

**Reprint  
as at 1 January 2021**



## **Climate Change Response Act 2002**

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Commencement      see section 2

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This Act is administered by the Ministry for the Environment.**

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## 1 Title

This Act is the Climate Change Response Act 2002.

## Part 1 Preliminary provisions

### 2 Commencement

This Act comes into force on a date 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.

Section 2: section 1, Part 1, subpart 3 of Part 2, and Part 3 (other than section 50(1)(a) and (c)–(h) and section 51) brought into force, on 1 August 2003, by clause 2 of the Climate Change Response Act Commencement Order 2003 (SR 2003/151).

Section 2: subparts 1 and 2 of Part 2 and sections 50(1)(a) and (c)–(h) and 51 brought into force, on 19 November 2007, by clause 2 of the Climate Change Response Act Commencement Order 2007 (SR 2007/336).

### 2A Application of Schedules 3 and 4

- (1) Any provision in this Act that imposes an obligation on, or provides an entitlement to, a person in respect of an activity listed in Schedule 3 or 4—
  - (a) does not apply to that person unless—
    - (i) the Part or subpart in Schedule 3 or 4 in which the activity is listed applies; and
    - (ii) the person, if carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 (for fertiliser–farmer activities or animals–farmer activities), falls within a class of persons prescribed in an Order in Council that applies that subpart; and
  - (b) applies subject to sections 2C(3), 217 to 219, 178A, and 178B.
- (2) Part 1 of Schedule 3 and Part 1 of Schedule 4 apply on and after 1 January 2008.
- (2A) Part 3 of Schedule 4 applies on and after 1 July 2013.
- (3) Part 2 of Schedule 3 and Part 4 of Schedule 4 apply on and after 1 January 2009.
- (4) Subpart 1 of Part 3 of Schedule 3, subpart 1 of Part 4 of Schedule 3, and subpart 1 of Part 2 of Schedule 4 apply on and after 1 January 2010.
- (5) *[Repealed]*
- (5A) Subpart 1 of Part 5 of Schedule 3 (for fertiliser–processor activities)—
  - (a) applies on and after 1 January 2011; but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the period—
    - (i) starting on 1 January 2011; and
    - (ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022).

- (5B) Subpart 2 of Part 5 of Schedule 3 (for fertiliser–farmer activities)—
- (a) applies on and after a date appointed by the Governor-General by Order in Council (*see* section 2B); but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the first year in which that subpart 2 applies to the persons, or class of persons, carrying out that activity.
- (5C) Subpart 3 of Part 5 of Schedule 3 (for animals–processor activities)—
- (a) applies on and after 1 January 2011; but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the period—
    - (i) starting on 1 January 2011; and
    - (ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022).
- (5D) Subpart 4 of Part 5 of Schedule 3 (for animals–farmer activities)—
- (a) applies on and after 1 January 2024 or a later date appointed by the Governor-General by Order in Council (*see* section 2B); but
  - (b) is affected by section 219, which provides that emissions released during the following excluded period do not require units to be surrendered: the first year in which that subpart 4 applies to the persons, or class of persons, carrying out that activity.
- (6) *[Repealed]*
- (7) Subpart 2 of Part 4 of Schedule 3, Part 6 of Schedule 3, and subpart 3 of Part 2 of Schedule 4 apply on and after 1 January 2011.
- (7A) Part 1A of Schedule 3 applies on and after 1 January 2013.
- (7B) Subpart 2 of Part 3 of Schedule 3 applies on and after 1 January 2014.
- (8) Part 1A of Schedule 4 applies on and after 1 January 2023.
- (9) *[Repealed]*
- (10) *[Repealed]*
- (11) *[Repealed]*
- (12) *[Repealed]*
- (13) *[Repealed]*
- (14) Subpart 2 of Part 2 of Schedule 4 applies on and after a date to be appointed by the Governor-General by Order in Council.
- (15) *[Repealed]*
- (16) *[Repealed]*
- (17) *[Repealed]*

(18) *[Repealed]*

(19) *[Repealed]*

Section 2A: inserted, on 26 September 2008, by section 4 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 2A(1): substituted, on 8 December 2009, by section 4(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(1)(a)(ii): amended, on 23 June 2020, by section 4(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(1)(b): amended, on 23 June 2020, by section 4(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(1)(b): amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

Section 2A(1)(b): amended, on 1 January 2013, by section 4(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(2): amended, on 1 July 2013, by section 4(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(2A): inserted, on 1 July 2013, by section 4(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(3): amended, on 23 June 2020, by section 4(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(3): amended, on 1 January 2013, by section 4(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(4): amended, on 23 June 2020, by section 4(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(5): repealed, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(5A): inserted, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(5B): inserted, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(5C): inserted, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(5D): inserted, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(6): repealed, on 23 June 2020, by section 4(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(7A): inserted, on 1 January 2013, by section 4(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(7B): inserted, on 1 January 2013, by section 4(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 2A(8): replaced, on 23 June 2020, by section 4(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(9): repealed, on 23 June 2020, by section 4(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 2A(10): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(11): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(12): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(13): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(15): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(16): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(17): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(18): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 2A(19): repealed, on 8 December 2009, by section 4(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **2B Orders in Council in relation to subparts 2 and 4 of Part 5 of Schedule 3 (Agriculture)**

- (1) This section relates to an Order in Council made under section 2A(5B) or (5D), which appoints a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 (the **subpart**) applies (for fertiliser–farmer activities or animals–farmer activities).
- (2) The order must—
  - (a) be made on the recommendation of the Minister; and
  - (b) appoint a date that is 1 January in a year; and
  - (c) be made at least 1 year before the date appointed by the order.
- (3) The order may provide that the subpart applies, on and after the date appointed by the order,—
  - (a) specifically to 1 or more classes of person who carry out an activity listed in the subpart; or
  - (b) generally, to all persons who carry out an activity listed in the subpart.
- (4) Before recommending the making of the order, the Minister must comply with subsections (5) and (6).
- (5) The Minister must have regard to—
  - (a) the need for the EPA to be able to verify information contained in emissions returns of the persons who will become participants in an activity listed in the subpart by operation of the order; and
  - (b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in the subpart will reduce their emissions; and
  - (c) the desirability of minimising—

- (i) the compliance and administration costs of persons who will become participants in an activity listed in the subpart by operation of the order; and
  - (ii) the administration costs of the Crown in administering the emissions trading scheme.
- (6) The Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the consultant likely to have an interest in the order.

Section 2B: replaced, on 23 June 2020, by section 5 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **2C Effect of overlapping application of subparts of Part 5 of Schedule 3 (Agriculture)**

- (1) This section applies—
  - (a) to the fertiliser–processor and fertiliser–farmer subparts (of Part 5 of Schedule 3) at any time that those subparts apply at the same time (because of an Order in Council made under section 2A(5B)); and
  - (b) to the animals–processor and animals–farmer subparts (of Part 5 of Schedule 3) on and after—
    - (i) 1 January 2024; or
    - (ii) if an Order in Council is made under section 2A(5D), the date appointed in that order.
- (2) If this section applies, then regulations made under section 163(1) may require—
  - (a) a person carrying out a fertiliser–processor activity and a person carrying out a fertiliser–farmer activity to—
    - (i) collect data or other information relating to the same synthetic fertiliser; and
    - (ii) calculate emissions relating to the same synthetic fertiliser; or
  - (b) a person carrying out an animals–processor activity and a person carrying out an animals–farmer activity to—
    - (i) collect data or other information relating to the same ruminant animals, pigs, horses, or poultry; and
    - (ii) calculate emissions relating to the same ruminant animals, pigs, horses, or poultry.
- (3) However,—
  - (a) on and after the first day in respect of which the person carrying out a fertiliser–farmer activity is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the fertiliser–processor activity in relation to that fertiliser; and

- (b) on and after the first day in respect of which the person carrying out an animals–farmer activity is required to surrender units for emissions relating to the ruminant animals, pigs, horses, or poultry, this Act no longer applies to the person carrying out the animals–processor activity in relation to those ruminant animals, pigs, horses, or poultry.
- (4) If an Order in Council is made under section 2A(5B) that has the effect of applying the fertiliser–farmer subpart to all persons who carry out a fertiliser–farmer activity, then section 2A(5A) and the fertiliser–processor subpart are repealed on the first day in respect of which emissions from all persons carrying out a fertiliser–farmer activity may result in liability to surrender units.
- (5) On the first day on which, under section 2A(5D), the animals–farmer subpart applies to all persons who carry out an animals–farmer activity, and emissions from all persons carrying out the activity may result in liability to surrender units, section 2A(5C) and the animals–processor subpart are repealed.
- (6) If, by operation of subsection (3), (4), or (5), this Act no longer applies to a person carrying out a fertiliser–processor activity or an animals–processor activity, then—
- (a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of that subsection, to be a participant in respect of that activity; and
- (b) the person is not required to comply with section 59, but the EPA may, for the purposes of section 59(2), determine that the person has ceased to carry out the activity.
- (7) In this section and sections 2A, 2B, 216, and 219,—
- animals–farmer subpart** means subpart 4 of Part 5 of Schedule 3, and **animals–farmer activity** means an activity listed in that subpart
- animals–processor subpart** means subpart 3 of Part 5 of Schedule 3, and **animals–processor activity** means an activity listed in that subpart
- fertiliser–farmer subpart** means subpart 2 of Part 5 of Schedule 3, and **fertiliser–farmer activity** means an activity listed in that subpart
- fertiliser–processor subpart** means subpart 1 of Part 5 of Schedule 3, and **fertiliser–processor activity** means an activity listed in that subpart.

Section 2C: replaced, on 23 June 2020, by section 5 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 3 Purpose

- (1) The purpose of this Act is to—
- (aa) provide a framework by which New Zealand can develop and implement clear and stable climate change policies that—



- (i) contribute to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and
    - (ii) allow New Zealand to prepare for, and adapt to, the effects of climate change:
  - (a) enable New Zealand to meet its international obligations under the Convention, the Protocol, and the Paris Agreement, 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 starting on 1 January 2008 and ending on 31 December 2012; and
    - (ii) its obligation to report to the Conference of the Parties via the Secretariat under Article 12 of the Convention, Article 7 of the Protocol, and Article 13 of the Paris Agreement:
  - (b) provide for the implementation, operation, and administration of a greenhouse gas emissions trading scheme in New Zealand that supports and encourages global efforts to reduce the emission of greenhouse gases by—
    - (i) assisting New Zealand to meet its international obligations under the Convention, the Protocol, and the Paris Agreement; and
    - (ii) assisting New Zealand to meet its 2050 target and emissions budgets:
  - (c) provide for the imposition, operation, and administration of a levy on specified synthetic greenhouse gases contained in motor vehicles and also another levy on other goods to support and encourage global efforts to reduce the emission of those gases by—
    - (i) assisting New Zealand to meet its international obligations under the Convention, the Protocol, and the Paris Agreement; and
    - (ii) assisting New Zealand to meet its 2050 target and emissions budgets.
- (2) *[Repealed]*
- (2) A person who exercises a power or discretion, or carries out a duty, under this Act must exercise that power or discretion, or carry out that duty, in a manner that is consistent with the purpose of this Act.
- (3) *[Repealed]*

Section 3(1): substituted, on 26 September 2008, by section 5 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 3(1)(aa): inserted, on 14 November 2019, by section 4 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 3(1)(a): amended, on 23 June 2020, by section 6(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(a)(i): amended, on 23 June 2020, by section 6(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(a)(ii): amended, on 23 June 2020, by section 6(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(b): replaced, on 1 January 2013, by section 5 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3(1)(b)(i): amended, on 23 June 2020, by section 6(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(b)(ii): replaced, on 23 June 2020, by section 6(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(c): inserted, on 1 January 2013, by section 5 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3(1)(c)(i): amended, on 23 June 2020, by section 6(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3(1)(c)(ii): replaced, on 23 June 2020, by section 6(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3 first subsection (2): repealed, on 8 December 2009, by section 6(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 3(3): repealed, on 23 June 2020, by section 6(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 3A Treaty of Waitangi (Te Tiriti o Waitangi)

In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi,—

- (a) *[Repealed]*
- (ab) with respect to section 5G (which relates to nominations for the Climate Change Commission), particular attention is required to seeking nominations from iwi and Māori representative organisations:
- (ac) with respect to section 5H (which relates to appointments of members of the Commission), the Minister must, before recommending the appointment of a member to the Commission, have regard to the need for the Commission to have members who have technical and professional skills, experience, and expertise, and innovative approaches, relevant to the Treaty of Waitangi (Te Tiriti o Waitangi):
- (ad) with respect to sections 5ZG and 5ZI (which require the Minister to prepare and publish an emissions reduction plan), the Minister must include in a emissions reduction plan a strategy to recognise and mitigate the impacts on iwi and Māori of reducing emissions and must ensure that iwi and Māori have been adequately consulted on the plan:

- (ae) with respect to section 5ZS (which requires the Minister to prepare a national adaptation plan), the Minister must, in preparing a plan, take into account the economic, social, health, environmental, ecological, and cultural effects of climate change on iwi and Māori:
- (b) with respect to the following provisions (which relate to powers to make regulations or Orders in Council or to give notice in the *Gazette*), before recommending the making of regulations or an order, or giving notice in the *Gazette*, under those provisions, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulations, order, or notice:
  - (i) section 2A(5B) or (5D) (Part 5 of Schedule 3):
  - (ii) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
  - (iii) section 30GA (auctions to sell New Zealand units):
  - (iv) section 30GB (limits and price controls for units):
  - (v) section 30GD (auction monitor):
  - (vi) section 30M (infringement offences):
  - (via) section 30W(1)(a) (price of carbon):
  - (vii) section 60 (exemptions in respect of activities listed in Schedule 3):
  - (viii) section 60A (exemptions for participants in activity listed in Part 1 of Schedule 4):
  - (ix) section 84A or 84B (phase-out rates for eligible industrial activities):
  - (x) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is to require persons to provide electricity-related contracts or any information related to those contracts:
  - (xi) section 161G (eligible agricultural activities):
  - (xii) section 162 (adding further activity to Part 2 of Schedule 4):
  - (xiii) section 163 (methodologies and verifiers):
  - (xiv) section 164 (unique emissions factors):
  - (xv) section 168(1)(nb) (New Zealand's best practice forest management):
  - (xvi) section 186F (pre-1990 offsetting forest land):
  - (xvii) section 194C (input returns):
  - (xviii) section 196F (forestry classifications):

- (xix) section 244 (exemptions from payment of synthetic greenhouse gas levy):
- (xx) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
- (xxi) section 258 (verifiers):
- (c) *[Repealed]*
- (d) with respect to section 161 (which relates to the appointment and conduct of a review panel),—
  - (i) if the Minister initiates a review under section 160(1) or 269(1) and appoints an independent panel under section 160(3) or 269(3), the Minister must ensure that the review panel has at least 1 member who, in the Minister’s opinion, has the appropriate knowledge, skill, and experience relating to the principles of the Treaty of Waitangi and tikanga Māori to conduct the review; and
  - (ii) the review panel must consult with the representatives of iwi and Māori that appear to the panel likely to have an interest in the review; and
  - (iii) the terms of reference for the review panel must incorporate reference to the principles of the Treaty of Waitangi.
- (e) *[Repealed]*
- (f) *[Repealed]*
- (g) *[Repealed]*
- (h) *[Repealed]*
- (i) *[Repealed]*
- (j) *[Repealed]*

Section 3A: inserted, on 8 December 2009, by section 7 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 3A(a): repealed, on 23 June 2020, by section 7(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(ab): inserted, on 14 November 2019, by section 5 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 3A(ac): inserted, on 14 November 2019, by section 5 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 3A(ad): inserted, on 14 November 2019, by section 5 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 3A(ae): inserted, on 14 November 2019, by section 5 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 3A(b): replaced, on 23 June 2020, by section 7(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(b)(via): inserted, on 1 January 2021, by section 209 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(c): repealed, on 23 June 2020, by section 7(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(d)(i): amended, on 1 January 2013, by section 6 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 3A(e): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(f): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(g): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(h): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(i): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3A(j): repealed, on 23 June 2020, by section 7(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **3B Consultation about certain regulations, orders, and notices**

- (1) The Minister must comply with this section before recommending the making of regulations or an Order in Council, or giving notice in the *Gazette*, under any of the following:
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
  - (b) section 30GA (auctions to sell New Zealand units):
  - (c) section 30GB (limits and price controls for units):
  - (d) section 30GD (auction monitor):
  - (e) section 30M (infringement offences):
  - (ea) section 30W(1)(a) (price of carbon):
  - (f) section 60 (exemptions in respect of activities listed in Schedule 3), unless the Crown has signed a negotiated greenhouse agreement with the person exempted:
  - (g) section 60A (exemptions for participants in activity listed in Part 1 of Schedule 4):
  - (h) section 84A or 84B (phase-out rates for eligible industrial activities):
  - (i) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is—
    - (i) to require persons to provide electricity-related contracts or any information related to those contracts; or
    - (ii) to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160:
  - (j) section 161G(1)(a)(ii) (allocative baseline of eligible agricultural activity):
  - (k) section 162 (adding further activity to Part 2 of Schedule 4):

- (l) section 163 (methodologies and verifiers):
  - (m) section 164 (unique emissions factors):
  - (n) section 168(1)(nb) (New Zealand's best practice forest management):
  - (o) section 186F (pre-1990 offsetting forest land):
  - (p) section 194C (input returns):
  - (q) section 196F (forestry classifications):
  - (r) section 216 (voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity):
  - (s) *[Repealed]*
  - (t) section 244 (exemptions from payment of synthetic greenhouse gas levy):
  - (u) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
  - (v) section 258 (verifiers).
- (2) The Minister must also comply with this section before recommending the revocation of an Order in Council under section 60, 60A, or 244 (exemptions for various matters).
- (3) The Minister must be satisfied that 1 of the following has consulted the persons (or representatives of those persons) that appear to the consulter likely to be substantially affected by any regulations made in accordance with the recommendation, by any order made or revoked in accordance with the recommendation, or by the notice:
- (a) the Minister or the chief executive; or
  - (b) for regulations made under section 30GB, 84A, or 84B, the Minister, the chief executive, or the Climate Change Commission.
- (4) The process for consultation must, to the extent practicable in the circumstances, include—
- (a) adequate and appropriate notice of the proposed terms of the recommendation or notice, and of the reasons for it; and
  - (b) a reasonable opportunity for consulted persons to consider the recommendation or notice and make submissions; and
  - (c) adequate and appropriate consideration of submissions.
- (5) This section does not apply to regulations made under the following if the Minister considers it is in the national interest that the regulations be made urgently:
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
  - (b) section 30GA (auctions to sell New Zealand units):
  - (c) section 30GB (limits and price controls for units):
  - (d) section 30GD (auction monitor).

- (6) A failure to comply with this section does not affect the validity of any regulations, order, or notice to which it applies.

