either a load factor or an emissions level below the cap defined in regulations for baseload plant:

- is required for a small isolated community with no viable non fossil-fuel based alternatives:
- is part of a cogeneration process that improves overall production efficiency above specified level (eg, 80%):
- uses an acceptable mix of renewable and fossil fuels (eg, waste incineration).

The Electricity Commission would be required to conduct a public consultation on an exemption to be granted before finalising its recommendation to the Minister of Energy. This would provide greater transparency to the process.

The exemption would be gazetted by the Minister of Energy after approval.

The Electricity Commission would be required to monitor compliance with any conditions of an exemption.

Breaching the moratorium by connecting a plant without authorisation, or exceeding conditions of an exemption, would be an offence under the Electricity Act 1992.

The Minister of Energy would need the power to revoke or suspend an exemption in appropriate circumstances. The conditions under which an exemption could be revoked or suspended would need to be developed, but could include after an offence has been proved in court, or an exemption holder is in breach of conditions.

There would be no explicit appeal process for exemption applications. Judicial review would provide a remedy for decisions in breach of administrative law.

The advantage of the ex ante method is that it allows for a comprehensive analysis of the application by a neutral party (the Electricity Commission) who can then make reasoned judgement of the need for the application against relevant criteria and impose conditions on approval should these be required.

A further advantage of the pre-checking provided by the exemption application is that the application process will provide the Electricity Commission with greater flexibility to consider implications and requirements for security of supply.

The method will provide greater certainty to the applicant of what is allowable or permitted.

Implementation and review

A consequence of a legislative moratorium is that, because it would apply to all generators in the electricity sector, it would restore competitive neutrality between parties with regard to the type of investments they can undertake.

A legislative moratorium will have a significant effect on stakeholders in the electricity market by restricting their generation investment options, raising potential concern over security of supply. This concern is mitigated by allowing for exemptions to the moratorium if necessary for security of supply.

Other issues, such as the risks of a reduction in hydrocarbon exploration, are more difficult to quantify and mitigate and will require ongoing monitoring by the Ministry of Economic Development.

In November 2006, the Minister of Energy conducted a review of the electricity market [CAB Min (06) 45/6 refers]. This market review concluded that the performance of the electricity market was mixed, and while some improvement was possible, alternative arrangements did not appear to offer sufficient improvement to outweigh anticipated transition costs and risks.

A thermal moratorium, with the Electricity Commission as the only party who can recommend new thermal investment for security of supply, represents an intervention in the market of similar size and scope to several other market alternatives that were rejected in this prior market review because of likely high cost and consequences.

Although the Minister's market review assessed alternatives against a range of objectives (as opposed to minimising emissions), the moratorium could potentially create outcomes that might warrant a more fundamental review of the electricity market in the future.

Consultation

The Treasury, the Energy Efficiency and Conservation Agency, and the Electricity Commission were consulted in the development of this paper. The Department of the Prime Minister and Cabinet was informed.

Hon David Parker

Climate Change (Emissions Trading and Renewable Preference) Bill

Government Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Climate Change (Emissions Trading and Renewable Preference) Act **2007**.

2 Commencement

This Act comes into force on a day to be appointed by the Governor-General by Order in Council, and 1 or more orders may be made bringing different provisions into force on different dates.

Part 1
Amendments to Climate Change Response Act 2002

3 Principal Act amended

This **Part** amends the Climate Change Response Act 2002.

4 New section 2A inserted

The following section is inserted after section 2:

"**2A Application of Schedules 3 and 4**

"(1) Any provision in this Act that imposes an obligation on, or grants a right to, a person in respect of an activity listed in **Schedule 3 or 4** does not apply to that person unless the Part or subpart in **Schedule 3 or 4** in which the activity is listed applies.

"(2) **Part 1 of Schedule 3** and **Parts 1 and 3 of Schedule 4** apply on and after **1 January 2008**.

"(3) **Part 2 of Schedule 3** and **Part 4 of Schedule 4** apply on and after **1 January 2009**.

"(4) **Parts 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3**, and **Part 2 of Schedule 4** apply on and after **1 January 2010**.

"(5) **Subpart 1 of Part 5 of Schedule 3** applies on or after **1 January 2013**, unless repealed under **subsection (10)**.

"(6) **Subpart 3 of Part 5 of Schedule 3** applies on or after **1 January 2013**, unless repealed under **subsection (11)**.

"(7) **Subpart 2 of Part 4 of Schedule 3 and Part 6 of Schedule 3** apply on or after **1 January 2013**.

"(8) **Subpart 2 of Part 5 of Schedule 3** applies on and after a date to be appointed by the Governor-General by Order in Council.

"(9) **Subpart 4 of Part 5 of Schedule 3** applies on and after a date to be appointed by the Governor-General by Order in Council.

"(10) If the Governor-General makes an Order in Council under **subsection (8)**, then **subpart 1 of Part 5 of Schedule 3** is repealed.

"(11) If the Governor-General makes an Order in Council under **subsection (9)**, then **subpart 3 of Part 5 of Schedule 3** is repealed.

"(12) If, by **1 January 2013**, the Governor-General does not make an Order in Council under **subsection (8)** that applies **subpart 2 of Part 5 of Schedule 3**, then that subpart expires on **1 January 2013**.

"(13) If, by **1 January 2013**, the Governor-General does not make an Order in Council under **subsection (9)** that applies **subpart 4 of Part 5 of Schedule 3**, then that subpart expires on **1 January 2013**."

5 Purpose

Section 3 is amended by repealing subsection (1) and substituting the following subsection:

"(1) The purpose of this Act is to—

"(a) enable New Zealand to meet its international obligations under the Convention and the Protocol, including (but not limited to)—

"(i) its obligation under Article 3.1 of the Protocol to retire Kyoto units equal to the number of tonnes of carbon dioxide equivalent of human-induced greenhouse gases emitted from the sources listed in Annex A of the Protocol in New Zealand in the first commitment period; and

"(ii) its obligation to report to the Conference of the Parties via the Secretariat under Article 7 of the Protocol and Article 12 of the Convention; and

"(b) provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand."

6 Interpretation

(1) Section 4(1) is amended by repealing the definitions of **inventory agency**, **Minister**, **Minister responsible for the inventory agency**, and **Minister responsible for the Registry**.

(2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

"**animal material** has the same meaning as in section 4(1) of the Animal Products Act 1999

"**animal product** has the same meaning as in section 4(1) of the Animal Products Act 1999

"**approved overseas unit** means a unit, other than a Kyoto unit,—

"(a) issued by an overseas registry; and

"(b) prescribed as a unit that may be transferred to accounts in the Registry

"**associated person** has the meaning given to it by **section 4(3)**

"**chief executive**, in relation to a Part, means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of the Part

"**chief executive responsible for the administration of this Act** means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of this Act

"**coal** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

"**conversion account** means an account in the Registry used for the purpose of converting New Zealand units into assigned amount units

"**convert**, in relation to a New Zealand unit, means the transfer of the unit to a conversion account in the Registry with the effect specified in **section 18CA(5)**

"**Crown land** has the meaning in section 2(1) of the Crown Minerals Act 1991

"**dairy processing**, in relation to milk or colostrum, means the first occasion on which the milk or colostrum is made subject to heat treatment, freezing, separation, concentration, filtering, blending, extraction of milk components, and the addition of other material, including (but not limited to) food, ingredients, additives, or processing aids as defined in the Food Standards Code

"**deforest**, in relation to forest land, means to convert forest land to non-forest land

"**disposal facility** means any facility, including a landfill,—

"(a) at which waste is disposed; and

"(b) at which the waste disposed includes organic waste; and

"(c) that operates, at least in part, as a business to dispose of waste

"**dispose**, in relation to waste,—

"(a) means to deposit the waste into or onto land set apart for that purpose; and

"(b) includes incinerating the waste

"**document** means a document in any form whether signed or initialled or otherwise authenticated by its maker or not; and includes—

"(a) any writing on any material:

"(b) any information recorded or stored by means of any tape recorder, computer, or any other device; and any material subsequently derived from information so recorded or stored:

"(c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

"(d) any book, map, plan, graph, or drawing:

"(e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

"**emissions**, in relation to an activity listed in **Schedule 3 or 4**, means carbon dioxide equivalent emissions of greenhouse gases from the activity

"**emissions return** means—

"(a) an annual emissions return submitted under **section 65**; or

"(b) a final emissions return submitted under **section 106**; or

"(c) an emissions return submitted under **section 167**; or

"(d) an emissions return submitted under **section 168**

"**entity**, in relation to a group, means a reporting entity or reporting entity's subsidiary, within the meaning of section 2(1) of the Financial Reporting Act 1993

"**exempt land** means pre-1990 forest land that has been declared to be exempt land—

"(a) under **section 159**; or

"(b) under **section 160** and in respect of which the conditions in **section 160(6)** have been met

"**exotic forest species** means forest species that are not indigenous forest species

"**Food Standards Code** has the same meaning as in section 4(1) of the Animal Products Act 1999

"**forest land**—

"(a) means an area of land of at least 1 hectare that has, or will at maturity have, tree crown cover (or equivalent stocking level) of more than 30% in each hectare and in which—

"(i) the trees are forest species; and

"(ii) the forest consists of—

"(A) closed forest formations where trees of various storeys and undergrowth cover a high proportion of the ground; or

"(B) open forest; and

"(b) includes an area normally forming part of a forest that is temporarily unstocked as a result of human intervention or natural causes but that is expected to revert to forest; but

"(c) does not include—

"(i) a shelter belt where the tree crown cover at maturity has, or is expected to have, an average width of less than 30 metres; or

"(ii) an area of land where the tree crown cover at maturity has, or is expected to have, an average width of less than 30 metres, unless the area is contiguous with other forest land

"**forest species** means tree species capable of reaching at least 5 metres in height at maturity in the place where it is located

"**group** means a group as defined in section 2(1) of the Financial Reporting Act 1993

"**indigenous forest species** means forest species that occur naturally in New Zealand or have arrived in New Zealand without human assistance

"**international transaction log** means an international log established and maintained by the Secretariat to confirm the validity of transactions, including the issue and transfer of Kyoto units between registries and between accounts in the Registry

"**inventory agency** means the chief executive of the department that is, with the authority of the Prime Minister, responsible for the administration of **Part 3**

"**Kyoto units** means all of the unit types specified in, or in accordance with, the Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units)

"**landowner**,—

"(a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2(2) of the Crown Minerals Act 1991); and

"(b) in relation to land other than Crown land, means—

"(i) the owner of a freehold estate in the land; or

"(ii) if the land is Maori customary land (as defined in section 4 of Te Ture Whenua Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Act 1993

"**Maori land** has the same meaning as in section 4 of Te Ture Whenua Maori Act 1993

"**merchantable timber** means timber from the stem of a tree greater than 10 years old, other than—

"(a) the stump; and

"(b) wood that is decayed or grossly distorted; and

"(c) wood that is less than 10 centimetres in diameter excluding the bark

"**mining** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

"**Minister**, in relation to a Part of this Act, means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of the Part

"**Minister responsible for the administration of this Act** means the Minister who is, under the authority of any warrant or under the authority of the Prime Minister, responsible for the administration of this Act

"**natural gas** means—

"(a) all gaseous hydrocarbons produced from wells, including wet gas and residual gas remaining after the extraction of condensate from wet gas; and

"(b) liquid hydrocarbons, other than condensate, extracted from wet gas and sold as natural gas liquids, for example, liquid petroleum gas; and

"(c) coal seam gas

"**New Zealand unit** means a unit issued by the Registrar and designated as a New Zealand unit

"**obligation fuel** means any fuel specified as obligation fuel in regulations made under this Act

"**obligation jet fuel** means any jet fuel specified as obligation jet fuel in regulations made under this Act

"**organic waste** means any waste that includes matter that is or was alive

"**participant** means a person who is a participant under **section 54**

"**public notice** means a notice published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin, and on the Internet site of the entity giving the notice

"**post-1989 forest land** means forest land that—

"(a) was not forest land on **31 December 1989**; or

"(b) was forest land on **31 December 1989** but was deforested between **1 January 1990** and **31 December 2007**; or

"(c) was pre-1990 forest land—

"(i) that was deforested on or after **1 January 2008**; and

"(ii) in respect of which any liability to surrender units arising in relation to an activity listed in **Part 1 of Schedule 3** has been satisfied

"**pre-1990 forest land** means forest land—

"(a) that was forest land on **31 December 1989**; and

"(b) that remained as forest land on **31 December 2007**; and

"(c) where the forest species on the forest land consisted of exotic forest species

"**registered forestry right** means a forestry right registered under the Forestry Rights Registration Act 1983

"**registered lease**,—

"(a) in relation to a lease in respect of land registered under the Land Transfer Act 1952,—

"(i) means a lease registered under that Act; and

"(ii) includes a lease registered under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002:

"(b) in relation to a lease in respect of land that is not registered under the Land Transfer Act 1952, means a lease registered under the Deeds Registration Act 1908

"**removal activity** means an activity that is listed in **Parts 1 or 2 of Schedule 4**

"**removals**, in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—

"(a) removed from the atmosphere; or

"(b) not released into the atmosphere

"**surrender** means the transfer of a unit to a surrender account in the Registry with the effect specified in **section 18CA(2) or (4)**

"**surrender account** means an account in the Registry for the purpose of holding units that account holders have surrendered

"**year** means a calendar year ending on **31 December**".

(3) The definition of **assigned amount unit** in section 4(1) is amended by omitting "(or AAU)".

(4) The definition of **cancel** in section 4(1) is repealed and the following definition substituted:

"**cancel**, in relation to a unit, means the transfer of the unit to a cancellation account in the Registry with the effect specified in **section 18CA(1)**".

(5) The definition of **carbon dioxide equivalent** is amended by omitting "metric" in each place where it appears.

(6) The definition of **certified emission reduction unit** in section 4(1) is amended by omitting "(or CER)".

(7) The definition of **commitment period reserve** in section 4(1) is amended by inserting "Kyoto" after "number of" in the first place where it appears.

(8) The definition of **emission reduction unit** in section 4(1) is amended by omitting "(or ERU)".

(9) The definition of **holding account** in section 4(1) is amended by omitting "retired or cancelled" and substituting "retired, surrendered, converted, or cancelled".

(10) The definition of **independent transaction log** in section 4(1) is repealed.

(11) The definition of **long-term certified emission reduction unit** in section 4(1) is amended by omitting "(or lCER)".

(12) Paragraph (a) of the definition of **overseas registry** in section 4(1) is amended by adding " or any other prescribed registry".

(13) Paragraph (b) of the definition of **relevant commitment period** in section 4(1) is amended by inserting "Kyoto" after "account or".

(14) Paragraph (b) of the definition of **removal unit** in section 4(1) is amended by omitting "(or RMU)".

(15) The definition of **retire** in section 4(1) is repealed and the following definition substituted:

"**retire**, in relation to a Kyoto unit, means the transfer of that Kyoto unit to a retirement account in the Registry with the effect specified in **section 18CA(2)**".

(16) The definition of **retirement account** in section 4(1) is amended by inserting "Kyoto" after "of holding".

(17) The definition of **temporary certified emission reduction unit** in section 4(1) is amended by omitting "(or tCER)".

(18) The definition of **units** in section 4(1) is repealed and the following definition substituted:

"**unit** means a Kyoto unit, a New Zealand unit, or an approved overseas unit".

(19) Section 4 is amended by adding the following subsections:

"(3) A person is an **associated person** in relation to 1 or more other persons if—

"(a) each person is a body corporate and each of them—

"(i) consist substantially of the same members or shareholders; or

"(ii) are under the control of the same persons; or

"(b) any of them has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to 25% or more of the voting securities of the other.

"(4) For the purposes of the definition of pre-1990 forest land, land that was forest land on **31 December 1989** is to be treated as forest land on **31 December 2007** if, on **31 December 2007**, the land had—

"(a) any standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or

was expected at maturity to have, tree crown cover of an average width of less than 30 metres that was not harvested because of restrictions imposed on it by any enactment; or

"(b) any other merchantable timber from exotic forest species."

7 Minister of Finance may give directions to Registrar regarding accounts and units

(1) Section 7(1)(a) is amended by adding the following subparagraphs:

"(vii) a surrender account:

"(viii) a conversion account:".

(2) Section 7(1)(d) is amended by inserting ", subject to any prescribed restriction or prohibition," after "transfer units".

(3) Section 7(1)(d) is amended by inserting "the surrender account, the conversion account," after "retirement account,".

(4) Section 7(2)(b)(ii) is repealed.

8 Purpose of Registry

(1) Section 10 is amended by inserting "in relation to Kyoto units" after "purpose of the Registry".

(2) Section 10(a)(i) is amended by inserting "surrender," after "retirement,".

(3) Section 10(a)(i) is amended by inserting "Kyoto" after "cancellation of".

(4) Section 10(b)(ii) is amended by omitting "independent" and substituting "international".

(5) Section 10(b)(ii) is amended by omitting "; and" and substituting ".".

(6) Section 10(c) is repealed.

(7) Section 10 is amended by adding the following subsections as subsections (2) and (3):

"(2) The purpose of the Registry in relation to New Zealand units and approved overseas units is to ensure—

"(a) the accurate accounting of the—

"(i) issue of New Zealand units; and

"(ii) holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and

"(iii) conversion of New Zealand units into assigned amount units; and

"(b) the accurate, transparent, and efficient exchange of information between the Registry and overseas registries.

"(3) The purpose of the Registry in relation to all units is to facilitate the exchange of information between those persons with functions, duties, and powers under this Act to enable all of them to carry out their functions and duties, and exercise their powers."

9 Appointment of Registrar

Section 11 is amended by omitting "of the Ministry responsible for the Registry".

10 Registrar must give effect to directions

(1) Section 14 is amended by repealing subsection (1) and substituting the following subsection:

"(1) Subject to **subsection (3)**, the Registrar must give effect to any direction relating to the operation of the Registry given by the chief executive."

(2) Section 14 is amended by repealing subsection (2) and substituting the following subsection:

"(2) As soon as practicable after giving the direction, the chief executive must publish a copy of the direction in the *Gazette* and make a copy of the direction accessible via the Registry's Internet site."

(3) Section 14 is amended by adding the following subsections:

"(3) Despite **subsection (1)** and any regulations made under this Act, the chief executive may not give a direction relating to the operation of the Registry that affects the holding, transfer, retirement, surrender, conversion, or cancellation of units held by an account holder other than the Crown, unless—

"(a) the chief executive has the written consent of the account holder; or

"(b) if consent is not given, the chief executive gives the account holder reasonable notice.

"(4) For the purposes of **subsection (3)(b)**, **reasonable notice** means sufficient opportunity in the circumstances for the relevant account holder to make a written submission to the chief executive on the proposed direction."

11 Registrar must allocate unique numbers

(1) The heading to section 15 is amended by omitting "**must**" and substituting "**to**".

(2) Section 15 is amended by inserting the following subsection after subsection (1):

"(1A) The Registrar may, in accordance with regulations made under this Act, allocate a unique serial number to—

"(i) a New Zealand unit; or

"(ii) an approved overseas unit; or

"(iii) a class or subclass of New Zealand units; or

"(iv) a class or subclass of approved overseas units."

12 Carry-over of units

The heading to section 16 is amended by inserting "**certain Kyoto**" after "**Carry-over of**".

13 Commitment period reserve

(1) Section 17(1) is amended by omitting "The" and substituting "Despite anything in this Act, the".

(2) Section 17(1) is amended by inserting "Kyoto" after "or cancel".

(3) Section 17(1) is amended by omitting "independent" and substituting "international".

(4) Section 17(2) is amended by inserting "Kyoto" after "cancellations of".

14 Form and content of unit register

Section 18(2)(b)(i) is amended by inserting "surrender, conversion," after "retirement,".

15 Closing holding accounts

(1) Section 18B(2) is amended by omitting "Minister responsible for the Registry" in each place where it appears and substituting in each case "chief executive".

(2) Section 18B(2)(b)(ii)(B) is amended by omitting "with this Act" and substituting "with this Part".

(3) Section 18B(2)(b)(ii)(B) is amended by omitting "under this Act" and substituting "regarding the matters specified in **section 30G**".

(4) Section 18B is amended by repealing subsection (6) and substituting the following subsection:

"(6) For the purposes of subsection (2)(b)(i), **reasonable notice** means sufficient opportunity in the circumstances to—

"(a) transfer the units to another account before the holding account that is the subject of the closure direction is closed; or

"(b) in the case of non-compliance, comply with this Part or any regulations made under **section 30G**; or

"(c) if the chief executive is satisfied that an account holder no longer requires a holding account, make a written submission to the chief executive, before the account is closed, regarding the account holder's need to retain the account."

16 Transfer of units

Section 18C(3) is amended by inserting "Kyoto" after "to transfer".

17 New sections 18CA and 18CB inserted

The following sections are inserted after section 18C:

"18CA Effect of surrender, retirement, and cancellation

"(1) A unit that is transferred to a cancellation account may not be further transferred, retired, surrendered, carried over, or cancelled.

"(2) A Kyoto unit that is transferred to—

"(a) a retirement account may not be further transferred, retired, surrendered, carried over, or cancelled; and

"(b) a surrender account may be further transferred only in accordance with **subsection (3)**.

"(3) A Kyoto unit that is transferred to a surrender account may, in accordance with a direction from the Minister of Finance, be transferred to—

"(a) a retirement account or a cancellation account; or

"(b) a participant's holding account, if the direction was given on receipt of a notice from the chief executive under **section 112** (which relates to reimbursement of New Zealand units or approved overseas units).

"(4) A New Zealand unit or an approved overseas unit that is transferred to a surrender account may be further transferred only in accordance with a direction from the Minister of Finance given on receipt of a notice from the chief executive under **section 112** (which relates to reimbursement of New Zealand units or approved overseas units).

"(5) A New Zealand unit that is transferred to a conversion account may not be surrendered, cancelled, or otherwise further transferred except as required by **section 30E(4)(c)**.

"18CB Certain Kyoto units may not be surrendered

Despite anything in section 18C, the Registrar, with respect to any application to transfer Kyoto units issued in a relevant commitment period,—

"(a) may not, if the application is received in a subsequent commitment period, transfer those Kyoto units to a surrender account unless those Kyoto units have been carried over to the subsequent commitment period in accordance with this Act and any regulations made under this Act; and

"(b) must notify the applicant that the transfer may not proceed."

18 New section 19 substituted

Section 19 is repealed and the following section substituted:

"19 Retirement of Kyoto units by the Crown

"(1) The Crown may offset each tonne of carbon dioxide equivalent of human-induced greenhouse gas emissions, emitted from sources listed in Annex A of the Protocol, by transferring a Kyoto unit to the retirement account.

"(2) New Zealand units and approved overseas units may not be retired unless converted to assigned amount units."

19 Transactions must be registered

(1) Section 20(1) is amended by inserting "surrender, convert," after "retire,".

(2) Section 20(2)(a) is amended by omitting "independent" and substituting "international".

20 Registration procedure

(1) The heading to section 21 is amended by adding "**for Kyoto units**".

(2) Section 21(1) is amended by inserting "in relation to Kyoto units" after "a direction".

(3) Section 21(1) is amended by inserting "in relation to Kyoto units" after "a transaction".

(4) Section 21(1) is amended by repealing paragraph (b) and substituting the following paragraphs:

"(b) if the proposed transaction concerns the international transaction log, send a record of the proposed transaction to the international transaction log if required to do so by the international transaction log; and

"(c) if the proposed transaction does not concern the international transaction log,—

"(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

"(ii) send electronic notification that the transaction has been recorded in the unit register to—

"(A) the Minister of Finance, in the case of a direction; or

"(B) the account holder, in the case of an application."