Section 3B: inserted, on 23 June 2020, by section 8 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3B(1)(ea): inserted, on 1 January 2021, by section 210(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 3B(1)(s): repealed, on 1 January 2021, by section 210(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### 4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

**2050 target** means the emissions reduction target set in section 5Q

**account number** means a unique account number assigned to a holding account by the Registrar under section 15(1)

**agency** means,—

- (a) in relation to the motor vehicle levy, the Registrar of Motor Vehicles; and
- (b) in relation to the goods levy, the chief executive of the New Zealand Customs Service

**allocate**, in relation to New Zealand units,—

- (a) means the allocation or provisional allocation of New Zealand units; but
- (b) does not include the transfer of New Zealand units

**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

**animal welfare export certificate** means an animal welfare export certificate issued under section 46 of the Animal Welfare Act 1999

**annual financial statements of the Government** has the meaning given in section 2(1) of the Public Finance Act 1989

**approved overseas unit** means a unit, other than a New Zealand unit, that is—

- (a) issued (as defined by this section); and
- (b) prescribed as a unit that may be transferred to accounts in the Registry

**associated person** has the meaning given to it by subsection (3)

**action** means an auction to sell New Zealand units under section 6A

**biogenic methane** means all methane greenhouse gases produced from the agriculture and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)

**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)

**carbon accounting area** means an area of post-1989 forest land that—

- (a) is defined by a person who is registered or has applied to register as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4; and
- (b) meets any relevant criteria specified in regulations made under this Act; or
- (c) is constituted as a carbon accounting area by operation of section 188(7)(b) or 192(3)(b)

**carbon dioxide equivalent**, in relation to a greenhouse gas, means the amount of carbon dioxide (in tonnes) that would produce the same global warming as the amount of that gas, calculated in accordance with international climate change obligations

**carbon equivalence**, in relation to land that is the subject of an offsetting forest land application under section 186A, means that the offsetting forest land achieves, within the usual rotation period for forest species on the pre-1990 forest land, the same carbon stock as was contained in the pre-1990 forest land at the time of the clearing as determined in accordance with regulations made under section 186F

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

**clear**, in relation to a tree,—

- (a) includes—
  - (i) felling, harvesting, burning, removing by mechanical means, spraying with a herbicide intended to kill the tree, or undertaking any other form of human activity that kills the tree; and
  - (ii) felling, burning, killing, uprooting, or destroying by a natural cause or event; but
- (b) does not include pruning or thinning

**Climate Change Commission** and **Commission** mean the Climate Change Commission established under section 5A

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

**Conference of the Parties** means the Conference of the Parties to the Convention

**consolidated group** means a consolidated group formed under section 150



**Convention—**

- (a) means the United Nations Framework Convention on Climate Change done at New York on 9 May 1992, a copy of the English text of which is set out in Schedule 1; and
- (b) includes any amendments made to the Convention that are, or will become, binding on New Zealand from time to time

**Crown conservation contract** means a written agreement with the Crown (including a concession granted in accordance with Part 3B of the Conservation Act 1987) for the removal and storage of greenhouse gases on post-1989 forest land that is Crown land managed or administered under the Conservation Act 1987 or any of the Acts listed in Schedule 1 of that Act

**Crown holding account—**

- (a) means a holding account that is established and held by the Crown in accordance with a direction of the Minister of Finance under section 6; and
- (b) does not include a holding account opened by any other person on behalf of the Crown under section 18A

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

**dairy processing**, in relation to milk or colostrum, means the first occasion, other than at a farm dairy, 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,—

- (a) means to convert forest land to land that is not forest land (*see* section 181, for example); and
- (b) includes deforestation after forest land is cleared, where section 179 applies

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

- (a) at which waste is disposed; and
- (b) at which the waste disposed includes waste from a household that is not entirely from construction, renovation, or demolition of a house; and
- (c) that operates, at least in part, as a business to dispose of waste; but
- (d) does not include a facility, or any part of a facility, at which waste is combusted for the purpose of generating electricity or industrial heat

**dispose**, in relation to waste,—

- (a) means—

- (i) the final or more than short-term deposit of waste into or onto land set apart for that purpose; or
  - (ii) the incineration of waste by deliberately burning the waste to destroy it; but
- (b) does not include any deposit of biosolids for rehabilitation or other beneficial purposes

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

**electrical switchgear** means fittings for—

- (a) controlling the distribution of electricity; or
- (b) controlling or protecting electrical circuits and electrical equipment; or
- (c) the transmission of electricity

**eligible activity** means—

- (a) an eligible agricultural activity; or
- (b) an eligible industrial activity

**eligible agricultural activity** means an activity or subclass of an activity listed in Part 5 of Schedule 3 in respect of which a person is required to surrender units for emissions under this Act

**eligible industrial activity** means an activity that is specified as an eligible industrial activity in regulations made under section 161A

**eligible person** means a person who meets any requirements for receiving an allocation of New Zealand units specified in, as relevant,—

- (a) section 80(1):
- (b) section 85(1):
- (c) any regulations made under this Act:
- (d) the pre-1990 forest land allocation plan

**emissions,—**

- (a) in relation to Parts 1A and 1B, means emissions of greenhouse gases; but
- (b) in relation to an activity listed in Schedule 3 or 4, means carbon dioxide equivalent emissions of greenhouse gases from the activity

**emissions budget** means the quantity of emissions that will be permitted in each emissions budget period as a net amount of carbon dioxide equivalent

**emissions budget period** means a 5-year period, except for the first 4-year period in the years 2022 to 2025, as specified in section 5X(3)

**emissions reduction plan** means a plan for achieving an emissions budget prepared in accordance with sections 5ZG to 5ZI

**emissions return—**

- (a) means—
  - (i) an annual emissions return submitted under section 65; or
  - (ii) a quarterly emissions return submitted under section 66; or
  - (iii) a final emissions return submitted under section 118; or
  - (iv) an emissions return submitted under a provision of Part 5 or Schedule 1AA; and
- (b) includes the following as if they had been submitted in that form:
  - (i) an emissions return as amended by the EPA under section 120; and
  - (ii) the EPA's assessment under section 121 of the matters that should have been in an emissions return; and
- (c) includes an emissions return that shows nil liability

**emissions trading scheme** means (except in section 3) the greenhouse gas emissions trading scheme established under this Act

**entity**, in relation to a group, means a reporting entity or a reporting entity's subsidiary, within the meaning of section 5 of the Financial Reporting Act 2013

**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

**ETS participant provisions** means Parts 4 to 5D of this Act

**exempt land—**

- (a) means pre-1990 forest land that has been declared to be exempt land—
  - (i) under section 183 or 183B; or
  - (ii) under section 184 and in respect of which the conditions in section 184(6) have been met; but

- (b) does not include any forest land that met the definition in paragraph (a), but has been deforested, and in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2)

**exotic forest species** means a forest species that is not an indigenous forest species

**export** has a corresponding meaning to exportation in section 5(1) of the Customs and Excise Act 2018

**farm dairy** has the same meaning as in section 4(1) of the Animal Products Act 1999

**financial year** has the same meaning as in section 2(1) of the Public Finance Act 1989

**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 is likely to have, tree crown cover from forest species of more than 30% in each hectare; and
- (b) includes an area of land that temporarily does not meet the requirements specified in paragraph (a) because of human intervention or natural causes but that is likely to revert to land that meets the requirements specified in paragraph (a); but
- (c) does not include—
- (i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 metres; or
  - (ii) an area of land where the forest species have, or are likely to have, a tree crown cover of an average width of less than 30 metres, unless the area is contiguous with land that meets the requirements specified in paragraph (a) or (b)

**forest species** means a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located, but does not include tree species grown or managed primarily for the production of fruit or nut crops

**forestry activity** means—

- (a) an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or pre-1990 offsetting forest land); or
- (b) an activity listed in Part 1 of Schedule 4 (forestry on post-1989 forest land)

**forestry classification** has the meaning given in section 196

**fugitive coal seam gas** means gas released by the activity of mining coal as calculated in accordance with any regulations made under this Act

**general cancellation account** means an account in the Registry for the purpose of holding units on behalf of the Crown that are cancelled for any reason

**goods** means all kinds of movable property, including motor vehicles

**goods levy** means the synthetic greenhouse gas levy imposed by section 227(1)(b)

**greenhouse gas** means—

- (a) carbon dioxide (CO<sub>2</sub>):
- (b) methane (CH<sub>4</sub>):
- (c) nitrous oxide (N<sub>2</sub>O):
- (d) any hydrofluorocarbon:
- (e) any perfluorocarbon:
- (f) sulphur hexafluoride (SF<sub>6</sub>)

**gross emissions** means New Zealand's total emissions from the agriculture, energy, industrial processes and product use, and waste sectors (as reported in the New Zealand Greenhouse Gas Inventory)

**group** has the same meaning as in section 5 of the Financial Reporting Act 2013

**holding account** means an account in the Registry for the purpose of holding units

**import** has a corresponding meaning to importation in section 5(1) of the Customs and Excise Act 2018

**importer** has the same meaning as in section 5(1) of the Customs and Excise Act 2018

**indigenous forest species** means a forest species that occurs naturally in New Zealand or has arrived in New Zealand without human assistance

**indirect greenhouse gas**—

- (a) means a gas that—
  - (i) reacts with other gases to form a greenhouse gas; or
  - (ii) changes the chemistry of the atmosphere in a way that increases the lifetime of other greenhouse gases; and
- (b) includes, but is not limited to, carbon monoxide, nitrogen oxides, non-methane volatile organic compounds, and sulphur dioxide

**industrial or trade premises** means any premises used for any industrial or trade purposes, or any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes; but does not include any production land

**international climate change obligations** means New Zealand's international obligations under the Convention, the Protocol, or the Paris Agreement

**international transaction body** means a prescribed body that confirms the validity of transactions relating to accounting of greenhouse gas emissions

**issued**, in relation to an approved overseas unit, means—

- (a) issued by an overseas registry; or
- (b) issued in another way and approved by an international transaction body

**inventory agency** means the chief executive

**landowner**,—

- (a) in relation to Crown land, means the appropriate Minister (as that term is defined in section 2A of the Crown Minerals Act 1991); and
- (b) in relation to land other than Crown land, means—
  - (i) the legal 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 Maori Act 1993), the person or persons who have title to the land as determined under Te Ture Whenua Maori Act 1993; or
  - (iii) if the land is Maori freehold land (as defined in section 4 of Te Ture Whenua Maori Act 1993), the legal owner of the land

**leviable goods** means goods that contain a specified synthetic greenhouse gas, but does not include an air-conditioning system that is part of a motor vehicle

**leviable motor vehicle** means a motor vehicle that includes, as part of the motor vehicle, an air-conditioning system containing a specified synthetic greenhouse gas

**levy year** means the period of 12 months starting on 1 January and ending with the close of 31 December

**local authority** means a local authority within the meaning of the Local Government Act 2002

**mandatory emissions return period** means any of the following periods:

- (a) the first commitment period starting on 1 January 2008 and ending on 31 December 2012;
- (b) the 5-year period starting on 1 January 2013 and ending on 31 December 2017;
- (c) the 5-year period starting on 1 January 2018 and ending on 31 December 2022;
- (d) the 3-year period starting on 1 January 2023 and ending on 31 December 2025:

(e) the 5-year period starting on 1 January 2026 and ending on 31 December 2030:

(f) each consecutive 5-year period after that

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

**member**, in relation to an unincorporated body, means a partner, joint venturer, trustee, joint owner of land, or other member of the body

**merchantable timber** means timber from the stem of a tree more 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** 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

**motor vehicle** has the same meaning as in section 2(1) of the Land Transport Act 1998

**motor vehicle levy** means the synthetic greenhouse gas levy imposed by section 227(1)(a)

**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

**net accounting emissions** means the total of gross emissions and emissions from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory), less—

(a) removals, including from land use, land-use change, and forestry (as reported in the New Zealand Greenhouse Gas Inventory); and

(b) offshore mitigation

**New Zealand Greenhouse Gas Inventory** means the reports that are required under Articles 4 and 12 of the Convention, Article 7.1 of the Protocol, and Article 13.7 of the Paris Agreement and that are prepared in accordance with section 32(1)

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

**nominated entity**, in relation to a consolidated group, means an entity appointed under section 150(4)(b) or 152(3)(b) as the nominated entity of a consolidated group

**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

**offsetting forest land** means land that the EPA has approved as offsetting forest land under section 186B

**offshore mitigation** means emissions reductions and removals, or allowances from emissions trading schemes,—

- (a) that originate from outside New Zealand; and
- (b) that are expressed as a quantity of carbon dioxide equivalent; and
- (c) that are robustly accounted for to ensure that, among other things, double counting is avoided; and
- (d) that either—
  - (i) represent an actual additional, measurable, and verifiable reduction or removal of an amount of carbon dioxide equivalent; or
  - (ii) are an emissions trading scheme allowance that triggers the reduction of carbon dioxide equivalent

**operating**, in relation to a disposal facility, means being in control of the facility

**ordinary hours of business** means the hours of 8 am to 6 pm from Monday to Friday

**overseas registry** means a prescribed overseas registry from which or to which units may be transferred to or from accounts in the Registry

**Paris Agreement**—

- (a) means the Paris Agreement done at Paris on 12 December 2015, a copy of the English text of which is set out in Schedule 2A; and
- (b) includes any amendments made to the Paris Agreement that are, or will become, binding on New Zealand from time to time

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

**performance**, in relation to ruminants and other farmed livestock, means the production statistics with respect to those animals, including, but not limited to, weight, milk production, lambing and calving percentage, and wool weight



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

- (a) is one of the following:
  - (i) land that was not forest land on 31 December 1989;
  - (ii) land that was forest land on 31 December 1989 but was deforested in the period beginning on 1 January 1990 and ending on 31 December 2007;
  - (iii) land that was pre-1990 forest land, other than exempt land,—
    - (A) that was deforested on or after 1 January 2008; and
    - (B) 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;
  - (iv) land that was pre-1990 forest land, other than exempt land, that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land;
  - (v) land that was pre-1990 offsetting forest land that was deforested after 1 January 2013 and in respect of which any liability to surrender units arising in relation to an activity listed in Part 1A of Schedule 3 has been satisfied;
  - (vi) land that was exempt land—
    - (A) that has been deforested; and
    - (B) in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2):
  - (vii) land that was exempt land that has been deforested more than 8 years ago; and
- (b) is not offsetting forest land or pre-1990 offsetting forest land

**pre-1990 forest land**—

- (a) means forest land—
  - (i) that was forest land on 31 December 1989; and
  - (ii) that remained as forest land on 31 December 2007 (taking into account subsection (5)); and
  - (iii) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; but
- (b) does not include any forest land that met the definition in paragraph (a), but—
  - (i) has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or

- (ii) was declared to be exempt land, has been deforested, and the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3 had the land not been exempt land have been surrendered under section 187(2)(b)

**pre-1990 forest land allocation plan** means the allocation plan issued under section 70 in respect of pre-1990 forest land

**pre-1990 offsetting forest land** means offsetting forest land that the EPA has noted as pre-1990 offsetting forest land on the register under section 186D(3)

**primary representative** means an individual appointed by an account holder as a primary representative of the account holder in accordance with any regulations made under Part 2

**production land** means any land used for the production of primary products (including agricultural, pastoral, horticultural, and forestry products); but does not include any buildings

**Protocol**—

- (a) means the Protocol to the United Nations Framework Convention on Climate Change done at Kyoto on 11 December 1997, a copy of the English text of which is set out in Schedule 2; and
- (b) includes any amendments made to the Protocol that are, or will become, binding on New Zealand from time to time

**provisional allocation** means a provisional allocation made under section 81

**public notice** means a notice published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin, and made accessible via the Internet

**publicly available**, in relation to a document or information, means that the document or information is available at all reasonable times, free of charge, on an Internet site

**recover**, in relation to dispose,—

- (a) means the extraction of materials or energy from waste for further use or processing; and
- (b) includes making waste into compost

**recycle**, in relation to dispose, means the reprocessing of waste to produce new materials

**registered**,—

- (a) in relation to a motor vehicle, has the same meaning as in section 2(1) of the Land Transport Act 1998; but
- (b) otherwise means registered in accordance with this Act

**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 2017, means a lease registered under that Act;
- (b) in relation to a lease in respect of land that is not registered under the Land Transfer Act 2017, means a lease registered under the Deeds Registration Act 1908

**Registrar** means the person appointed under section 11

**Registrar of Motor Vehicles** has the same meaning as Registrar in section 233(1) of the Land Transport Act 1998

**Registry** means the Registry established in New Zealand for the purpose set out in section 10

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

**removals**,—

- (a) in relation to a removal activity, means carbon dioxide equivalent greenhouse gases that are, as a result of the removal activity,—
  - (i) removed from the atmosphere; or
  - (ii) not released into the atmosphere; or
  - (iii) a reduction from emissions reported in—
    - (A) New Zealand’s annual inventory report under section 32 as required under the Convention or Protocol for any year; or
    - (B) any emissions report from New Zealand under a successor international agreement; and
- (b) in Part 1B and the definitions of net accounting emissions and offshore mitigation, means greenhouse gases that are removed from the atmosphere

**reuse**, in relation to dispose, means the further use of waste in its existing form for the original purpose of the materials or products that constitute the waste or for a similar purpose

**Secretariat** means the Secretariat of the Convention

**sink activity**, in relation to greenhouse gas removals, means—

- (a) an activity under Article 3.3 of the Protocol; or
- (b) an elected activity under Article 3.4 of the Protocol

**solid biofuel** means wood, wood waste, sulphate lyes, or charcoal

**specified synthetic greenhouse gas** means a hydrofluorocarbon or perfluorocarbon specified in regulations made under section 246(1)(a)

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

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

**synthetic greenhouse gas** means—

- (a) a hydrofluorocarbon; or
- (b) a perfluorocarbon

**synthetic greenhouse gas levy** or **levy** means the levy imposed by section 227

**the Customs** has the same meaning as Customs in section 5(1) of the Customs and Excise Act 2018

**tree weed** means a tree that is defined or designated as—

- (a) a pest in a pest management strategy under the Biosecurity Act 1993; or
- (b) a tree weed in regulations made under this Act

**tree weed spread** means the spread of a tree weed by natural regeneration

**unincorporated body**—

- (a) means an unincorporated body of persons; and
- (b) includes (but is not limited to)—
  - (i) a partnership, a joint venture, or the trustees of a trust; and
  - (ii) if land, a lease, a forestry right, or a Crown conservation contract is not owned, held, or entered into by a partnership, joint venture, or the trustees of a trust, 3 or more joint—
    - (A) landowners; or
    - (B) leaseholders; or
    - (C) holders of a registered forestry right; or
    - (D) parties to a Crown conservation contract; but
- (c) does not, unless they are partners, joint venturers, or trustees of a trust, include 2 joint—
  - (i) landowners; or
  - (ii) leaseholders; or
  - (iii) holders of a registered forestry right; or
  - (iv) parties to a Crown conservation contract

**unit** means a New Zealand unit or an approved overseas unit

**usual rotation period**, in relation to a forest species on land that is the subject of an offsetting forest land application under section 186A, means the usual rotation period prescribed for a forest species in any regulations made under this Act

**waste** means any thing that has been disposed of or discarded—

- (a) including (but not limited to) any disposed of or discarded thing that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste); but
- (b) excluding any solid biofuel combusted for the purposes of generating electricity or industrial heat

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

- (2) Terms and expressions used and not defined in this Act but defined in the Convention, the Protocol, or the Paris Agreement have, unless the context otherwise requires, the same meaning as in the Convention, the Protocol, or the Paris Agreement.
- (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 the bodies corporate—
    - (i) consist substantially of the same members or shareholders; or
    - (ii) are under the control of the same persons; or
  - (b) any of the bodies corporate—
    - (i) has the power, directly or indirectly, to exercise, or control the exercise of, 25% or more of the voting power at a meeting of the other; or
    - (ii) is able to appoint or control 25% or more of the governing body of the other.
- (4) For the purposes of the definition of dispose, a deposit of waste is short-term if, not later than 6 months after the deposit (or any later time that the chief executive has agreed to in writing), the waste is—
  - (a) reused or recycled; or
  - (b) recovered; or
  - (c) removed from the land for any other reason.
- (5) Despite anything in this Act, a hectare of land is not to be treated as pre-1990 forest land if,—
  - (a) on 1 January 2008, the land had—
    - (i) no standing exotic forest species (dead or alive), other than a strip of standing exotic forest species that had, or was likely to have, tree crown cover of an average width of less than 30 metres; and
    - (ii) no other merchantable timber from exotic forest species; and
  - (b) 4 years after the date on which the land met the conditions in paragraph (a), it is not forest land and no allocation has been made in respect of the land under the pre-1990 forest land allocation plan.