(5) Section 21 is amended by repealing subsection (2) and substituting the following subsection:

"(2) If the Registrar sends a record of the proposed transaction to the international transaction log under **subsection (1)(b)** and receives notification back from the international transaction log that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

"(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

"(b) send notification that the transaction has been recorded in the unit register to the international transaction log; and

"(c) send electronic notification that the transaction has been recorded in the unit register to—

"(i) the Minister of Finance, in the case of a direction; or

"(ii) the account holder, in the case of an application."

(6) Section 21(3) is amended by omitting "independent" in each place where it appears and substituting in each case "international".

(7) Section 21(3) is amended by inserting "in relation to Kyoto units" after "a transaction".

(8) Section 21(3) is amended by repealing paragraph (c) and substituting the following paragraphs:

"(c) must give notification of the termination, as soon as practicable, to the international transaction log; and

"(d) send electronic notification that the transaction has been terminated to—

"(i) the Minister of Finance, in the case of a direction; or

"(ii) the account holder, in the case of an application."

(9) Section 21(4) is amended by omitting "units" and substituting "assigned amount units, certified emission reduction units, and emission reduction units".

21 New section 21AA inserted

The following section is inserted after section 21:

"21AA Registration procedure for New Zealand units and approved overseas units

"(1) On receipt of a direction in relation to New Zealand units or approved overseas units given by the Minister of Finance, or an application for the registration of a transaction in relation to New Zealand units or approved overseas units by an account holder, that is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—

"(a) create an unique transaction number; and

"(b) if the proposed transaction concerns an overseas registry, send a record of the transaction to the overseas registry if required to do so by the overseas registry; and

"(c) if the proposed transaction does not concern an overseas registry,—

"(i) record in the unit register the particulars of the transaction set out in the direction or the application; and

"(ii) send electronic notification that the transaction has been recorded in the unit register to—

"(A) the Minister of Finance, in the case of a direction; or

"(B) the account holder, in the case of an application.

"(2) If the Registrar sends a record of the proposed transaction to an overseas registry under **subsection (1)(b)** and receives notification back from the overseas registry that there are no discrepancies in the transaction, the Registrar must, as soon as practicable,—

"(a) record in the unit register the particulars of the transaction set out in the direction or the application; and

"(b) send notification to the overseas registry that the transaction has been recorded in the unit register; and

"(c) send electronic notification that the transaction has been recorded in the unit register to—

"(i) the Minister of Finance, in the case of a direction; or

"(ii) the account holder, in the case of an application.

"(3) If the Registrar receives a notification from the overseas registry that there is a discrepancy in a proposed transaction in relation to New Zealand units or approved overseas units, the Registrar—

"(a) may not register the transaction; and

"(b) must terminate the transaction; and

"(c) must notify the overseas registry of the termination; and

"(d) send electronic notification that the transaction has been terminated to—

"(i) the Minister of Finance, in the case of a direction; or

"(ii) the account holder, in the case of an application."

22 Receiving units from overseas registries

(1) The heading to section 23 is amended by inserting "**Kyoto**" after "**Receiving**".

(2) Section 23(1) and (2) is amended by inserting "Kyoto" after "to transfer".

(3) Section 23 is amended by omitting "independent" in each place where it appears and substituting in each case "international".

(4) Section 23(3) is amended by inserting "Kyoto" after "transfer of".

23 New section 23A inserted

The following section is inserted after section 23:

"23A Receiving New Zealand units and approved overseas units from overseas registries

"(1) If the Registrar receives notification from an overseas registry of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is no discrepancy with the transaction, the Registrar must register the transaction in accordance with the notification.

"(2) If the Registrar receives notification from an overseas registry of a proposal to transfer New Zealand units or approved overseas units to an account in the Registry and the Registrar is satisfied that there is a discrepancy with the transaction, the Registrar—

"(a) may not register the transaction; and

"(b) must terminate the transaction; and

"(c) must notify the overseas registry of the termination.

"(3) A transfer of New Zealand units or approved overseas units from an overseas registry is subject to any regulations made under this Act."

24 Correction of unit register

Section 25(3)(c) is amended by repealing subparagraph (ii) and substituting the following subparagraphs:

"(ii) the international transaction log (if required to do so); and

"(iia) an overseas registry (if required to do so); and".

25 Information accessible by search

(1) Section 27(b)(i) is amended by inserting "Kyoto" after "quantity of".

(2) Section 27(b) is amended by inserting the following subparagraphs after subparagraph (ii):

"(iia) the total quantity of New Zealand units issued; and

"(iib) the total quantity of New Zealand units held in the Registry at the beginning of the year; and".

(3) Section 27(b)(x) is amended by inserting "Kyoto" after "quantity of".

(4) Section 27(b) is amended by inserting the following subparagraphs after subparagraph (x):

"(xa) the total quantity of each type of unit surrendered; and

"(xb) the total quantity of New Zealand units converted; and".

(5) Section 27 is amended by inserting the following paragraph after paragraph (b):

"(ba) the total quantity of New Zealand units transferred for each removal activity; and".

26 Recovery of fees

Section 30 is amended by omitting "of the Ministry responsible for the Registry" in each place where it appears.

27 Crown or Registrar not liable in relation to searches in certain cases

(1) The heading to section 30A is amended by omitting "**Crown**" and substituting "**The Crown**".

(2) Section 30A(b)(i) is amended by omitting "independent" and substituting "international".

(3) Section 30A(b) is amended by inserting the following subparagraphs after subparagraph (i):

"(ia) an overseas registry; or

"(ib) a third party; or".

28 New sections 30E to 30J inserted

The following sections are inserted after section 30D:

"30E Conversion of New Zealand units into designated assigned amount units for sale overseas

"(1) An account holder may apply to the Registrar to convert a New Zealand unit held by that person into a designated assigned amount unit for the purpose of transferring that assigned amount unit to an account in an overseas registry.

"(2) An account holder who applies to convert any New Zealand units into designated assigned amount units for the purpose specified in **subsection (1)** must—

"(a) submit the prescribed form to the Registrar specifying the New Zealand units that the account holder wishes to convert; and

"(b) submit an application under section 18C for the transfer of an equivalent number of designated assigned amount units (into which the account holder is converting the New Zealand units) from the account holder's account in the Registry to an account in an overseas registry; and

"(c) pay the prescribed fee (if any).

"(3) Upon receipt of an application under **subsection (2)(a)** the Registrar must—

"(a) transfer the New Zealand units specified in the application from the account holder's account to the conversion account in accordance with **section 21AA**; and

"(b) transfer to the account holder's account an equivalent number of designated assigned amount units in accordance with **section 21(1)**; and

"(c) register the transaction requested under **subsection (2)(b)** in accordance with **section 21(1)**.

"(4) To avoid doubt, if the Registrar receives notification from the international transaction log under section 21(3) that there are discrepancies in the transaction relating to the application submitted under **subsection (2)(b)**, the Registrar—

"(a) must not convert the New Zealand units specified in the form submitted under **subsection (2)(a)**; and

"(b) must comply with section 21(3); and

"(c) must reverse the transfers in **subsection (3)(a) and (3)(b)**.

"(5) For the purposes of this section, **designated assigned amount unit** means an assigned amount unit that—

"(a) was issued by the Registrar on the basis of New Zealand's initial assigned amount; and

"(b) is held by the Crown in a holding account other than a cancellation, retirement, or surrender account.

"30F Restrictions on certain New Zealand units allocated to landowners of pre-1990 forest land

"(1) This section applies to any New Zealand units referred to in **section 69(2)(a)(ii)** that are allocated in accordance with an allocation plan made under **section 68** that relates to those units.

"(2) Despite anything in section 18C or **30E**, the Registrar may not transfer any class or subclass of New Zealand units to which this section applies to a surrender account or a conversion account until—

"(a) **1 January 2013**; or

"(b) any date after **1 January 2013** specified in the allocation plan made under **section 68**.

"30G Regulations relating to Part 2

"(1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:

"(a) procedures and requirements relating to any powers of the Minister of Finance under subpart 1 of this Part:

"(b) prescribing matters, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, or prohibitions, in respect of—

"(i) the transfer of units, including (but not limited to)—

"(A) the transfer of units from an account holder's holding account to another account in an overseas registry:

"(B) the transfer of units within the unit register:

"(C) the transfer of units from an overseas registry:

"(D) prohibitions on the transfer of units for the purposes of holding those units in an account in the Registry:

"(ii) the opening or closing of holding accounts:

"(c) prescribing matters in respect of the holding, surrender, conversion, and cancellation of units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

"(d) carry-over of assigned amount units, certified emission reduction units, and emission reduction units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:

"(e) prescribing procedures, requirements, and other matters in respect of the unit register and its operation, including, but not limited to, matters relating to—

"(i) access to the unit register:

"(ii) the location of the unit register:

"(iii) the hours of access to the unit register:

"(iv) the format of unique numbers to be used in the unit register:

"(v) the allocation of unique serial numbers to New Zealand units and approved overseas units:

"(vi) the exchange of data between—

"(A) the Registry and overseas registries:

"(B) the Registry and the international transactions log:

"(vii) the registration of transactions:

"(viii) the form and content of the unit register:

"(f) prescribing matters in respect of which fees are payable under this Part, the amounts of those fees, and the procedures for payment:

"(g) prescribing procedures, requirements, and other matters in respect of the form, use, and manner of obtaining electronic verification statements to confirm a registration:

"(h) prescribing procedures, requirements, and other matters in respect of searching the unit register, including, but not limited to,—

"(i) the criteria by which a search may be conducted:

"(ii) the method of disclosure:

"(iii) the form of search results:

"(iv) the abbreviations, expansions, or symbols that may be used in search results:

"(i) prescribing forms and notices for the purposes of this Part:

"(j) prescribing, for the purpose of the definition of overseas registry, overseas registries from which and to which units may be transferred to and from accounts in the Registry:

"(k) prescribing the units issued by an overseas registry that may be transferred to accounts in the Registry:

"(l) prescribing procedures for transactions involving approved overseas units:

"(m) for the purposes of, and subject to, this Part, giving effect to the terms of the Convention and the Protocol, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

"(n) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.

"(2) Regulations made under **subsection (1)** may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.

"(3) Any regulation made under **subsection (1)(b) or (c)** does not apply to the transfer of units that are held in an account in the Registry at the time that the regulation comes into force.

"(4) Any regulations made under **subsection (1)** must be consistent with the Convention and the Protocol.

"30H Incorporation by reference in regulations made under section 30G

"(1) The following written material may be incorporated by reference in regulations made under **section 30G**:

"(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol; and

"(b) any standards, requirements, or recommended practices—

"(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

"(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Protocol.

"(2) Material may be incorporated by reference in regulations—

"(a) in whole or in part; and

"(b) with modifications, additions, or variations specified in the regulations.

"(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

"(4) **Sections 150 to 157** apply to material incorporated by reference into regulations under **section 30G** as though all references to **section 148** were references to **section 30G** and all references to the chief executive were references to the Registrar.

"30I Signing false declaration with respect to regulations made under section 30G

Every person who signs a declaration that is required under regulations made under **section 30G**, knowing the declaration to be false,—

"(a) commits an offence; and

"(b) is liable on conviction to a fine not exceeding $5,000.

"30J Providing false or misleading information to Registrar

"(1) Every person who knowingly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding,—

"(a) in the case of an individual, $50,000:

"(b) in the case of a body corporate, $200,000.

"(2) Every person who recklessly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding $2,000."

29 New Part 3 heading substituted

The subpart 3 heading above section 31 is repealed and the following heading substituted:

"Part 3
"Inventory agency".

30 Inventory agency under direction of Minister responsible for inventory agency

(1) The heading to section 33 is amended by omitting "**responsible for inventory agency**".

(2) Section 33 is amended by omitting "responsible for the inventory agency" in each place where it appears.

31 New heading substituted

The Part 3 heading and the heading above section 36 are repealed and the following heading is substituted: "*Inspectors*".

32 Authorisation of inspectors

(1) Section 36 is amended by omitting "responsible for the inventory agency" in each place where it appears.

(2) Section 36(1) is amended by omitting "carry out all or any of the powers and duties of" and substituting "exercise any or all of the powers of, and carry out any or all of the duties of,".

33 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases

Section 37 is amended by omitting "responsible for the inventory agency" in each place where it appears.

34 Limitation on power of entry under section 37

Section 38 is amended by omitting "responsible for the inventory agency".

35 New section 45A inserted

The following section is inserted after section 45:

"**45A Protection of persons acting under authority of Act**

No inspector or person called upon to assist an inspector who does an act or omits to do an act when carrying out a duty or exercising a power conferred on that person by this Act is under any civil or criminal liability in respect of that act or

omission unless the person has acted or omitted to act in bad faith or without reasonable cause."

36 Obstructing, hindering, resisting, or deceiving person exercising power under Act

(1) The heading to section 47 is amended by omitting "**Act**" and substituting "**Part**".

(2) Section 47(a)(i) is amended by omitting "Act" in each place it occurs and substituting "Part".

(3) Section 47(a)(ii) is amended by omitting "Act" and substituting "Part".

37 Signing false declaration

The heading to section 48 is amended by adding "**in respect of regulations made under section 50**".

38 Section 48A repealed

Section 48A is repealed.

39 Reporting

Section 49 is amended by inserting "responsible for the administration of this Act" after "Minister" in the first place where it appears.

40 Regulations

(1) Section 50(1)(a) is repealed.

(2) Section 50(1)(c) is repealed.

(3) Section 50(1)(ca) is repealed.

(4) Section 50(1)(d) is repealed.

(5) Section 50(1)(e) is amended by omitting "Act" and substituting "Part".

(6) Section 50(1)(g) is repealed.

(7) Section 50(1)(h) is repealed.

(8) Section 50(1)(i) is amended by omitting "Act" and substituting "Part".

(9) Section 50(1)(k) is amended by omitting "Act" and substituting "Part".

(10) Section 50(2) and (3) are amended by omitting "responsible for the inventory agency".

(11) Section 50 is amended by repealing subsection (5) and substituting the following subsection:

"(5) Regulations made under subsection (1) or subsection (2) may be made in respect of different persons, or classes of persons."

41 New section 51 substituted

Section 51 is repealed and the following section substituted:

"**51 Incorporation by reference in regulations under section 50**

"(1) The following written material may be incorporated by reference in regulations made under section 50:

"(a) decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved by any international or national organisation in accordance with the Convention or the Protocol; and

"(b) any standards, requirements, or recommended practices—

"(i) of any international or national organisation that are adopted, agreed on, made, or approved in accordance with the Convention or the Protocol:

"(ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with the Protocol.

"(2) Material may be incorporated by reference in regulation—

"(a) in whole or in part; and

"(b) with modifications, additions, or variations specified in the regulations.

"(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

"(4) **Sections 150 to 157** apply to material incorporated by reference into regulations under section 50 as though all references to **section 148** were references to section 50 and all references to the chief executive were references to the inventory agency."

42 Inventory agency must report to Minister responsible for inventory agency on certain matters before certain regulations are made

(1) The heading to section 52 is amended by omitting "**responsible for inventory agency**".

(2) Section 52(1) is amended by omitting "responsible for the inventory agency".

(3) Section 52(3) is amended by omitting "responsible for the inventory agency".

(4) Section 52(4) is amended by omitting "who is responsible for the inventory agency".

43 New Parts 4 and 5 inserted

The following Parts are inserted after section 53:

"Part 4
"New Zealand greenhouse gas emissions trading scheme

"Subpart 1—Participants

"54 Participants

"(1) A person is a **participant**,—

"(a) in relation to an activity listed in **Schedule 3**, if the person—

"(i) carries out the activity; or

"(ii) is required under this Act to be treated as carrying out the activity; and

"(b) in relation to an activity listed in **Schedule 4**, if the person—

"(i) carries out the activity; and

"(ii) is registered as a participant under **section 57** in relation to the activity.

"(2) **Subsection (1)(a)** is subject to any exemption under an Order in Council made under **section 60**.

"(3) A person who was a participant under **subsection (1)** continues to be a participant for the purposes of this Act in respect of any obligations or entitlements arising in relation to an activity listed in **Schedule 3 or 4** that the person carried out while a participant.

"**55 Associated persons**

"(1) This section applies if an activity listed in **Schedule 3** has a threshold below or above which a person becomes a participant.

"(2) If this section applies, persons who are associated persons are to be treated as 1 person for the purpose of determining whether the threshold is met.

"(3) If a threshold for an activity listed in **Schedule 3** is met by associated persons, each of the associated persons—

"(a) is to be treated as carrying out the activity for the purposes of this Act; and

"(b) may elect to comply with this Part and **Part 5** as a—

"(i) participant in relation to the activity; or

"(ii) a person engaged in a joint activity in accordance with **section 142**; or

"(iii) a member of a consolidated group under **section 137**, if the associated person qualifies to be a member of a consolidated group.

"**56 Registration as participant in relation to activities listed in Schedule 3**

"(1) A person who carries out an activity listed in **Schedule 3** must notify the chief executive that the person is a participant in respect of the activity.

"(2) A notice under **subsection (1)** must be—

"(a) submitted to the chief executive within 20 working days of the person becoming a participant in respect of the activity; and

"(b) be in the prescribed form; and

"(c) contain the account number of the participant's holding account required under **section 61**.

"(3) The chief executive must, as soon as practicable after receiving a notice under **subsection (1)**, enter on a register kept by the chief executive for the purpose of this section—

"(a) the name of the person; and

"(b) the details of the activity that the person carries out.

"**57 Applications to be registered as participant in relation to activities listed in Schedule 4**

"(1) A person who carries out an activity listed in **Schedule 4** may apply to be registered as a participant in respect of the activity by application to the chief executive in accordance with **subsection (2)**.

"(2) An application under **subsection (1)** must—

"(a) be in the prescribed form; and

"(b) be accompanied by—

"(i) any other information that the chief executive may require; and

"(ii) the prescribed fee (if any); and

"(c) be made within—

"(i) the period specified in—

"(A) **section 166(1)** with respect to an activity listed in **Part 1 of Schedule 4**; or

"(B) **section 173(1)** with respect to an activity listed in **Part 3 of Schedule 4**; or

"(C) **section 176(1)** with respect to an activity listed in **Part 4 of Schedule 4**; or

"(ii) at any time with respect to an activity listed in **Part 2 of Schedule 4**; and

"(d) contain the account number of the participant's holding account required under **section 61**.

"(3) Following the receipt of an application under **subsection (1)**, the chief executive must, unless the chief executive has reason to believe that the person is not carrying out the activity listed in **Schedule 4** specified in the application,—

"(a) enter on a register kept by the chief executive for the purpose of this section—

"(i) the name of the applicant; and

"(ii) the details of the activity carried out by the applicant; and

"(iii) the date from which the applicant's registration as a participant in relation to the activity will take effect under **subsection (4)**; and

"(b) notify the following persons that the applicant has been registered as a participant in relation to the activity and the date from which the registration will take effect:

"(i) the applicant; and

"(ii) any other persons required to be notified under **section 166(2)(a), 173(2)(a), or 176(2)(a)**, as the case may require.

"(4) The registration of a participant takes effect from the date specified in **section 166(2)(b), 173(2)(b), or 176(2)(b)**, as the case may require.

"58 Removal from register of participants in relation to activities listed in Schedule 4

"(1) A person who is registered under **section 57** as a participant in relation to an activity listed in **Schedule 4** may apply to have that person's name removed from the register in relation to the activity by application to the chief executive in accordance with **subsection (2)**.

"(2) An application under **subsection (1)** must—

"(a) be in the prescribed form; and

"(b) be accompanied by the prescribed fee (if any).

"(3) Following receipt of an application under **subsection (1)**, the chief executive must—

"(a) note on the register—

"(i) that the applicant has applied to be removed from the register as a participant in relation to the activity; and

"(ii) the date on which the applicant's name is to be removed in accordance with **subsection (4)**; and

"(b) notify the applicant of the date on which the applicant's name is to be removed from the register in accordance with **subsection (4)**; and

"(c) notify any other persons required to be notified under **section 166(3)(a), 173(3)(a), or 176(3)(a)**, as the case may require,—

"(i) that the applicant has applied to have the applicant's name removed from the register as a participant in relation to the activity; and

"(ii) the date that the applicant's name will be removed in accordance with **subsection (4)**.

"(4) The chief executive must remove the name of an applicant under **subsection (1)** from the register on the date required under **section 166(3)(b), 173(3)(b), or section 176(3)(b)**, as the case may require.

"**59 Removal from register of participants in relation to activities listed in Schedules 3 and 4**

"(1) A person who is registered under **section 56 or 57** in respect of an activity listed in **Schedule 3 or 4** must notify the chief executive as soon as practicable if the person ceases, or will cease, to carry out the activity.

"(2) The chief executive must, as soon as practicable after receiving notice under **subsection (1)**, or otherwise being satisfied that the person has ceased to carry out the activity,—

"(a) remove the name of the person from the register; and

"(b) notify any other persons required to be notified under **section 166(3)(a), 173(3)(a), or 176(3)(a)**, as the case may require, that the applicant's name has been removed from the register.

"**60 Exemptions in relation to activities listed in Schedule 3**

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons carrying out an activity listed in **Schedule 3** from being a participant under this Act in relation to—

"(a) an activity; or

"(b) part of an activity; or

"(c) a proportion of the emissions from an activity; or

"(d) a combination of the matters specified in **paragraphs (a) to (c)**.

"(2) Before recommending the making of an order under **subsection (1)**, the Minister must be satisfied that—

"(a) the order will not materially undermine the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

"(b) the costs of making the order do not exceed the benefits of not making the order.

"(3) In determining whether or not to recommend the making of an order under **subsection (1)**, the Minister must have regard to the following matters:

"(a) the need to maintain the environmental integrity of the greenhouse gas emissions trading scheme established under this Act; and

"(b) the desirability of minimising any compliance and administrative costs associated with the greenhouse gas

emissions trading scheme established under this Act; and

"(c) the relative costs of giving the exemption or not giving it, and who bears the costs; and

"(d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption; and

"(e) any other matters the Minister considers relevant.

"(4) While an order made under this section is in force, any person or class of persons in respect of whom the order is made is not required to comply with the obligations imposed on participants under this Part and **Part 5** in respect of the matters covered by the order.

"(5) Before recommending the making or revocation of an order under this section, the Minister must—

"(a) consult with persons that the Minister thinks are representative of the interests of persons likely to be substantially affected by the making of the order; and

"(b) give those persons the opportunity to make submissions; and

"(c) consider those submissions.

"(6) Despite anything in **subsection (2) or (3)**, the Minister may make a recommendation for the making of an order under **subsection (1)** in respect of a person with whom the Crown has signed a negotiated greenhouse agreement if—

"(a) the negotiated greenhouse agreement was signed before **31 December 2005**; and

"(b) the order relates to an activity of the person that is covered by the negotiated greenhouse agreement; and

"(c) the order is in force for a period not exceeding the term of the negotiated greenhouse agreement, including any extension of the term made in accordance with the agreement.

"(7) The Minister is not required to comply with **subsection (5)** before recommending the making of an order under **subsection (1)** in respect of a person with whom the Crown has signed a negotiated greenhouse agreement.

"(8) A failure to comply with **subsection (5)** does not affect the validity of any order made.

"**61 Participants must have holding accounts**

"(1) A participant must have a holding account for the purpose of—

"(a) surrendering units as required under this Part and **Part 5**; and

"(b) receiving New Zealand units to which the participant becomes entitled under this Part or **Part 5**.

"(2) To comply with **subsection (1)**, the participant must—

"(a) open a new holding account in accordance with section 18A; or

"(b) use an existing holding account of the participant.

"(3) To avoid doubt, a participant may—

"(a) open a new holding account for the purpose of **subsection (1)** whether or not the participant meets any eligibility requirements for opening a holding account specified in regulations made under this Act:

"(b) use a new holding account opened for the purpose of **subsection (1)** for any other purpose permitted under this Act.

"**62 Monitoring of emissions and removals**

A participant must, in respect of each activity listed in **Schedule 3 or 4** that is carried out by the participant in a year,—

"(a) collect the prescribed data or other prescribed information (which data or information must, if required under regulations made under this Act, be verified by a person or organisation recognised by the chief executive under **section 81**); and

"(b) calculate the emissions and the removals from the activity in accordance with the methodologies prescribed in regulations made under this Act; and

"(c) if required under regulations made under this Act, have the calculations verified by a person or organisation recognised by the chief executive under **section 81**; and

"(d) keep records of the data or information and calculations in the prescribed format (if any).

"**63 Liability to surrender units to cover emissions**

"(1) A participant is liable to surrender 1 unit for each whole tonne of emissions from each activity listed in **Schedule 3 or 4** that the participant carries out,—

"(a) as calculated in accordance with this Act; and

"(b) at the times required under this Act.

"(2) If a participant is liable to surrender units under this Act, the participant must make an application under section 18C to transfer the required number of units from the participant's holding account to a surrender account designated by the chief executive.

"**64 Entitlement to receive New Zealand units for removal activities**

"(1) A participant is entitled to receive 1 New Zealand unit for each whole tonne of removals from the participant's removal activities, as calculated in accordance with this Act.

"(2) If a participant is entitled to receive New Zealand units, the chief executive must notify the Minister of Finance of—

"(a) the number of New Zealand units to which the participant is entitled; and

"(b) the details of the participant's holding account.

"(3) As soon as practicable after receiving notification under **subsection (2)**, the Minister of Finance must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant's holding account.

"**65 Annual emissions returns**

"(1) Between **1 January and 31 March** in each year, a participant must submit an annual emissions return to the chief executive in respect of each of the activities listed in **Schedule 3 or 4** carried out by the participant in the immediately preceding year.

"(2) The annual emissions return must, in respect of the period covered by the return,—

"(a) record the participant's activities; and

"(b) record the participant's emissions and removals as calculated and, if required, as verified under **section 62(b) and (c)**; and

"(c) contain an assessment of the participant's—

"(i) liability to surrender units in respect of the participant's emissions; and

"(ii) entitlement to receive New Zealand units for the participant's removals; and

"(d) be accompanied by such other information as may be prescribed; and

"(da) accompanied by the prescribed fee (if any); and

"(e) be signed by the participant.

"(3) The participant must submit the annual emissions return under **subsection (1)** by submitting it in the prescribed manner and format.

"(4) Following the submission of an annual emissions return under **subsection (1)**, a participant must, by **30 April**, surrender the number of units listed in the participant's assessment under **subsection (2)(c)(i)**.

"(5) This section is subject to **section 167**, which concerns the submission of emissions returns by participants carrying out an activity listed in **Part 1 of Schedule 4**.

"66 Retention of emissions records

"(1) A participant must keep sufficient records to enable the chief executive to verify, in respect of any year in which the participant carries or carried out an activity listed in **Schedule 3 or 4**,—

"(a) the activities carried out by the participant; and

"(b) the emissions and removals from those activities as calculated and, if required, as verified under **section 62(b) and (c)**; and

"(c) the participant's assessment of the participant's—

"(i) liability to surrender units; and

"(ii) entitlement to receive New Zealand units; and

"(d) any other information contained in the participant's annual emissions return.

"(2) The records specified in **subsection (1)** must,—

"(a) include the records specified in **section 62(d)**; and

"(b) in the case where they relate to an activity listed in **Part 1 of Schedule 3 or 4**, be retained for a period of at least 20 years after the end of the year to which they relate; and

"(c) in every other case, be retained for a period of at least 7 years after the end of the year to which they relate.

"Subpart 2—Allocation of New Zealand units

"67 Issuance of New Zealand units

"(1) Subject to **subsection (2)**, the Minister may, at any time, give a direction to the Registrar to issue New Zealand units into a Crown holding account.

"(2) Before issuing a direction, the Minister must—

"(a) consult with the Minister of Finance; and

"(b) have regard to the following matters:

"(i) the number of units that New Zealand has received, or that the Minister expects New Zealand to receive, under any international agreement; and

"(ii) the ability of New Zealand to meet its international obligations (if any) to retire units equal to the number of tonnes of emissions that are emitted in New Zealand; and

"(iii) the proper functioning of the emissions trading scheme established under this Act.

"(3) The Registrar must give effect to a direction given by the Minister under **subsection (1)**.

"(4) As soon as practicable after giving a direction under **subsection (1)**, the Minister must publish a copy of the direction in the *Gazette*, make a copy of the direction accessible via the chief executive's Internet site, and present a copy of the direction to the House of Representatives, in each case accompanied by a statement setting out how the Minister has had regard to the matters specified in **subsection (2)(b)**.

"68 Allocation plans for allocation of New Zealand units free of charge

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, issue an allocation plan that provides for the allocation of New Zealand units free of charge.

"(2) New Zealand units may only be allocated free of charge in accordance with an allocation plan made in accordance with this section.

"(3) The Minister must, as soon as practicable after an allocation plan is made in accordance with **subsection (1)**,—

"(a) publish the allocation plan in whatever form the Minister considers appropriate; and

"(b) make the allocation plan available for inspection at the places that the Minister considers appropriate; and

"(c) provide a copy of the allocation plan to each person, or class of person, entitled to an allocation of New Zealand units free of charge under the plan.

"(4) As soon as practicable after the Minister has published the allocation plan in accordance with **subsection (3)**, the Minister of Finance must issue a direction to the Registrar to transfer New Zealand units in accordance with the plan to the persons or classes of persons who are entitled to an allocation of New Zealand units under the plan.

"(5) For the purpose of correcting any minor mistakes or defects in an allocation plan, the Minister may, without complying with **sections 73 and 74**, provide the Governor-General with a recommendation to amend the allocation plan.

"69 Allocation to pre-1990 forest land owners

"(1) The Minister must recommend that an order is made under **section 68(1)** for the issue of an allocation plan that provides for an allocation of New Zealand units free of charge to the landowners of pre-1990 forest land other than land that has been declared exempt land under section 159.

"(2) An allocation plan that provides for an allocation of New Zealand units free of charge to persons specified in **subsection (1)** must specify—

"(a) a total number of New Zealand units available for allocation consisting of—

"(i) 21 million New Zealand units in the period from **1 January 2008 to 31 December 2012**, reduced by 1 New Zealand unit for each tonne of emissions that results, or that the Minister considers is likely to result, from the activities specified in **subsection (3)** in that period; and

"(ii) 34 million New Zealand units in the period from **1 January 2013 to 31 December 2024**, reduced by 1 New Zealand unit for each tonne of emissions that results, or that the Minister is satisfied will

result, from the activities specified in **subsection (3)** in that period; and

"(b) the basis upon which the number of New Zealand units available for allocation will be allocated to persons or classes of persons specified in **subsection (1)**.

"(3) For the purposes of **subsection (2)(a)(i) and (ii)**, the activities are—

"(a) deforestation on exempt land; and

"(b) deforestation of 2 hectares or less of pre-1990 forest land for which no obligation to surrender units is imposed under this Act.

"(4) An allocation plan made under **section 68** may—

"(a) provide for the allocation of the New Zealand units referred to in **subsection (2)(a)(ii)** at any time; and

"(b) specify dates before which some or all of those New Zealand units may not be surrendered or converted.

"70 Allocation to industry

"(1) The Minister must recommend that an order is made under **section 68(1)** for the issue of an allocation plan that provides for an allocation of New Zealand units free of charge to persons or classes of persons who—

"(a) the Minister considers are likely to be trade exposed; and

"(b) have specified emissions above a prescribed threshold (if any), and—

"(i) carry out an activity listed in **Part 4 of Schedule 3**; or

"(ii) as a result of the obligations imposed by this Act on persons who carry out an activity listed in **Part 3 of Schedule 3**, face increased costs in respect of the person's—

"(A) direct use of coal, natural gas, or geothermal steam; or

"(B) direct consumption of electricity.

"(2) An allocation plan that provides for an allocation of New Zealand units free of charge to persons or classes of persons specified in **subsection (1)** must specify—

"(a) a total number of New Zealand units available for allocation consisting of 90 New Zealand units for each 100 tonnes of emissions that the Minister is satisfied resulted from the persons specified in **subsection (1)**—

"(i) carrying out any activity listed in **Part 4 of Schedule 3** in **2005**; and

"(ii) directly using any coal, natural gas, or geothermal steam in **2005**; and

"(iii) directly consuming any electricity in **2005**; and

"(b) the basis upon which the New Zealand units available for allocation will be allocated to persons or classes of persons specified in **subsection (1)**; and

"(c) a reduction in the total number of New Zealand units available for allocation to persons specified in **subsection (1)** by one-twelfth of the number of New Zealand units available for allocation under **subsection (2)(a)** each year in the period from **1 January 2014 to 31 December 2024**.

"(3) For the purposes of **subsection (1)(a)**, in considering whether a person is likely to be trade exposed, the Minister must have regard to the following matters—

"(a) whether the person competes with a firm or firms that operate from outside New Zealand in respect of—

"(i) products the person sells into the New Zealand market; or

"(ii) products the person exports into overseas markets; and

"(b) if the person does compete with firms that operate from outside New Zealand, whether the person—

"(i) faces higher costs in respect of the person's emissions than the firm or firms with which the person competes face in respect of their emissions; and

"(ii) is unable to pass-on some or all of the person's costs due to the competition the person faces.

"(4) For the purposes of this section, **specified emissions** means the emissions that the Minister is satisfied resulted from the person—

"(a) carrying out an activity listed in **Part 4 of Schedule 3** in **2005**; and

"(b) directly using any coal, natural gas, or geothermal steam in **2005**; and

"(c) directly consuming any electricity in **2005**.

"**71 Allocation to agriculture**

"(1) The Minister must recommend that an order is made under **section 68(1)** for the issue of an allocation plan that provides for an allocation of New Zealand units free of charge to—

"(a) persons or classes of persons who—

"(i) carry out an activity listed in **Part 5 of Schedule 3**; or

"(ii) face increased costs as a result of the obligations imposed by this Act on any persons who carry out an activity in **Part 5 of Schedule 3** and who—

"(A) farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry for reward or for the purpose of trade in those animals or in animal material or animal products taken or derived from those animals; or

"(B) purchase, other than for on-selling, synthetic fertiliser containing nitrogen; or

"(b) body corporates or trusts representing the persons or classes of persons specified in **paragraph (a)**.

"(2) An allocation plan that provides for an allocation of New Zealand units free of charge to persons or classes of persons specified in **subsection (1)** must specify—

"(a) a total number of New Zealand units available for allocation, consisting of 90 New Zealand units for each 100 tonnes of emissions that the Minister is satisfied resulted from the activities listed in **Part 5 of Schedule 3** in **2005**; and

"(b) the basis upon which the New Zealand units available for allocation will be allocated to persons or classes of persons specified in **subsection (1)**; and

"(c) a reduction in the total number of New Zealand units available for allocation to persons specified in **subsection (1)** by one-twelfth of the number of New Zealand units available for allocation under **subsection (2)(a)** each year in the period from **1 January 2014 to 31 December 2024**.

"**72 Persons not eligible for allocation of New Zealand units free of charge**

The Minister may not recommend that an order is made under **section 68(1)** for the issue of an allocation plan providing for the allocation of New Zealand units free of charge—

"(a) to any person or class of persons other than a person or class of persons specified in **sections 69 to 71**; or

"(b) to any person or class of persons specified in **sections 69 to 71** in respect of any period other than a period specified in those sections.

"73 Statements of intention to prepare draft allocation plans

"(1) Before making an order recommending the issue of an allocation plan, the Minister must prepare a statement of intention to prepare a draft allocation plan under **section 74**.

"(2) The statement of intention under **subsection (1)** must state—

"(a) the section or sections under which the draft allocation plan will be prepared (**sections 69 to 71**); and

"(b) the persons or classes of persons to whom New Zealand units are proposed to be allocated free of charge under the allocation plan; and

"(c) any proposed criteria for determining the number of New Zealand units that any eligible person or class of person may be entitled to receive; and

"(d) the preconditions that any person or class of persons eligible to receive an allocation of New Zealand units must satisfy in order to receive an allocation of New Zealand units free of charge under the plan, including the requirement to provide the following information to the Minister—

"(i) the name and contact details of any person or any person representing a class of persons; and

"(ii) supporting information that demonstrates that the person or class of persons is eligible to be allocated New Zealand units under the proposed plan; and

"(iii) the person's or class of persons assessment of the number of units they would be entitled to receive under the proposed criteria; and

"(e) the date by which the information in **paragraph (d)** must be provided (which must be at least 40 working days after the date on which notice is given).

"(3) The Minister must give—

"(a) public notice of the statement of intention; and

"(b) notice of the statement of intention to any person or body representative of the persons who the Minister

considers may be eligible for an allocation of New Zealand units under the allocation plan.

"(4) The Minister must consider all information in respect of the notice received by the date specified in the statement of intention under **subsection (2)**, and may either—

"(a) amend the statement of intention; or

"(b) approve the statement of intention as the basis on which to prepare a draft allocation plan.

"(5) If the Minister amends the statement of intention under **subsection (4)**, the Minister must comply with **subsections (2) to (4)** as if the amended statement of intention were a new statement of intention.

"74 Preparation of draft allocation plan

"(1) When preparing a draft allocation plan, the Minister must consider—

"(a) the requirements of the section or sections that the allocation plan is prepared under (**sections 69 to 71**); and

"(b) all information received in respect of the statement of intention to prepare the draft allocation plan; and

"(c) any other information the Minister considers relevant (including but not limited to any further information that may be sought from any person who provided information in respect of the notice of intention to prepare the draft allocation plan).

"(2) The Minister must ensure the draft allocation plan—

"(a) allocates New Zealand units in accordance with the statement of intention approved under **section 73(4)(b)**; and

"(b) specifies the total number of New Zealand units to be allocated free of charge under the allocation plan; and

"(c) specifies the persons, or classes of persons, eligible to receive an allocation of New Zealand units free of charge under the allocation plan; and

"(d) specifies the number of New Zealand units to be allocated free of charge to each person, or class of persons, eligible to receive an allocation of New Zealand units under the allocation plan, including the number of New Zealand units to be allocated free of charge in any given

year to each person or class of persons covered by the allocation plan.

"(3) The Minister must give—

"(a) public notice of the draft allocation plan; and

"(b) notice of the draft allocation plan to any person or body representative of the persons who provided information in response to the statement of intention in respect of that plan.

"(4) The notice of a draft allocation plan must state—

"(a) that any person may make a submission on the draft allocation plan in writing to the chief executive responsible for the administration of this Act; and

"(b) where the draft allocation plan may be viewed; and

"(c) how copies of the draft allocation plan may be requested; and

"(d) the date by which submissions must be received by the chief executive responsible for the administration of this Act (which must be at least 40 working days after the date on which notice is given).

"(5) The chief executive responsible for the administration of this Act must prepare for the Minister a report and recommendations in respect of all submissions made in accordance with **subsection (4)** in respect of the draft allocation plan.

"(6) The Minister must consider the report and recommendations made under **subsection (5)** and then may (but need not) make any changes to the draft allocation plan that the Minister thinks fit before making a recommendation under **section 68(1)** in respect of the allocation plan.

"75 Allocation of New Zealand units by public tender

"(1) After consulting the Minister of Finance, the Minister may, by public notice,—

"(a) offer New Zealand units held by the Crown for sale by public tender; and

"(b) specify the terms and conditions of the offer, which may include a condition as to the persons or class of persons who are eligible to submit tenders.

"(2) Every notice under **subsection (1)(a)** must specify—

"(a) the number of New Zealand units offered; and

"(b) who may participate in the tender; and

"(c) the manner in which tenders must be submitted, and the time by which tenders must be received by the Minister, in order for the tenders to be valid.

"(3) The Minister must not accept any tender that does not comply in a material way with the requirements of the notice.

"(4) The Minister may amend or revoke a notice before the time by which tenders must be received expires.

"(5) The Minister may decide to accept or decline any tender made in respect of an offer for any reason.

"76 Balance of units at end of true-up period

"(1) By the end of the true-up period, the Minister must ensure that the Crown holds, in any Crown holding account in the Registry, or any retirement or surrender account, a number of Kyoto units equal to the number of New Zealand units issued into a Crown holding account during the first commitment period.

"(2) **Subsection (3)** applies if New Zealand has received, or if the Minister expects New Zealand to receive, units under—

"(a) the Protocol during a subsequent commitment period; or

"(b) any international agreement other than the Protocol.

"(3) If this subsection applies,—

"(a) the Governor-General may, by Order in Council made on the recommendation of the Minister, specify a date by which the Crown must hold a number of units received under any international agreement equal to the number of New Zealand units issued to a Crown holding account in accordance with a direction under **section 67(1)**; and

"(b) the Minister must recommend that such an order is made.

"(4) If an order is made under **subsection (3)**, the Minister must ensure that the Crown holds the required number of units by the date specified in the order.

"(5) For the purposes of this section, **true-up period** means the 100 days, beginning on a date determined by the Conference of the Parties (acting as the Meeting of the Parties to the Protocol), providing Parties with an additional period for fulfilment of their obligation under Article 3.1 of the Protocol.

"Subpart 3—Chief executive

"*General administrative provisions*

"77 Functions of chief executive

"(1) The functions of the chief executive are to—

"(a) keep a register under **section 56** of persons who carry out activities and a register or persons who register under **section 57** as participants; and

"(b) receive and collate the data and other information provided by participants under this Part and **Part 5**; and

"(c) give notice to the Minister of Finance of participants' entitlements to receive New Zealand units; and

"(d) ensure participants comply with this Part and **Part 5** and to take any action that may be appropriate to enforce those provisions and the provisions of any regulations made under this Part; and

"(e) publish information in accordance with **section 79**; and

"(f) issue emissions rulings to help persons meet their obligations under this Part and **Part 5**.

"(2) The chief executive must comply with any direction that the Minister gives under **section 78(1)**.

"78 Directions to chief executive

"(1) The Minister may give general directions to the chief executive in relation to the exercise of powers and functions conferred on the chief executive under this Part, **Part 5**, or any regulations made under this Part or **Part 5**.

"(2) **Subsection (1)** does not authorise the Minister to give directions about the exercise of powers and performance of functions in relation to a particular person.

"(3) As soon as practicable after giving a direction under **subsection (1)**, the Minister must publish a copy of the direction in the *Gazette* and make a copy of the direction accessible via the chief executive's Internet site.

"79 Chief executive to publish certain information

"(1) The chief executive must publish the following information in accordance with **subsection (2)**:

"(a) in relation to each activity listed in **Schedule 3**, the total number of participants—

"(i) registered under **section 56**; and
"(ii) removed from the register under **section 59**; and

"(b) in relation to each activity listed in **Schedule 4**, the total number of participants—
"(i) registered under **section 57**; and
"(ii) removed from the register under **section 58(4) or 59**; and

"(c) the total number and type of activities reported in emissions returns; and

"(d) the total quantity of emissions and removals reported in emissions returns; and

"(e) the number of participants who failed to comply with their obligation to—
"(i) submit an emissions return under **section 65(1), 106(2), 167(2) or 168(2)(a)**; or
"(ii) surrender or cancel units under **section 65(4), 106(4), 111(3) or (6), 167(5), or 168(2)(b)**; and

"(f) the total number and type of units surrendered; and

"(g) the total number of New Zealand units transferred for removal activities; and

"(h) the total number of New Zealand units allocated free of charge under any allocation plan; and

"(i) the total number of New Zealand units sold by public tender; and

"(j) in relation to holding accounts other than Crown holding accounts, the total number and type of units transferred—
"(i) between holding accounts in the Registry; and
"(ii) between the Registry and any overseas registry.

"(2) The chief executive—
"(a) must publish the information specified in **subsection (1)** by **30 June** in each year; and
"(b) may publish the information specified in **subsection (1)**, in whole or in part, at any other time and in whatever manner and format that the chief executive considers appropriate.

"80 Chief executive may prescribe form of certain documents

"(1) The chief executive may, for the purposes of this Part and **Part 5**, prescribe—

"(a) the form and electronic format of any forms, applications, returns, or other documents that are not otherwise prescribed in regulations made under this Act; and

"(b) different forms or formats for different classes of participants or different activities.

"(2) The production by the chief executive of any document purporting to be a prescribed form or an extract from a prescribed form or a copy of a form or extract is, in all courts and in all proceedings, unless the contrary is proved, sufficient evidence that the form or electronic format was prescribed.

"(3) To avoid doubt, if the chief executive prescribes an electronic form or format under **subsection (1)**, the chief executive may require any signature on that form or that relates to that format to be an electronic signature.

"81 Recognition of verifiers

"(1) The chief executive may, in accordance with any regulations made under **section 148**, recognise a person or organisation with the prescribed expertise, technical competence, or qualifications as a person or organisation that may undertake verification functions for the purposes of **section 62(a) and (c)**.

"(2) A person or organisation may be recognised by the chief executive as able to verify information relating to—

"(a) 1 or more types of data or information or calculations of types of emissions or removals:

"(b) 1 or more activities in Schedule 3 or 4.

"(3) The chief executive may suspend or revoke any recognition given under this section in accordance with regulations made under **section 148**.

"Verification and inquiry

"82 Appointment of enforcement officers

"(1) The chief executive may appoint 1 or more persons as enforcement officers to exercise all or any of the powers and carry out the functions conferred on enforcement officers under this Part.

"(2) A person appointed under **subsection (1)** must be employed by the chief executive under the State Sector Act 1988.

"(3) The chief executive must supply an enforcement officer with a warrant of authorisation that clearly states the powers and functions of the enforcement officer.

"(4) An enforcement officer who exercises, or purports to exercise, a power conferred on the enforcement officer under this Act must carry and to produce, if required to do so,—

"(a) his or her warrant of authorisation; and

"(b) evidence of his or her identity.

"(5) An enforcement officer must, on the termination of the enforcement officer's appointment, surrender his or her warrant to the chief executive.

"(6) To avoid doubt, if the chief executive delegates the appointment power specified in **subsection (1)** to another chief executive under section 41 of the State Sector Act 1988, **subsection (2)** applies as if the reference to the chief executive were a reference to the chief executive to whom the power specified in **subsection (1)** is delegated.

"83 Power to require information

"(1) The chief executive or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of—

"(a) ascertaining whether a person is complying, or has complied, with this Part and **Part 5**; or

"(b) ascertaining whether the chief executive should exercise any powers under this Part or **Part 5**.

"(2) The information required to be provided under **subsection (1)** must,—

"(a) if required by the chief executive or an enforcement officer, be accompanied by a statutory declaration attesting to the truthfulness of the information provided; and

"(b) be provided—

"(i) in the form specified by the chief executive or enforcement officer; and

"(ii) within any reasonable time specified in the notice requiring the information; and

"(iii) free of charge.

"**84 Power to inquire**

"(1) For the purpose of obtaining information for a purpose specified in **section 83(1)**, or any other information required for the purposes of the administration or enforcement of this Part or **Part 5**, the chief executive may require a person to—

"(a) appear before the chief executive or an enforcement officer at a time and place that is specified in the notice to give evidence; and

"(b) produce any document or class of documents in the person's possession or under the person's control that is specified in the notice.

"(2) The chief executive or enforcement officer may require the evidence to be given on oath and either orally or in writing, and for that purpose the chief executive or enforcement officer may administer an oath.

"**85 Inquiry before District Court Judge**

"(1) For the purpose of obtaining information for a purpose specified in **section 83(1)**, or any other information required for the purposes of the administration or enforcement of this Part or **Part 5**, the chief executive, if he or she considers it necessary, may apply in writing to a District Court Judge to hold an inquiry under this section.