- (6) For the purposes of a provision of this Act that relates to a participant who submits an emissions return that shows nil liability, **activity** or **activities** includes any thing that would have been an activity listed in Schedule 3 or 4 if it had been carried out as, or to the extent, described in Schedule 3 or 4 during the period reported on in the emissions return.
- (7) For the purposes of the definition of landowner in relation to the activity listed in Part 1 of Schedule 3, 1 or more pieces of land (**land A**) and 1 or more pieces of other land (**land B**) that are owned by the same person are to be treated as if they were owned by different persons if—
- (a) land A and land B are held under different trusts; and
  - (b) each trust has the same trustee or trustees; and
  - (c) the trustees hold land A and land B in their capacity as professional trustees (as defined in section 183(7)).

Section 4(1) **2050 target**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **account number**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **account number**: amended, on 23 June 2020, by section 9(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **agency**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **allocate**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **allocation plan**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **animal material**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal product**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **animal welfare export certificate**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **annual financial statements of the Government**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **approved overseas unit**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **assigned amount unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **associated person**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **auction**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **Australian eligible industrial activity**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **biogenic methane**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **cancel**: substituted, on 26 September 2008, by section 6(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon accounting area**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **carbon accounting area** paragraph (b): amended, on 8 December 2009, by section 8(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **carbon accounting area** paragraph (c): added, on 8 December 2009, by section 8(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **carbon dioxide equivalent**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **carbon equivalence**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **carry-over**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **CDM registry**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **certified emission reduction unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **chief executive**: substituted, on 5 December 2011, by section 4(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **chief executive responsible for the administration of this Act**: repealed, on 5 December 2011, by section 4(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **clean development mechanism project**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **clear**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Climate Change Commission** and **Commission**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **coal**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **commitment period**: repealed, on 1 August 2003, by section 5(3) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **commitment period reserve**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **consolidated group**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **Convention**: substituted, on 8 December 2009, by section 8(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **conversion account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **convert**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **Crown conservation contract**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Crown holding account**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **Crown land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dairy processing**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **deforest**: replaced, on 1 January 2021, by section 211 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **designated operational entity**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **disposal facility**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **dispose**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **document**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **draft allocation plan**: repealed, on 8 December 2009, by section 8(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **elect**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **electrical switchgear**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **eligible activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible agricultural activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible industrial activity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible land**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **eligible person**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **eligible person** paragraph (d): replaced, on 23 June 2020, by section 9(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **emission reduction unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **emissions**: replaced, on 14 November 2019, by section 6(2) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **emissions budget**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **emissions budget period**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **emissions reduction plan**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **emissions return**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **emissions trading scheme**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **entity**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).



Section 4(1) **Environmental Protection Authority** or **EPA**: inserted, on 5 December 2011, by section 4(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **ETS participant provisions**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **executive board**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **exempt land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **exempt land** paragraph (a)(i): replaced, on 23 June 2020, by section 9(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **exotic forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **expire** or **expiry**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **export**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **export**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **farm dairy**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **financial year**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **first commitment period**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **fishing allocation plan**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **Food Standards Code**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest land** paragraph (a): amended, on 8 December 2009, by section 8(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest land** paragraph (c)(i): amended, on 8 December 2009, by section 8(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest land** paragraph (c)(ii): amended, on 8 December 2009, by section 8(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **forest species**: amended, on 8 December 2009, by section 8(10) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **forestry activity**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **forestry classification**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **fugitive coal seam gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **general cancellation account**: amended, on 23 June 2020, by section 9(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **goods**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **goods levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **greenhouse gas**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **gross emissions**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **group**: replaced, on 1 April 2014, by section 126 of the Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102).

Section 4(1) **holding account**: amended, on 23 June 2020, by section 9(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **holding account**: amended, on 1 August 2003, by section 5(1)(c) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 4(1) **import**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **import**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **importer**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **importer**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **independent transaction log**: repealed, on 26 September 2008, by section 6(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **indigenous forest species**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **initial assigned amount**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **international climate change obligations**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **international transaction body**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **international transaction log**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **inventory agency**: substituted, on 5 December 2011, by section 4(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **issued**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **joint implementation project**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **Kyoto units**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **landowner**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **landowner** paragraph (a): amended, on 24 May 2013, by section 65 of the Crown Minerals Amendment Act 2013 (2013 No 14).

Section 4(1) **leviable goods**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **leviable motor vehicle**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **levy year**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1): **local authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 4(1) **long-term certified emission reduction replacement account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **long-term certified emission reduction unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **mandatory emissions return period**: inserted, on 23 June 2020, by section 9(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **Maori land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **member**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **merchantable timber**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **mining**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister**: substituted, on 5 December 2011, by section 4(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Minister responsible for the administration of this Act**: repealed, on 5 December 2011, by section 4(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Minister responsible for the inventory agency**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **Minister responsible for the Registry**: repealed, on 26 September 2008, by section 6(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **motor vehicle**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **motor vehicle levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **natural gas**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **net accounting emissions**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **New Zealand Customs Service and the Customs**: repealed, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **New Zealand Greenhouse Gas Inventory**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **New Zealand unit**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **nominated entity**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

- Section 4(1) **non-compliance cancellation account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **obligation fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **obligation jet fuel**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **offsetting forest land**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 4(1) **offshore mitigation**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).
- Section 4(1) **operating**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **overseas registry**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **Paris Agreement**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **participant**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **Party**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **post-1989 forest land**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **pre-1990 forest land**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **pre-1990 forest land allocation plan**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **pre-1990 offsetting forest land**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 4(1) **previous commitment period**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 4(1) **primary representative**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **Protocol**: substituted, on 8 December 2009, by section 8(12) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 4(1) **provisional allocation**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 4(1) **public notice**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **publicly available**: inserted, on 14 November 2019, by section 6(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).
- Section 4(1) **recover**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **recycle**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 4(1) **registered**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **registered forestry right**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **registered lease**: replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 4(1) **Registrar**: inserted, on 5 December 2011, by section 4(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 4(1) **Registrar of Motor Vehicles**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **relevant commitment period**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **removal activity**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **removal unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **removals**: replaced, on 14 November 2019, by section 6(3) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 4(1) **representative identifier**: repealed, on 26 September 2008, by section 6(19) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **retire**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **retirement account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **reuse**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **sink cancellation account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **solid biofuel**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **specified synthetic greenhouse gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **subsequent commitment period**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **supervisory committee**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **surrender**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **surrender**: amended, on 23 June 2020, by section 9(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **surrender account**: inserted, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(1) **synthetic greenhouse gas**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **synthetic greenhouse gas levy** or **levy**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **temporary certified emission reduction replacement account**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **temporary certified emission reduction unit**: repealed, on 23 June 2020, by section 9(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **the Customs**: inserted, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 4(1) **tree weed**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **tree weed spread**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **unincorporated body**: inserted, on 8 December 2009, by section 8(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **unit**: replaced, on 23 June 2020, by section 9(1), (2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(1) **usual rotation period**: inserted, on 1 January 2013, by section 7(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(1) **waste**: substituted, on 8 December 2009, by section 8(13) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(1) **year**: added, on 26 September 2008, by section 6(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(2): amended, on 23 June 2020, by section 9(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(3): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(4): added, on 26 September 2008, by section 6(24) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 4(5): substituted, on 8 December 2009, by section 8(14) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 4(6): inserted, on 1 January 2013, by section 7(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 4(6): amended, on 23 June 2020, by section 9(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 4(7): inserted, on 1 January 2013, by section 7(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **4AA Greenhouse gas definition may be amended to add gases**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,—
  - (a) amend the definition of greenhouse gas in section 4 to add 1 or more other gases; and
  - (b) if necessary, amend Schedule 1AA to set out transitional provisions for the addition.
- (2) The Minister must not recommend the making of an order unless the Minister is satisfied that New Zealand has international climate change obligations in relation to the additional gas or gases.

Section 4AA: inserted, on 23 June 2020, by section 10 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **4A Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 4A: inserted, on 14 November 2019, by section 7 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5 Act binds the Crown**

This Act binds the Crown.

### **Part 1A Climate Change Commission**

Part 1A: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **Subpart 1—Establishment and appointments**

Subpart 1: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5A Climate Change Commission established**

The Climate Change Commission is established.

Section 5A: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5B Purposes of Commission**

The purposes of the Commission are—

- (a) to provide independent, expert advice to the Government on mitigating climate change (including through reducing emissions of greenhouse gases) and adapting to the effects of climate change; and
- (b) to monitor and review the Government's progress towards its emissions reduction and adaptation goals.

Section 5B: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5C Commission is Crown entity**

- (1) The Commission is a Crown entity for the purposes of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to, and in relation to, the Commission except to the extent that this Act expressly provides otherwise.

Section 5C: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5D Membership of Commission**

- (1) The Commission consists of—

- (a) a Chairperson;
  - (b) a Deputy Chairperson;
  - (c) no fewer than 3, and no more than 7, other members.
- (2) The members of the Commission are a board for the purposes of the Crown Entities Act 2004.

Section 5D: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5D(1)(c): replaced, on 23 June 2020, by section 11 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **5E Process for appointment of members of Commission**

- (1) The Minister may recommend to the Governor-General that a person be appointed a member of the Commission if—
- (a) the person has been nominated by the nominating committee; and
  - (b) the Minister has had regard to the matters in section 5H; and
  - (c) the Minister has consulted representatives of all political parties in Parliament.
- (2) The Minister may, at any time, recommend to the Governor-General that a current member of the Commission be appointed to the position of Chairperson or Deputy Chairperson of the Commission.

Section 5E: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **5F Establishment and membership of nominating committee**

- (1) The Minister must establish a committee to nominate candidates to the Minister for appointment as members of the Commission.
- (2) The nominating committee must comprise—
- (a) the Chairperson of the Commission; and
  - (b) 4 or more other people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.
- (3) If the position of Chairperson is vacant, the nominating committee must comprise 5 or more people who, in the opinion of the Minister, have the relevant skills or experience to identify suitably qualified candidates.

Section 5F: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **5G Role of nominating committee**

- (1) On request of the Minister, the nominating committee must nominate 1 or more people who, in the opinion of the committee, are suitably qualified to be appointed to be members of the Commission.
- (2) Before nominating a person for appointment, the nominating committee must—



- (a) publicly call for expressions of interest in being appointed; and
- (b) consult any person or group who may have an interest in being a member of the Commission, including—
  - (i) iwi and Māori representative organisations; and
  - (ii) any person or group that the Minister has identified as having an interest.

Section 5G: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5H Matters Minister must have regard to before recommending appointment of member of Commission**

- (1) Before recommending the appointment of a member of the Commission, the Minister must have regard to the need for the Commission to have members who, collectively, have—
  - (a) an understanding of climate change mitigation and adaptation, including the likely effects of any responses to climate change; and
  - (b) experience working in or with local and central government; and
  - (c) knowledge of the process by which public and regulatory policy is formed and given effect to; and
  - (d) technical and professional skills, experience, and expertise in, and an understanding of innovative approaches relevant to,—
    - (i) the environmental, ecological, social, economic, and distributional effects of climate change and climate change policy interventions; and
    - (ii) the Treaty of Waitangi (Te Tiriti o Waitangi) and te ao Māori (including tikanga Māori, te reo Māori, mātauranga Māori, and Māori economic activity); and
    - (iii) a range of sectors and industries, at regional and local levels.

- (2) In this section,—

**mātauranga Māori** means traditional Māori knowledge

**te ao Māori** means the Māori world

**te reo Māori** means the Māori language

**tikanga Māori** means Māori custom and protocol.

Section 5H: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5I Members' term of office**

In recommending the appointment of a member of the Commission, the Minister must recommend a term of office that ensures that no more than 2 members have their terms of office expire in any calendar year.

Section 5I: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### Subpart 2—Commission’s functions, duties, and powers

Subpart 2: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

## 5J Commission’s functions

The functions of the Commission are—

- (a) to review the 2050 target and, if necessary, recommend changes to the target (*see* sections 5R to 5T):
- (b) to provide advice to the Minister to enable the preparation of emissions budgets (*see* section 5ZA):
- (c) to recommend any necessary amendments to emissions budgets (*see* section 5ZE):
- (d) to provide advice to the Minister about the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods (*see* section 5ZF):
- (e) to provide advice to the Minister to enable the preparation of an emissions reduction plan (*see* section 5ZH):
- (f) to monitor and report on progress towards meeting emissions budgets and the 2050 target (*see* sections 5ZJ to 5ZL):
- (fa) to make recommendations to the Minister about limits and price control settings for units (*see* section 5ZOA):
- (fb) to make recommendations to the Minister about decreased or increased phase-out rates (*see* section 5ZOB):
- (g) to prepare national climate change risk assessments (*see* section 5ZQ):
- (h) to prepare reports on the implementation of the national adaptation plan (*see* section 5ZU):
- (ha) to provide advice to the Minister (as required by section 220) on the progress that has been made towards—
  - (i) meeting the primary sector climate change commitments set out in Schedule 5; and
  - (ii) participants in the activities listed in subpart 4 of Part 5 of Schedule 3 (for animals–farmer participants) being ready to start complying with reporting and surrender obligations under this Act:
- (i) to provide other reports requested by the Minister (*see* section 5K).

Section 5J: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5J(fa): inserted, on 23 June 2020, by section 12(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 5J(fb): inserted, on 23 June 2020, by section 12(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 5J(ha): inserted, on 23 June 2020, by section 12(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **5K Reports to Government**

- (1) The Minister may, at any time, request that the Commission prepare reports to the Government on matters related to reducing emissions of greenhouse gases and adapting to the effects of climate change.
- (2) Before making a request, the Minister must consult the Commission about the terms of reference for the requested report, which may, without limitation, specify—
  - (a) the scope of the report; and
  - (b) requirements concerning consultation; and
  - (c) matters relating to the Commission working jointly with other agencies (including overseas agencies) concerned with the subject matter of the report; and
  - (d) the date by which the Commission must submit its report to the Minister.
- (3) On receiving a request from the Minister, the Commission must,—
  - (a) as soon as practicable, make the terms of reference publicly available; and
  - (b) prepare a report in accordance with the terms of reference; and
  - (c) provide the report to the Minister.

Section 5K: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **5L Tabling and publication of Commission's reports**

- (1) This section applies in respect of a document (such as advice, a report, a recommendation, or an assessment) provided to the Minister by the Commission under this Act.
- (2) The Minister must present a copy of the document to the House of Representatives by the later of—
  - (a) 10 working days after the document is provided to the Minister; and
  - (b) if Parliament is not in session during the 10 working days after the document is provided to the Minister, as soon as practicable after the commencement of the next session of Parliament.
- (3) The Commission must make the document publicly available as soon as practicable after it is presented to the House of Representatives, but no later than 20 working days after providing it to the Minister (even if the document has not been presented to the House by that date).

Section 5L: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5M Matters Commission must consider**

In performing its functions and duties and exercising its powers under this Act, the Commission must consider, where relevant,—

- (a) current available scientific knowledge; and
- (b) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand; and
- (c) the likely economic effects; and
- (d) social, cultural, environmental, and ecological circumstances, including differences between sectors and regions; and
- (e) the distribution of benefits, costs, and risks between generations; and
- (f) the Crown-Māori relationship, te ao Māori (as defined in section 5H(2)), and specific effects on iwi and Māori; and
- (g) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention.

Section 5M: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5N Consultation**

- (1) In performing its functions and duties and exercising its powers under this Act, the Commission must—
  - (a) proactively engage with persons the Commission considers relevant to the functions, duties, and powers; and
  - (b) where the Commission considers it is necessary, provide for participation by the public.
- (2) The Commission may—
  - (a) make publicly available, and invite submissions on, discussion papers and draft reports; and
  - (b) undertake any other type of consultation that it considers necessary for the performance of its functions and duties under this Act.

Section 5N: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5N(2)(a): replaced, on 23 June 2020, by section 13 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**5O Commission must act independently**

- (1) The Commission must act independently in performing its functions and duties and exercising its powers under this Act.
- (2) However, the Minister may direct the Commission to have regard to Government policy for the purposes of the Commission—
  - (a) recommending unit supply settings of the New Zealand emissions trading scheme; and

- (b) providing advice about New Zealand's nationally determined contributions under the Paris Agreement (in a report requested under section 5K).

Section 5O: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5P Obligation to maintain confidentiality**

- (1) The Commission must keep confidential all information that is disclosed to it under section 99(2)(b)(iiib).
- (2) The Commission must not disclose the information, except—
  - (a) with the consent of the person to whom the information relates or of the person to whom the information is confidential; or
  - (b) to the extent that the information is already in the public domain; or
  - (c) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or
  - (d) as provided under this Act or any other Act; or
  - (e) 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.
- (3) A person who knowingly fails to comply with this section commits an offence under section 130.

Section 5P: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

## **Part 1B Emission reduction**

Part 1B: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **Subpart 1—2050 target**

Subpart 1: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5Q Target for 2050**

- (1) The target for emissions reduction (the **2050 target**) requires that—
  - (a) net accounting emissions of greenhouse gases in a calendar year, other than biogenic methane, are zero by the calendar year beginning on 1 January 2050 and for each subsequent calendar year; and
  - (b) emissions of biogenic methane in a calendar year—
    - (i) are 10% less than 2017 emissions by the calendar year beginning on 1 January 2030; and

- (ii) are 24% to 47% less than 2017 emissions by the calendar year beginning on 1 January 2050 and for each subsequent calendar year.
- (2) The 2050 target will be met if emissions reductions meet or exceed those required by the target.
- (3) In this section, **2017 emissions** means the emissions of biogenic methane for the calendar year beginning on 1 January 2017.

Section 5Q: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5R Review of inclusion of emissions from international shipping and aviation in 2050 target**

The Commission must, no later than 31 December 2024, provide written advice to the Minister on whether the 2050 target should be amended to include emissions from international shipping and aviation (and, if so, how the target should be amended).

Section 5R: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5S Other 2050 target reviews**

- (1) The Commission must review the 2050 target—
  - (a) when preparing advice under section 5ZA on setting an emissions budget for an emissions budget period beginning on or after 2036; and
  - (b) at any other time the Minister requests a review.
- (2) The Commission must advise the Minister in writing of the outcome of any review, including any recommendations made in accordance with section 5T,—
  - (a) at the same time as giving advice to the Minister on setting an emissions budget (in the case of a review required under subsection (1)(a)); or
  - (b) as soon as practicable following completion of the review (in the case of a review requested by the Minister).

Section 5S: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5T Recommendations to amend 2050 target**

- (1) As a result of a review under section 5S, the Commission may recommend a change to—
  - (a) the time frame for achievement of the 2050 target (or part of the target):
  - (b) the levels of emission reductions required by the 2050 target (or part of the target):
  - (c) the greenhouse gases, emissions, and removals to which the 2050 target (or part of the target) applies:

- (d) how the 2050 target (or part of the target) may be met, including limits on removals and offshore mitigation.
- (2) The Commission may recommend a change to the 2050 target only if—
  - (a) significant change has occurred, or is likely to occur, since the commencement of this section to 1 or more of the following, as they relate to climate change:
    - (i) global action:
    - (ii) scientific understanding of climate change:
    - (iii) New Zealand’s economic or fiscal circumstances:
    - (iv) New Zealand’s obligations under relevant international agreements:
    - (v) technological developments:
    - (vi) distributional impacts:
    - (vii) equity implications (including generational equity):
    - (viii) the principal risks and uncertainties associated with emissions reductions and removals:
    - (ix) social, cultural, environmental, and ecological circumstances; and
  - (b) the Commission is satisfied that the significant change justifies the change to the target.

Section 5T: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5U Government response to target review recommendations**

- (1) Within 12 months after receiving a recommendation to amend the 2050 target under section 5R or 5T, the Minister must advise the Commission in writing of the Government’s response.
- (2) The response must include reasons for any departure from the Commission’s recommendation.
- (3) The Minister must make the response publicly available and present a copy to the House of Representatives as soon as practicable, but no later than 10 working days after it has been provided to the Commission.