"(2) For the purposes of an inquiry under this section,—

"(a) the District Court Judge—

"(i) may, with respect to any matter that is relevant to the subject matter of the inquiry, summon and examine on oath all persons whom the chief executive or any other interested person requires to be called and examined; and

"(ii) has the same jurisdiction and authority regarding the summoning and examination of a person as the Judge would have in respect of a witness in a civil action within the Judge's ordinary jurisdiction; and

"(b) the person summoned and examined has all the rights and is subject to all the liabilities that the person would have and be subject to if the person were a witness in a civil action within the Judge's ordinary jurisdiction.

"(3) The chief executive and any person materially affected by the subject matter of the inquiry may be represented by a barrister or solicitor, who may examine, cross-examine, and re-examine, in accordance with ordinary practice, any person summoned under **subsection (2)**.

"(4) Every examination under this section must take place in chambers.

"(5) The statement of every person examined—

"(a) must be—

"(i) recorded in writing and signed by the person in the presence of the District Court Judge; and

"(ii) delivered to the chief executive; and

"(b) does not form part of the records of the Court.

"86 No criminal proceedings for statements under section 84 or 85

"(1) No person summoned or examined under **section 84 or 85** is excused from answering a question on the ground that the answer may incriminate the person or render the person liable to any penalty or forfeiture.

"(2) The testimony of a person examined is not admissible as evidence in criminal proceedings against the person, except on a charge of perjury in relation to the testimony.

"87 Expenses in relation to inquiries by chief executive or District Court Judge

The chief executive may pay, or a District Court Judge may order the chief executive to pay, to any person who has appeared before the chief executive or an enforcement officer under **section 84** or the District Court Judge under **section 85**, out of money appropriated by Parliament for the purpose, the sum that in the chief executive's or Judge's opinion, as the case may be, is reasonable in respect of that person's travelling and other expenses.

"88 Obligation to maintain confidentiality

"(1) This section applies—

"(a) to the chief executive, any enforcement officer, and any other person who carries out functions or exercises

powers of the chief executive or an enforcement officer under this Part and **Part 5**; and

"(b) at the time during which, and any time after which, those functions are carried out or those powers are exercised.

"(2) A person to whom this section applies—

"(a) must keep confidential all information that comes into the person's knowledge when carrying out any function or exercising any power under this Part and **Part 5**; and

"(b) may not disclose any information specified in **subsection (2)(a)**, except—

"(i) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or

"(ii) to the extent that the information is publicly available; or

"(iii) for the purposes of, or in connection with, the exercise of powers conferred by this Part; or

"(iv) in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or

"(v) for the purpose of complying with any obligation under the Protocol.

"(3) A person to whom this section applies commits an offence under **section 117** if the person contravenes this section.

"(4) Nothing in **subsection (2)** may be treated as prohibiting the chief executive from—

"(a) providing or publishing general guidance in relation to the operation of this Part and **Part 5**; or

"(b) with the prior approval of the Minister, preparing and supplying statistical information to any person in a form that does not identify any individual; or

"(c) providing information to any person about whether any forest land is considered by the chief executive to be pre-1990 forest land or post-1989 forest land, or has been declared to be exempt land by the chief executive.

"**89 Power of entry for investigation**

"(1) An enforcement officer may enter land or premises (excluding any dwellinghouse or marae) at any reasonable time during the ordinary hours of business to investigate whether a person is complying with this Part and **Part 5**.

"(2) During an investigation, an enforcement officer may—

"(a) require the production of, inspect, and copy any documents:

"(b) take samples of water, air, soil, or organic matter:

"(c) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises):

"(d) demand from the occupier any other information that the enforcement officer may reasonably require for the purpose of determining whether a person is complying with this Part and **Part 5**.

"(3) An enforcement officer who exercises the power of investigation under this section must give the occupier or owner reasonable notice of the enforcement officer's intention to enter the land or premises, unless doing so would defeat the purpose of the entry.

"(4) A notice given under **subsection (3)** must specify—

"(a) when entry is to be made; and

"(b) the purpose for which the entry is required; and

"(c) that the entry is authorised under this section.

"(5) An enforcement officer who exercises the power of investigation under this section may be accompanied by any person or persons reasonably necessary to assist him or her with the investigation.

"(6) A person who provides assistance under **subsection (5)** may exercise the powers provided to enforcement officers under **subsection (2)(a) to (c)**.

"(7) Nothing in this section limits the privilege against self-incrimination.

"**90 Applications for warrants**

"(1) A District Court Judge who, on written application made on oath by an enforcement officer authorised by the chief executive, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises,

dwellinghouse, or marae any documents or other records or things (including samples) that may be evidence of the commission of an offence under **section 116, 119, or 120** may issue a warrant authorising the entry and search of the land, premises, dwellinghouse, or marae.

"(2) Every search warrant must authorise the enforcement officer executing the warrant to—

"(a) enter and search the land, premises, dwellinghouse, or marae within 30 working days after the date of the warrant at any time that is reasonable in the circumstances during the ordinary hours of business; and

"(b) require the production, inspection, and copying of documents; and

"(c) demand from the occupier any other information that the enforcement officer may reasonably require for the purpose of determining whether an offence under **section 116, 119, or 120** has been committed; and

"(d) seize any documents that the enforcement officer has reasonable cause to suspect may be evidence of the commission of an offence under **section 116, 119, or 120**; and

"(e) take samples of water, air, soil, or organic matter; and

"(f) use the assistance of any person that is reasonably necessary in the circumstances; and

"(g) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances; and

"(h) carry out surveys, investigations, tests, inspections, or measurements (including those that involve leaving measuring equipment on the land or premises).

"(3) An enforcement officer may not enter a dwellinghouse or marae unless that enforcement officer is accompanied by a member of the police.

"(4) A person who provides assistance under **subsection (2)(f)** may exercise the powers provided to enforcement officers under **subsection (2)(a), (b), (d), (e), and (h)**.

"(5) Nothing in this section limits the privilege against self-incrimination.

"**91 Proof of authority must be produced**

If powers are exercised under **section 89 or 90**, an enforcement officer must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection—

"(a) the enforcement officer's warrant of authorisation and evidence of his or her identity; and

"(b) any notice given under **section 89(3)** or a search warrant issued under **section 90**, as the case may be.

"**92 Notice of entry**

"(1) If, when powers are exercised under **section 89 or 90**, the occupier is not present, the enforcement officer must, in a prominent place, attach a written notice that shows—

"(a) the date and time of the entry or search; and

"(b) the purpose of the entry or search; and

"(c) the name and phone number of the enforcement officer; and

"(d) an address at which inquiries may be made.

"(2) If the enforcement officer removes, or has removed, any documents from any land, premises, dwellinghouse, or marae, the enforcement officer must hand to the occupier, or attach in a prominent place, a notice that—

"(a) lists all of the items taken; and

"(b) states—

"(i) where those items are being held; and

"(ii) if they are being held in 2 or more places, which items are being held at which place; and

"(iii) the procedure that the person must follow to have those items returned.

"**93 Information obtained under section 89 or 90 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5**

No document or other information obtained from a person under **section 89 or 90** is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of an obligation imposed under this Part or **Part 5**.

"**94 Return of items seized**

Section 199 of the Summary Proceedings Act 1957 applies, with the necessary modifications, to any property seized or taken by an enforcement officer as if—

"(a) references in that section to a constable were references to an enforcement officer; and

"(b) the reference in that section to section 198 of that Act were a reference to **section 89 or 90** of this Act.

"**95 Protection of persons acting under authority of Act**

No enforcement officer or person called upon to assist an enforcement officer who does an act, or omits to do an act, when carrying out a function or exercising a power conferred on that person by this Act is under any civil or criminal liability in respect of the act or omission, unless the person has acted, or omitted to act, in bad faith or without reasonable cause.

"*Emissions rulings*

"**96 Applications for emissions rulings**

"(1) A person may apply to the chief executive for an emissions ruling in respect of 1 or more of the following matters:

"(a) whether something that the person—

"(i) is doing is an activity listed in **Schedule 3 or 4**; or

"(ii) proposes to do would be an activity listed in **Schedule 3 or 4**:

"(b) whether the person is a participant in respect of an activity listed in **Schedule 3** or is eligible to register as a participant in respect of an activity listed in **Schedule 4**:

"(c) the correct application of any provision contained in regulations made under **section 148** in relation to a particular matter specified in the person's application:

"(d) any other prescribed matters.

"(2) Every application under **subsection (1)** must—

"(a) be in the prescribed form; and

"(b) state the name and address of the applicant; and

"(c) specify the matter on which the applicant seeks a ruling; and

"(d) specify the applicant's opinion as to what the ruling should be; and

"(e) contain, or have attached, all information that is relevant to a proper consideration of the application; and

"(f) be accompanied by the prescribed fee (if any).

"(3) The chief executive may request any further information from an applicant that the chief executive considers necessary to assist in the consideration of the application.

"(4) The chief executive may not make an emissions ruling with respect to a provision that authorises or requires the chief executive to—

"(a) impose or remit a penalty; or

"(b) inquire into the correctness of any return or other information supplied by any person; or

"(c) prosecute any person; or

"(d) recover any debt owing by any person

"97 Making of emissions rulings

"(1) The chief executive must make an emissions ruling regarding the matter in respect of which a ruling is sought under **section 96** within the prescribed time, being a time after the receipt of—

"(a) a properly completed application for a ruling; and

"(b) all information that the chief executive considers relevant to the consideration of the application, including information requested under **section 96(3)**.

"(2) Subject to **section 102(2)**, a ruling comes into effect on the day on which it is made.

"(3) A ruling may be made subject to any conditions that the chief executive thinks fit.

"(4) Despite **subsection (1)**, the chief executive may decline to make an emissions ruling if, in the chief executive's opinion, the chief executive has insufficient information to do so.

"98 Notice of emissions rulings

The chief executive must, as soon as practicable, notify the applicant of—

"(a) an emissions ruling, together with the reasons for the ruling, and the conditions (if any) to which the ruling is subject; or

"(b) a decision to decline to make an emissions ruling, together with the reasons for the decision.

"**99 Confirmation of basis of emissions rulings**

At any time after an emissions ruling is made, the chief executive may, by notice, require an applicant to satisfy the chief executive, within 20 working days after receipt of the notice, and in a manner that the chief executive considers appropriate, that—

"(a) the information on which the emissions ruling is based remains accurate; and

"(b) the conditions (if any) to which the ruling is subject, have been, and continue to be, complied with.

"**100 Notifying chief executive of changes relevant to or compliance with emissions rulings**

"(1) A person must, as soon as practicable, notify the chief executive of any material change that is relevant to the application if the person—

"(a) has made an application for an emissions ruling under **section 96**; and

"(b) becomes aware of a material change relating to the application before the emissions ruling is made by the chief executive.

"(2) A person who has obtained an emissions ruling under **section 97** must, as soon as practicable, notify the chief executive of—

"(a) any material change that is relevant to the ruling:

"(b) any failure to comply with any of the conditions of the ruling.

"(3) The notification that a person provides under **subsection (1) or (2)** must state the date on which the person became aware of the material change or the failure to comply.

"**101 Correction of emissions rulings**

"(1) The chief executive may amend an emissions ruling to correct any error that the chief executive is satisfied is contained in the ruling.

"(2) The chief executive must, as soon as practicable after making a correction, notify the applicant of the corrected ruling.

"(3) The correction to a ruling applies to the applicant from the date on which notice of the corrected ruling is given to the applicant.

"(4) Despite **subsection (3)**, if the corrected ruling has the effect of—

"(a) increasing the number of units that a person is required to surrender, or decreasing the number of New Zealand units which a person is entitled to receive, in respect of a year, then the ruling as given prior to correction under this section must be applied to that year; or

"(b) decreasing the number of units that a person is required to surrender, or increasing the number of New Zealand units which a person is entitled to receive, in respect of a year, then the corrected ruling must be applied to that year.

"102 Cessation of emissions rulings

"(1) An emissions ruling ceases to have effect on the earliest of the following dates:

"(a) the date of a material change in any of the information or facts on which the ruling is based; or

"(b) the date of a material change to this Act or to any regulations relevant to the ruling; or

"(c) the date on which any of the conditions to which the ruling is subject cease to be met or complied with; or

"(d) the date of a failure to satisfy the requirements of the chief executive under **section 99**.

"(2) An emissions ruling does not come into effect if any information on which it is based is not accurate in all material respects.

"103 Appeal from decisions of chief executive

An applicant who is dissatisfied with an emissions ruling, or a decision to decline to make an emissions ruling, may, within 20 working days after the date on which notice of the ruling or decision is given, appeal to a District Court against the ruling or decision.

"104 Effect of emissions rulings

"(1) An emissions ruling is conclusive evidence of the determination of the matter in respect of which a ruling is sought under **section 96**.

"(2) If the chief executive makes an emissions ruling under **section 97**,—

"(a) the ruling applies to the matter in relation to which the ruling was sought; and

"(b) if the applicant complies with the ruling, the chief executive must apply this Act to that matter in accordance with the ruling.

"(3) This section is subject to **sections 101 and 102**.

"105 Chief executive may publish certain aspects of emissions rulings

"(1) For the purpose of providing general guidance about the application of this Part or **Part 5**, the chief executive may, after making an emissions ruling, publish information that relates to the ruling.

"(2) The chief executive may not publish any information under **subsection (1)** that identifies any person to whom the ruling relates.

"(3) No person may treat, or rely on, the information published under **subsection (1)** as an emissions ruling with the effect specified by **section 104**.

"Emissions returns

"106 Chief executive may require final emissions returns

"(1) This section applies to the following persons:

"(a) a participant who the chief executive believes is about to—

"(i) leave New Zealand; or

"(ii) cease carrying out an activity listed in **Schedule 3 or 4** in relation to which the person is a participant:

"(b) a participant who has ceased to carry out any activities in New Zealand:

"(c) the executors or administrators of a deceased participant:

"(d) a participant who has become bankrupt, or is a company that has been put into liquidation.

"(2) The chief executive may, at any time, require a participant to whom this section applies to submit a final emissions return in relation to a specified activity listed in **Schedule 3 or 4**.

"(3) The final emissions return required under **subsection (2)** must—
"(a) contain all of the information required in an annual emissions return under **section 65(2)**, but only for the period specified by the chief executive; and
"(b) be submitted in accordance with **section 65(3)**.

"(4) Following the submission of a final emissions return under this section, a participant must, within 20 working days, surrender the number of units in the participant's assessment under **section 65(2)(c)(i)**.

"107 Power to extend date for emissions returns

The chief executive may extend the time for the submission of an emissions return by a period of no more than 20 working days if—
"(a) the participant has applied for an extension before the date upon which the emissions return is due; and
"(b) the chief executive is satisfied that the participant is unable to submit the required emissions return by the due date.

"108 Amendment to emission returns by chief executive

Subject to **section 114**, if the chief executive is satisfied that the information contained in an emissions return is incorrect, the chief executive may, at any time, amend the emissions return and any assessment of the participant's liability to surrender units or entitlement to receive New Zealand units in the emissions return as the chief executive thinks fit.

"109 Assessment if default made in submitting emissions return

"(1) This section applies if—
"(a) a participant fails to submit an emissions return when required to do so under this Act; or
"(b) the chief executive has reason to believe that a person is a participant who should have submitted an emissions return, but did not.

"(2) If this section applies, the chief executive may make an assessment of the matters that should have been in the person's emissions return.

"**110 Amendment or assessment presumed to be correct**

An amendment made to an emissions return under **section 108**, or an assessment under **section 109**, must be taken to be correct unless, on review or appeal, a different amendment or assessment is made.

"**111 Effect of amendment or assessment**

"(1) If the chief executive makes an amendment under **section 108** or an assessment under **section 109**, the chief executive must, as soon as practicable after making the amendment or assessment, notify the participant of—

"(a) the particulars of the amendment or assessment; and

"(b) any grounds or information upon which the amendment or assessment was based; and

"(c) the right of the person to seek a review of the decision under **section 131**.

"(2) A notice under **subsection (1)** must, if relevant, be accompanied by a penalty notice under **section 121(3)(b)**.

"(3) If the amendment or assessment results in a liability for the person to surrender units or any additional units, the participant must surrender those units within 90 days after the date of the notice under **subsection (1)**.

"(4) If the amendment shows that a participant has surrendered too many units, the chief executive must, within 20 working days after the date of the notice under **subsection (1)**, arrange for reimbursement to the participant, in accordance with **section 112**, of the number of units incorrectly surrendered.

"(5) If the amendment or assessment results in an entitlement for a participant to receive New Zealand units for the participant's removal activities, the chief executive must notify the Minister of Finance under **section 64(2)** of the entitlement.

"(6) If the amendment shows that a participant was transferred too many New Zealand units for the participant's removal activities, the participant must, within 90 days after the date of the notice under **subsection (1)**, cancel the required number of units by transferring them to a cancellation account designated by the chief executive.

"**112 Reimbursement of New Zealand units or approved overseas units**

"(1) If the chief executive is required to arrange for the reimbursement of units to a participant under **section 111(4) or 113(2)**, the chief executive may satisfy the requirement by giving notice to the Minister of Finance—

"(a) under **subsection (2) or (4)** in relation to the transfer of units to the participant; or

"(b) under **section 64(2)** in relation to New Zealand units that were cancelled by the participant,

"(2) If the chief executive wishes to arrange reimbursement of New Zealand units or approved overseas units to a participant, the chief executive must notify the Minister of Finance of—

"(a) the number of New Zealand units or approved overseas units to be reimbursed to the participant from the units surrendered by that participant; and

"(b) the details of the participant's holding account.

"(3) As soon as practicable after receiving notification under **subsection (2)**, the Minister of Finance must direct the Registrar to transfer the New Zealand units or approved overseas units from the appropriate surrender account to the participant's holding account.

"(4) If the chief executive wishes to arrange reimbursement of Kyoto units to a participant, the chief executive must notify the Minister of Finance of—

"(a) the number and type of Kyoto units to be reimbursed to the participant; and

"(b) the details of the participant's holding account.

"(5) As soon as practicable after receiving notification under **subsection (4)**, the Minister of Finance must direct the Registrar to transfer the applicable number and type of Kyoto units from a surrender account, or another Crown holding account, to the participant's holding account.

"**113 Obligation to surrender or cancel units not suspended by review or appeal**

"(1) The obligation to surrender or cancel units under **section 111** is not suspended by any review or legal proceedings.

"(2) If the applicant for a review or the appellant in proceedings is successful in the review or the proceedings, the chief executive must arrange for the reimbursement to the applicant or appellant of the number of units surrendered or cancelled in excess of those that are determined to be required to be surrendered or cancelled.

"(3) However, any obligation on the chief executive under **subsection (2)** is suspended pending the outcome of any appeal filed by the chief executive under **section 133**.

"114 Time bar for amendment of emissions returns

"(1) If a participant has complied with the participant's obligation to surrender units in relation to an emissions return submitted under **section 65, 106, 167, or 168**, the chief executive may not amend the emissions return, or assessment made by the participant of the units to be surrendered or received, after the expiration of 7 years from the end of the year or other period in respect of which the emissions return was made if the amendment would—

"(a) increase the number of units required to be surrendered by the participant; or

"(b) alter the number of New Zealand units which the participant is entitled to receive for removal activities.

"(2) However, if the chief executive is satisfied that an emissions return was fraudulent, was wilfully misleading, or deliberately omitted mention of emissions or removals in respect of which an emissions return was required to be submitted, the chief executive may amend the emissions return at any time, under **section 108**, so as to—

"(a) increase the number of units required to be surrendered by the participant:

"(b) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.

"115 Amendments and assessments made by electronic means

Any amendment or assessment made by the chief executive for the purpose of this Act that is made automatically by a computer or other electronic means in response to or as a result of information entered or held in the computer or other electronic medium—

"(a) must be treated as an amendment or assessment made by or under the properly delegated authority of the chief executive; and

"(b) is not invalid by virtue of the fact that it is made automatically by such means.

"Subpart 4—Offences and penalties

"116 Strict liability offences

"(1) A person commits an offence against this Act if the person—

"(a) is a participant in any year and, without reasonable excuse, fails to comply with **section 62** (requirement to collect data or other information, calculate emissions and removals, and keep records); or

"(b) without reasonable excuse,—

"(i) fails to notify the chief executive under **section 56** that the person is carrying out an activity in **Schedule 3**.

"(ii) fails to submit an emissions return when required to do so by **section 65, 106, 167, or 168**; or

"(iii) fails to keep emissions records as required under **section 66**; or

"(iv) fails to notify the chief executive of a matter that is required to be notified under **section 100**; or

"(2) Every person who is convicted of an offence against **subsection (1)** is liable on summary conviction,—

"(a) the first time the person is convicted of that offence, to a fine not exceeding $8,000:

"(b) the second time the person is convicted of that offence, to a fine not exceeding S16,000:

"(c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding $24,000.

"117 Offence for breach of section 88

Every person to whom **section 88(1)** applies who knowingly acts in contravention of **section 88** commits an offence and is liable on summary conviction to—

"(a) imprisonment for a term not exceeding 6 months; or

"(b) a fine not exceeding $15,000; or

"(c) both.

"**118 Offence for failure to provide information or documents**

"(1) A person commits an offence against this Act if the person, without reasonable excuse,—

"(a) fails to provide information to the chief executive or an enforcement officer when required to do so under **section 83**; or

"(b) fails to appear before the chief executive or an enforcement officer, or fails to produce any document or documents, when required to do so under **section 84**.

"(2) Every person who is convicted of an offence against **subsection (1)** is liable on summary conviction—

"(a) in the case of an individual, to a fine not exceeding $12,000; or

"(b) in the case of a body corporate, to a fine not exceeding $24,000.

"**119 Other offences**

"(1) A person commits an offence against this Act if the person—

"(a) refuses to take an oath when required to do so under **section 84**; or

"(b) refuses to answer any question when required to do so under **section 84**; or

"(c) is a participant in any year and knowingly fails to comply with **section 62** (requirement to collect data or other information, calculate emissions and removals, and keep records); or

"(d) knowingly fails to submit an emissions return when required under **section 65, 106, 167, or 168**; or

"(e) knowingly fails to keep records as required under **section 66**; or

"(f) knowingly provides altered, false, incomplete, or misleading information (including emissions returns) to the chief executive or any other person in respect of any matter in this Part and **Part 5**; or

"(g) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or **Part 5**; or

"(h) wilfully interferes with any survey, investigation, test, or measurement carried out by an enforcement officer or a person assisting an enforcement officer under **section 89 or 90**; or

"(i) refuses to provide information that an enforcement officer has demanded from that person under **section 89(2)(d) or 90(2)(c)**.

"(2) Every person who is convicted of an offence against **subsection (1)** is liable on summary conviction,—

"(a) in the case of an individual, to a fine not exceeding $25,000; or

"(b) in the case of a body corporate, to a fine not exceeding $50,000.

"120 Evasion or similar offences

"(1) A person commits an offence against this Act if the person, with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment,—

"(a) fails to comply with any of the requirements specified in **section 62**; or

"(b) fails to submit an emissions return when required under **section 65, 106, 167, or 168**; or

"(c) fails to keep records as required under **section 66**; or

"(d) fails to provide information to the chief executive or any other person when required to do so under this Part or **Part 5**; or

"(e) provides altered, false, incomplete, or misleading information (including emissions returns) to the chief executive or any other person in respect of a matter in this Part and **Part 5**.

"(2) Every person who commits an offence against **subsection (1)** is liable on conviction on indictment to—

"(a) imprisonment for a term not exceeding 5 years; or

"(b) a fine not exceeding $50,000; or

"(c) both imprisonment and a fine.

"121 Penalty for failing to surrender units

"(1) This section applies if—

"(a) a person fails to surrender units by the due date when required under **section 65(4), 106(4), 167(5), or 168(2)(b)**; or

"(b) an amendment to an emissions return under **section 108** or an assessment under **section 109** results in a liability for a person—

"(i) to surrender units or additional units under **section 111(3)**; or

"(ii) cancel units in accordance with **section 111(6)**.

"(2) Subject to **section 122**, if this section applies, the person is liable to—

"(a) surrender or cancel the units as required under the relevant section; and

"(b) pay to the chief executive an excess emissions penalty of $30 for each unit that,—

"(i) if **subsection (1)(a)** applies, the person fails to surrender by the due date; or

"(ii) if **subsection (1)(b)** applies, the person is required to surrender under **section 111(3)** or cancel under **section 111(6)**.

"(3) If a person is liable to an excess emissions penalty under **subsection (2)**, the chief executive must give a notice to the person that,—

"(a) if **subsection (1)(a)** applies,—

"(i) refers to the person's failure to surrender units by the due date as required under **section 65(4), 106(4), 167(5), or 168(2)(b)**, as applicable; and

"(ii) sets out the number of units required to be surrendered; and

"(iii) sets out the amount of the excess emissions penalty to which the person is liable under **subsection (2)(b)**; and

"(iv) requires the person to surrender the units specified in **subparagraph (ii)**, and pay the penalty specified in **subparagraph (iii)** to the chief executive, within 20 working days of the date of the notice; and

"(v) advises that, unless both the units are surrendered and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with **section 124**; or

"(b) if **subsection (1)(b)** applies,—

"(i) refers to the relevant notice under **section 111(1)**; and

"(ii) sets out the amount of the excess emissions penalty to which the person is liable under **subsection (2)(b)**; and

"(iii) requires the person to pay the penalty specified in **subparagraph (ii)** within the period in which the person must surrender units under **section 111(3)** or cancel units under **section 111(6)**; and

"(iv) advises that, unless both the units are surrendered or cancelled, as the case may be, and the penalty paid in full, by the due date, interest on the amount of the penalty will accrue in accordance with **section 124**.

"(4) The amount of the excess emissions penalty, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the chief executive in a Court of competent jurisdiction.

"122 Reductions in penalty

"(1) The chief executive may reduce the excess emissions penalty imposed by **section 121(2)(b)(i)** by up to 75%, if the person voluntarily discloses the failure to surrender units before receiving a penalty notice under **section 121**.

"(2) The chief executive may reduce the excess emissions penalty imposed by **section 121(2)(b)(ii)** by up to 75%, if—

"(a) the person voluntarily disclosed that an emissions return submitted by the person contained incorrect information or that the person failed to file a return when required to do so before the chief executive or an enforcement officer—

"(i) requested any information under **section 83 or 84** in relation to the return; or

"(ii) gave notice of an intention to enter land or premises under **section 89(3)**; or

"(iii) executed a warrant under **section 90**; or

"(b) the chief executive is satisfied that the person formed a view as to the information on which the return was based or as to whether a return was required, that, while incorrect, was reasonable, having regard to the information available to that person at the time the emissions return was required.

"**123 Additional penalty for knowing failure to comply**

"(1) A participant who is convicted of an offence against **section 119(1)(c) to (f)** is liable, in addition to any penalty imposed in respect of that offence, to—

"(a) surrender a number of units equivalent to the number of units determined by the chief executive in any relevant amendment under **section 108** or assessment under **section 109**, or in any review or appeal proceedings relating to that determination; and

"(b) pay an excess emissions penalty of $30 for each unit the person is liable to surrender under **paragraph (a)**.

"(2) If a participant is liable under **subsection (1)**, the chief executive must give a notice to the participant that—

"(a) sets out the—

"(i) number of additional units that the participant is required to surrender; and

"(ii) amount of the excess emissions penalty to which the participant is liable; and

"(b) requires the participant to surrender the additional units and pay the penalty within 90 days after the date of the notice; and

"(c) advises that, unless both the units are surrendered and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with **section 124**.

"(3) To avoid doubt, any liability to surrender units or pay a penalty under **subsection (1)** is additional to, and does not affect, the liability of a person to surrender units under any other section of this Act or to pay a penalty under a penalty notice given by the chief executive under **section 121**.

"(4) The amount of the excess emissions penalty, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the chief executive in a Court of competent jurisdiction.

"(5) For the purposes of this section, **participant** includes a person who was a participant at the time of the commission of the offence, but is no longer a participant.

"**124 Interest for late payment**

"(1) This section applies if a person—

"(a) has failed to surrender units when required to do so and is liable to pay an excess emissions penalty in relation to those units under **section 121(2)(b)(i)**; or

"(b) is required to surrender or cancel units under **section 111** and is liable to pay an excess emissions penalty in relation to those units under **section 121(2)(b)(ii)**; or

"(c) is required to surrender units and pay an excess emissions penalty under **section 123**; and

"(d) does not comply, or comply in full, with the requirement to surrender or cancel units and to pay the penalty by the relevant date.

"(2) If this section applies, the person is liable to pay interest on the full amount of the excess emissions penalty—

"(a) at the rate prescribed by the Governor-General by Order in Council; and

"(b) for the period from the date by which the penalty was due to be paid until the associated liability to surrender or cancel units (or to pay any associated debt under **section 144**) has been met, and until the penalty and any interest due have been paid in full.

"(3) To avoid doubt, interest accrues under **subsection (2)** even if the amount of the excess emissions penalty in a penalty notice has been paid in full if the associated requirement to surrender or cancel units (or to pay any associated debt under **section 144**) has not been met in full.

"(4) Despite anything in this section, the chief executive may remit any amount of interest that has accrued under this section, if the chief executive is satisfied that—

"(a) the failure of the person to comply with the requirement to surrender or cancel units and pay the penalty in full arises as a result of an event or circumstance beyond the control of that person; and

"(b) as a consequence of that event or circumstance, the person has a reasonable justification or excuse for the non-compliance; and

"(c) the person corrected the failure to comply as soon as practicable.

"(5) Without limiting the chief executive's discretion under **subsection (4)**, an event or circumstance may include—

"(a) an accident or a disaster; or

"(b) illness or emotional or mental distress.

"(6) Despite anything in this section, the chief executive may remit part of an amount of interest that has accrued under this section if the chief executive is satisfied that it would be manifestly unfair or unjust to impose the full amount.

"(7) For the purposes of this section, an **event or circumstance** does not include—

"(a) an act or omission of an agent of a person, unless the chief executive is satisfied that the act or omission was caused by an event or circumstance beyond the control of the agent—

"(i) that could not have been anticipated; and

"(ii) the effect of which could not have been avoided by compliance with accepted standards of business organisation and professional conduct; or

"(b) a person's financial position.

"**125 Obligation to pay penalty not suspended by appeal**

"(1) The obligation to pay and the right to receive and recover any excess emissions penalty or interest imposed under **section 121, 123, or 124** and the obligation to surrender any additional units under **section 123** are not suspended by any review or appeal.

"(2) If the applicant or appellant is successful in the review or appeal, the amount of any excess emissions penalty or interest paid by the applicant must be refunded to the applicant or appellant by the chief executive, and any units not required to be surrendered must be reimbursed.

"(3) However, any obligation on the chief executive under **subsection (2)** is suspended pending the outcome of any appeal filed under **section 133**.

"(4) The chief executive must pay interest on any refunded excess emissions penalty and interest calculated in accordance with the following formula:

$$((X \times Y) \div 365) \times Z$$

where—

X is the number of days in the period that—

(a) commences on the day on which the relevant penalty is lodged to the credit of the chief executive; and

(b) ends on the day on which the relevant penalty is refunded by the chief executive; and

Y is the amount of penalty and interest that, having been paid, is caused to be refunded in accordance with the outcome of a successful appeal; and

Z is the rate of interest specified by the Governor-General by Order in Council made under **section 124(2)(a)**.

"**126 Liability of body corporate**

If, in the course of proceedings against a body corporate for an offence under this Part, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of the person's actual or apparent authority, had that state of mind.

"**127 Liability of directors and managers of companies**

If a body corporate is convicted of an offence under this Part, every director and every person concerned in the management of the body corporate is also guilty of that offence if it is proved that—

"(a) the act or omission that constituted the offence took place with the authority, permission, or consent of the director or person; or

"(b) the director or person knew that the offence was to be, or was being, committed and failed to take all reasonable steps to prevent or stop it.

"**128 Liability of companies and persons for actions of director, agent, or employee**

Any act or omission on behalf of a body corporate or other person or group of persons (including a consolidated group) (the **principal**) by a director, agent, or employee of the principal is to be treated for the purposes of this Act as being also the act or omission of the principal.

"**129 Offences generally punishable on summary conviction**

"(1) Except as provided in **section 120**, every offence against this Part or **Part 5** or any regulations made under this Part is punishable on summary conviction.

"(2) Despite section 14 of the Summary Proceedings Act 1957, proceedings in respect of an offence against this Part or **Part 5** may be commenced at any time within 2 years after the matter giving rise to the offence was discovered or ought reasonably to have been discovered.

"**130 Evidence in proceedings**

"(1) In any proceedings for an offence against this Part or **Part 5**, a certificate or document (including an electronic copy) of any of the following kinds is admissible in evidence and, in the absence of proof to the contrary, is sufficient evidence of the matter stated in the certificate or the document, as the case may require—

"(a) a certificate purporting to be signed by the chief executive, or by a delegate of the chief executive, to the effect that, at any specified date or period,—

"(i) a named person is or was, or is not or was not, an enforcement officer or a person or organisation recognised under **section 81**; or

"(ii) a person was, or was not, registered as a participant in relation to an activity listed in **Schedule 4**:

"(b) a certificate purporting to be signed by any person authorised to delegate to any person, or to persons of any kind or description, the exercise of any power or the performance of any function under this Part or **Part 5**, stating that the person has delegated—

"(i) the exercise of the power or the performance of the function specified in the certificate to the person specified in the certificate; or

"(ii) the exercise of the power or the performance of the function specified in the certificate to persons of a kind or description specified in the certificate, and that a named person specified in the certificate is a person of that kind or description.

"(2) The production of a certificate or document purporting to be a certificate to which **subsection (1)** applies is prima facie evidence that it is such a certificate or document, without proof of—

"(a) the signature of the person purporting to have signed the document; or

"(b) the document's nature.

"Subpart 5—Review and appeal provisions

"131 Request for review of decisions

"(1) A person affected by a decision of the chief executive who is dissatisfied with the decision may, by notice to the chief executive within the period of 30 days after receiving notice of the decision, or within any further period that the chief executive allows, request the chief executive to review the decision.

"(2) The request must set out the grounds on which it is believed that the original decision should be reviewed.

"(3) For the purposes of a review, the chief executive may require the person making the request for review to supply information additional to that contained in the request.

"(4) Following a review, the chief executive may confirm, revoke, or vary the decision in the manner that the chief executive thinks fit.

"(5) The decision requested to be reviewed remains valid unless and until altered by the chief executive.

"(6) The chief executive must, as soon as practicable, give notice to the person who requested the review of the decision on the review, and of the reasons for it.

"(7) A decision by the chief executive under this section is final, unless determined otherwise by a Court under an appeal under **section 132 or 133**.

"(8) This section does not apply to any decision that the chief executive makes under **section 80**.

"132 Right of appeal to District Court

"(1) A person has a right of appeal to a District Court if affected by a decision of the chief executive under **section 131**.

"(2) The Court may confirm, reverse, or modify the decision appealed against.

"(3) Every decision appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.

"133 Appeals to High Court on questions of law only

If a party to any proceedings before the District Court under **section 132** is dissatisfied with any determination of the Court as being erroneous in point of law, the party may appeal to the High Court by way of case stated for the opinion of the Court on a question of law only.

"Subpart 6—Miscellaneous provisions

"134 Giving of notices by chief executive

"(1) This section applies if this Act requires the chief executive to give a notice to a person.

"(2) If this section applies, the chief executive—

"(a) must give the notice in writing to—

"(i) the person; or

"(ii) a representative authorised to act on behalf of the person; and

"(b) may give notice by—

"(i) personal delivery to a person that is not a body corporate:

"(ii) personal delivery to a person that is a body corporate, if the personal delivery is made to the person's office during working hours:

"(iii) an electronic means of communication to the person, if the chief executive complies with the Electronic Transactions Act 2002:

"(iv) post to—

"(A) the street address of the person's usual or last known place of residence; or

"(B) the street address of any of the person's usual or last known places of business; or

"(C) any other address, if the person has notified the chief executive that they accept notices at the address.

"(3) A notice given by post under **subsection (2)(b)(iv)** is to be treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

"135 Giving of notices to chief executive

"(1) This section applies if this Act requires a person to give a notice to the chief executive.

"(2) If this section applies, the person must—

"(a) give the notice in writing; and

"(b) may—

"(i) give the notice to any office of the chief executive's department:

"(ii) give the notice by—

"(A) personal delivery, if the personal delivery is made during working hours:

"(B) an electronic means of communication, if the person complies with the Electronic Transactions Act 2002:

"(C) post to the street address or the post office box number.

"(3) A notice given by post under **subsection (2)(b)(ii)(C)** is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

"136 Sharing information

"(1) The purpose of this section is to facilitate the exchange of information between any chief executive with functions or powers under this Act, the Registrar, and the inventory agency.

"(2) A person referred to in **subsection (1)** (**person A**) must provide information to another person referred to in that subsection (**person B**) if the information—

"(a) is requested by person B; and

"(b) is required by person B to assist person B to carry out his or her functions under this Act.

"137 Formation of consolidated group

"(1) A group (or any part of a group) may, in relation to any activity listed in **Schedule 3 or 4** carried out by the entities in the

group (or any part of the group), elect to form and be treated as a consolidated group for the purposes of this Part and **Part 5**.

"(2) An election under **subsection (1)** must be made by giving notice to the chief executive in a form that the chief executive approves.

"(3) A notice given under **subsection (2)** must—

"(a) include—

"(i) the names and contact details of each of the entities that are to be members of the consolidated group; and

"(ii) the activities in relation to which the members elect to be treated as a consolidated group; and

"(b) nominate 1 of the entities listed in the notice as the agent of the consolidated group in relation to the activities specified in the notice and this Part and **Part 5**; and

"(c) contain an agreement by each entity listed in the notice as a member of the consolidated group—

"(i) to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or **Part 5** in respect of emissions and removals resulting from the activities specified in the notice; and

"(ii) to the allocation to the nominated entity of any units to which any member of the consolidated group may become entitled in relation to the activities listed in the notice.

"(4) If at any time any 2 or more entities in a group have formed a consolidated group, and at least 1 entity remains a member of the consolidated group, any other entity that is a member of the group may elect to join and be treated as a member of the consolidated group by giving notice to the chief executive in a form that the chief executive approves.

"(5) A notice given under **subsection (4)** must—

"(a) include—

"(i) the name and contact details of the entity that elects to join the consolidated group and sufficient information for the chief executive to identify the consolidated group that is to be joined; and

"(ii) the activity or activities in relation to which the entity elects to be treated as a member of that consolidated group; and

"(b) contain the agreement of the entity—

"(i) to be jointly and severally liable with other members of the consolidated group for any obligations under this Part or **Part 5** in respect of emissions and removals resulting from the activities of the members of the group; and

"(ii) to the allocation to the nominated entity of the group of any units to which the consolidated group may become entitled in relation to the activity or activities of that entity specified in **paragraph (a)(ii)**.

"(6) The chief executive must acknowledge the formation of a consolidated group, or the joining of a member to a consolidated group, by notice to all members of the group given within 1 month after the chief executive's receipt of a notice under **subsection (2) or (4)**.

"(7) If any 2 or more entities have elected under **subsection (1)** to form a consolidated group, those entities must be treated for the purposes of this Part as being members of a consolidated group,—

"(a) if notice of the formation of the group is received by the chief executive by 30 September in any year, from the beginning of the following year:

"(b) if notice of the formation of the group is received by the chief executive after 30 September in any year, from the beginning of the year following the next year.

"(8) If an entity has elected under **subsection (4)** to join a consolidated group, that entity is treated for the purposes of this Part as being a member of that consolidated group,—

"(a) if notice of the election to join the group is received by the chief executive by 30 September in any year, from the beginning of the following year:

"(b) if notice of the election to join the group is received by the chief executive after 30 September in any year, from the beginning of the year following the next year.

"(9) To avoid doubt, an entity may be a member of more than 1 consolidated group in relation to different activities.

"**138 Nominated entities**

"(1) The nominated entity for a consolidated group at any time is treated for the purposes of this Part or **Part 5** as the agent at that time of the consolidated group and of each entity that is at that time a member of the consolidated group, except where this Act otherwise expressly provides or the context otherwise requires.

"(2) No entity is at any time a nominated entity for a consolidated group unless, at the time, the entity is a member of the consolidated group.

"(3) If an entity that is at any time a nominated entity for a consolidated group gives notice to the chief executive, in a form that the chief executive approves, the entity is to cease to be the agent for the consolidated group and that another member entity is to become the agent for the consolidated group, the notifying entity ceases to be the agent for the consolidated group, and the other entity becomes the agent for the consolidated group, from the date of receipt by the chief executive of the notice or from a later date that may be specified in the notice.

"**139 Ceasing to be member of consolidated group**

"(1) An entity that is a member of a consolidated group ceases to be a member of the consolidated group if—

"(a) the entity so elects, by notice to the chief executive in a form that the chief executive approves; or

"(b) the entity ceases to be a member of the group in respect of which it is eligible to be a member of the consolidated group; or

"(c) the entity is a member of a consolidated group that has ceased to have a nominated entity.

"(2) An entity is treated as having ceased to be a member of a consolidated group,—

"(a) if **subsection (1)(a)** applies, with effect from the date of receipt by the chief executive of the notice of election to cease to be a member of the consolidated group; and

"(b) if **subsection (1)(b)** applies, with effect from the date on which the entity ceased to be a member of the group in respect of which it is eligible to be a member of the consolidated group; and

"(c) if **subsection (1)(c)** applies, with effect from the date on which the consolidated group ceased to have a nominated entity.

"(3) **Subsection (1)(c)** does not apply if—

"(a) the nominated entity ceases to be the nominated entity by reason of being liquidated; and

"(b) within 20 working days after that liquidation, or within such further period as the chief executive may allow, the other entities in the consolidated group have selected another nominated entity and notified the chief executive accordingly (in which case the selected entity is treated as the nominated entity with effect from the time of the liquidation).

"(4) An entity that ceases to be a member of a group in respect of which it is eligible to be a member of the consolidated group, or is a member of a consolidated group that ceases to have a nominated company, must as soon as practicable give notice to the chief executive of this change of circumstances.

"(5) The chief executive must acknowledge the cessation of membership of a member of a consolidated group, by notice to that member and the other members of the consolidated group given within 1 month of the chief executive's receipt of a notice under **subsection (1)(a)** or notice that **subsection (1)(b) or (c)** applies.

"**140 Effect of ceasing to be member of consolidated group**

If an entity ceases to be a member of a consolidated group, the entity—

"(a) continues to be jointly and severally liable with other members of the consolidated group for any obligations under this Part or **Part 5** in respect of emissions and removals from the activities of the members of the consolidated group during the period in which the entity was a member of the consolidated group; but

"(b) is not liable for any obligations under this Part or **Part 5** in respect of emissions and removals from the activities of other members of the group for any period during which the entity is not a member of the consolidated group.

"**141 Effect of being member of consolidated group**

"(1) The nominated entity of a consolidated group must—

"(a) have a holding account in the name of the consolidated group for the purposes of meeting the members' obligations under this Part and **Part 5**; and

"(b) record in that holding account the names of all the members of the consolidated group; and

"(c) make a single annual emissions return for the consolidated group in respect of a year, which must—

"(i) meet the requirements of **section 65(2)(a) to (e)** in respect of the activities listed in the notice under **section 137(3)(a)(ii) or (5)(a)(ii)** carried out by each member of the consolidated group:

"(ii) be signed by the nominated entity in accordance with **section 65(2)(e)** on behalf of the consolidated group.

"(2) Each member of a consolidated group is jointly and severally liable to surrender the amount of units assessed in relation to the consolidated group in any year, and that joint and several liability is in substitution for any liability of those members under this Part or **Part 5** individually in respect of units to be surrendered for that year (to the extent that the surrender obligation relates to a period when the entity is a member of the consolidated group).

"(3) The liability of every member of the consolidated group to surrender units in respect of any year is met by the transfer of the units assessed in relation to the consolidated group from the consolidated group's holding account to a surrender account designated by the chief executive.

"**142 Joint activities**

"(1) This section applies where and to the extent that any 2 or more persons jointly carry out an activity listed in **Schedule 3**, including (but not limited to) in partnership, under an unincorporated joint venture, as trustees of a trust, or through joint ownership of land.

"(2) If this section applies, the persons who carry out the activity—

"(a) are together the participant for the purposes of this Act and are jointly and severally liable for the obligations of

a participant in relation to the activity and are jointly entitled to any benefits resulting from the activity; and

"(b) must nominate 1 of the persons as the agent of those persons for the purposes of—

"(i) complying with the requirement specified in **section 61** to have a holding account; and

"(ii) submitting returns in respect of the activity as required under this Part and **Part 5**, which returns must be signed by the agent on behalf of the persons jointly carrying out the activity.

"143 Compensation for participants where public works result in liability to surrender units

"(1) This section applies if a participant is required to carry out an activity listed in **Schedule 3** as a result of the exercise of a power that relates to a public work.

"(2) If this section applies, the person who exercised the power must, to the extent that the participant is not compensated under any other Act, compensate the participant for any liability to surrender units that the participant incurs as a result of the exercise of the power.

"(3) All claims for compensation under **subsection (2)** must, unless settled by agreement, be determined in the manner provided by the Public Works Act 1981, and the provisions of that Act relating to compensation apply accordingly.

"(4) The purposes of this section, **public work** has the same meaning as in section 2 of the Public Works Act 1981.

"144 Chief executive may surrender units for person who is in default or insolvent

"(1) This section applies is a person—

"(a) is required to surrender units and does not do so, or does not surrender the total number of units required to be surrendered within 1 year of the date of a penalty notice given under **section 121 or 123** in relation to the units; or

"(b) if a person enters into an insolvency process.

"(2) If this section applies the chief executive must purchase and surrender on the participant's behalf any units that—

"(a) the person has failed to surrender after 1 year; or

"(b) the insolvent participant would be required to surrender under any other provision of this Act.

"(3) The cost of purchasing units, and any administrative costs incurred in their surrender on the participant's behalf under **subsection (2)**, constitutes an unsecured debt to the Crown and is recoverable by the chief executive in a Court of competent jurisdiction.

"145 Meaning of insolvency process in section 144

For the purposes of **section 144**, **insolvency process** means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006.

"146 Future development of emissions trading scheme

"(1) This section applies if—

"(a) no subsequent commitment period is specified or determined under the Protocol; and

"(b) there is no successor international agreement to the Protocol.

"(2) If this section applies, the Governor-General may, by Order in Council on the recommendation of the Minister, declare that either—

"(a) an international market for approved overseas units continues, in which case the provisions of **subsection (3)** apply; or

"(b) no such market exists, in which case the provisions of **subsection (4)** apply.

"(3) While an order made under **subsection (2)(a)** is in force, the Minister may, in any year, and despite anything in **section 67(2)(b)**, direct the Registrar to issue into a Crown holding account the number of New Zealand units calculated in accordance with the following formula:

$$A = \frac{(B + C + D + E + F)}{5}$$

where—

A is the number of New Zealand units that the Minister may direct the Registrar to issue; and

B is the number of whole tonnes of emissions that resulted in the year immediately preceding the year in which the direction is given; and

C is the number of whole tonnes of emissions that resulted in the year immediately preceding the year represented by B; and

D is the number of whole tonnes of emissions that resulted in the year immediately preceding the year represented by C; and

E is the number of whole tonnes of emissions that resulted in the year immediately preceding the year represented by D; and

F is the number of whole tonnes of emissions that resulted in the year immediately preceding the year represented by E.