Section 5U: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **Subpart 2—Setting emissions budgets**

Subpart 2: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5V Interpretation**

In this subpart and subparts 3 and 4, unless the context otherwise requires,—  
**advice** includes recommendations

**banked** has the meaning given in section 5ZF(1)

**borrowed** has the meaning given in section 5ZF(3).

Section 5V: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5W Purpose of this subpart**

The purpose of this subpart and subparts 3 and 4 is to require the Minister to set a series of emissions budgets—

- (a) with a view to meeting the 2050 target and contributing to the global effort under the Paris Agreement to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels; and
- (b) in a way that allows those budgets to be met domestically; and
- (c) that provides greater predictability for all those affected, including households, businesses, and investors, by giving advance information on the emissions reductions and removals that will be required.

Section 5W: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5X Duty of Minister to set emissions budgets and ensure they are met**

- (1) The Minister must set an emissions budget for each emissions budget period in accordance with this subpart.
- (2) From 31 December 2021, there must be 3 consecutive emissions budgets, 1 current and 2 prospective, in place at any one time.
- (3) An emissions budget must be set and notified in the *Gazette* under section 5ZD as follows:
  - (a) for the emissions budget period 2022 to 2025, by 31 December 2021:
  - (b) for the emissions budget period 2026 to 2030, by 31 December 2021:
  - (c) for the emissions budget period 2031 to 2035, by 31 December 2021:
  - (d) for the emissions budget period 2036 to 2040, by 31 December 2025:
  - (e) for the emissions budget period 2041 to 2045, by 31 December 2030:
  - (f) for the emissions budget period 2046 to 2050, by 31 December 2035:
  - (g) for any subsequent emissions budget period, by 31 December not less than 10 years before that emissions budget period commences.
- (4) The Minister must ensure that the net accounting emissions do not exceed the emissions budget for the relevant emissions budget period.

Section 5X: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).



**5Y Contents of emissions budgets**

- (1) Each emissions budget must state the total emissions that will be permitted for the relevant emissions budget period, expressed as a net quantity of carbon dioxide equivalent.
- (2) Each emissions budget must include all greenhouse gases.

Section 5Y: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5Z How emissions budgets are to be met**

- (1) Emissions budgets must be met, as far as possible, through domestic emissions reductions and domestic removals.
- (2) However, offshore mitigation may be used if there has been a significant change of circumstance—
  - (a) that affects the considerations on which the relevant emissions budget was based; and
  - (b) that affects the ability to meet the relevant emissions budget domestically.

Section 5Z: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**Subpart 3—Role of Commission to advise on emissions budgets**

Subpart 3: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZA Commission to advise Minister**

- (1) The Commission must advise the Minister on the following matters relevant to setting an emissions budget:
  - (a) the recommended quantity of emissions that will be permitted in each emissions budget period; and
  - (b) the rules that will apply to measure progress towards meeting emissions budgets and the 2050 target; and
  - (c) how the emissions budgets, and ultimately the 2050 target, may realistically be met, including by pricing and policy methods; and
  - (d) the proportions of an emissions budget that will be met by domestic emissions reductions and domestic removals, and the amount by which emissions of each greenhouse gas should be reduced to meet the relevant emissions budget and the 2050 target; and
  - (e) the appropriate limit on offshore mitigation that may be used to meet an emissions budget, and an explanation of the circumstances that justify the use of offshore mitigation (*see* section 5Z).
- (2) In preparing advice for the Minister under subsection (1), the Commission must have regard to the matters set out in section 5ZC.

- (3) Before the Commission provides advice to the Minister on an emissions budget, it must—
  - (a) make the proposed advice publicly available and invite comments on that advice; and
  - (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Commission.
- (4) The Commission must provide its advice to the Minister,—
  - (a) in the case of the first 3 emissions budgets, no later than—
    - (i) 1 February 2021; or
    - (ii) after a request by the Commission to extend the deadline, any date on or before 1 August 2021 that is specified by the Minister (whether once or more) by notice in the *Gazette*.
  - (b) in the case of all subsequent emissions budgets, at least 12 months before an emissions budget must be notified under section 5ZD (or at least 15 months before, if a general election is to take place in that year).

Section 5ZA: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZA(4)(a): replaced, on 23 June 2020, by section 14 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **5ZB Minister's response to Commission**

- (1) Before the Minister sets an emissions budget, the Minister must be satisfied that there has been adequate consultation.
- (2) If the Minister is not satisfied that there has been adequate consultation, the Minister must—
  - (a) make the proposed emissions budget publicly available; and
  - (b) allow adequate time and opportunity for any submissions to be received, heard, and considered by the Minister.
- (3) At the time when the Minister sets and notifies an emissions budget under section 5ZD in accordance with the dates set out in section 5X(3), the Minister must provide a written response that—
  - (a) responds to the advice received from the Commission; and
  - (b) includes a proposed emissions budget for the relevant emissions budget period; and
  - (c) is presented to the House of Representatives and made publicly available.
- (4) If the proposed emissions budget departs from the advice of the Commission, the Minister must—
  - (a) decide whether it is necessary to further consult persons likely to have an interest in the emissions budget; and

- (b) explain the reasons for any departures from the Commission's advice in the response provided under subsection (3).

Section 5ZB: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZC Matters relevant to advising on, and setting, emissions budgets**

- (1) This section applies to—
  - (a) the Commission, when it is preparing advice for the Minister under section 5ZA:
  - (b) the Minister, when the Minister is determining an emissions budget.
- (2) The Commission and the Minister must—
  - (a) have particular regard to how the emissions budget and 2050 target may realistically be met, including consideration of—
    - (i) the key opportunities for emissions reductions and removals in New Zealand; and
    - (ii) the principal risks and uncertainties associated with emissions reductions and removals; and
  - (b) have regard to the following matters:
    - (i) the emission and removal of greenhouse gases projected for the emissions budget period:
    - (ii) a broad range of domestic and international scientific advice:
    - (iii) existing technology and anticipated technological developments, including the costs and benefits of early adoption of these in New Zealand:
    - (iv) the need for emissions budgets that are ambitious but likely to be technically and economically achievable:
    - (v) the results of public consultation on an emissions budget:
    - (vi) the likely impact of actions taken to achieve an emissions budget and the 2050 target, including on the ability to adapt to climate change:
    - (vii) the distribution of those impacts across the regions and communities of New Zealand, and from generation to generation:
    - (viii) economic circumstances and the likely impact of the Minister's decision on taxation, public spending, and public borrowing:
    - (ix) the implications, or potential implications, of land-use change for communities:
    - (x) responses to climate change taken or planned by parties to the Paris Agreement or to the Convention:

- (xi) New Zealand's relevant obligations under international agreements.

Section 5ZC: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **5ZD Publication of emissions budgets**

- (1) Before an emissions budget is notified in the *Gazette* and presented to the House of Representatives, the Minister must consult the appropriate representative of each of the political parties represented in the House of Representatives.
- (2) When an emissions budget has been finalised by the Minister in accordance with this subpart, the emissions budget must be—
  - (a) notified in the *Gazette*, stating the date on which the emissions budget period commences and ends; and
  - (b) presented by the Minister to the House of Representatives; and
  - (c) made publicly available at the direction of the Minister.
- (3) A *Gazette* notice published under this section is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012, and does not have to be presented to the House of Representatives under section 41 of that Act.

Section 5ZD: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### *Revision of emissions budgets*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### **5ZE When emissions budgets may be revised**

#### *Notified emissions budgets*

- (1) The Commission may, when providing advice and recommendations on a future emissions budget under section 5ZA, recommend that any emissions budgets notified under section 5ZD be revised if, since the emissions budgets were originally set,—
  - (a) there have been methodological improvements to the way that emissions are measured and reported; or
  - (b) 1 or more significant changes have affected the considerations listed in section 5ZC(2) on which an emissions budget was based.
- (2) At any time the 2050 target is revised, the Commission may provide advice recommending that the relevant emissions budgets be revised to reflect the change in the 2050 target.
- (3) An emissions budget notified under section 5ZD may be revised only if the Commission recommends the revision.

*Minister's determination*

- (4) After receiving advice from the Commission, the Minister must determine whether to revise an emissions budget.
- (5) The Minister must—
  - (a) take into account—
    - (i) the Commission's advice; and
    - (ii) the matters set out in section 5ZC(2); and
  - (b) follow the procedure set out in sections 5ZB and 5ZD.
- (6) However, the Minister must not revise an emissions budget—
  - (a) after an emissions budget period has begun, unless the circumstances are exceptional; or
  - (b) after the end of the emissions budget period to which it relates; or
  - (c) in any way other than that required if any of the circumstances described in subsection (1) or (2) apply.
- (7) If the Minister determines to revise an emissions budget, the Minister must present to the House of Representatives an explanation of the reasons for revising the original emissions budget, having regard to—
  - (a) the matters described in subsection (1)(a) and (b); and
  - (b) the prohibition on revising an emissions budget (*see* subsection (6)) and any exceptional circumstances that led to the Minister's decision (*see* subsection (6)(a)).

Section 5ZE: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

*Banking and borrowing*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZF Power to bank or borrow**

*Banking*

- (1) If the total emissions in an emissions budget period are lower than the emissions budget for that period, the excess reduction may be carried forward to the next emissions budget period (**banked**).
- (2) Banking provides that the emissions budget for the next emissions budget period will be increased by the amount carried forward.

*Borrowing*

- (3) If the total emissions in an emissions budget period are greater than the emissions budget for that emissions budget period, an amount from the next emissions budget may be carried back to the preceding emissions budget period (**borrowed**).

- (4) Borrowing provides that the emissions budget for the next emissions budget period will be reduced by the amount carried back.
- (5) The amount carried back under subsection (3) must not exceed 1% of the emissions budget for the next emissions budget period.
- (6) The Minister must decide whether to bank or borrow, and must determine the extent to which banking or borrowing is permitted.
- (7) Before the Minister makes a decision under subsection (6),—
  - (a) the Commission must, in its report on an emissions budget period, provide advice on the quantity of emissions that may be banked or borrowed between 2 adjacent emissions budget periods; and
  - (b) the Minister must have regard to that advice.

Section 5ZF: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### *Emissions reduction plan to be prepared*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZG Requirement for emissions reduction plan**

- (1) The Minister must prepare and make publicly available a plan setting out the policies and strategies for meeting the next emissions budget, and may include policies and strategies for meeting emissions budgets that have been notified under section 5ZD in accordance with the dates set out in section 5X(3).
- (2) The plan must be prepared and made publicly available by the deadlines specified in section 5ZI.
- (3) The plan must include—
  - (a) sector-specific policies to reduce emissions and increase removals; and
  - (b) a multi-sector strategy to meet emissions budgets and improve the ability of those sectors to adapt to the effects of climate change; and
  - (c) a strategy to mitigate the impacts that reducing emissions and increasing removals will have on employees and employers, regions, iwi and Māori, and wider communities, including the funding for any mitigation action; and
  - (d) any other policies or strategies that the Minister considers necessary.

Section 5ZG: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZG(2): replaced, on 23 June 2020, by section 15 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **5ZH Commission to advise on emissions reduction plans**

- (1) Not later than 24 months before the beginning of an emissions budget period, the Commission must provide to the Minister advice on the direction of the

policy required in the emissions reduction plan for that emissions budget period.

- (2) Despite subsection (1), the first advice must be given no later than—
  - (a) 1 February 2021; or
  - (b) after a request by the Commission to extend the deadline, any date on or before 1 August 2021 that is specified by the Minister (whether once or more) by notice in the *Gazette*.
- (3) In preparing its advice, the Commission must apply section 5ZC(2) as if it referred to preparing an emissions reduction plan.

Section 5ZH: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZH(2): replaced, on 23 June 2020, by section 16 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **5ZI Minister to prepare and make emissions reduction plan publicly available**

- (1) In preparing a plan and supporting policies and strategies for an emissions budget period, the Minister must—
  - (a) consider the advice received from the Commission under section 5ZH for meeting emissions budgets; and
  - (b) ensure that the consultation has been adequate, including with sector representatives, affected communities, and iwi and Māori, and undertake further consultation as the Minister considers necessary.
- (2) The Minister must—
  - (a) prepare the plan after the relevant emissions budget has been notified under section 5ZD; but
  - (b) do the following at least 12 months before the commencement of the budget period:
    - (i) publish the plan in the *Gazette*; and
    - (ii) make the plan publicly available; and
    - (iii) present a copy of the plan to the House of Representatives.
- (2A) However, for the plan for the first emissions budget period, the Minister—
  - (a) may prepare the plan before the relevant emissions budget has been notified under section 5ZD; and
  - (b) must do the following before the commencement of the budget period:
    - (i) publish the plan in the *Gazette*; and
    - (ii) make the plan publicly available; and
    - (iii) present a copy of the plan to the House of Representatives.
- (3) The Minister may, at any time, amend the plan and supporting policies and strategies to maintain their currency,—

- (a) using the same process as required for preparing the plan; or
  - (b) in the case of a minor or technical change, without repeating the process used for preparing the plan.
- (4) *[Repealed]*

Section 5ZI: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZI(2): replaced, on 23 June 2020, by section 17(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 5ZI(2A): inserted, on 23 June 2020, by section 17(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 5ZI(4): repealed, on 23 June 2020, by section 17(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 4—Monitoring

Subpart 4: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZJ Commission to monitor progress towards meeting emissions budgets**

- (1) The Commission must regularly monitor and report on progress towards meeting an emissions budget and the 2050 target in accordance with sections 5ZK and 5ZL (which relate to reporting requirements).
- (2) The Commission must carry out its monitoring function in accordance with the rules referred to in section 5ZA(1)(b) (which relates to measuring progress towards meeting emissions budgets and the 2050 target).

Section 5ZJ: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZK Commission to report annually on results of monitoring**

- (1) The Commission must prepare an annual report that includes, for the most recent year of the emissions budget period for which data is available from the New Zealand Greenhouse Gas Inventory,—
  - (a) measured emissions; and
  - (b) measured removals.
- (2) The report must also include—
  - (a) the latest projections for current and future emissions and removals; and
  - (b) an assessment of the adequacy of the emissions reduction plan and progress in its implementation, including any new opportunities to reduce emissions.
- (3) Not later than 3 months after the publication of a New Zealand Greenhouse Gas Inventory report, the Commission must provide its annual report prepared under subsection (1) to the Minister.



- (4) Not later than 3 months after receiving the Commission's annual report under subsection (3), the Minister must present to the House of Representatives and make publicly available a report that—
- (a) sets out the Minister's response to the Commission's report and recommendations; and
  - (b) describes the progress made in implementing the current emissions reduction plan; and
  - (c) notes any amendments to that plan.

Section 5ZK: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZL Commission to report at end of emissions budget period**

- (1) Not later than 2 years after the end of an emissions budget period, the Commission must prepare a report for the Minister evaluating the progress made in that emissions budget period towards meeting the emissions budget for that period, including—
- (a) an evaluation of how well the emissions reduction plan has contributed to that progress; and
  - (b) recommendations on any banking and borrowing that would be appropriate; and
  - (c) an assessment of the amount of offshore mitigation required to meet the emissions budget for that period, taking into account the limit proposed by the Commission under section 5ZA(1)(e).
- (2) The Minister must present a report to the House of Representatives setting out the Minister's response to the Commission's report—
- (a) not later than 3 months after receiving the Commission's report; or
  - (b) if Parliament is not in session, as soon as practicable after the commencement of the next session of Parliament.
- (3) The Minister's response to the Commission's report must—
- (a) provide reasons for any failure to meet the relevant emissions budget and for any departures from the Commission's recommendations; and
  - (b) be made publicly available.

Section 5ZL: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZL(1): amended, on 23 June 2020, by section 18(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 5ZL(1)(c): replaced, on 23 June 2020, by section 18(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 5—Effect of 2050 target and emissions budgets

Subpart 5: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZM Effect of failure to meet 2050 target and emissions budgets**

- (1) No remedy or relief is available for failure to meet the 2050 target or an emissions budget, and the 2050 target and emissions budgets are not enforceable in a court of law, except as set out in this section.
- (2) If the 2050 target or an emissions budget is not met, a court may make a declaration to that effect, together with an award of costs.
- (3) If a declaration is made and becomes final after all appeals or rights of appeal expire or are disposed of, the Minister must, as soon as practicable, present to the House of Representatives a document that—
  - (a) brings the declaration to the attention of the House of Representatives; and
  - (b) contains advice on the Government’s response to the declaration.

Section 5ZM: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZN 2050 target and emissions budget are permissive considerations**

If they think fit, a person or body may, in exercising or performing a public function, power, or duty conferred on that person or body by or under law, take into account—

- (a) the 2050 target; or
- (b) an emissions budget; or
- (c) an emissions reduction plan.

Section 5ZN: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZO Guidance for departments**

- (1) The responsible Minister may issue guidance for departments on how to take the 2050 target or an emissions budget into account in the performance of their functions, powers, and duties (or classes of those functions, powers, and duties).
- (2) The responsible Minister must, as soon as practicable after issuing the guidance, make it publicly available.

Section 5ZO: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

## Subpart 6—Recommendations about making regulations

Subpart 6: inserted, on 23 June 2020, by section 19 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **5ZOA Recommendations about limits and price control settings for units**

- (1) This section applies after the Minister has set the first emissions budget.
- (2) The Commission must recommend to the Minister limits and price control settings, including any desirable emissions price path, each time the Minister is required to recommend the making of regulations under section 30GB.
- (3) The Commission's recommendations must—
  - (a) cover the limits and price control settings for each year that the Minister's recommendation must cover; and
  - (b) be made in accordance with—
    - (i) the same requirements under sections 30GB and 30GC (except section 30GC(5)(e)) that apply to the making of the Minister's recommendations; and
    - (ii) its other duties (*see* sections 5M to 5O, for example); and
  - (c) be given to the Minister a reasonable time before the Minister is required to recommend the making of the regulations.

Section 5ZOA: inserted, on 23 June 2020, by section 19 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **5ZOB Recommendations about decreased or increased phase-out rates**

- (1) The Commission must, on the Minister's request, consider and recommend whether—
  - (a) a decreased phase-out rate should be set for 1 or more eligible industrial activities for a year or years (by the making or amendment of regulations under section 84A);
  - (b) an increased phase-out rate should be set for 1 or more eligible industrial activities for an emissions budget period (by the making or amendment of regulations under section 84B).
- (2) The Commission must recommend that a decreased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that there is an ongoing and substantial risk that activities will be relocated outside of New Zealand to reduce emissions-related costs.
- (3) The Commission may recommend that an increased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that it is appropriate to do so, having regard to the matters listed in section 84C(3).

Section 5ZOB: inserted, on 23 June 2020, by section 19 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Part 1C

### Adaptation

Part 1C: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### *National climate change risk assessment*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZP National climate change risk assessment**

- (1) A national climate change risk assessment must—
  - (a) assess the risks to New Zealand’s economy, society, environment, and ecology from the current and future effects of climate change; and
  - (b) identify the most significant risks to New Zealand, based on the nature of the risks, their severity, and the need for co-ordinated steps to respond to those risks in the next 6-year period.
- (2) Sections 5L and 5ZQ apply to all national climate change risk assessments except the first one.
- (3) Section 5ZR applies to the first national climate change risk assessment.

Section 5ZP: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **5ZQ Preparation of national climate change risk assessment**

- (1) The Commission must, no later than 6 years after the date on which the most recent national climate change risk assessment was made publicly available,—
  - (a) provide the next national climate change risk assessment to the Minister; and
  - (b) make that assessment publicly available.
- (2) At the same time as making a national climate change risk assessment publicly available (in compliance with subsection (1)(b) and section 5L(3)), the Commission must make any evidence commissioned to support its preparation publicly available.
- (3) In preparing a national climate change risk assessment, the Commission must take into account the following:
  - (a) economic, social, health, environmental, ecological, and cultural effects of climate change;
  - (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors;
  - (c) New Zealand’s relevant obligations under international agreements;
  - (d) how the assessment aligns or links with any other relevant national risk assessments produced by central government entities;

- (e) current effects and likely future effects of climate change;
  - (f) any information received as a result of requests made under section 5ZW;
  - (g) scientific and technical advice.
- (4) The Commission may also take into account—
- (a) opportunities arising for New Zealand’s economy, society, and environment as a result of the effects of climate change; and
  - (b) any other factor that it thinks is relevant or appropriate.