"(4) While an order made under **subsection 2(b)** is in force, the Minister may,—

"(a) despite anything in **section 67(2)(b)**, direct the Registrar to issue any number of New Zealand units into a Crown holding account at any time; and

"(b) offer for auction by public tender the New Zealand units transferred in accordance with the direction at the specified price.

"(5) The Minister must determine the specified price and publish it by notice in the *Gazette*.

"(6) In this section, **specified price** means the monthly average of the spot price for the 2 years prior to the end of the first commitment period.

"147 Reviews of operation of emissions trading scheme

"(1) The Minister responsible for the administration of this Act must initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act, to be completed within 9 months before the end of each of the following periods:

"(a) the first commitment period:

"(b) each subsequent commitment period:

"(c) if there is no subsequent commitment period,—

"(i) the 5-year period commencing on **1 January 2013**:

"(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**.

"(2) Without limiting the scope of the review, a review under **subsection (1)** must—

"(a) include consultation with the Minister of Finance and any other persons that the Minister responsible for the administration of this Act considers appropriate; and

"(b) consider—

"(i) whether amendment to this Act in relation to the emissions trading scheme is necessary or desirable; and

"(ii) whether it is necessary or desirable to omit any activities from **Schedule 3 or 4**, and if so, what consequential changes to **subpart 2** of this Part in respect of allocation plans are necessary or desirable; and

"(iii) whether it is necessary or desirable to add any additional removal activities to **Part 2 of Schedule 4**; and

"(iv) the appropriateness of any methodologies that are prescribed for calculating emissions and removals; and

"(v) the emissions pricing policies of New Zealand's major trading partners and what (if any) implications these have for the provisions in **subpart 2** of this Part in respect of allocation plans; and

"(vi) the appropriateness of the penalties in **subpart 4** of this Part; and

"(vii) the implications (if any) of those obligations with respect to the provisions in **subpart 2** of this Part in respect of allocation plans, if New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from or additional to any international obligations that New Zealand had undertaken when this section came into force, or since the last review carried out under this section; and

"(viii) any other matter that the Minister responsible for the administration of this Act considers relevant.

"(3) Following the completion of each review, the Minister responsible for the administration of this Act must—

"(a) prepare and publish a report on the review; and

"(b) present a copy of the report to the House of Representatives.

"148 Regulations

"(1) The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:

"(a) prescribing the data or other information that must be collected under **section 62(a)** in respect of an activity, and, if relevant, the mechanism or method by which the data or information must be collected; and

"(b) prescribing the methodology for calculating emissions and removals from an activity for the purposes of **section 62(b)**, which may include (but is not limited to)—

"(i) default methodologies; and

"(ii) specific amendments to a default methodology relating to a participant or class of participants; and

"(c) prescribing the data or other information, or the calculations of emissions or removals, that must be verified by a person or organisation recognised by the chief executive under **section 81**; and

"(d) prescribing, for the purposes of **section 81**,—

"(i) the process by which a person or organisation may be recognised as being able to verify information or calculations for the purposes of **section 62(a) or (c)**; and

"(ii) the expertise, technical competence, or qualifications required for recognition as a person or organisation able to verify information relating to 1 or more types of data or information, the calculations of certain types of emissions or removals, or 1 or more activities; and

"(iii) any additional—

"(A) requirements for recognition of an organisation; and

"(B) restrictions on the employees of the organisation who may carry out the duties of the

organisation in respect of the recognition; and

"(iv) the period for which a person or organisation may be recognised, and the process for the renewal of recognition; and

"(v) conditions of recognition, which may include (but are not limited to) ongoing competency and professional standard requirements, membership of a professional body, and the provision of reports to the chief executive; and

"(vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and

"(vii) fees for recognition of a person or organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought; and

"(e) specifying the fuel that is obligation fuel and the jet fuel that is obligation jet fuel for the purposes of this Act; and

"(ea) prescribing matters in respect of which applications for emission rulings may be made; and

"(eb) prescribing a threshold in respect of specified emissions for the purposes of **section 70(1)(b)**; and

"(f) prescribing forest species that are tree weeds for the purposes of **section 160**; and

"(g) requiring notification by the chief executive of the status of forest land under **section 170**; and

"(h) prescribing the endorsements that must be made by the Registrar-General of Land on the appropriate register under the Land Transfer Act 1952 or the Registrar of the Maori Land Court on a memorial schedule to reflect the status of land as pre-1990 forest land, post-1989 forest land, or exempt land under this Act, and providing for the circumstances in which the endorsement must be removed; and

"(i) prescribing the form and manner in which any applications, returns, information, or other documents must be submitted or notified under this Part and **Part 5**, and the particulars to be provided in the application, return, or other document; and

"(j) prescribing the information that must be provided in or with applications under this Part and **Part 5**; and

"(k) specifying a date by which an emissions return for the activity in **Part 1 of Schedule 4** must be submitted for the purposes of **section 167(2)(c)(ii)**; and

"(l) providing for any other matters contemplated by this Part and **Part 5** or **Schedules 3 and 4**, necessary for their administration, or necessary for giving them full effect.

"(2) A regulation made under **subsection (1)** may apply—

"(a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other things; or

"(b) in respect of the same classes of activity, persons, parts of New Zealand, or other things, in different circumstances; or

"(c) generally or at any specified time of each year.

"(3) The power to prescribe forms under **subsection (1)** includes the power to prescribe electronic formats to be used for the electronic transmission of data to or between computers.

"(4) A regulation made under **subsection (1)(a) to (c)** may have retrospective effect to the extent that the regulation may be expressed to apply from the commencement of the year in which it is made, or in respect of a period after any particular date within the year in which it is made.

"(5) The Governor-General may, by Order in Council, make regulations prescribing the fees or charges payable to enable the recovery of the direct and indirect costs of the chief executive in—

"(a) publicising and informing people about this Part or **Part 5**:

"(b) administering this Part or **Part 5**:

"(c) enforcing and monitoring compliance with this Part or **Part 5**:

"(d) doing anything else authorised or required under this Part or **Part 5**.

"(6) Examples of the costs that may be recovered include (but are not limited to)—

"(a) the cost of processing applications:

"(b) the costs of providing, operating, and maintaining systems, databases, or other processes in connection with the administration of this Part and **Part 5**:

"(c) the costs of services provided by third parties.

"(7) Regulations made under **subsection (5)** may—

"(a) specify the persons or classes of persons by whom any fees and charges prescribed or fixed are payable; and

"(b) prescribe the matters for which direct and indirect costs may be recovered; and

"(c) prescribe a scale of fees and charges, or a rate based on the time involved in carrying out the function, power, or duty; and

"(d) prescribe a scale of fees and charges, or a fee and charge for a prescribed function, power, or duty; and

"(e) prescribe a formula for fixing fees and charges; and

"(f) prescribe an annual fee or charge, or classes of fees or charges, payable by participants or classes of participants; and

"(g) prescribe the time of payment of fees and charges, the means of collection of fees and charges, and the person who is responsible for paying a fee or charge.

"149 Incorporation by reference in regulations made under section 148

"(1) The following written material may be incorporated by reference in regulations made under **section 148**:

"(a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and

"(b) any standards, requirements, or recommended practices of a standard-setting organisation or a professional body.

"(2) Material may be incorporated by reference in regulations—

"(a) in whole or in part; and

"(b) with modifications, additions, or variations specified in the regulations.

"(3) Material incorporated by reference in regulations has legal effect as part of the regulations.

"150 Effect of amendments to, or replacement of, material incorporated by reference in regulations

An amendment to, or replacement of, material incorporated by reference in regulations (**regulations A**) has legal effect as

part of regulations A only if regulations made under **section 148**, after the making of regulations A, state that the particular amendment or replacement has that effect.

"151 Proof of material incorporated by reference

"(1) A copy of any material incorporated by reference in regulations, including any amendment to, or replacement of, the material (**material**) must be—

"(a) certified as a correct copy of the material by the chief executive; and

"(b) retained by the chief executive.

"(2) The production in proceedings of a certified copy of the material incorporated by reference is, in the absence of evidence to the contrary, sufficient evidence that the material produced is the material incorporated by reference in regulations.

"152 Effect of expiry of material incorporated by reference

Material incorporated by reference in regulations that expires, or that is revoked or that ceases to have effect, ceases to have legal effect as part of the regulations only if regulations made under **section 148** state that the material ceases to have legal effect.

"153 Requirement to consult

"(1) This section applies to regulations made under **section 148** that—

"(a) incorporate material by reference:

"(b) state that an amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations.

"(2) Before regulations to which this section applies are made, the chief executive must—

"(a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material incorporated by reference (**proposed material**) available for inspection during working hours for a reasonable period, free of charge, at the office of the chief executive; and

"(b) make copies of the proposed material available for purchase at a reasonable price; and

"(c) give notice in the *Gazette* stating—

"(i) that the proposed material is available for inspection during working hours, free of charge; and

"(ii) the place where the proposed material can be inspected, and the period during which it can be inspected; and

"(iii) that copies of the proposed material can be purchased; and

"(iv) the place where the proposed material can be purchased; and

"(d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and

"(e) consider any comments these persons make.

"(3) The reference in **subsection (2)** to the proposed material includes, if the material is not in an official New Zealand language, an accurate translation of the material in an official New Zealand language.

"(4) Before regulations to which this section applies are made, the chief executive—

"(a) may make copies of the proposed material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an Internet site); and

"(b) must, if **paragraph (a)** applies, give notice in the *Gazette* stating that the proposed material is available in other ways and details of where or how it can be accessed or obtained.

"(5) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

"154 Public access to material incorporated by reference

"(1) The chief executive—

"(a) must make the material specified in **subsection (2)** (**material**) available for inspection during working hours, free of charge, at the office of the chief executive; and

"(b) must make copies of the material available for purchase at a reasonable price at the office of the chief executive; and

"(c) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an Internet site); and

"(d) must give notice in the *Gazette* stating—

"(i) that the material is incorporated in the regulations and the date on which the regulations were made; and

"(ii) that the material is available for inspection during working hours, free of charge; and

"(iii) the place where it can be inspected; and

"(iv) that copies of the material can be purchased; and

"(v) the place where the material can be purchased; and

"(vi) that, if copies of the material are made available under **paragraph (c)**, the material is available in other ways and the details of where or how the material can be accessed or obtained.

"(2) The material is—

"(a) material incorporated by reference in regulations made under **section 148**:

"(b) any amendment to, or replacement of, that material that is incorporated in the regulations or the material specified in **paragraph (a)** with the amendments or replacement material incorporated:

"(c) if the material specified in **paragraph (a) or (b)** is not in an official New Zealand language, an accurate translation of the material in an official New Zealand language.

"(3) A failure to comply with this section does not invalidate regulations that incorporate material by reference.

"155 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in regulations or to an amendment to, or replacement of, that material.

"**156 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference**

Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in regulations to be presented to the House of Representatives.

"**157 Application of Standards Act 1988 not affected**

Sections 149 to 156 do not affect the application of sections 22 to 25 of the Standards Act 1988.

"Part 5
"Sector specific provisions

"Subpart 1—Forestry sector

"*Pre-1990 forest land*

"**158 Participant in respect of pre-1990 forest land**

"(1) If the activity listed in **Part 1 of Schedule 3** is carried out, the landowner of the pre-1990 forest land is to be treated as the participant unless the chief executive is satisfied that—

"(a) the right to decide to deforest the pre-1990 forest land was vested in a third party whether before or after **1 January 2008**; and

"(b) the landowner had no control over the decision.

"(2) If the chief executive is satisfied that the criteria in **subsection (1)** are met, the third party is to be treated as the participant.

"**159 Application for exemption for land holdings of less than 50 hectares of pre-1990 forest land**

"(1) A landowner who, with any associated persons, owned in total less than 50 hectares of pre-1990 forest land on **1 September 2007** may apply to the chief executive for the land to be declared exempt land.

"(2) An application under **subsection (1)** must—

"(a) be submitted to the chief executive before **30 June 2009**; and

"(b) be in the prescribed form and accompanied by the prescribed fee (if any); and

"(c) contain details of the land to which the application relates, including, if applicable, references to the relevant certificates of title; and

"(d) be accompanied by evidence showing that the land is pre-1990 forest land; and

"(e) contain a statement by the applicant that the applicant owned in total less than 50 hectares of pre-1990 forest land on **1 September 2007**; and

"(f) be signed by the applicant; and

"(g) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct.

"(3) If the chief executive is satisfied that the land described in an application under **subsection (1)** is pre-1990 forest land, and that the applicant owned less than 50 hectares of that land at **1 September 2007**, the chief executive must—

"(a) declare the land to be exempt land; and

"(b) notify the applicant that the land has been declared exempt land.

"(4) Despite **subsection (2)(a)**, the chief executive may, at his or her discretion, accept applications after the date specified in that subsection.

"(5) For the purposes of this section—

"**applicant**, when referring to the ownership of land, means the applicant and any associated person of the applicant

"**own**, in relation to pre-1990 land, means to have a legal or beneficial interest in the land.

"160 Exemptions for deforestation of land with tree weeds

"(1) The chief executive may give public notice that exemptions are available in relation to the deforestation of pre-1990 forest land if the forest species growing on the land is a tree weed.

"(2) A notice given under **subsection (1)** must include—

"(a) the types of tree weeds in respect of which exemptions may be available; and

"(b) the priorities by which exemptions will be assessed, which may include the type of tree weed, location of forest land, or any other matter; and

"(c) the date by which applications for exemptions under this section must be received by the chief executive.

"(3) If a notice has been given under **subsection (1)**, a person who wishes to deforest pre-1990 forest land on which the forest species is a tree weed may apply to the chief executive for the land to be declared exempt land.

"(4) An application for an exemption under **subsection (3)** must—
- "(a) be submitted to the chief executive before the date notified under **subsection (2)(c)**; and
- "(b) be in the prescribed form and accompanied by the prescribed fee (if any); and
- "(c) contain details of the land to which the application relates, including, if applicable, references to the relevant certificates of title; and
- "(d) be accompanied by evidence that—
  - "(i) the land is pre-1990 forest land; and
  - "(ii) the tree species on the land is a tree weed; and
- "(e) be signed by the applicant; and
- "(f) be accompanied by a statutory declaration verifying that the information contained in the application is true and correct.

"(5) The chief executive must consider all applications received under **subsection (4)** against the priorities in the relevant notice given under **subsection (1)** and may, if satisfied that the land is pre-1990 forest land and the tree species on the land is a tree weed, declare the land, or any part of the land, to be exempt land.

"(6) The harvesting of the tree weed on exempt land must be—
- "(a) commenced within 12 months of the date of notification of the exemption; and
- "(b) completed within 24 months of that date.

"(7) Land that is declared to be exempt land under this section ceases to be exempt land if either of the conditions specified in **subsection (6)** is breached.

"(8) If a person is convicted of an offence under **section 119 or 120** in relation to an application under this section,—
- "(a) the person must be treated as a person who has failed to submit an emissions return when required to do so under this Act; and
- "(b) the chief executive must make an assessment of the matters that should have been in the person's annual emissions return and the number of units the person

would have been liable to surrender if the land had not been exempt land; and

"(c) the person is liable to surrender the number of units in the assessment under **paragraph (b)**; and

"(d) **section 111(1) to (3)** and the other provisions of this Act apply, as if the assessment under **paragraph (b)** was an assessment under **section 109.**

"(9) For the purposes of this section, **tree weed** means a tree that—

"(a) is defined or designated as—

"(i) a pest in a regional pest management strategy under the Biosecurity Act 1993; or

"(ii) a tree weed in regulations made under this Act; and

"(b) has naturally regenerated.

"161 Effect of exemption

The status of pre-1990 forest land as exempt land runs with the land and is not affected by any change in the ownership of the land.

"162 Methodology for pre-1990 forest land

"(1) **Subsection (2)** applies where the trees harvested from pre-1990 forest land by a person carrying out the activity in **Part 1 of Schedule 3** are 8 years or younger.

"(2) If this subsection applies, the participant must—

"(a) for the purposes of **sections 62(b) and 65(2)(b)**, apply any methodology and calculate and record the emissions from the activity—

"(i) as if the trees harvested from the pre-1990 forest land were the age of those last harvested from the pre-1990 forest land; or

"(ii) if the trees last harvested from the pre-1990 land were also 8 years or younger, as if the trees harvested when carrying out the activity were 9 year old trees; and

"(b) surrender units under this Act based on emissions calculated and recorded in accordance with **paragraph (a)**.

"(3) A methodology for calculating emissions from the activity in **Part 1 of Schedule 3** prescribed in regulations under **section 148**

must relate to the trees that are harvested from the pre-1990 forest land as part of the deforestation activity.

"163 Registration as participant in respect of pre-1990 forest land

"(1) For the purposes of **section 56(1)**, a participant is to be treated as carrying out an activity listed in **Part 1 of Schedule 3** in respect to a hectare of pre-1990 forest land, on the date that the first action is taken that is inconsistent with that hectare remaining forest land.

"(2) Despite anything in **section 56**, if an activity listed in **Part 1 of Schedule 3** is carried out in **2008**, the person who carried out the activity has until **31 January 2009** to give notice to the chief executive under **section 56(1)**.

"(3) To avoid doubt, a person who carried out an activity listed in **Part 1 of Schedule 3** on or after **1 January 2008**, but before this section came into force, must register under **section 56(1)** in accordance with **subsection (2)**.

"164 Pre-1990 forest land to be treated as deforested in certain cases

"(1) This section applies if trees that are forest species on a hectare of pre-1990 forest land have been felled and,—

"(a) 4 years after felling, the hectare has not—

"(i) been replanted in forest species; or

"(ii) naturally established a significant covering of forest species; or

"(b) 10 years after felling, exotic forest species are growing but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height; or

"(c) 20 years after felling, indigenous forest species are growing but that hectare does not have tree crown cover of at least 30% from trees that have reached 5 metres in height.

"(2) If this section applies, the chief executive must treat the hectare of pre-1990 forest land as deforested when carrying out the chief executive's functions under **section 109**.

"(3) Nothing in this section limits the chief executive's ability to exercise powers under **section 109** in respect of a hectare of pre-

1990 forest land whenever the chief executive considers that—

"(a) the hectare has been deforested; and

"(b) any obligations imposed under this Act in respect of the deforestation have not been complied with.

"Post-1989 forest land

"165 Participant in respect of post-1989 forest land

A person may not register as a participant under **section 57** in respect of an activity listed in **Part 1 of Schedule 4** unless,

"(a) if the person is the landowner of the post-1989 forest land,—

"(i) there is no forestry right or lease registered in respect of that land; or

"(ii) the landowner has the written agreement of any holder of a registered forestry right or registered lease in respect of that land to the landowner's registration as a participant; or

"(iii) the landowner has terminated a forest sink covenant registered in respect of the land under section 67ZD of the Forests Act 1949 and has complied with **subparagraph (a)(ii)**; or

"(b) if the person is the holder of a registered forestry right or registered lease in respect of the land, the person has the written agreement of the landowner of the land to the forestry right holder or lease holder, as the case may be, registering as a participant.

"166 Registration as participant in respect of post-1989 forest land

"(1) An application under **section 57** to be registered as a participant in respect of an activity listed in **Part 1 of Schedule 4**—

"(a) must be submitted to the chief executive—

"(i) before **1 January 2010**; or

"(ii) within 18 months of the beginning of each subsequent commitment period; or

"(iii) if there is no subsequent commitment period, within 18 months after—

"(A) **1 January 2013**; and

"(B) each subsequent 5 year period after **1 January 2013**; and

"(b) may be submitted for all post-1989 forest land in respect of which the person carries out the activity, or any part of the land in respect of which the person carries out the activity.

"(2) If the chief executive registers a person as a participant under **section 57** in relation to an activity listed in **Part 1 of Schedule 4**,—

"(a) the chief executive must notify under **section 57(3)(b)(ii)**,—

"(i) if **section 165(a)** applies, any person with a registered forestry right or registered lease in respect of the post-1989 forest land; or

"(ii) if section **165(b)** applies, the landowner of the post-1989 land; and

"(b) the registration takes effect from the date of the notice given to the applicant for registration under **section 57(3)(b)(i)**.

"(3) If the chief executive receives an application under **section 58** for the removal of a person's name from the register as a participant in relation to an activity listed in **Part 1 of Schedule 4** or is satisfied under **section 59(2)** that the person has ceased to carry out the activity, the chief executive must—

"(a) notify under **section 58(3)(c) or 59(2)(b)**,—

"(i) if the landowner is the registered participant, any person with a registered forestry right or registered lease in respect of the post-1989 forest land; or

"(ii) if a forestry right holder or holder of a registered lease is the registered participant, the landowner of the post-1989 land; and

"(b) remove the applicant's name from the register under **section 58(4)**, 10 working days after the date of the notice given under **section 58(3)(b)**.

"(4) Despite **subsection (2)(b)**, a person specified in **section 165(a)(iii)** who registers as a participant, is to be treated as being registered as a participant in respect of the post-1989 forest land from the later of—

"(a) the date the covenant was registered on the land under section 67ZD of the Forests Act 1949; or

"(b) **1 January 2008**.

"167 Emissions returns for post-1989 forest land activities

"(1) This section applies to a person who is registered as a participant in relation to an activity listed in **Part 1 of Schedule 4**.

"(2) A person to whom this section applies—

"(a) is not required to submit an annual emissions return under **section 65** in relation to the activity; but

"(b) may submit an emissions return under this section in relation to the activity in respect of any period of at least 12 months; and

"(c) must submit an emissions return in respect of the activity—

"(i) by **31 March 2013**; and

"(ii) at any other time after **31 March 2013** that is prescribed in regulations made under this Act.

"(3) An emissions return submitted under **subsection (2)** must—

"(a) contain the information specified in **section 65(2)**; and

"(b) be submitted in accordance with **section 65(3)**; and

"(c) be in respect of the period—

"(i) commencing on the later of –

"(A) 1 January 2008; or

"(B) the date on which the person commenced the activity; or

"(C) the day after the end of the period covered by the participant's last emissions return in relation to the activity; and

"(ii) ending on—

"(A) in relation to a return under **subsection (2)(b)**, the date specified in the return (which must be at least 12 months from the commencement date of the period); and

"(B) in relation to a return under **section (2)(c)(i)**, **31 December 2012**; and

"(C) in relation to a return under **subsection (2)(c)(ii)**, the prescribed date.

"(4) If a person to whom this section applies submits an emissions return under this section, the person—

"(a) may include in the return an assessment of the person's net liability to surrender units or the person's entitlement to New Zealand units, calculated by determining the difference between the number of units required to be surrendered for each whole tonne of emissions in the return, and the number of New Zealand units to which the person is entitled in relation to each whole tonne of removals in the return; and

"(b) may elect to surrender the net number of units for which the person is liable, or to receive the net number of New Zealand units to which the person is entitled, as determined under **paragraph (a)**; and

"(c) must, if the person makes an election under **paragraph (b)**, indicate clearly in the return that such an election has been made.

"(5) If a person to whom this section applies submits an emissions return under this section, the person must, if the emissions return includes a liability to surrender units, surrender those units within 20 working days.

"168 Special rules regarding surrender of units in relation to post-1989 forest land

"(1) Despite anything in this Act, a person who is registered as a participant in relation to an activity listed in **Part 1 of Schedule 4**, is not liable to surrender in respect of emissions from any post-1989 land in respect of which the person is registered a greater number of units than were issued in respect of removals from that post-1989 forest land.