Section 5ZQ: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZR Minister must prepare first national climate change risk assessment**

- (1) The Minister must, no later than 1 year after the commencement of this Part,—
- (a) prepare the first national climate change risk assessment; and
  - (b) present the assessment to the House of Representatives; and
  - (c) make the assessment and any evidence commissioned to support its preparation publicly available.
- (2) Section 5ZQ(3) and (4) applies with the necessary modifications for the purposes of this section.

Section 5ZR: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

*National adaptation plan*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZS National adaptation plan**

- (1) In response to each national climate change risk assessment, the Minister must prepare a national adaptation plan.
- (2) A national adaptation plan must set out—
- (a) the Government’s objectives for adapting to the effects of climate change; and
  - (b) the Government’s strategies, policies, and proposals for meeting those objectives; and
  - (c) the time frames for implementing the strategies, policies, and proposals; and
  - (d) how the matters in paragraphs (a) to (c) address the most significant risks identified in the most recent national climate change risk assessment; and

- (e) the measures and indicators that will enable regular monitoring of and reporting on the implementation of the strategies, policies, and proposals.
- (3) A national adaptation plan may include any other matter that the Minister considers relevant.
- (4) In preparing a national adaptation plan, the Minister must take into account the following:
  - (a) economic, social, health, environmental, ecological, and cultural effects of climate change, including effects on iwi and Māori:
  - (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors:
  - (c) New Zealand's relevant obligations under international agreements:
  - (d) any information received as a result of requests made under section 5ZW:
  - (e) any relevant advice or reports received from the Commission:
  - (f) the ability of communities or organisations to undertake adaptation action, including how any action may be funded:
  - (g) scientific and technical advice.
- (5) The Minister may also take into account any other matter that the Minister thinks is relevant or appropriate.
- (6) In preparing a national adaptation plan, the Minister must undertake public consultation on the draft plan.

Section 5ZS: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZT National adaptation plan must be presented to Parliament and made publicly available**

- (1) The Minister must, no later than 2 years after the date on which the most recent national climate change risk assessment is made publicly available,—
  - (a) present the national adaptation plan to the House of Representatives; and
  - (b) make the national adaptation plan publicly available.
- (2) The Minister may make minor or technical changes to a national adaptation plan and must make any new version publicly available (but need not present the new version to the House of Representatives).

Section 5ZT: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

*Progress reports*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZU Progress reports on national adaptation plan**

- (1) For each national adaptation plan, the Commission must provide the Minister with a progress report that evaluates the implementation of the adaptation plan and its effectiveness—
  - (a) 2 years after the adaptation plan is made publicly available; and
  - (b) 4 years after the adaptation plan is made publicly available; and
  - (c) 6 years after the adaptation plan is made publicly available.
- (2) Each progress report must include—
  - (a) an assessment of the progress made towards implementing the strategies, policies, and proposals included in the plan; and
  - (b) an assessment of the degree to which the objectives of the plan have been achieved and how well the plan responds to the most significant risks posed by climate change; and
  - (c) an identification of any known barriers to the implementation and effectiveness of the current plan, including recommendations for how those barriers might be addressed or overcome in future; and
  - (d) any other relevant matters required to support the report.
- (3) The Commission is not required to provide the Minister with a progress report if the date for providing the report to the Minister under subsection (1) is more than 1 year after the date on which a subsequent adaptation plan is made publicly available.

Section 5ZU: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZV Minister must respond to progress report**

The Minister must, no later than 6 months after the date on which the Minister receives a progress report,—

- (a) respond in writing to the progress report; and
- (b) make the response publicly available and present it to the House of Representatives.

Section 5ZV: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

*Power to request provision of information*

Heading: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**5ZW Minister or Commission may request certain organisations to provide information on climate change adaptation**

- (1) The Minister or the Commission may, in writing, request that a reporting organisation provide all or any of the following information:
  - (a) a description of the organisation's governance in relation to the risks of, and opportunities arising from, climate change:
  - (b) a description of the actual and potential effects of the risks and opportunities on the organisation's business, strategy, and financial planning:
  - (c) a description of the processes that the organisation uses to identify, assess, and manage the risks:
  - (d) a description of the metrics and targets used to assess and manage the risks and opportunities, including, if relevant, time frames and progress:
  - (e) any matters specified in regulations.
- (2) The reporting organisation must comply with a request made under subsection (1).
- (3) The Minister must, as soon as practicable, provide the Commission with a copy of any information received in response to a request made by the Minister.
- (4) The Commission must, as soon as practicable, provide the Minister with a copy of any information received in response to a request made by the Commission.
- (5) The Minister and the Commission must not publicly disclose any information received in response to a request, unless disclosure of the information is necessary to enable the Minister or the Commission to perform a function or duty imposed by this Part.
- (6) Subsection (5) does not apply in respect of information that is already in the public domain.
- (7) Before publicly disclosing any information received in response to a request, the Minister or Commission must consult with the person to whom the information relates.
- (8) For the purposes of this section and section 5ZX, the following are **reporting organisations**:
  - (a) the public service, as defined in section 10 of the Public Service Act 2020:
  - (b) local authorities, as defined in section 5(1) of the Local Government Act 2002:
  - (c) council-controlled organisations, as defined in section 6(1) of the Local Government Act 2002:



- (d) Crown entities, as defined in section 7(1) of the Crown Entities Act 2004, but excluding school boards;
- (e) companies listed in Schedule 4A of the Public Finance Act 1989;
- (f) organisations listed in Schedule 1 of the State-Owned Enterprises Act 1986;
- (g) lifeline utilities listed in Schedule 1 of the Civil Defence Emergency Management Act 2002;
- (h) the New Zealand Police;
- (i) the New Zealand Defence Force.

Section 5ZW: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 5ZW(8)(a): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 5ZW(8)(d): amended, on 1 August 2020, by section 668 of the Education and Training Act 2020 (2020 No 38).

#### **5ZX Regulations relating to requiring provision of information**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations specifying all or any of the following:
  - (a) requirements that relate to information that is provided in response to a request under section 5ZW(1), including different requirements for different sectors, classes of activity, or geographical areas;
  - (b) a date by which or time within which requested information must be provided to the Minister;
  - (c) ongoing or recurring reporting requirements (for example, requiring the provision of further information at regular intervals following a request);
  - (d) any administrative matters relating to responses to requests.
- (2) In preparing the regulations, the Minister must consider—
  - (a) the ability to tailor a request to reflect the size and capability of the reporting organisation; and
  - (b) the potential extent and significance of climate change effects on the functions of the reporting organisation; and
  - (c) the avoidance of unnecessary duplication of information provided within existing reporting frameworks.
- (3) Before recommending the making of the regulations, the Minister must consult the Commission and the reporting organisations that the Minister considers may be affected by the proposed regulations.

Section 5ZX: inserted, on 14 November 2019, by section 8 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

## Part 2

### Institutional arrangements

#### Subpart 1—Ministerial powers

Subpart 1 heading: replaced, on 1 January 2013, by section 8 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **6 Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units**

The Minister of Finance may, on behalf of the Crown,—

- (a) direct the Registrar to establish or close Crown holding accounts:
- (b) direct the Registrar to transfer units to any holding account in the Registry or to an overseas registry or international transaction body:
- (c) buy or sell units, or otherwise acquire or dispose of units:
- (d) enter into agreements to buy or sell units, or otherwise acquire or dispose of units:
- (e) buy or sell, or enter into any agreement to buy or sell, or otherwise acquire or dispose of, any financial derivatives or other financial instruments relating to units or in connection with transactions relating to units:
- (f) appoint agents to conduct the activities referred to in paragraphs (a) to (e) on the terms and conditions that the Minister of Finance thinks fit.

Section 6 heading: amended, on 8 December 2009, by section 9(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 6(a): amended, on 8 December 2009, by section 9(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 6(b): amended, on 23 June 2020, by section 20(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 6(d): amended, on 23 June 2020, by section 20(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **6A Minister's power to sell by auction**

If regulations are made under section 30GA, the Minister may, on behalf of the Crown,—

- (a) sell New Zealand units by auction within a prescribed individual limit and overall limit:
- (b) appoint agents to conduct the sale on the terms and conditions that the Minister thinks fit:
- (c) direct the Registrar to transfer units to any holding account in the Registry for the purposes of selling New Zealand units by auction.

Section 6A: inserted, on 1 January 2013, by section 9 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 6A: amended, on 23 June 2020, by section 21(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 6A(a): amended, on 23 June 2020, by section 21(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 6A(c): inserted, on 23 June 2020, by section 21(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

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

- (1) The Minister of Finance may give directions to the Registrar to—
- (a) establish the following accounts in the Registry for the Crown:
    - (i) *[Repealed]*
    - (ii) *[Repealed]*
    - (iii) a general cancellation account:
    - (iv) *[Repealed]*
    - (v) *[Repealed]*
    - (vi) *[Repealed]*
    - (vii) a surrender account:
    - (viii) *[Repealed]*
  - (b) transfer units between holding accounts, subject to any prescribed restriction or prohibition.
  - (c) *[Repealed]*
  - (d) *[Repealed]*
  - (da) *[Repealed]*
  - (db) *[Repealed]*
  - (e) *[Repealed]*
- (2) Despite subsection (1), or any regulations made under this Act, the Minister of Finance may not give a direction to transfer units from an account held by an account holder other than the Crown to another account in the Registry, unless—
- (a) the Minister of Finance has the written consent of the account holder; or
  - (b) if written consent is not given, the Minister of Finance gives the account holder reasonable notice and—
    - (i) the transfer is required to comply with international climate change obligations; or
    - (ii) the account holder has failed to comply with Part 2 or any regulations made under section 30G; or

(c) section 30F(3) applies.

(3) *[Repealed]*

Section 7(1)(a)(i): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(a)(ii): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(a)(iv): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(a)(v): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(a)(vi): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(a)(vii): added, on 26 September 2008, by section 7(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85)

Section 7(1)(a)(viii): repealed, on 23 June 2020, by section 22(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(b): replaced, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(c): repealed, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(d): repealed, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(da): repealed, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(db): repealed, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(1)(e): repealed, on 23 June 2020, by section 22(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(2): added, on 19 November 2007, by section 6(5) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 7(2)(b): substituted, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(2)(b)(i): replaced, on 23 June 2020, by section 22(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 7(2)(c): added, on 26 September 2008, by section 7(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 7(3): repealed, on 23 June 2020, by section 22(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **8 Registrar must give effect to directions of Minister of Finance**

- (1) The Registrar must give effect to any directions given by the Minister of Finance under section 6 or section 7 in accordance with, and subject to, the procedures set out in subpart 2 of this Part and regulations made under section 30G.
- (2) To avoid doubt, the Crown Entities Act 2004 does not apply to a direction by the Minister of Finance to the Registrar.

Section 8(1): amended, on 26 September 2008, by section 8 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 8(2): added, on 5 December 2011, by section 5 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **8A Minister of Finance must publish directions**

As soon as practicable after giving a direction under section 6 or 7, the Minister of Finance must publish a copy of the direction on the Registry's Internet site.

Section 8A: inserted, on 19 November 2007, by section 7 of the Climate Change Response Amendment Act 2006 (2006 No 59).

### **9 Minister of Finance may obtain information from inventory agency and Registrar**

For the purposes of managing the Crown's holding of units and discharging New Zealand's obligations under section 32(1)(b), the Minister of Finance may, as and when he or she thinks fit,—

- (a) direct the inventory agency to provide information estimating New Zealand's human-induced emissions of greenhouse gases by sources and removals by sink activities:
- (b) direct the Registrar to provide information on those units, including, but not limited to, information indicating—
  - (i) how many units the Crown holds; and
  - (ii) how many units the Crown has issued or acquired, transferred, replaced, and cancelled.

Section 9: amended, on 19 November 2007, by section 8(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 9(b)(ii): amended, on 23 June 2020, by section 23 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 9(b)(ii): amended, on 19 November 2007, by section 8(2)(a) of the Climate Change Response Amendment Act 2006 (2006 No 59).

### **Subpart 1A—Chief executive**

Subpart 1A: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **9A Functions of chief executive**

The functions of the chief executive are to—

- (a) advise the Minister; and
- (b) be the inventory agency; and
- (c) publish information on the Internet in accordance with this Act.

Section 9A: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**9B Delegation by chief executive**

- (1) The chief executive may delegate any of his or her functions, duties, and powers under this Act to the EPA.
- (2) Clauses 2 and 3 of Schedule 6 of the Public Service Act 2020 applies to a delegation under this section as if the EPA were an employee of the chief executive.

Section 9B: inserted, on 5 December 2011, by section 6 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 9B(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

**Subpart 2—Registry***Purpose of Registry***10 Purpose of Registry**

The purpose of the Registry is—

- (a) to ensure the accurate, transparent, and efficient accounting of—
  - (i) the issue, holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and
  - (ii) the conversion of New Zealand units in accordance with regulations made under this Act; and
- (b) to ensure the accurate, transparent, and efficient exchange of information between the Registry, overseas registries, and international transaction bodies; and
- (c) to facilitate the exchange of information between the persons with functions, duties, and powers under this Act to enable all of them to perform their functions and duties and exercise their powers.

Section 10: replaced, on 23 June 2020, by section 24 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

*Registrar***11 EPA to appoint Registrar**

The EPA must appoint an employee of the EPA as the Registrar.

Section 11: substituted, on 5 December 2011, by section 7 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**12 Registrar responsible for Registry**

The Registrar is responsible for the operation, on behalf of the Crown, of the Registry.

Section 12: amended, on 5 December 2011, by section 8 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **13 Registrar may refuse access to, or suspend operation of, Registry**

The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),—

- (a) for maintenance; or
- (b) in response to technical difficulties; or
- (c) to ensure the security or integrity of the Registry; or
- (d) to give effect to international climate change obligations.

Section 13: substituted, on 19 November 2007, by section 10 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 13(d): amended, on 23 June 2020, by section 25 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **14 Registrar must give effect to directions**

The Registrar must give effect to any direction (including for the transfer of units) that is given by a Minister or the EPA in accordance with this Act.

Section 14: replaced, on 23 June 2020, by section 26 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **15 Registrar to allocate unique numbers**

- (1) The Registrar must, in accordance with regulations made under this Act, allocate a unique account number to each account when the account is created.
- (1A) The Registrar may, subject to regulations made under this Part, 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.
- (2) *[Repealed]*

Section 15 heading: amended, on 26 September 2008, by section 13(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 15(1): replaced, on 23 June 2020, by section 27(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 15(1A): inserted, on 26 September 2008, by section 13(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 15(2): repealed, on 23 June 2020, by section 27(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **16 Carry-over of certain Kyoto units**

*[Repealed]*

Section 16: repealed, on 23 June 2020, by section 28 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 17 Commitment period reserve

*[Repealed]*

Section 17: repealed, on 23 June 2020, by section 28 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 17A Power of Registrar to delegate

- (1) The Registrar may, in writing, delegate to any person who is employed by the EPA or in the State services all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) Subject to any general or special directions given or conditions specified at any time by the Registrar, the person to whom any functions, duties, or powers are delegated under this section must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by a section of this Act and not by delegation.
- (3) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under this section may be to a specified person or to persons of a specified class, or may be to the holder or holders for the time being of a specified office or specified classes of offices.
- (5) Every delegation under this section is revocable in writing at will by the Registrar, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.
- (6) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.
- (7) For the purposes of this section, **State services** has the same meaning as in section 5 of the Public Service Act 2020.

Section 17A: inserted, on 8 December 2009, by section 11 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 17A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 17A(7): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### *Unit register*

## 18 Form and content of unit register

- (1) The Registry must have a unit register that is—
  - (a) in electronic form; and
  - (b) accessible via the Registry's Internet site; and



- (c) operated at all times, unless the Registrar suspends its operation (in whole or in part) under section 13 or as prescribed in regulations.
- (2) The unit register must contain—
  - (a) a record of the holdings of units in holding accounts in New Zealand; and
  - (b) the particulars of transactions, including, but not limited to, the issue, transfer, replacement, surrender, conversion, and cancellation of units; and
  - (c) any other matters that are required to be registered under this Act or regulations made under this Act.
- (3) A unit recorded in the unit register is—
  - (a) indivisible with respect to the issue, holding, transfer, replacement, surrender, cancellation, and conversion of a unit within the unit register; and
  - (b) transferable, subject to any regulations made under this Act,—
    - (i) within the unit register; or
    - (ii) between the unit register and overseas registries or international transaction bodies.

Section 18(1)(b): amended, on 19 November 2007, by section 13(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(2)(b): replaced, on 23 June 2020, by section 29(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18(3): added, on 19 November 2007, by section 13(4) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18(3)(a): substituted, on 26 September 2008, by section 16(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18(3)(a): amended, on 23 June 2020, by section 29(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18(3)(b)(ii): amended, on 23 June 2020, by section 29(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18A Opening holding accounts**

- (1) Any person may submit an application to the Registrar to open 1 or more holding accounts in the unit register by using the form and paying the fees (if any) prescribed in regulations made under this Act.
- (2) The Registrar may approve the opening of a holding account subject to any regulations made under this Act.
- (3) If the Registrar approves an application to open a holding account, the Registrar must, as soon as practicable,—
  - (a) open a holding account in the applicant's name; and
  - (b) provide the applicant with an account number.

- (4) If the application is incomplete, the Registrar must, as soon as practicable, ask the applicant to provide the information or fee (if any) that is required to make the application complete.
- (5) The Registrar may refuse to provide a holding account to any applicant who provides an incomplete application.
- (6) A holding account is subject to any regulations made under this Act.

Section 18A: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18A(3)(b): amended, on 26 September 2008, by section 17 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### 18B Closing holding accounts

- (1) An account holder may submit a request to the Registrar to close 1 or more of that account holder's holding accounts in the unit register by using the form and paying the fee (if any) prescribed in regulations made under this Act.
- (2) The EPA may give a direction to the Registrar to close an account holder's holding account—
  - (a) if the EPA has the written consent of the account holder; or
  - (b) where written consent is not given,—
    - (i) if the EPA has given the account holder reasonable notice; and
    - (ii) if—
      - (A) *[Repealed]*
      - (B) the account holder has failed to comply with this Part or any regulations made regarding the matters specified in section 30G; or
      - (C) the EPA is satisfied that the account holder no longer requires the account.
- (3) If there are any units remaining in a holding account when it is closed,—
  - (a) the units are forfeited to the Crown; and
  - (b) the Registrar must, as soon as practicable, transfer the units to a Crown holding account.
- (4) If a request is incomplete, the Registrar must, as soon as practicable, ask the account holder to provide the information or fee (if any) that is required to make the request complete.
- (5) The Registrar may not close a holding account if the account holder provides an incomplete request.
- (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 EPA is satisfied that an account holder no longer requires a holding account, make a written submission to the EPA, before the account is closed, regarding the account holder's need to retain the account.
- (7) The Registrar must give effect to any directions given by the EPA under subsection (2) in accordance with, and subject to, the procedures set out in this subpart and any regulations made under section 30G.

Section 18B: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18B(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(2)(b)(ii)(A): repealed, on 23 June 2020, by section 30 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(B): amended, on 26 September 2008, by section 18(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(2)(b)(ii)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(6): substituted, on 26 September 2008, by section 18(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 18B(6)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 18B(7): added, on 8 December 2009, by section 12 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18B(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 18C Transfer of units

- (1) An account holder may, by using the form and paying the fees (if any) prescribed in regulations made under this Act, apply to the Registrar to transfer units from that account holder's holding account to another account in—
- (a) the unit register; or
  - (b) an overseas registry or international transaction body.
- (2) The Registrar must transfer the specified units as requested, subject to any regulations made under this Act.
- (3) *[Repealed]*
- (4) An account holder who receives units is under no obligation to initiate any registration process.

Section 18C: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18C(1)(b): amended, on 23 June 2020, by section 31(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18C(3): repealed, on 23 June 2020, by section 31(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18CA Effect of surrender and cancellation**

- (1) A unit that is transferred to a cancellation account may not be further transferred, surrendered, or cancelled.
- (2) A unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the Minister of Finance given under section 6 or 7 or a direction of the EPA given under section 124.

Section 18CA: replaced, on 23 June 2020, by section 32 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18CB Restriction on surrender of assigned amount units**

*[Repealed]*

Section 18CB: repealed, on 23 June 2020, by section 33 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18CC Restriction on surrender of assigned amount units issued during first commitment period**

*[Repealed]*

Section 18CC: repealed, on 23 June 2020, by section 33 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18CD Effect of surrendering restricted assigned amount units**

*[Repealed]*

Section 18CD: repealed, on 23 June 2020, by section 33 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18D Succession**

- (1) This section applies if an account holder—
  - (a) is a natural person and dies; or
  - (b) is not a natural person and is wound up, liquidated, dissolved, or otherwise ceases to exist.
- (2) If this section applies, the person listed on the holding account as the account holder's representative may operate the holding account until—
  - (a) a successor is determined; and
  - (b) the Registrar has registered the successor as the account holder.
- (3) The Registrar may register a successor as the account holder—

- (a) on application made in the form, and payment of the fee (if any), prescribed in regulations made under this Act; and
  - (b) in accordance with those regulations.
- (4) However, if the account holder is a company and any units in its holding account are vested in the Crown under section 324(1) of the Companies Act 1993,—
- (a) subsections (2) and (3) do not apply; and
  - (b) the EPA must, as soon as practicable after becoming aware of the public notice about the vesting of the units that is given under section 324(3) of that Act, direct the Registrar to transfer the units to a Crown holding account and close the account holder's holding account.

Section 18D: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18D(2)(b): replaced, on 23 June 2020, by section 34(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18D(3): replaced, on 23 June 2020, by section 34(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 18D(4): inserted, on 23 June 2020, by section 34(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **18E Trusts, representatives, and assignees of bankrupts**

- (1) Notice of a trust, whether express, implied, or constructive, may not be entered on the unit register except in accordance with subsection (1A).
- (1A) If the trustees of a trust apply to open a holding account under section 18A, then—
  - (a) the trustees may specify the name of the trust as the name of the holding account; and
  - (b) the Registrar may enter on the unit register the name of the trust as the name of the holding account.
- (2) Despite anything in section 18D, the existence of a representative that may operate the holding account of an account holder who has died, or that has been wound up, liquidated, or dissolved, or otherwise has ceased to exist, does not constitute notice of a trust.
- (3) The assignee of the property of a bankrupt may be entered on the unit register as the assignee of the bankrupt's units.

Section 18E: inserted, on 19 November 2007, by section 14 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 18E(1): substituted, on 8 December 2009, by section 14 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 18E(1A): inserted, on 8 December 2009, by section 14 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**19 Retirement of Kyoto units by the Crown**

*[Repealed]*

Section 19: repealed, on 23 June 2020, by section 35 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**20 Transactions must be registered**

- (1) A transaction to issue, transfer, cancel, surrender, convert, or replace units must be registered on the unit register.
- (2) However, the Registrar may not register a transaction on the unit register if—
  - (a) the Registrar receives a notification from an international transaction body that there is a discrepancy with the transaction; or
  - (b) the transaction is not submitted in the prescribed form; or
  - (c) the prescribed fees (if any) have not been paid to the Registrar (unless arrangements for payment have been made in accordance with regulations made under this Act).

Section 20(1): amended, on 23 June 2020, by section 36(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 20(1): amended, on 26 September 2008, by section 22(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 20(1): amended, on 19 November 2007, by section 15(1) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2): substituted, on 19 November 2007, by section 15(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 20(2)(a): amended, on 23 June 2020, by section 36(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**21 Registration procedure for Kyoto units**

*[Repealed]*

Section 21: repealed, on 23 June 2020, by section 37 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**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 EPA or a Minister authorised to give the direction under this Act, or an application for the registration of a transaction in relation to New Zealand units or approved overseas units by an account holder, which is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must—
  - (a) create a unique transaction number; and
  - (b) if the proposed transaction concerns an overseas registry or international transaction body, send a record of the proposed transaction to the overseas registry or international transaction body if required by it; and

- (c) if the proposed transaction does not concern an overseas registry or international transaction body,—
  - (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) in the case of a direction, the EPA or the Minister who gave the direction and, if the direction specifies that New Zealand units or approved overseas units are to be transferred to the holding account of an account holder other than the Crown, the account holder:
    - (B) in the case of an application, the account holder who submitted the application and the account holder specified in the application as the account holder to whose holding account New Zealand units or approved overseas units are to be transferred.
- (2) If the Registrar sends a record of the proposed transaction to an overseas registry or international transaction body under subsection (1)(b) and receives notification back from it 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 or international transaction body 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) in the case of a direction, the EPA or the Minister who gave the direction; or
    - (ii) in the case of an application, the account holder.
- (3) If the Registrar receives a notification from the overseas registry or international transaction body 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 or international transaction body of the termination; and
  - (d) send electronic notification that the transaction has been terminated to,—
    - (i) in the case of a direction, the Minister or the EPA who gave the direction; or
    - (ii) in the case of an application, the account holder.

Section 21AA: inserted, on 26 September 2008, by section 24 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 21AA(1): amended, on 23 June 2020, by section 38(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(1)(b): replaced, on 23 June 2020, by section 38(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(1)(c): amended, on 23 June 2020, by section 38(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(1)(c)(ii)(A): amended, on 23 June 2020, by section 38(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(1)(c)(ii)(A): amended, on 8 December 2009, by section 16(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 21AA(2): amended, on 23 June 2020, by section 38(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(2): amended, on 23 June 2020, by section 38(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(2)(b): amended, on 23 June 2020, by section 38(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(2)(c)(i): amended, on 23 June 2020, by section 38(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(3): amended, on 23 June 2020, by section 38(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(3)(c): amended, on 23 June 2020, by section 38(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21AA(3)(d)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21AA(3)(d)(i): amended, on 8 December 2009, by section 16(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **21A Electronic registration**

A direction to the Registrar by the Minister or the EPA under this Act or an application by an account holder to register a transaction must be—

- (a) made electronically in the prescribed form via the Registry's Internet site, and contain the particulars specified in the form; and
- (b) accompanied by the fee (if any) prescribed in regulations made under this Act; and
- (c) made in accordance with regulations made under this Act.

Section 21A: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21A: amended, on 23 June 2020, by section 39 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 21A: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 21A: amended, on 8 December 2009, by section 17 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).



### **21B Defective applications**

- (1) If an application is defective, the Registrar may direct the applicant, in writing by electronic notification, to correct the defect within a specified period of time.
- (2) If a direction to correct a defect is not complied with within the specified period of time, the Registrar may refuse to—
  - (a) proceed with the registration; or
  - (b) register the transaction.
- (3) Any fees paid to the Registrar in relation to an uncorrected defective application are forfeited.

Section 21B: inserted, on 19 November 2007, by section 17 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 21B(1): replaced, on 23 June 2020, by section 40 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **22 Transactions take effect when registered**

- (1) A transaction takes effect when it is registered.
- (2) A transaction is registered when the Registrar—
  - (a) assigns a registration number, date, and time, and other information that may be required by this Act, to the transaction; and
  - (b) enters those particulars in the unit register.

### **23 Receiving Kyoto units from overseas registries**

*[Repealed]*

Section 23: repealed, on 23 June 2020, by section 41 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **23A Receiving New Zealand units and approved overseas units from overseas registries or international transaction bodies**

- (1) If the Registrar receives notification from an overseas registry or international transaction body 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 or international transaction body 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 or international transaction body of the termination.
- (3) A transfer of New Zealand units or approved overseas units from an overseas registry or international transaction body is subject to any regulations made under this Act.

Section 23A: inserted, on 26 September 2008, by section 27 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 23A heading: amended, on 23 June 2020, by section 42(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 23A(1): amended, on 23 June 2020, by section 42(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 23A(2): amended, on 23 June 2020, by section 42(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 23A(2)(c): amended, on 23 June 2020, by section 42(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 23A(3): amended, on 23 June 2020, by section 42(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 24 Priority of registration

- (1) A direction given to the Registrar by the Minister or the EPA under this Act or an application for the registration of a transaction by an account holder must, as soon as practicable, be processed in the chronological order in which it is received by the Registrar.
- (2) A direction or an application is received by the Registrar when it is recorded as being downloaded into the computer maintained to operate the unit register.
- (3) Subsection (1) applies to an application for the registration of a transaction only if the application is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act.

Section 24(1): substituted, on 26 September 2008, by section 28(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 24(1): amended, on 23 June 2020, by section 43 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 24(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 24(1): amended, on 8 December 2009, by section 18 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 24(2): amended, on 19 November 2007, by section 19(2) of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 24(3): added, on 26 September 2008, by section 28(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## 25 Correction of unit register

- (1) If the unit register records a transaction inaccurately, and the inaccuracy is the result of an error or omission made by the Registrar when registering the transaction, then a request to correct the inaccuracy may be submitted by—

- (a) the EPA or the Minister who gave the direction, if the Registrar registered the transaction following receipt of a direction from the Minister or the EPA; or
  - (b) the account holder who applied to register the transaction.
- (2) The request—
- (a) may be made at any time; and
  - (b) must specify—
    - (i) the inaccuracy; and
    - (ii) the correction required; and
  - (c) must be in the form, and accompanied by the fees (if any), prescribed in regulations made under this Act.
- (3) If the Registrar is satisfied that the unit register is inaccurate in any respect, the Registrar may—
- (a) correct the unit register accordingly; and
  - (b) record on the unit register—
    - (i) the nature of the correction; and
    - (ii) the time that the correction was made; and
  - (c) give notification of the correction, as soon as practicable, to—
    - (i) any person whom the Registrar considers to be affected by the correction; and
    - (ii) an international transaction body (if required to do so); and
    - (iii) an overseas registry (if required to do so).

Section 25: substituted, on 19 November 2007, by section 20 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 25(1): substituted, on 26 September 2008, by section 29(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(1)(a): substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 25(1)(a): amended, on 23 June 2020, by section 44(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 25(3): amended, on 26 September 2008, by section 29(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 25(3)(c)(ii): replaced, on 23 June 2020, by section 44(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 25(3)(c)(iii): substituted, on 26 September 2008, by section 29(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **26 Unit register must be open for search**

- (1) Except as provided in section 13, the unit register must be open at all times for searches by a person via the Registry's Internet site.

- (2) The Registrar is not required to make publicly available any information that is not listed in section 27.

Section 26(1): amended, on 19 November 2007, by section 21 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 26(2): added, on 26 September 2008, by section 30 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## 27 Information accessible by search

- (1) The following information must be accessible by a search of the unit register:
- (a) the following up-to-date information for each account:
    - (i) the name of the account holder; and
    - (ii) the type of account; and
    - (iii) the account number; and
    - (iv) the full name, mailing address, telephone number, fax number, and email address of any primary representatives of the account holder; and
  - (b) a list of account holders; and
  - (c) for each account whose purpose is to hold approved overseas units, the commitment period that the Protocol provides for and that is associated with the account; and
  - (d) any other information prescribed in regulations made under this Part.
- (2) The following information must be made accessible by a search of the unit register, and be available by 31 January in each year, in a form that shows the relevant totals at the end of the previous year:
- (a) *[Repealed]*
  - (b) *[Repealed]*
  - (c) the total quantity of New Zealand units issued during that year under section 68 or 178B; and
  - (d) the total quantity of New Zealand units transferred for each removal activity during that year; and
  - (e) the total holdings of New Zealand units in the Registry; and
  - (f) the total holdings of approved overseas units in the Registry; and
  - (g) the total holdings of each type of approved overseas units in the Registry; and
  - (h) the total quantity of each type of approved overseas units issued during that year; and
  - (i) *[Repealed]*
  - (j) the following information in relation to units transferred into the Registry during that year:

- (i) the total quantity of units transferred; and
- (ii) the total quantity of each type of unit transferred; and
- (iii) the identity of the transferring registry or body, including the total quantity of—
  - (A) units transferred from each registry or body; and
  - (B) each type of unit transferred from each registry or body; and
- (k) the following information in relation to units transferred out of the Registry during that year:
  - (i) the total quantity of units transferred; and
  - (ii) the total quantity of each type of unit transferred; and
  - (iii) the identity of the acquiring registry or body, including the total quantity of—
    - (A) units transferred to each registry or body; and
    - (B) each type of unit transferred to each registry or body; and
- (l) the total quantity of units transferred between holding accounts in the Registry during that year; and
- (m) the total quantity of each type of unit transferred between holding accounts in the Registry during that year; and
- (n) *[Repealed]*
- (o) the total quantity of approved overseas units transferred during that year to any sink cancellation account; and
- (p) the total quantity of approved overseas units transferred during that year to any non-compliance cancellation account; and
- (q) the total quantity of units transferred to each general cancellation account during that year; and
- (r) *[Repealed]*
- (s) the total quantity of units surrendered during that year; and
- (t) the total quantity of each type of unit surrendered during that year; and
- (u) the total quantity of each type of unit into which New Zealand units are converted in accordance with regulations made under this Act.
- (v) *[Repealed]*
- (w) *[Repealed]*
- (3) The following information must be accessible by a search of the unit register in a form that shows the relevant totals at the beginning of the previous year:
  - (a) the total holdings in each holding account in the Registry (including any holding account held by the Crown) of each type of approved overseas unit issued in—

- (i) the first commitment period starting on 1 January 2008 and ending on 31 December 2012; or
  - (ii) the second commitment period starting on 1 January 2013 and ending on 31 December 2020; and
- (b) the total quantity of each type of approved overseas unit in the Registry.

Section 27: substituted, on 26 September 2008, by section 31 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 27(1)(c): replaced, on 23 June 2020, by section 45(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(a): repealed, on 23 June 2020, by section 45(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(b): repealed, on 23 June 2020, by section 45(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(c): replaced, on 1 January 2013, by section 14 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 27(2)(h): replaced, on 23 June 2020, by section 45(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(i): repealed, on 23 June 2020, by section 45(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(j): amended, on 23 June 2020, by section 45(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(j)(iii): amended, on 23 June 2020, by section 45(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(j)(iii)(A): amended, on 23 June 2020, by section 45(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(j)(iii)(B): amended, on 23 June 2020, by section 45(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(k): amended, on 23 June 2020, by section 45(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(k)(iii): amended, on 23 June 2020, by section 45(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(k)(iii)(A): amended, on 23 June 2020, by section 45(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(k)(iii)(B): amended, on 23 June 2020, by section 45(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(n): repealed, on 23 June 2020, by section 45(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(o): replaced, on 23 June 2020, by section 45(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(p): replaced, on 23 June 2020, by section 45(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(q): amended, on 23 June 2020, by section 45(11) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(r): repealed, on 23 June 2020, by section 45(12) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(u): replaced, on 23 June 2020, by section 45(13) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(v): repealed, on 23 June 2020, by section 45(13) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(2)(w): repealed, on 23 June 2020, by section 45(13) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(3)(a): replaced, on 23 June 2020, by section 45(14) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 27(3)(b): replaced, on 23 June 2020, by section 45(14) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **28 Search of unit register**

A person may, by using the form and paying the fees (if any) prescribed by regulations made under this Act, search the unit register, and obtain a printed search result, in accordance with this Act and any regulations made under this Act.

Section 28: substituted, on 14 November 2006, by section 23 of the Climate Change Response Amendment Act 2006 (2006 No 59).

## **29 Printed search result receivable as evidence**

A printed search result, or a copy of a printed search result, that purports to be issued by the Registrar is receivable as evidence and is, in the absence of evidence to the contrary, proof of any matter recorded in the unit register, including (but not limited to)—

- (a) the ownership of units; and
- (b) the date and time of the registration of a transaction; and
- (c) information that the Registry holds.

Section 29: substituted, on 14 November 2006, by section 23 of the Climate Change Response Amendment Act 2006 (2006 No 59).

## **30 Recovery of fees**

- (1) A fee that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fees by the EPA in any court of competent jurisdiction.
- (2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees that are payable.

Section 30(1): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 30(1): amended, on 26 September 2008, by section 32(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 30(2): amended, on 26 September 2008, by section 32(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**30A The Crown or Registrar not liable in relation to searches in certain cases**

No action may be brought against the Crown or the Registrar for any loss or damage resulting from—

- (a) an inaccuracy in a search of the unit register; or
- (b) an inaccurate entry or omission in the unit register if the inaccuracy or omission arises from reasonable reliance on information received by the Registrar from—
  - (i) an international transaction body; or
  - (ia) an overseas registry; or
  - (ib) a third party; or
  - (ii) an account holder.

Section 30A: inserted, on 14 November 2006, by section 24 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 30A heading: amended, on 26 September 2008, by section 33(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(i): replaced, on 23 June 2020, by section 46 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30A(b)(ia): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30A(b)(ib): inserted, on 26 September 2008, by section 33(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Expiry of long-term certified emission reduction units and temporary certified emission reduction units*

*[Repealed]*

Heading: repealed, on 23 June 2020, by section 47 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30B Expiry of long-term certified emission reduction units**

*[Repealed]*

Section 30B: repealed, on 23 June 2020, by section 47 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30C Replacement of certain long-term certified emission reduction units**

*[Repealed]*

Section 30C: repealed, on 23 June 2020, by section 47 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30D Expiry of temporary certified emission reduction units**

*[Repealed]*

Section 30D: repealed, on 23 June 2020, by section 47 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



*Miscellaneous provisions*

Heading: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**30E Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation**

*[Repealed]*

Section 30E: repealed, on 23 June 2020, by section 48 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

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

- (1) This section applies to any New Zealand units transferred or to be transferred after 31 December 2012 in accordance with the pre-1990 forest land allocation plan issued under section 70.
- (2) *[Repealed]*
- (3) If the activity listed in Part 1 of Schedule 3 is repealed, the Minister of Finance may issue a direction to the Registrar under section 7 to transfer from any holding account to a cancellation account any New Zealand units to which this section applies.

Section 30F: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30F(1): substituted, on 8 December 2009, by section 20 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 30F(2): repealed, on 8 December 2009, by section 20 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**30G Regulations relating to Part 2**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:
  - (a) prescribing 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 an account in an overseas registry or international transaction body:
      - (B) the transfer of units within the unit register:
      - (C) the transfer of units from an overseas registry or international transaction body:

- (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:
  - (iii) the registration of a successor as an account holder:
- (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) *[Repealed]*
- (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 an international transaction body:
  - (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 or regulations made 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 or regulations made under this Part:

- (ia) prescribing, for the purpose of the definition of **international transaction body** in section 4, bodies that confirm the validity of transactions relating to accounting of greenhouse gas emissions:
- (j) prescribing, for the purpose of the definition of overseas registry, overseas registries from which or to which units may be transferred to or from accounts in the Registry:
- (k) prescribing the units issued by an overseas registry or international transaction body that may be transferred to accounts in the Registry:
- (l) prescribing procedures for transactions involving approved overseas units:
- (m) prescribing matters in respect of the taking of possession of an emissions unit for the purposes of section 18(1A)(b) of the Personal Property Securities Act 1999:
- (n) in respect of this Part, giving effect to international climate change obligations, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with international climate change obligations:
- (o) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.
- (p) *[Repealed]*
- (q) *[Repealed]*
- (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)(i) or (c) applies to only the following units:
  - (a) all units that are not held in an account in the Registry at the time that the regulation comes into force; and
  - (b) approved overseas units that are issued before 1 January 2021 (the start of the third commitment period).
- (3A) The amount of fees set under regulations made under subsection (1)(f) must not exceed the amount necessary to enable the recovery of the direct and indirect costs of the Registrar in performing his or her functions under this Part.
- (4) Any regulations made under subsection (1) must be consistent with international climate change obligations.