"(2) Subject to **section 169**, a person who is registered as a participant in relation to an activity listed in **Part 1 of Schedule 4** must, within 20 working days of being removed from the register in relation to that activity or ceasing to carry out the activity on any area of more than 1 hectare of post-1989 land in respect of which the person is registered as a participant,—

"(a) submit an emissions return to the chief executive that—

"(i) sets out—

"(A) the number of New Zealand units issued in respect of removals from the post-1989 land; and

"(B) the number of units surrendered in respect of emissions from the post-1989 land; and

"(C) any other prescribed information; and

"(ii) is signed by the participant; and

"(b) surrender the number of units determined by subtracting the number of units in **paragraph (a)(i)(B)** from the number of units in **paragraph (a)(i)(A)**.

"(3) For the purposes of this section, any units issued in respect of the post-1989 forest land while it was the subject of a forest sink covenant under the Forests Act 1949, must be treated as New Zealand units issued under this Act in respect of removals from the post-1989 land.

"(4) An emissions return under this section must be submitted in the prescribed manner and format.

"169 Transfer of registration

"(1) If a person who is registered as a participant in respect of an activity listed in **Part 1 of Schedule 4** (**the transferor**) transfers or intends to transfer any post-1989 forest land, or a registered forestry right or registered lease over post-1989 forest land, in respect of which the transferor is registered as a participant, the transferor may apply to the chief executive to transfer to the intended transferee of the land, forestry right, or lease (the **transferee**) the transferor's registration under **section 57** in respect of the activity relating to that post-1989 forest land.

"(2) An application under **section (1)** must—

"(a) be in the prescribed form and be accompanied by the prescribed fee (if any); and

"(b) describe the post-1989 forest land in respect of which the transferor intends to transfer the ownership, registered forestry right, or registered lease; and

"(c) be accompanied by an application by the transferee to be registered under **section 57** as a participant in respect of the activity or the part of the activity carried out on the relevant post-1989 forest land.

"(3) The transferee's application under **subsection (2)(c)** must comply with **section 57(2)(a), (b), and (d)**, but may be made in conjunction with a transfer application at any time.

"(4) **Section 57(3) and (4)** do not apply to a transferee's application under **subsection (2)(c)**.

"(5) Following receipt of an application complying with **subsection (2)**, if the chief executive is satisfied that the transferee is

eligible under **section 165** to be registered as a participant in respect of the activity, the chief executive must—

"(a) enter the transferee's name on the register kept under **section 57** as the participant in respect of the activity in **Part 1 of Schedule 4** carried out on the post-1989 forest land covered by the application; and

"(b) remove the transferor's name from the register in respect of the activity in **Part 1 of Schedule 4** carried out on the post-1989 forest land covered by the application; and

"(c) give notice to the transferor and the transferee that the chief executive has taken the action in **paragraphs (a) and (b)**.

"(6) The transferee is, from the date of registration under **subsection (5)(a)**, to be treated for the purposes of this Act as being the same participant as the transferor in relation to the post-1989 forest land covered by the application.

"(7) A transferor who makes an application under **subsection (2)** is not required to notify the chief executive separately under **section 59** that the transferor is ceasing to carry on the activity in respect of any post-1989 forest land covered by the application.

"(8) **Section 168(2)** does not apply to any person in relation to post-1989 forest land in respect of which a transferee is registered as a participant under this section.

"(9) Despite anything in this Act, the chief executive must provide to any person who is a prospective transferee under **subsection (1)**, and who has the written consent of the registered participant in relation to the post-1989 forest land, a statement setting out—

"(a) the emissions returns (if any) that have been submitted in respect of the post-1989 forest land, and the period covered by those returns; and

"(b) the number of New Zealand units (if any) that have been transferred in respect of any removals from removal activities carried out on the post-1989 forest land; and

"(c) the number of units (if any) that have been surrendered in respect of any emissions from activities carried out on the post-1989 forest land.

"*Post-1989 forest land and pre-1990 forest land*

"**170 Notification of status of forest land**

"(1) The chief executive must, if required by regulations made under **section 148**, notify the following persons of the details of the land that the chief executive is satisfied is pre-1990 forest land or post-1989 forest land, or that the chief executive has declared to be exempt land,—

"(a) the Registrar of the Maori Land Court in relation to Maori land; and

"(b) the Registrar-General of Land in relation to any other land.

"(2) On receipt of a notice under **subsection (1)**, the Registrar-General of Land or the Registrar of the Maori Land Court must note the appropriate register under the Land Transfer Act 1952 or memorial schedule of the Title Binder relating to Maori land with any prescribed endorsement.

"(3) The Registrar-General of Land or the Registrar of the Maori Land Court must delete any endorsement made under **subsection (2)** if required under regulations made under **section 148**.

"*Transitional provisions*

"**171 First emissions return for pre-1990 forest land activities**

"(1) Despite anything in this Act, a participant who carries out an activity listed in **Part 1 of Schedule 3**—

"(a) is not required to submit an annual emissions return under **section 65** in relation to the year ending **31 December 2008**; but

"(b) must submit an emissions return in respect of the period commencing on **1 January 2008** and ending on **31 December 2009**.

"(2) **Section 65** applies to the return submitted under **subsection (1)(b)** with all necessary modifications, as if each reference to a year were a reference to the period commencing on **1 January 2008** and ending on **31 December 2009**.

"(3) For all other purposes of this Act, the emissions return submitted under **subsection (1)(b)** is to be treated as an annual emissions return.

"(4) Despite anything in this Act, a participant who carries out an activity listed in **Part 1 of Schedule 3** may not submit an emissions return before **1 January 2010**.

"172 First emissions return for post-1989 forest land activities

Despite anything in this Act, the first emissions return submitted by a person to whom **section 167** applies in respect of an activity listed in **Part 1 of Schedule 4** may not be submitted before **1 January 2009**.

"Subpart 2—Liquid fossil fuels sector

"173 Registration as participant by purchasers of jet fuel

"(1) An application under **section 57** to be registered as a participant in relation to an activity listed in **Part 3 of Schedule 4** may be submitted to the chief executive at any time.

"(2) If the chief executive registers a person as a participant under **section 56** in relation to an activity listed in **Part 3 of Schedule 4**,—

"(a) the chief executive must notify, under **section 57(3)(b)(ii)**, every person who is registered under **section 57** in respect of an activity in **Part 2 of Schedule 3**; and

"(b) the registration takes effect 1 year from the date of the notice to the applicant for registration under **section 57(3)(b)(i)**.

"(3) If the chief executive has received an application under **section 58** for removal of a person's name from the register as a participant in relation to an activity listed in **Part 3 of Schedule 4** or is satisfied under **section 59(2)** that the person has ceased to carry out the activity, the chief executive must—

"(a) notify, under **section 58(3)(c) or 59(2)(b)**, every person who is registered under **section 57** in respect of an activity listed in **Part 2 of Schedule 3**; and

"(b) remove, under **section 58(4)(a)**, the applicant's name from the register on the date that is 4 years after the date of the applicant's application to be removed from the register.

"174 Effect of registration by purchasers of jet fuel

A participant who carries out an activity listed in **Part 2 of Schedule 3** is not required to comply with **section 62**, report in

an emissions return, or surrender units, in respect of obligation jet fuel that is purchased by a person who is registered as a participant in respect of an activity listed in **Part 3 of Schedule 4.**

"175 Treatment of obligation fuels

"(1) This section applies if, in breach of the Customs and Excise Act 1996, a participant fails to remove obligation fuel for home consumption.

"(2) If this section applies, the obligation fuel that was not removed for home consumption must, for the purposes of this Act, be treated as obligation fuel removed for home consumption under the Customs and Excise Act 1996.

"Subpart 3—Stationary energy sector

"176 Registration as participant by purchasers of coal or natural gas

"(1) An application under **section 57** to be registered as a participant in relation to an activity listed in **Part 4 of Schedule 4** may be submitted to the chief executive at any time.

"(2) If the chief executive registers a person as a participant under **section 57** in relation to an activity listed in **Part 4 of Schedule 4**,—

"(a) the chief executive must notify, under **section 57(3)(b)(ii)**, every person who—

"(i) mines coal or natural gas; and

"(ii) is registered under **section 57**; and

"(b) the registration takes effect 1 year from the date of the notice to the applicant for registration under **section 57(3)(b)(i)**.

"(3) If the chief executive has received an application under **section 58** for removal of a person's name from the register as a participant in relation to an activity listed in **Part 4 of Schedule 4** or is satisfied under **section 59(2)** that the person has ceased to carry out the activity, the chief executive must—

"(a) notify, under **section 58(3)(c) or 59(2)(b)**, every person who—

"(i) mines coal or natural gas; and

"(ii) is registered under **section 57**; and

"(b) remove, under **section 58(4)(a)**, the applicant's name from the register on the date that is 4 years after the date of

the applicant's application to be removed from the register.

"177 **Effect of registration by purchasers of coal or natural gas**

A participant who mines coal or mines natural gas is not required to comply with **section 62**, report in an emissions return, or surrender units, in respect of coal or natural gas that is purchased by a person registered as a participant in respect of an activity listed in **Part 4 of Schedule 4**.

"178 **Transitional provision for penalties**

"(1) This section applies to a participant who submits an annual emissions return in respect of the activity in—

"(a) **Part 1 of Schedule 3** that relates to the period from **1 January 2008 to 31 December 2009**; or

"(b) **Part 2 of Schedule 3 or Part 3 of Schedule 4** that relates to the year from **1 January 2009 to 31 December 2009**; or

"(c) **Part 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3, and Part 4 of Schedule 4** that relates to the year from **1 January 2010 to 31 December 2010**; or

"(d) **Subpart 1 or 3 of Part 5 of Schedule 3**, that relates to the year from **1 January 2013 to 31 December 2013**; or

"(e) **Subpart 2 or 4 of Part 5 of Schedule 3** that relates to the first year following the making an Order in Council under **section 2A(8) or (9)**; or

"(f) **Subpart 2 of Part 4 of Schedule 3 or Part 6 of Schedule 3** that relates to the year from **1 January 2013 to 31 December 2013.**

"(2) Despite anything in this Act, a participant to whom this section applies is not liable to an excess emissions penalty under **section 121** in respect of any units that the participant is required to surrender under **section 111(3)** following an amendment to the participant's annual emissions return."

44 **New Schedules 3 and 4 added**

The **Schedules 3 and 4** set out in the Schedule of this Act are added.

Consequential amendments

45 Amendment to Forests Act 1949

(1) This section amends the Forests Act 1949.

(2) Section 67Y(1)(b) is amended by adding "which methodologies or mechanisms may be those prescribed in regulations made under **section 148(1)(b)** of the Climate Change Response Act 2002".

(3) Section 67Y(1) is amended by inserting the following paragraph after paragraph (j):

"(ja) prescribe the persons or organisations or classes of persons or organisations, who have been recognised under **section 81** of the Climate Change Response Act 2002 as able to carry out verification functions under that Act, who may carry out verification functions in relation to a forest sink or forest sink covenant:".

46 Amendments to Forestry Rights Registration Act 1983

(1) This section amends the Forestry Rights Registration Act 1983.

(2) Section 2 is amended by repealing the definitions of **carbon sequestration**, **forest sink**, and **greenhouse gas**.

(3) Section 2A(2)(b) is amended by omitting "units based on carbon sequestration that are received in accordance with a forest sink covenant" and substituting "the right to receive and the obligation to surrender units".

47 Income Tax Act 2004

Sections 48 to 55 amend the Income Tax Act 2004.

48 New heading and section CB 29 inserted

After section CB 28, the following is inserted:

"***Emissions trading scheme***

"**CB 29 Disposal of ETS units**

"*When this section applies*

"(1) This section applies if a person disposes of an ETS unit.

"*Income*

"(2) The amount that a person derives on disposal by the person of an ETS unit is income.

"*Surrender of unit: generally nil income*

"(3) If the person disposes of the unit by surrender under the Climate Change Response Act 2002, the person is treated as deriving no income, unless **subsection (4)** applies.

"*Surrender of unit: pre-1990 forest land deforestation*

"(4) Despite **subsection (3)**, **subsection (5)** applies—

"(a) if a person surrenders an ETS unit in relation to the deforestation of pre-1990 forest land; and

"(b) the ETS unit is not a forest land unit.

"*Surrendered unit treated as sold for cost*

"(5) If **subsection (4)** applies, the surrendered unit is treated as having been sold by the person, at the time of its surrender, to an unrelated person for an amount equal to its cost.

"*Converted unit treated as sold*

"(6) If a person converts a New Zealand unit into a Kyoto unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to its cost (if any).

"*Exempt income: pre-1990 forest land unit*

"(7) **Section CW 3B** (Pre-1990 forest land units: emissions trading scheme) applies in respect of the disposal to another person of a pre-1990 forest land unit.

"*Disposal at below market value*

"(8) **Section GD 16** (Disposals of ETS units at below market value) may apply to treat a disposal (other than a surrender) as being for market value.

"Defined in this Act: amount, convert, ETS unit, forest land unit, income, Kyoto unit, New Zealand unit, pre 1990 forest land unit, surrender."

49 New section CW 3B inserted

After section CW 3, the following is inserted:

"**CW 3B Pre-1990 forest land units: emissions trading scheme**

"*When this section applies*

"(1) This section applies if a person:

"(a) is issued a pre-1990 forest land unit:

"(b) disposes of a pre-1990 forest land unit other than by surrender under the Climate Change Response Act 2002.

"*Exempt income: issue*

"(2) An amount of income derived by the person from the issue is exempt income, if the person is treated as deriving an amount of income from the issue.

"*Exempt income: disposal*

"(3) An amount of income derived by the person from the disposal is exempt income.

"Defined in this Act: amount, ETS unit, exempt income, income, pre-1990 forest land unit, surrender."

50 New section CX 44F inserted

After section CX 44E, the following is inserted:

"**CX 44F Issue of post-1989 forest land units**

"*When this section applies*

"(1) This section applies if a person is issued a post-1989 forest land unit.

"*Excluded income*

"(2) An amount of income derived by the person from the issue is excluded income, if the person is treated as deriving an amount of income from the issue.

"Defined in this Act: amount, excluded income, income, post-1989 forest land unit."

51 New heading and sections DB 46 and DB 47 inserted

After section DB 45, the following is added:

"*Emissions trading scheme*

"DB 46 Acquisition of ETS units

"*When this section applies*

"(1) This section applies if a person acquires an ETS unit.

"*No expenditure or loss on issue of forest land units*

"(2) The person is treated as incurring no expenditure or loss on the acquisition, if the acquisition is on issue of a forest land unit.

"*Deduction: acquisition from another person*

"(3) The person is allowed a deduction for expenditure or loss incurred on acquiring the ETS unit from another person, if it is not the issue of a forest land unit.

"*Deduction: acquisition of Kyoto unit on conversion of New Zealand unit*

"(4) Despite **subsection (3)**, if a person converts a New Zealand unit to a Kyoto unit under the Climate Change Response Act 2002, the person is allowed a deduction for an amount of expenditure on the acquisition of the Kyoto unit that is—

"(a) not more than the cost (if any) to the person of the New Zealand unit; and

"(b) not less than the cost (if any) to the person of the New Zealand unit.

"*Link with subpart DA*

"(5) The link between this section and subpart DA (General rules) is as follows:

"(a) **subsections (2) and (4)(a)** override the general permission:

"(b) **subsection (3)** overrides the capital limitation. The other general limitations still apply:

"(c) **subsection (4)(b)** supplements the general permission and overrides the capital limitation. The other general limitations still apply.

"Defined in this Act: capital limitation, convert, ETS unit, forest land unit, general limitation, general permission, Kyoto unit, loss, New Zealand unit.

"DB 47 Surrender of pre-1990 forest land units for post-1989 forest land deforestation

"*When this section applies*

"(1) This section applies if a person surrenders a pre-1990 forest land unit under the Climate Change Response Act 2002 to meet a liability to surrender units in relation to post-1989 forest land.

"*Treated as disposal and reacquisition*

"(2) The person is treated as having disposed of the pre-1990 forest land unit to an unrelated person and as having then reacquired it, in each case, immediately before the surrender and for an amount equal to the unit's market value at the time.

"Defined in this Act: amount, post-1989 forest land, pre-1990 forest land unit, surrender."

52 New section EA 2B inserted

After section EA 2, the following is inserted:

"EA 2B ETS units: FIFO cost-flow method

"*When this section applies*

"(1) This section applies when a person holds an ETS unit.

"*FIFO method generally*

"(2) In general, the person must use the first-in first-out cost method to identify which ETS units are held by the person at any time.

"*FIFO method for free or replacement ETS units*

"(3) Despite **subsection (2)**, if the person holds any of the types of ETS units listed in **subsection (4)**, the person must treat a disposal of an ETS unit as being a disposal of an ETS unit of that type—

"(a) in the order in which the types are listed in **subsection (4)**; and

"(b) until the balance of the person's holding of that type is exhausted.

"*Specified types of ETS units*

"(4) The types of ETS units referred to in **subsection (3)** are—

"(a) pre-1990 forest land units:

"(b) post-1989 forest land units:

"(c) replacement ETS units.

"Defined in this Act: ETS unit, forest land unit, post-1989 forest land unit, pre-1990 forest land unit, replacement ETS unit."

53 Meaning of trading stock

In section EB 2(3)(g), "exchange." is replaced by "exchange:" and the following is added:

"(h) an ETS unit."

54 New section GD 16 inserted

After section GD 15, the following is inserted:

"GD 16 Disposals of ETS units at below market value

"*When this section applies*

"(1) This section applies if—

"(a) a person (the transferor) disposes of an ETS unit to another person (the transferee):

"(b) the disposal is not a surrender or conversion under the Climate Change Response Act 2002:

"(c) the disposal is for—

"(i) no consideration; or

"(ii) an amount of consideration that is less than the market value of the ETS unit at the time of disposal.

"*Disposal treated as being for market value*

"(2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value at the time.

"Defined in this Act: amount, convert, ETS unit, surrender."

55 Definitions

(1) This section amends section OB 1.

(2) After the definition of **controlling shareholder**, the following is inserted:

"**convert**, for a New Zealand unit, is defined in section 4(1) of the Climate Change Response Act 2002".

(3) After the definition of **estimated useful life**, the following is inserted:

"**ETS unit** means:

"(a) a New Zealand unit:

"(b) an approved overseas unit, as defined in section 4(1) of the Climate Change Response Act 2002:

"(c) a Kyoto unit".

(4) After the definition of **forward contract**, the following is inserted:

"**forest land unit** means a pre-1990 forest land unit or a post-1989 forest land unit".

(5) After the definition of **Kiwisaver scheme**, the following is inserted:

"**Kyoto unit** is defined in section 4(1) of the Climate Change Response Act 2002".

(6) After the definition of **New Zealand tax**, the following is inserted:

"**New Zealand unit** is defined in section 4(1) of the Climate Change Response Act 2002".

(7) After the definition of **possession**, the following is inserted:

"**post-1989 forest land** is defined in section 4(1) of the Climate Change Response Act 2002

"**post-1989 forest land unit** means a unit issued to a person under **section 64** of the Climate Response Act 2002 for removals in respect of post-1989 forest land".

(8) After the definition of **pre-1991 budget security**, the following is inserted:

"**pre-1990 forest land** is defined in section 4(1) of the Climate Change Response Act 2002

"**pre-1990 forest land unit** is a unit issued to a person under an allocation plan under section 69 of the Climate Change Response Act 2002, and identified under the rule in **section EA 2B(3) and (4)** (ETS units: FIFO cost-flow method) for determining which units are still held by a person".

(9) After the definition of **replaced area fraction**, the following is inserted:

"**replacement ETS unit** means an ETS unit acquired by a person if—

"(a) the person has previously disposed of an ETS unit; and

"(b) the ETS unit disposed of was a post-1989 forest land unit; and

"(c) the person has not, since the disposal, acquired another ETS unit that replaces the unit disposed of; and

"(d) when **paragraph (b)** is applied, the rule in **section EA 2B(3) and (4)** (ETS units: FIFO cost-flow method) determines whether a unit disposed of is a pre-1990 forest land unit rather than another type of ETS unit; and

"(e) when **paragraph (c)** is applied, an acquisition following the disposal is treated as resulting in a replacement for the unit except to the extent treated as resulting in a replacement for another forest land ETS unit disposed of at the same time".

(10) In the definition of **revenue account property**, paragraph (b), "or event))" is replaced by "or event)); or", and the following is added:

"(c) an ETS unit of the person but, despite the extent to which paragraph (a) or (b) applies, does not include a replacement ETS unit".

(11) After the definition of **surplus refundable credits**, the following is inserted:

"**surrender**, for an ETS unit, is defined in section 4(1) of the Climate Change Response Act 2002".

56 Income Tax Act 2007

Sections 57 to 64 amend the Income Tax Act 2007.

57 New heading and section CB 36 inserted

After section CB 35, the following is added:

"***Emissions trading scheme***

"CB 36 Disposal of ETS units

"*When this section applies*

"(1) This section applies if a person disposes of an ETS unit.

"*Income*

"(2) The amount that a person derives on disposal by the person of an ETS unit is income.

"*Surrender of unit: generally nil income*

"(3) If the person disposes of the unit by surrender under the Climate Change Response Act 2002, the person is treated as deriving no income, unless **subsection (4)** applies.

"*Surrender of unit: pre-1990 forest land deforestation*

"(4) Despite **subsection (3)**, **subsection (5)** applies—

"(a) if a person surrenders an ETS unit in relation to the deforestation of pre-1990 forest land; and

"(b) the ETS unit is not a forest land unit.

"*Surrendered unit treated as sold for cost*

"(5) If **subsection (4)** applies, the surrendered unit is treated as having been sold by the person, at the time of its surrender, to an unrelated person for an amount equal to its cost.

"*Converted unit treated as sold*

"(6) If a person converts a New Zealand unit into a Kyoto unit under the Climate Change Response Act 2002, the person is treated as having sold the converted unit for an amount equal to its cost (if any).

"*Exempt income: pre-1990 forest land unit*

"(7) **Section CW 3B** (Pre-1990 forest land units: emissions trading scheme) applies in respect of the disposal to another person of a pre-1990 forest land unit.

"*Disposal at below market value*

"(8) **Section GC 4B** (Disposals of ETS units at below market value) may apply to treat a disposal (other than a surrender) as being for market value.

"Defined in this Act: amount, convert, ETS unit, forest land unit, income, Kyoto unit, New Zealand unit, pre 1990 forest land unit, surrender."

58 New section CW 3B inserted

After section CW 3, the following is inserted:

"CW 3B Pre-1990 forest land units: emissions trading scheme

"*When this section applies*

"(1) This section applies if a person:

"(a) is issued a pre-1990 forest land unit:

"(b) disposes of a pre-1990 forest land unit other than by surrender under the Climate Change Response Act 2002.

"*Exempt income: issue*

"(2) An amount of income derived by the person from the issue is exempt income, if the person is treated as deriving an amount of income from the issue.

"*Exempt income: disposal*

"(3) An amount of income derived by the person from the disposal is exempt income.

"Defined in this Act: amount, ETS unit, exempt income, income, pre-1990 forest land unit, surrender."

59 New section CX 48B inserted

After section CX 48, the following is inserted:

"CX 48B Issue of post-1989 forest land units

"*When this section applies*

"(1) This section applies if a person is issued a post-1989 forest land unit.

"*Excluded income*

"(2) An amount of income derived by the person from the issue is excluded income, if the person is treated as deriving an amount of income from the issue.

"Defined in this Act: amount, excluded income, income, post-1989 forest land unit."

60 New heading and sections DB 60 and DB 61 inserted

After section DB 59, the following is inserted:

"Emissions trading scheme

"DB 60 Acquisition of ETS units

"*When this section applies*

"(1) This section applies if a person acquires an ETS unit.