Section 30G: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30G(1)(b)(i)(A): amended, on 23 June 2020, by section 49(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(b)(i)(C): amended, on 23 June 2020, by section 49(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(b)(iii): inserted, on 23 June 2020, by section 49(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(d): repealed, on 23 June 2020, by section 49(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(e)(vi)(B): amended, on 23 June 2020, by section 49(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(f): amended, on 23 June 2020, by section 49(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(i): amended, on 23 June 2020, by section 49(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(ia): inserted, on 23 June 2020, by section 49(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(j): amended, on 23 June 2020, by section 49(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(k): amended, on 23 June 2020, by section 49(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(n): amended, on 23 June 2020, by section 49(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(n): amended, on 23 June 2020, by section 49(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(p): repealed, on 23 June 2020, by section 49(11) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(1)(q): repealed, on 23 June 2020, by section 49(11) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(3): replaced, on 30 November 2020, by section 203 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30G(3A): inserted, on 5 December 2011, by section 9 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 30G(4): amended, on 23 June 2020, by section 49(12) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30GA Regulations for auctions to sell New Zealand units**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section that prescribe matters relating to the powers of the Minister under section 6A to sell New Zealand units by auction.
- (2) If regulations are to be made under this section, the Minister must recommend the making of regulations that—
  - (a) specify the date on which the sale of New Zealand units by auction commences:
  - (b) prescribe an indicative schedule for when auctions are planned to be held:
  - (c) specify circumstances in which an auction will not be held:

- (d) specify the format of an auction (for example, a single-round, sealed bid format):
  - (e) specify rules for the format of the auction (for example, rules on how bids are made and how tied bids are resolved):
  - (f) specify criteria, and requirements for registration, that a person must satisfy to participate in an auction:
  - (g) specify financial processes that a person must follow when participating in an auction, including requirements for financial assurance, payment, and delivery:
  - (h) provide for the results of each auction to be made publicly available.
- (3) If regulations are to be made under this section, the Minister may recommend the making of regulations for any or all of the following purposes:
- (a) providing for pilot auctions to be conducted, whether before or after the date on which auctions commence:
  - (b) prescribing offences and penalties for the breach of regulations made under this section or section 30GD:
  - (c) prescribing infringement offences for the breach of regulations made under this section or section 30GD, and prescribing for those offences—
    - (i) maximum fines not exceeding—
      - (A) \$3,000 for an individual:
      - (B) \$6,000 in any other case; and
    - (ii) infringement fees not exceeding—
      - (A) \$1,000 for an individual:
      - (B) \$2,000 in any other case:
  - (d) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
  - (e) providing for any other matters for the conduct of an auction that the Minister considers relevant to the effective conduct of the auction.

Section 30GA: replaced, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30GB Regulations about limits and price control settings for units**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section.
- (2) If regulations are to be made under section 30GA, the Minister must recommend the making of regulations under this section that—
  - (a) prescribe the following limits for a calendar year:
    - (i) a limit on the New Zealand units available by auction (an **individual limit**); and

- (ii) a limit on the approved overseas units used (another **individual limit**); and
    - (iii) a limit on the sum of the following (the **overall limit**):
      - (A) the New Zealand units available by auction;
      - (B) the New Zealand units available by other means;
      - (C) the approved overseas units used; and
  - (b) provide that—
    - (i) the individual limits must not be exceeded; and
    - (ii) the overall limit—
      - (A) restricts both the New Zealand units available by auction and the approved overseas units used, in that neither must cause the overall limit to be exceeded; but
      - (B) does not restrict the New Zealand units available by other means, in that they may cause the overall limit to be exceeded; and
  - (c) provide that any additional units that are allocated under section 86C(5)(b) are not counted as New Zealand units available by other means; and
  - (d) provide for how a reserve amount of New Zealand units is to be released for sale at auction if a trigger price is reached or exceeded by bidding at an auction, unless the reserve amount and minimum price are set at zero under paragraph (e); and
  - (e) prescribe the following **price control settings**:
    - (i) the reserve amount of New Zealand units for each trigger price, which may be a single reserve amount of zero;
    - (ii) the 1 or more trigger prices, unless the reserve amount is zero;
    - (iii) the minimum price at which units may be sold by auction, which may be zero.
- (3) The Minister must recommend the making of regulations under this section so that,—
- (a) when the regulations are first made, they prescribe limits and price control settings for each of the next 5 or 6 calendar years; and
  - (b) the regulations are amended to ensure that, at all times, they prescribe limits and price control settings for each of the next 5 calendar years.
- (4) Each time the Minister is to recommend that the regulations be amended to apply to a further calendar year under subsection (3)(b), the Minister—
- (a) must consider whether to recommend prescribing new limits and new price control settings for each of the 2 calendar years before that further calendar year; and

- (b) may recommend prescribing new limits and new price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made.
- (5) However, the Minister may make a recommendation under subsection (4)(b) only if,—
- (a) in the year in which the amendment is made, the price control settings have had effect by—
- (i) the release of a reserve amount of units; or
- (ii) the sale of units at the minimum price; or
- (b) the Minister is satisfied that the amendment is justified by the following special circumstances:
- (i) a change that has significantly affected any matter that the Minister was required to consider under section 30GC when recommending the limits and price control settings that are to be amended; or
- (ii) a change in the budget or contribution described by section 30GC(2)(a) or (b) that applies to the year to which the amendment applies; or
- (iii) a *force majeure* event.
- (6) Regulations made under subsection (2)(a)(ii) may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.
- (7) See section 30GC for requirements relating to this section.
- (8) In this section,—

**approved overseas units used** means the number of approved overseas units used by participants in a calendar year by, for example, being transferred to holding accounts or being surrendered

**New Zealand units available by auction** means the number of New Zealand units sold by auction in a calendar year

**New Zealand units available by other means** means the number of New Zealand units that are allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in a calendar year.

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#### Example

Regulations are first made under this section in December 2020. They must prescribe the individual limits, overall limits, and price control settings for the 5 (or 6) years from 2021 to 2025 (or 2026). In 2021, the regulations—

- must be amended to apply (or in how they apply) to 2026; and
- may be amended to prescribe new individual limits, overall limits, and price control settings for 2024 and 2025; and

- may be amended to prescribe new price control settings for 2022 or 2023.

Section 30GB: replaced, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30GC Requirements for regulations about limits and price control settings for units**

- (1) The Minister must comply with this section in—
  - (a) recommending under section 30GB(2), (3), or (4)(b) the making of regulations that prescribe individual limits, overall limits, or price control settings; and
  - (b) considering under section 30GB(4)(a) whether to recommend prescribing new individual limits, overall limits, and price control settings for the 2 calendar years before a further calendar year.
- (2) The Minister must be satisfied that the limits and price control settings are in accordance with—
  - (a) the emissions budget, and the nationally determined contribution for New Zealand under the Paris Agreement, that applies to—
    - (i) the period for which the limits or price control settings are being prescribed; or
    - (ii) any period after that, if a budget or contribution exists for that period; and
  - (b) the 2050 target.
- (3) However, they need not strictly accord with the budgets or contributions as long as the Minister is satisfied that the discrepancy is justified, after considering the other matters under this section.
- (4) The Minister must consider—
  - (a) the main matters; and
  - (b) the additional matters, but only in relation to the price control settings.
- (5) The **main matters** are as follows:
  - (a) the projected trends for New Zealand's greenhouse gas emissions in the 5 years after the current year, including—
    - (i) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme applies (meaning emissions for which participants are required to submit returns or surrender units under this Act); and
    - (ii) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme does not apply:
  - (b) the proper functioning of the emissions trading scheme:



- (c) international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions to access emissions reductions in their carbon markets:
  - (d) the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions:
  - (e) the recommendations made by the Climate Change Commission under section 5ZOA:
  - (f) any other matters that the Minister considers relevant.
- (6) The **additional matters** are as follows:
- (a) the impact of emissions prices on households and the economy:
  - (b) the level and trajectory of international emissions prices (including price controls in linked markets):
  - (c) inflation.
- (7) If the Minister makes a recommendation about prescribing limits or price control settings that differs from a recommendation made by the Commission under section 5ZOA, the Minister must, as soon as is reasonably practicable, prepare a report of the reasons for the difference and—
- (a) present a copy of the report to the House of Representatives; and
  - (b) make the report publicly available.

Section 30GC: inserted, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30GD Regulations for auction monitor**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations under this section.
- (2) If regulations are made, or are to be made, under section 30GA, the Minister may recommend the making of regulations under this section for any or all of the following purposes:
  - (a) prescribing a method or process by which the Minister may appoint a person as an auction monitor, which must—
    - (i) require the person to be independent of any auction agents and any persons who are likely to be auction participants; and
    - (ii) include as functions of the auction monitor—
      - (A) validating auction results; and
      - (B) publishing reports on the results of auctions:
  - (b) specifying that the auction monitor's functions include any of the following:

- (i) monitoring the conduct of any auction agents and auction participants:
  - (ii) providing periodic assessments of the auction system and making recommendations for improvements:
  - (iii) calculating additional specified metrics in respect of the auction process and auction results (such as bid volume statistics and relevant aggregate information):
  - (iv) any other functions that the Minister considers are relevant to the effective conduct of the auction monitor's role.
- (3) In this section and section 30GE,—

**auction agent** means any agent appointed under section 6A(b) to conduct an auction

**auction monitor** means a person appointed as an auction monitor under regulations recommended under subsection (2)(a)

**auction participant** means a potential buyer who participates in an auction.

Section 30GD: inserted, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 30GE Sharing information with auction monitor

- (1) The purpose of this section is to facilitate the provision of information—
- (a) from the EPA, the Registrar, the chief executive, or any auction agent (a **provider**):
  - (b) to the auction monitor (if appointed).
- (2) A provider must provide information to the auction monitor if the information—
- (a) is requested by the auction monitor; and
  - (b) is required by the auction monitor to assist in carrying out its functions.

Section 30GE: inserted, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 30GF Obligation of confidentiality on auction monitor

- (1) This section applies to the auction monitor (if appointed) while, and after, the auction monitor performs its functions or exercises its powers.
- (2) The auction monitor—
- (a) must keep confidential all information that comes into its knowledge when performing its functions or exercising its powers; and
  - (b) must not disclose any of that information, except—
    - (i) with the consent of the person to whom the information relates or to whom the information is confidential; or

- (ii) to the extent that the information is already in the public domain;  
or
  - (iii) for the purposes of, or in connection with, the performance of its functions or the exercise of its powers; or
  - (iv) as provided under this Act or any other Act; or
  - (v) 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
  - (vi) for the purpose of complying with international climate change obligations.
- (3) The auction monitor commits an offence under section 30GG if the auction monitor knowingly contravenes this section.
- (4) Nothing in subsection (2) may be treated as prohibiting the auction monitor from—
- (a) providing or publishing general information in relation to its functions;  
or
  - (b) with the prior approval of the Minister, preparing statistical information and supplying it to any person in a form that does not identify any individual.

Section 30GF: inserted, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30GG Offence for breach of auction monitor's obligation of confidentiality**

An auction monitor who knowingly acts in contravention of section 30GF commits an offence and is liable on conviction to either or both of the following:

- (a) imprisonment for a term not exceeding 6 months;
- (b) a fine not exceeding \$15,000.

Section 30GG: inserted, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30H Consultation and commencement for certain regulations about units and auctions**

- (1) This section applies to regulations made under—
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2);
  - (b) section 30GA (auctions to sell New Zealand units);
  - (c) section 30GB (limits and price controls for units);
  - (d) section 30GD (auction monitor).
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.

- (3) The regulations come into force—
- (a) 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations; but
  - (b) if the Minister considers it is in the national interest that they be made urgently, on any earlier date specified in the regulations.

Section 30H: replaced, on 23 June 2020, by section 50 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30I 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 international climate change obligations; 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 international climate change obligations:
    - (ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with international climate change obligations.
- (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 170 to 177 apply to material incorporated by reference into regulations under section 30G as though all references to a relevant empowering section were references to section 30G and all references to the chief executive were references to the Registrar.

Section 30I: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30I(1)(a): amended, on 23 June 2020, by section 51(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30I(1)(b)(i): amended, on 23 June 2020, by section 51(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30I(1)(b)(ii): amended, on 23 June 2020, by section 51(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30I(4): amended, on 23 June 2020, by section 51(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30IA Minister must obtain greenhouse gas reductions to match certain excess units**

- (1) This section applies to the following New Zealand units (if any) to the extent that they cause the emissions budget for an emissions budget period to be exceeded:
  - (a) the units sold by auction, after being released in a reserve amount, in that period:
  - (b) the units allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in that period.
- (2) The Minister must ensure, or enter into agreements that require, that the emission of greenhouse gases is reduced, or the removal of greenhouse gases from the atmosphere is increased, by 1 tonne of carbon dioxide equivalent for each of the units, whether by domestic means or offshore mitigation.
- (3) The deadline for the Minister to do so is as soon as is reasonably practicable after the end of the emissions budget period.

Section 30IA: inserted, on 23 June 2020, by section 52 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30J Signing false declaration with respect to regulations made under section 30G or 30GA**

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

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$5,000.

Section 30J: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 30J heading: amended, on 23 June 2020, by section 53(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 30J: amended, on 23 June 2020, by section 53(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**30K 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.

Section 30K: inserted, on 26 September 2008, by section 34 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### Subpart 3—Infringement offences

Subpart 3: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### 30L Meaning of infringement offence and infringement fee

In this subpart,—

**infringement fee**, for an infringement offence, means the infringement fee for the offence prescribed in regulations made under this Act

**infringement offence** means an offence prescribed as an infringement offence by regulations made under this Act.

Section 30L: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### 30M Regulations about infringement offences

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes:
  - (a) prescribing infringement offences by—
    - (i) prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any of sections 30J, 30K(1), 46, 47, 48, 129, 131, 132(1)(a), (b), and (f) to (i), 259, 260, 261(1)(a), (b), (d), and (e), and 264; and
    - (ii) providing that a contravention of the duty, restriction, or prohibition is an infringement offence:
  - (b) prescribing for the infringement offences—
    - (i) maximum fines not exceeding—
      - (A) \$3,000 for an individual;
      - (B) \$6,000 in any other case; and
    - (ii) infringement fees not exceeding—
      - (A) \$1,000 for an individual;
      - (B) \$2,000 in any other case:
  - (c) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
  - (d) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Before the Minister recommends the making of regulations under subsection (1)(a), the Minister must be satisfied, after consulting the Minister of Justice,

that a contravention of each duty, restriction, or prohibition is sufficiently minor to be appropriate as an infringement offence.

- (3) A person may be prosecuted for, and convicted of, an offence against any provision referred to in subsection (1)(a)(i) even if their conduct is or may be an infringement offence.

Section 30M: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30N Consultation and commencement for regulations about infringement offences**

- (1) This section applies to regulations made under section 30M.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 30N: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30O Proceedings for infringement offences**

- (1) A person who is alleged to have committed an infringement offence may—
  - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
  - (b) be issued with an infringement notice under section 30Q.
- (2) Proceedings commenced in the way described in subsection (1)(a) do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

Section 30O: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30P Appointment of enforcement officers**

- (1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this subpart.
- (2) Section 93(2) to (5) applies in relation to the appointment.

Section 30P: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30Q When infringement notice may be issued**

- (1) An enforcement officer may issue an infringement notice to a person if the enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.

- (2) The enforcement officer may require the person to provide their full name and any other information required so that the enforcement officer can issue the infringement notice.

Section 30Q: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30R Infringement notice may be revoked**

- (1) The enforcement officer may revoke an infringement notice before the infringement fee is paid or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
- (3) The revocation of an infringement notice under this section is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

Section 30R: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30S What infringement notice must contain**

- (1) An infringement notice must be in the form prescribed in regulations and must contain the following particulars:
- (a) details of the alleged infringement offence that fairly inform a person of the nature of the alleged offence, including, to any applicable extent, the time and place of the alleged offence;
  - (b) the amount of the infringement fee;
  - (c) the address of the EPA;
  - (d) how the infringement fee may be paid;
  - (e) the time within which the infringement fee must be paid;
  - (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
  - (g) a statement that the person served with the notice has a right to request a hearing;
  - (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing;
  - (i) any other matters prescribed in regulations.
- (2) The particulars contained in the notice under subsection (1)(d) must include at least 1 method of payment in person.

Section 30S: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



### **30T How infringement notice may be served**

- (1) An infringement notice may be served on the person who the enforcement officer believes is committing or has committed the infringement offence by—
  - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
  - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
  - (c) leaving it for the person at the person's place of business, or place of work, with another person; or
  - (d) sending it to the person by prepaid post addressed to—
    - (i) the mailing address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person, if they are an account holder; or
    - (ii) the person's last known place of residence or place of business or work; or
  - (e) sending it to,—
    - (i) if the person is an account holder, the electronic address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person; or
    - (ii) if the person does not have a known place of residence or business in New Zealand, an electronic address of the person.
- (2) An infringement notice (or a copy of it) sent by prepaid post to a person under subsection (1) is to be treated as having been served on the person on the fifth working day after the date on which it was posted.

Section 30T: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30U Payment of infringement fees**

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account.

Section 30U: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **30V Reminder notices**

A reminder notice must be in the form prescribed in regulations, and must include the same particulars, or substantially the same particulars, as the infringement notice.

Section 30V: inserted, on 23 June 2020, by section 54 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 4—Regulations setting price of carbon

Subpart 4: inserted, on 1 January 2021, by section 212 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **30W Regulations setting price of carbon**

- (1) For the purpose of sections 134 to 134D and any other provisions that refer to regulations made under this section, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—
  - (a) prescribing the methodology for specifying the price of carbon; and
  - (b) specifying the price of carbon by applying the methodology.
- (2) Before recommending the making of regulations, the Minister must take into account—
  - (a) the price of the units used to calculate revenue from the emissions trading scheme in the Crown annual financial statements in the preceding 12 months; and
  - (b) the price of New Zealand units sold by auction in the preceding 12 months; and
  - (c) any changes to the operation of the emissions trading scheme that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year.
- (3) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(a).
- (4) Regulations made under subsection (1)(a) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 30W: inserted, on 1 January 2021, by section 212 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **Part 3**

### **Inventory agency**

Part 3 heading: inserted, on 26 September 2008, by section 35 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **31 Meaning of greenhouse gas**

For the purposes of this Part, despite anything in section 4, **greenhouse gas** means a gas in the earth's atmosphere that strongly absorbs and re-emits infra-red radiation, and includes indirect greenhouse gases.

Section 31: amended, on 23 June 2020, by section 55(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 31: amended, on 23 June 2020, by section 55(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 32 Primary functions of inventory agency

- (1) The primary functions of the inventory agency are to—
  - (a) estimate annually New Zealand’s human-induced emissions by sources and removals by sinks of greenhouse gases; and
  - (b) prepare the following reports for the purpose of discharging New Zealand’s obligations:
    - (i) New Zealand’s annual inventory report under Articles 4 and 12 of the Convention and Article 7.1 of the Protocol, including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled; and
    - (ia) any report of information by New Zealand under Article 13 of the Paris Agreement; and
    - (ii) New Zealand’s national communication (or periodic report) under Article 7.2 of the Protocol and Article 12 of the Convention.
    - (iii) *[Repealed]*
- (2) In carrying out its functions, the inventory agency must—
  - (a) identify source categories; and
  - (b) collect data by means of—
    - (i) voluntary collection; and
    - (ii) collection from government agencies and other agencies that hold relevant information; and
    - (iii) collection in accordance with regulations made under this Part (if any); and
  - (c) estimate the emissions and removals by sinks for each source category; and
  - (d) undertake assessments on uncertainties; and
  - (e) undertake procedures to verify the data; and
  - (f) retain information and documents to show how the estimates were determined.