"*No expenditure or loss on issue of forest land units*

"(2) The person is treated as incurring no expenditure or loss on the acquisition if the acquisition is on issue of a forest land unit.

"*Deduction: acquisition from another person*

"(3) The person is allowed a deduction for expenditure or loss incurred on acquiring the ETS unit from another person if it is not the issue of a forest land unit.

"*Deduction: acquisition of Kyoto unit on conversion of New Zealand unit*

"(4) Despite **subsection (3)**, if a person converts a New Zealand unit to a Kyoto unit under the Climate Change Response Act 2002, the person is allowed a deduction for an amount of expenditure on the acquisition of the Kyoto unit that is—

"(a) not more than the cost (if any) to the person of the New Zealand unit; and

"(b) not less than the cost (if any) to the person of the New Zealand unit.

"*Link with subpart DA*

"(5) The link between this section and subpart DA (General rules) is as follows:

"(a) **subsections (2) and (4)(a)** override the general permission:

"(b) **subsection (3)** overrides the capital limitation. The other general limitations still apply:

"(c) **subsection (4)(b)** supplements the general permission and overrides the capital limitation. The other general limitations still apply.

"Defined in this Act: capital limitation, convert, ETS unit, forest land unit, general limitation, general permission, Kyoto unit, loss, New Zealand unit.

"DB 61 Surrender of pre-1990 forest land units for post-1989 forest land emissions

"*When this section applies*

"(1) This section applies if a person surrenders a pre-1990 forest land unit under the Climate Change Response Act 2002 to meet a liability to surrender units in relation to post-1989 forest land.

"*Treated as disposal and reacquisition*

"(2) The person is treated as having disposed of the pre-1990 forest land unit to an unrelated person and as having then reacquired it, in each case, immediately before the surrender and for an amount equal to the unit's market value at the time.

"Defined in this Act: amount, post-1989 forest land, pre-1990 forest land unit, surrender."

61 New section EA 2B inserted

After section EA 2, the following is inserted:

"EA 2B ETS units: FIFO cost-flow method

"When this section applies

"(1) This section applies when a person holds an ETS unit.

"FIFO method generally

"(2) In general, the person must use the first-in first-out cost method to identify which ETS units are held by the person at any time.

"FIFO method for free or replacement ETS units

"(3) Despite **subsection (2)**, if the person holds any of the types of ETS units listed in **subsection (4)**, the person must treat a disposal of an ETS unit as being a disposal of an ETS unit of that type—

"(a) in the order in which the types are listed in **subsection (4)**; and

"(b) until the balance of the person's holding of that type is exhausted.

"Specified types of ETS units

"(4) The types of ETS units referred to in **subsection (3)** are—

"(a) pre-1990 forest land units:

"(b) post-1989 forest land units:

"(c) replacement ETS units.

"Defined in this Act: ETS unit, forest land unit, post-1989 forest land unit, pre-1990 forest land unit, replacement ETS unit."

62 Meaning of trading stock

In section EB 2(3)(g), "exchange." is replaced by "exchange;" and the following is added:

"(h) an ETS unit."

63 New section GC 4B inserted

After section GC 4, the following is inserted:

"GC 4B Disposals of ETS units at below market value

"*When this section applies*

"(1) This section applies if—

"(a) a person (the transferor) disposes of an ETS unit to another person (the transferee):

"(b) the disposal is not a surrender or conversion under the Climate Change Response Act 2002:

"(c) the disposal is for—

"(i) no consideration; or

"(ii) an amount of consideration that is less than the market value of the ETS unit at the time of disposal.

"*Disposal treated as being for market value*

"(2) For the purposes of this Act, the consideration received by the transferor and provided by the transferee is treated as being equal to the market value at the time.

"Defined in this Act: amount, convert, ETS unit, surrender."

64 Definitions

(1) This section amends section YA 1.

(2) After the definition of **controlling shareholder**, the following is inserted:

"**convert**, for a New Zealand unit, is defined in section 4(1) of the Climate Change Response Act 2002".

(3) After the definition of **estimated useful life**, the following is inserted:

"**ETS unit** means:

"(a) a New Zealand unit:

"(b) an approved overseas unit, as defined in section 4(1) of the Climate Change Response Act 2002:

"(c) a Kyoto unit".

(4) After the definition of **forward contract**, the following is inserted:

"**forest land unit** means a pre-1990 forest land unit or a post-1989 forest land unit".

(5) After the definition of **Kiwisaver scheme**, the following is inserted:

"**Kyoto unit** is defined in section 4(1) of the Climate Change Response Act 2002".

(6) After the definition of **New Zealand tax**, the following is inserted:

"**New Zealand unit** is defined in section 4(1) of the Climate Change Response Act 2002".

(7) After the definition of **possession**, the following is inserted:

"**post-1989 forest land** is defined in section 4(1) of the Climate Change Response Act 2002

"**post-1989 forest land unit** means a unit issued to a person under **section 64** of the Climate Change Response Act 2002 for removals in respect of post-1989 forest land".

(8) After the definition of **pre-1991 budget security**, the following is inserted:

"**pre-1990 forest land** is defined in section 4(1) of the Climate Change Response Act 2002

"**pre-1990 forest land unit** means a New Zealand unit issued to a person under an allocation plan under **section 69** of the Climate Change Response Act 2002, and that is identified under the rule in **section EA 2B(3) and (4)** (ETS units: FIFO cost-flow method) for determining which units are still held by a person".

(9) After the definition of **replaced area fraction**, the following is inserted:

"**replacement ETS unit** means an ETS unit acquired by a person if—

"(a) the person has previously disposed of an ETS unit; and

"(b) the ETS unit disposed of was a forest land unit other than a pre-1990 forest land unit; and

"(c) the person has not since the disposal acquired another ETS unit that replaces the unit disposed of; and

"(d) when **paragraph (b)** is applied, the rule in **section EA 2B(3) and (4)** (ETS units: FIFO cost-flow method) determines whether a unit disposed of is a pre 1990 forest land unit rather than another type of ETS unit; and

"(e) when **paragraph (c)** is applied, an acquisition following the disposal is treated as resulting in a replacement for

the unit except to the extent treated as resulting in a replacement for another forest land unit disposed of at the same time".

(10) In the definition of **revenue account property**, paragraph (b), "acquiring asset)" is replaced by "acquiring asset); or", and the following is added:

"(c) an ETS unit of the person but, despite the extent to which paragraph (a) or (b) applies, does not include a replacement ETS unit".

(11) After the definition of **supply**, the following is inserted:

"**surrender**, for an ETS unit, is defined in section 4(1) of the Climate Change Response Act 2002".

65 Amendments to Personal Property Securities Act 1999

(1) This section amends the Personal Property Securities Act 1999.

(2) Section 16(1) is amended by inserting the following definition in its appropriate alphabetical order:

"**emissions unit** means a unit as defined in section 4(1) of the Climate Change Response Act 2002".

(3) The definition of **investment security** in section 16(1) is amended by repealing paragraph (a) and substituting the following paragraph:

"(a) means—

"(i) a writing (whether or not in the form of a security certificate) that is recognised in the place in which it is issued or dealt with as evidencing a futures contract, or a warrant or option or share, right to participate, or other interest in property or an enterprise, or that evidences an obligation of the issuer, and that, in the ordinary course of business, is transferred or withdrawn by—

"(A) delivery with any necessary endorsement, assignment, or registration in the records of the issuer or agent of the issuer, or by compliance with restrictions on transfer or withdrawal; or

"(B) an entry in the records of a clearing house or securities depository; or

"(C) an entry in the records maintained for that purpose by or on behalf of the issuer; or

"(D) by an entry in the records maintained for that purpose by or on behalf of the nominee:

"(ii) an emissions unit; but".

(4) Section 18(1) is amended by inserting ", other than an emissions unit," after "investment security" in each place where it appears.

(5) Section 18 is amended by inserting the following subsection after subsection (1):

"(1A) For the purposes of this Act, a person takes possession of an investment security that is an emissions unit if the emissions unit—

"(a) is, in the ordinary course of business, traded or settled through a clearing house or securities depository, by the clearing house or securities depository recording the interest of the person in the emissions unit; or

"(b) is not, in the ordinary course of business, traded or settled through a clearing house or securities depository, by registering in the Registry (as defined in section 4(1) of the Climate Change Response Act 2002) the interest of the person in the emissions unit; or

"(c) is, in the ordinary course of business, held by a nominee, by recording in the records of the nominee the interest of the person in the emissions unit."

Part 2
Amendments to Electricity Act 1992

66 Principal Act amended

This **Part** amends the Electricity Act 1992.

67 New Part 6A inserted

The following Part is inserted after Part 6:

"Part 6A
"Limitation on new fossil-fuelled thermal electricity generating capacity

"Preliminary provisions

"62A Purpose of this Part

The purpose of this Part is to reduce the impact of fossil-fuelled thermal electricity generation on climate change by creating a preference for renewable electricity generation through the implementation of a 10-year moratorium on new fossil-fuelled thermal electricity generation capacity, except where an exemption is appropriate (for example, to ensure security of supply).

"62B Expiry of this Part

This Part expires on the close of the day that is 10 years after the date on which this Part comes into force.

"62C Interpretation

"(1) In this Part, unless the context otherwise requires,—

"**co-generation process** means a process for the combined production of electricity and useful thermal energy

"**distribution network** means the electricity lines, and associated equipment, owned or operated by an electricity distributor, but does not include—

"(a) the national grid; or

"(b) an embedded network that is used to convey less than 2.5 GWh per annum

"**exemption** means an exemption granted under this Part

"**fossil fuel** means any of the following:

"(a) natural gas:

"(b) coal (as defined in section 2(1) of the Crown Minerals Act 1991):

"(c) petroleum:

"(d) any refined petroleum product:

"(e) any other obligation fuel (as defined in the Climate Change Response Act 2002)

"**greenhouse gas** has the same meaning as in section 4 of the Climate Change Response Act 2002

"**natural gas** means—

"(a) all gaseous hydrocarbons produced from wells, including wet gas and residual gas remaining after the extraction of condensate from wet gas; and

"(b) liquid hydrocarbons, other than condensate, extracted from wet gas and sold as natural gas liquids, for example, liquid petroleum gas; and

"(c) coal seam gas

"**operate** does not include the provision only of maintenance and related services

"**petroleum** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

"**specified generation plant—**

"(a) means an electricity generation plant that—

"(i) uses, or will use, fossil fuels if fossil fuels provide, or will provide, more than 20% of the total fuel energy input for the generator or generators constituting the plant; and

"(ii) has, or will have, an aggregate generating capacity (determined according to nameplate or nameplates) of more than 10 MW; but

"(b) does not include—

"(i) an electricity generation plant that is in operation before the commencement of this Part; or

"(ii) an electricity generation plant that is declared by regulations not to be a specified generation plant.

"(2) For the purposes of the definition of specified generation plant, if a fossil fuel is blended with another substance that is not a fossil fuel, the fuel energy input of that blend must be calculated only from the proportion that is fossil fuel.

"*Moratorium*

"**62D Moratorium on connection and operation of new fossil-fuelled thermal generation plant**

"(1) No person may connect a specified generation plant to the national grid or a distribution network, or operate a specified generation plant, unless—

"(a) the person has an exemption in relation to the plant; and

"(b) the plant is connected and operated in accordance with the exemption.

"(2) Every person who breaches **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding $500,000.

"62E Additional penalty for breach involving commercial gain

"(1) If a person is convicted of an offence under **section 62D**, the court may, on the application of the Commission, in addition to any penalty that the court may impose under that section, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the breach of that section if the court is satisfied that the breach occurred in the course of producing a commercial gain.

"(2) The order may be in addition to any other penalty the court may impose under this Part.

"(3) For the purpose of **subsection (1)**, the value of any gain is to be assessed by the court, and any amount ordered to be paid is recoverable in the same manner as a fine.

"(4) In this section, **court** includes a District Court.

"Exemptions

"62F Minister of Energy may grant exemption

"(1) The Minister of Energy may, by notice in the *Gazette*, on the recommendation of the Commission exempt a person from the prohibition in **section 62D** in respect of a specified generation plant.

"(2) The Minister of Energy may vary an exemption in the same way as an exemption may be granted under this section.

"62G Minister of Energy may only grant exemption if satisfied of certain matters

"(1) The Minister of Energy may only grant an exemption if he or she is satisfied that the specified generation plant—

"(a) is a non-baseload plant that has a load factor or greenhouse gas emissions level below or less than prescribed limits; or

"(b) is necessary or desirable for 1 or more of the following purposes:

"(i) for the purpose of mitigating the effects of an emergency:

"(ii) for the purpose of providing reserve energy:

"(iii) for the purpose of providing electricity to a small isolated community that does not have a reasonable non-fossil fuel based alternative:

"(iv) for the purpose of forming part of a co-generation process to improve the overall energy efficiency of the process above a prescribed level; or

"(c) uses an acceptable combination of renewable energy sources and fossil fuels as prescribed in regulations; or

"(d) is based on waste material (for example, burning rubbish using only a small amount of fossil fuel for ignition or burning landfill gas); or

"(e) will be connected and operated in circumstances where an existing thermal electricity generation plant will be retired in whole or in part and the specified generation plant together with any part of the existing thermal electricity generation plant that is not retired—

"(i) will significantly decrease greenhouse gas emissions (based on projected emissions assessed by the Commission rather than nominal output capacity); and

"(ii) will not reduce security of supply margins.

"(2) The Minister of Energy must, when considering whether to grant an exemption, have regard to any prescribed matters.

"62H Grounds and terms and conditions of exemption

"(1) The Minister of Energy must specify in the exemption the ground under **section 62G(1)** under which the exemption is granted.

"(2) If the exemption is granted for 1 or more purposes under **section 62G(1)(b)**, the Minister of Energy must include in the exemption terms and conditions that he or she considers are reasonably necessary to ensure that the specified generation plant is operated in accordance with those purposes and for no other purposes.

"(3) If the exemption is granted for the purpose referred to in **section 62G(1)(b)(i)**, the term of the exemption must be no longer than the Minister of Energy reasonably considers is necessary to mitigate the effects of the emergency.

"(4) The Minister of Energy may grant an exemption on any other terms and conditions he or she reasonably considers are necessary to give effect to the purpose of this Part.

"(5) A person who is granted an exemption must ensure that the specified generation plant is operated in accordance with—

"(a) any purpose under **section 62G(1)(b)** for which the exemption was granted (and for no other purposes); and

"(b) all other terms and conditions of the exemption.

"(6) The Commission may modify the terms and conditions of an exemption in the prescribed manner.

"62I Public consultation on draft exemption

"(1) The Minister of Energy must, before granting an exemption, arrange for a draft of the exemption to be notified—

"(a) in the *Gazette*; and

"(b) in daily newspapers circulated in Auckland, Hamilton, Wellington, Christchurch, and Dunedin.

"(2) **Subsection (1)** does not apply if the exemption relates to **section 62G(1)(b)(i)** and the Minister of Energy considers that consultation is not desirable in the circumstances.

"(3) Notification of the draft exemption must state—

"(a) that written submissions on the draft exemption are invited from members of the public and interested organisations; and

"(b) where copies of the draft exemption may be obtained; and

"(c) the closing date for submissions; and

"(d) the address to which submissions are to be forwarded.

"(4) The Commission must, before recommending the granting of an exemption, have regard to all submissions that are received by the closing date for submissions.

"62J Publication of exemption and reasons for exemption

"(1) The Minister of Energy must make exemptions available to the public by making copies of them available for inspection,

free of charge, on the Internet in an electronic form that is publicly accessible (at all reasonable times).

"(2) The Minister of Energy's reasons for granting an exemption (including why the exemption is appropriate) must be notified in the *Gazette* together with the exemption.

"(3) However, the Minister of Energy may defer notifying or not notify the reasons for granting an exemption if he or she is satisfied that it is proper to do so on the ground of commercial confidentiality.

"62K Revocation of exemption

"(1) The Minister of Energy may, by notice in the *Gazette*, revoke an exemption if he or she considers that—

"(a) the specified generation plant is no longer required for the purpose for which the exemption was granted; or

"(b) the specified generation plant has not been, or is not being, operated in accordance with the terms and conditions of the exemption.

"(2) If an exemption in respect of a specified generation plant is revoked, no person may continue to operate that plant.

"62L Suspension of exemption

"(1) If the Minister of Energy has reasonable grounds to believe that there may be a ground to revoke an exemption under **section 62K**, he or she may, by notice to the person who is granted the exemption, suspend the exemption for as long as is reasonably necessary to determine whether a ground exists.

"(2) The Minister of Energy may only act under **subsection (1)** if his or her belief that there may be a ground to revoke the exemption is supported by evidence that he or she reasonably believes is credible and relevant.

"(3) If the Minister of Energy determines that there is a ground to revoke a suspended exemption, he or she—

"(a) may revoke the exemption; or

"(b) may continue the suspension until satisfied that there is no longer a ground to revoke the exemption.

"(4) If the Minister of Energy determines that there is no ground to revoke a suspended exemption, he or she must (unless there is some other ground to suspend or revoke the exemption) notify the person who is granted the exemption that the exemption is

no longer suspended with effect from the date of the notification.

"(5) If an exemption in respect of a specified generation plant is suspended, no person may continue to operate that plant during the period of suspension.

"Enforcement

"62M Commission must monitor compliance

"(1) The Commission must monitor compliance with this Part (including compliance with the terms and conditions of exemptions).

"(2) The High Court and any District Court each have jurisdiction to restrain any breach or threatened breach of **section 62D** by injunction on the application of the Commission or the Minister of Energy, and to make any order in the matter as to costs and otherwise as it thinks fit.

"(3) **Subsection (2)** does not limit the liability of any person to be convicted of an offence under **section 62D**.

"Regulations

"62N Regulations for purposes of this Part

"(1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Energy, make regulations for all or any of the following purposes:

"(a) declaring an electricity generation plant not to be a specified generation plant:

"(b) prescribing limits for load factors or greenhouse gas emission levels for the purposes of **section 62G**:

"(c) specifying how those load factors and emission levels are to be calculated or determined:

"(d) prescribing matters for the purposes of **section 62G(1)(b)(iv) and (c)**:

"(e) prescribing how applications for exemptions are to be made and dealt with:

"(f) prescribing matters that the Minister of Energy must have regard to when granting, amending, suspending, or revoking an exemption:

"(g) authorising the Commission to modify the terms and conditions of exemptions (including prescribing when

and how the Commission may act and the criteria that the Commission must comply with).

"(2) This section does not limit section 169."

68 Regulations

Section 169(1)(30) is amended by inserting ", the Commission," after "the Board".

69 Party must co-operate with investigations

Section 172KB is amended by inserting "**Part 6A** or" after "monitoring or enforcing".

70 Functions of Commission

Section 172O(1) is amended by inserting the following paragraphs after paragraph (j):

"(ja) give recommendations to the Minister of Energy under **Part 6A** and modify terms and conditions of exemptions under that Part in the prescribed manner:

"(jb) monitor compliance with **Part 6A** and investigate breaches of that Part:

"(jc) take enforcement action in relation to breaches of **Part 6A**:".

Schedule
s 30

New Schedules 3 and 4 added

Schedule 3

ss 2A, 4(1), (5), 54(1), 55, 56, 59, 60, 62, 63, 65, 66, 70 to 72, 79, 96, 106, 137, 142, 143, 158, 161, 162, 170, 171, 173, 174, 177, 178

Activities with respect to which persons must be participants

Part 1
Forestry

(applies on and after **1 January 2008**)

Deforesting pre-1990 forest land other than exempt land, if the area deforested is more than 2 hectares in the 5-year period commencing on **1 January 2008**, or any subsequent 5-year period after that.

Part 2
Liquid fossil fuels

(applies on and after **1 January 2009**)

Owning obligation fuel—

(a) at the time the obligation fuel is—

(i) removed for home consumption in accordance with the Customs and Excise Act 1996; or

(ii) otherwise removed from a refinery, other than for export; and

(b) if the total amount of the obligation fuel removed under paragraph (a) exceeds 50 000 litres in a calendar year.

Part 3
Stationary energy

(applies on and after **1 January 2010**)

Importing coal.

Mining coal where—

(a) the volume of coal mined exceeds 2 000 tonnes in a calendar year; and

Schedule 3—*continued*

Part 3—*continued*

(b) the coal is mined other than for export.

Importing natural gas where the volume of natural gas imported exceeds 10 000 litres in a calendar year.

Mining natural gas, other than for export.

Off-taking geothermal steam where the steam is separated from geothermal fluid containing non-condensable gas components.

Using geothermal fluid for the purpose of generating electricity or industrial heat.

Combusting used oil, waste oil, used tyres, and waste for the purpose of generating electricity or industrial heat.

Refining petroleum where the refining involves the combustion of obligation fuel or obligation jet fuel.

Part 4
Industrial processes

Subpart 1
(applies on and after **1 January 2010**)

Producing iron or steel.

Producing aluminium resulting in the consumption of anodes or the production of anode effects

Producing clinker, or burnt lime resulting in calcination of limestone.

Producing glass using soda ash.

Producing gold using limestone.

Producing cable using a nitrogen cure process.

Importing hydro fluorocarbons or per fluorocarbons.

Subpart 2
(applies on and after **1 January 2013**)

Importing sulphur hexafluoride.

Part 5
Agriculture

Schedule 3—*continued*

Part 5—*continued*

Subpart 1—Fertiliser (processor)

(applies on and after **1 January 2013** unless **subpart 2** brought into force)

Importing or manufacturing synthetic fertilisers containing nitrogen.

Subpart 2—Fertiliser (farmer)

(applies on and after a date determined by Order in Council)

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen.

Subpart 3—Animals (processor)

(applies on and after **1 January 2013** unless **subpart 4** brought into force)

Slaughtering ruminant animals, pigs, horses, or poultry by a person who—

(a) is the operator of a risk management programme registered under the Animal Products Act 1999; and

(b) is not a retail butcher, as defined in section 4(1) of the Animal Products Act 1999.

Dairy processing of milk or colostrum.

Subpart 4—Animals (farmer)

(applies on and after a date determined by Order in Council)

Farming, raising, growing or keeping ruminant animals, pigs, horses or poultry for—

(a) reward; or

(b) the purpose of trade in those animals, or in animal material or animal products taken or derived from those animals.

Part 6
Waste

(applies on and after **1 January 2013**)

Schedule 3—*continued*

Part 6—*continued*

Operating a disposal facility.

Schedule 4

ss 2A, 4(1), 54(1), 57, 58, 59, 62, 63, 65, 66, 72, 79, 96, 106, 130, 137, 143, 148(1)(l), 165 to 169, 172 to 174, 176 to 178

Activities with respect to which persons may be participants

Part 1
Forestry removal activities

(applies on and after **1 January 2008**)

Owning post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Holding a registered forestry right or being the leaseholder under a registered lease of post-1989 forest land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949.

Part 2
Other removal activities

(applies on and after **1 January 2010**)

Producing a product that contains a substance where the substance—

(a) has not been combusted; and

(b) if combusted, would result in emissions; and

(c) is—

(i) permanently embedded in the product; or

(ii) temporarily embedded in the product, and the product is exported with the substance still embedded.

Part 3
Liquid fossil fuels

(applies on and after **1 January 2008**)

Purchasing obligation jet fuel from a participant who carries out an activity in **Part 2 of Schedule 3** where the obligation jet fuel purchased exceeds 10 million litres in a calendar year.

Schedule 4—*continued*

Part 3—*continued*

Part 4
Stationary energy

(applies on or after **1 January 2009**)

Purchasing coal or natural gas from a participant who mines coal or natural gas where the—

(a) coal purchased exceeds 250 000 tonnes in a calendar year; or

(b) natural gas purchased exceeds 2 petajoules in a calendar year.

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