Section 32(1)(b)(i): amended, on 1 January 2013, by section 20 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 32(1)(b)(i): amended, on 14 November 2006, by section 25 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 32(1)(b)(ia): inserted, on 23 June 2020, by section 56(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 32(1)(b)(iii): repealed, on 23 June 2020, by section 56(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 32(2)(b)(iii): amended, on 26 September 2008, by section 36 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**33 Inventory agency under direction of Minister**

- (1) The inventory agency must comply with any direction from the Minister in relation to the performance of its functions under this Part.
- (2) As soon as practicable after giving the direction, the Minister must make a copy of the direction accessible via the inventory agency's Internet site.

Section 33 heading: amended, on 26 September 2008, by section 37(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(1): amended, on 26 September 2008, by section 37(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(2): amended, on 26 September 2008, by section 37(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 33(2): amended, on 14 November 2006, by section 26 of the Climate Change Response Amendment Act 2006 (2006 No 59).

**34 Record keeping**

The inventory agency must keep a record of changes that occur from year to year in—

- (a) the collection of data; and
- (b) the use of methodologies and emission factors.

**35 Publication**

The inventory agency must publish New Zealand's annual inventory report, national inventory report, and national communication (or periodic report) in electronic form by placing the reports on a publicly accessible portion of the inventory agency's Internet site.

Section 35: substituted, on 1 August 2003, by section 27 of the Climate Change Response Amendment Act 2006 (2006 No 59).

Section 35: amended, on 23 June 2020, by section 57 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

*Inspectors*

Heading: substituted, on 26 September 2008, by section 38 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**36 Authorisation of inspectors**

- (1) The Minister may authorise the following persons, provided that they are suitably qualified and trained, to exercise any or all of the powers of, and carry out any or all of the duties of an inspector under this Part:
  - (a) employees of the inventory agency; or
  - (b) employees of the Ministry for Primary Industries and employees of any other department of the public service prescribed by regulation; or

- (c) employees of New Zealand Forest Research Institute Limited, Landcare Research New Zealand Limited, AgResearch Limited, and employees of any other Crown Research Institute (within the meaning of the Crown Research Institutes Act 1992) prescribed by regulation; or
  - (d) employees of the EPA.
- (2) An authorisation is subject to the terms and conditions that are agreed to by the Minister and the chief executive of the agency that employs the person authorised to be an inspector.
- (3) The Minister must supply an inspector with a warrant of authorisation that clearly states the powers and duties of that inspector.
- (4) An inspector who exercises, or purports to exercise, a power conferred on that inspector under this Part must carry and be able to produce, if required to do so,—
  - (a) his or her warrant of authorisation; and
  - (b) evidence of his or her identity.
- (5) An inspector who holds a warrant of authorisation issued under this section must, on the termination of that inspector's authorisation, surrender his or her warrant of authorisation to the Minister.

Section 36(1): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(1): amended, on 26 September 2008, by section 39(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(1)(b): amended, on 1 January 2013, by section 21 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 36(1)(c): amended, on 23 June 2020, by section 58 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 36(1)(c): amended, on 5 December 2011, by section 10 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 36(1)(d): added, on 5 December 2011, by section 10 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 36(2): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(3): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(4): amended, on 26 September 2008, by section 39(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 36(5): amended, on 26 September 2008, by section 39(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **37 Power to enter land or premises to collect information to estimate emissions or removals of greenhouse gases**

- (1) For the purposes of collecting information to assist with the estimation of New Zealand's human-induced emissions by sources and removals by sinks of greenhouse gases, an inspector may, if authorised in writing by the Minister,

enter or re-enter land, or premises where any livestock are likely to be held, excluding any dwellinghouse, at any reasonable time during the ordinary hours of business, to—

- (a) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):
  - (b) take samples of water, air, soil, or organic matter.
- (2) To avoid doubt, the authorisation given by the Minister may be for a series of surveys, investigations, tests, measurements, or samples.
- (3) Reasonable notice, in writing, must be given to the occupier (if any) of the land or premises to be entered that specifies—
- (a) when, and by what means, entry is to be made; and
  - (b) the purpose for which entry is required; and
  - (c) that the entry is authorised under this section.
- (4) Reasonable effort must be made to give notice under subsection (3) to the owner or owners of the land or premises.
- (5) If the owner or owners are not given notice, reasonable effort must be made to identify any wāhi tapu areas and archaeological sites on the land by other means.
- (6) An inspector who exercises the power of entry under this section may use any assistance that is reasonably necessary to exercise the power.
- (7) A person who provides assistance under subsection (6) may exercise the powers provided to inspectors under subsection (1).

Section 37(1): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 37(2): amended, on 26 September 2008, by section 40 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **38 Limitation on power of entry under section 37**

The Minister may only authorise an inspector to exercise the power of entry under section 37 if satisfied that the information sought—

- (a) requires specific technical expertise to collect; and
- (b) cannot reasonably be obtained from the occupier or owner of the land or premises.

Section 38: amended, on 26 September 2008, by section 41 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **39 Power of entry for inspection**

- (1) An inspector authorised in writing by the inventory agency may enter land or premises (excluding any dwellinghouse) at any reasonable time during the ordinary hours of business, for the purpose of inspection, to determine whether

- or not a person is complying with regulations made under section 50(2)(a), (c), (e), or (f).
- (2) During an inspection, an inspector may—
    - (a) require the production of, inspect, and copy any documents or business records (including electronic documents or records):
    - (b) take samples of water, air, soil, or organic matter:
    - (c) carry out surveys, investigations, tests, or measurements (including those that involve leaving measuring equipment on the land or premises):
    - (d) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not regulations made under section 50(2)(a), (c), (e), or (f) have been complied with.
  - (3) An inspector who exercises the power of inspection under this section must give the occupier or owner reasonable notice of the inspector'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 inspector who exercises the power of inspection under this section may be accompanied by any person or persons reasonably necessary to assist him or her with the inspection.
  - (6) A person who provides assistance under subsection (5) may exercise the powers provided to inspectors under subsection (2)(a) to (c).
  - (7) Nothing in this section limits the privilege against self-incrimination.

#### **40 Applications for warrants**

- (1) A District Court Judge who, on written application made on oath by an inspector authorised by the inventory agency, is satisfied that there are reasonable grounds to believe that there are in or on or under or over any land, premises, or dwellinghouse any documents or other records or things (including samples) for which there are reasonable grounds to believe may be evidence of the commission of an offence under section 46 may issue a warrant authorising the entry and search of that land, premises, or dwellinghouse.
- (2) Every search warrant must authorise the inspector executing the warrant to—
  - (a) enter and search the land, premises, or dwellinghouse within 30 working days of 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 or business records (including electronic documents or records); and
  - (c) demand from the occupier any other information that the inspector may reasonably require for the purpose of determining whether or not the regulations made under section 50(2) have been complied with; and
  - (d) seize any documents or business records that the inspector has reasonable cause to suspect may be evidence of the commission of an offence under section 46; and
  - (e) take samples of water, air, soil, or organic matter; and
  - (f) use any assistance 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.
- (3) An inspector may not enter a dwellinghouse unless that inspector is accompanied by a constable.
- (4) A person who provides assistance under subsection (2)(f) may exercise the powers provided to inspectors under subsection (2)(a), (b), (d), (e), and (g).
- (5) Nothing in this section limits the privilege against self-incrimination.

Section 40(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

#### **41 Entry of defence areas**

Despite anything in sections 37, 39, and 40, an inspector may not enter a defence area (within the meaning of section 2(1) of the Defence Act 1990), except in accordance with a written agreement between the inventory agency and the Chief of Defence Force on the date or dates specified in that agreement.

#### **42 Proof of authority must be produced**

If powers are exercised under section 37 or section 39 or section 40, an inspector must, on initial entry, and if asked by the occupier at any time afterward, produce for inspection that inspector's—

- (a) warrant of authorisation and evidence of his or her identity; and
- (b) written authorisation to enter required under section 37 or section 39 or a search warrant required under section 40.

#### **43 Notice of entry**

- (1) If, when powers are exercised under section 37 or section 39 or section 40, the occupier is not present at the time that the written authorisation or search warrant is executed, and notice is not given to the owner or owners under section 37 or section 39, the inspector 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 that inspector; and
  - (d) an address at which enquiries may be made.
- (2) If the inspector removes, or has removed, any documents or business records from any land, premises, or dwellinghouse, the inspector must hand to the occupier, or attach in a prominent place, a notice that—
- (a) lists all of the items taken; and
  - (b) states where those items are being held (and, if they are being held in 2 or more places, state which items are being held in which place); and
  - (c) states the procedure that the person must follow to have those items returned.

**44 Information obtained under section 39 or section 40 only admissible in proceedings for alleged breach of regulations made under section 50(2)**

No document, business record, or other information obtained from a person under section 39 or section 40 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of regulations made under section 50(2).

**45 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 inspector as if—

- (a) references in that section to a constable were references to an inspector; and
- (b) the reference in that section to section 198 of that Act were a reference to section 39 or section 40 of this Act.

**45A Protection of persons acting under authority of this Part**

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, performing a function, or exercising a power conferred on that person by this Part 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.

Section 45A: inserted, on 26 September 2008, by section 42 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Offences and penalties*

**46 Failing to provide required information to inventory agency**

Every person who fails, without reasonable excuse, to provide the information to the inventory agency required under regulations made under section 50(2)—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding,—
  - (i) in the case of an individual, \$5,000; or
  - (ii) in the case of a body corporate, \$30,000.

#### **47 Obstructing, hindering, resisting, or deceiving person exercising power under Part**

Every person—

- (a) commits an offence who—
  - (i) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under this Part or regulations made under this Part; or
  - (ii) wilfully interferes with any survey, investigation, test, or measurement carried out by an inspector under this Part; or
  - (iii) refuses to provide information that an inspector has demanded from that person under section 39(2)(d) or section 40(2)(c), except on the grounds of self-incrimination; and
- (b) is liable on conviction to a fine not exceeding,—
  - (i) in the case of an individual, \$5,000; or
  - (ii) in the case of a body corporate, \$30,000.

Section 47 heading: amended, on 26 September 2008, by section 43(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(i): amended, on 26 September 2008, by section 43(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 47(a)(ii): amended, on 26 September 2008, by section 43(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **48 Signing false declaration in respect of regulations made under section 50**

Every person who signs a declaration that is required by regulations made under section 50 and that is false, knowing the declaration to be false,—

- (a) commits an offence; and
- (b) is liable on conviction to a fine not exceeding \$5,000.

Section 48 heading: amended, on 26 September 2008, by section 44 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 48: amended, on 23 June 2020, by section 59 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **48A Providing false or misleading information to Registrar**

*[Repealed]*

Section 48A: repealed, on 26 September 2008, by section 45 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

*Miscellaneous provisions*

**49 Reporting**

For the purpose of reporting to the Secretariat in accordance with international climate change obligations, the Minister may, as and when the Minister thinks fit, direct the inventory agency or the Registrar to provide reports and information to the Minister or directly to the Secretariat.

Section 49: amended, on 23 June 2020, by section 60 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 49: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**50 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:
- (a) *[Repealed]*
  - (b) prescribing agencies whose employees may act as inspectors under section 36, being—
    - (i) a department as defined in section 5 of the Public Service Act 2020; or
    - (ii) a Crown Research Institute within the meaning of the Crown Research Institutes Act 1992:
  - (c) *[Repealed]*
  - (ca) *[Repealed]*
  - (d) *[Repealed]*
  - (e) *[Repealed]*
  - (f) *[Repealed]*
  - (g) *[Repealed]*
  - (h) *[Repealed]*
  - (i) prescribing forms and notices for the purposes of this Part:
  - (j) for the purposes of, and subject to, Part 2, giving effect to international climate change obligations, including any decisions, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters adopted, agreed on, made, or approved in accordance with international climate change obligations:
  - (k) providing for the matters that are contemplated by, or necessary for, giving full effect to this Part and for its due administration.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring persons to keep and provide information to the inventory agency for the purpose of estimating New Zealand's

- human-induced emissions by sources and removals by sinks of greenhouse gases on any or all of the following:
- (a) emissions of greenhouse gases into the atmosphere from industrial or trade premises:
  - (b) volumes of fuel produced, distributed, sold, or used, and the nature of the use of that fuel:
  - (c) industrial processes, including by-products from industrial processes:
  - (d) composition of vehicle fleets and use of vehicles, including, but not limited to, distances travelled:
  - (e) imports and exports of hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:
  - (f) imports, exports, manufacture, sales, and the nature of the use of products that contain hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride:
  - (fa) the registration of motor vehicles of each class that have air-conditioning systems that contain hydrofluorocarbons or perfluorocarbons:
  - (g) waste composition and weight, dimensional characteristics of landfills, and volume of landfill gases extracted and combusted:
  - (h) numbers of ruminants and other farmed livestock and their performance:
  - (i) areas of crops and amounts produced:
  - (j) amount of nitrogenous and lime fertilisers used:
  - (k) native and planted trees, the amount of harvesting, the area of land in scrub, and the area of land in other land uses that are necessary to determine land use change under international climate change obligations.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations requiring persons to provide to the inventory agency information that the person holds on any matter specified in subsection (2) for any year from 1989 to the current reporting year.
  - (4) Regulations made under subsection (2) may specify the manner and form in which records must be kept and provided, including specifying that those records must be declared as true, the form of that declaration, and who must sign that declaration.
  - (5) Regulations made under subsection (1) or (2) may be made in respect of different persons or classes of persons.
  - (6) For the purposes of subsection (5), **classes of persons** includes local authorities.
  - (7) Any regulations made under this section must be consistent with—
    - (a) this Act; and
    - (b) international climate change obligations.

(c) *[Repealed]*

- (8) The Governor-General may, by Order in Council, amend or replace Schedule 1, 2, or 2A so that the schedule sets out an up-to-date form of the relevant document (the Convention, the Protocol, or the Paris Agreement).

Section 50(1)(a): repealed, on 26 September 2008, by section 47(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(b)(i): replaced, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 50(1)(c): repealed, on 26 September 2008, by section 47(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(ca): repealed, on 26 September 2008, by section 47(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(d): repealed, on 26 September 2008, by section 47(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(e): repealed, on 26 September 2008, by section 47(5) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(f): repealed, on 26 September 2008, by section 47(6) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(g): repealed, on 26 September 2008, by section 47(7) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(h): repealed, on 26 September 2008, by section 47(8) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(i): amended, on 26 September 2008, by section 47(9) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(1)(j): amended, on 23 June 2020, by section 61(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(1)(j): amended, on 23 June 2020, by section 61(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(1)(k): amended, on 26 September 2008, by section 47(10) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(2): amended, on 23 June 2020, by section 61(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(2)(fa): inserted, on 1 January 2013, by section 22(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 50(2)(k): amended, on 23 June 2020, by section 61(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(3): amended, on 23 June 2020, by section 61(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(5): substituted, on 26 September 2008, by section 47(12) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 50(7)(b): replaced, on 23 June 2020, by section 61(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(7)(c): repealed, on 23 June 2020, by section 61(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 50(8): replaced, on 23 June 2020, by section 61(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**51 Incorporation by reference in regulations made 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 international climate change obligations; 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 international climate change obligations:
    - (ii) prescribed in any country or jurisdiction that are adopted, agreed on, made, or approved in accordance with international climate change obligations.
- (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 170 to 177 apply to material incorporated by reference into regulations under section 50 as though all references to a relevant empowering section were references to section 50 and all references to the chief executive were references to the inventory agency.

Section 51: substituted, on 26 September 2008, by section 48 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 51(1)(a): amended, on 23 June 2020, by section 62(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 51(1)(b)(i): amended, on 23 June 2020, by section 62(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 51(1)(b)(ii): amended, on 23 June 2020, by section 62(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 51(4): amended, on 23 June 2020, by section 62(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**52 Inventory agency must report to Minister on certain matters before certain regulations are made**

- (1) Before regulations are made under section 50(2) or (3), the inventory agency must provide a report to the Minister on—
  - (a) whether or not the information to be collected under the regulations is reasonably available to the inventory agency by other means, including, but not limited to,—
    - (i) voluntary collection; or

- (ii) collection from a government agency that holds the information (provided that the release of the information by that government agency complies with the information privacy principles set out in section 22 of the Privacy Act 2020 and any provisions of the enactment under which the information was collected); and
  - (b) any deficiencies with collecting the information using those other means, including, but not limited to,—
    - (i) deficiencies in obtaining the required quality of information; and
    - (ii) the lack of certainty that all the required information can be provided; and
  - (c) whether or not the regulations are likely to place a disproportionate burden on any particular group of persons.
- (2) When preparing a report under subsection (1), the inventory agency must consult any person or government agency that is likely to be affected by the proposed regulations.
- (3) With respect to a report prepared under subsection (1), the Minister—
- (a) must have regard to the report and to the results of consultation; and
  - (b) may recommend the making of regulations under section 50(2) or (3).
- (4) The Minister may not recommend the making of regulations under section 50(2) and (3) unless he or she is satisfied, on reasonable grounds, that the regulations are necessary to assist New Zealand to meet its international climate change obligations.

Section 52 heading: amended, on 26 September 2008, by section 49(1) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(1): amended, on 26 September 2008, by section 49(2) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(1)(a)(ii): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 52(3): amended, on 26 September 2008, by section 49(3) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 52(3)(b): amended, on 23 June 2020, by section 63(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 52(4): amended, on 23 June 2020, by section 63(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 52(4): amended, on 26 September 2008, by section 49(4) of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## 53 Consequential amendments

*[Repealed]*

Section 53: repealed, on 23 June 2020, by section 64 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Part 4

### New Zealand greenhouse gas emissions trading scheme

Part 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### Subpart 1—Participants

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 54 Participants

- (1) A person is a **participant**,—
  - (a) in respect of an activity listed in Schedule 3, if the person—
    - (i) is required under section 180, 186I, 204, or 213 to be treated as the person carrying out the activity; or
    - (ii) if subparagraph (i) does not apply, carries out the activity; and
  - (b) in relation to an activity listed in Schedule 4, if the person—
    - (i) carries out the activity, is registered as a participant under section 57 in respect of the activity, and that registration has taken effect; or
    - (ii) becomes a participant under Part 5 in respect of the activity and is not removed from the register in respect of that activity.
- (2) Any reference in the ETS participant provisions to a person or participant carrying out an activity must be read as referring to the person who is to be treated under section 180, 186I, 204, or 213 as carrying out the activity, or if those sections do not apply, to the person or participant carrying out the activity.
- (3) Subsection (1)(a) is subject to any exemption under an Order in Council made under section 60.
- (4) 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 (including, but not limited to, the obligation to retain records in accordance with section 67), or entitlements under section 64, arising in respect of an activity listed in Schedule 3 or 4 that the person carried out while a participant.
- (5) The EPA must ensure that the registers, or the information contained in the registers, kept for the purposes of section 56 or 57 are open for public inspection, without fee, on the EPA's Internet site and in any other form the EPA considers appropriate.

Section 54: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 54(1)(a)(i): amended, on 23 June 2020, by section 65(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



Section 54(1)(a)(i): amended, on 8 December 2009, by section 22(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(1)(b)(ii): amended, on 23 June 2020, by section 65(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 54(1)(b)(ii): amended, on 8 December 2009, by section 22(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(2): amended, on 23 June 2020, by section 65(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 54(2): amended, on 23 June 2020, by section 65(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 54(2): amended, on 8 December 2009, by section 22(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(4): amended, on 8 December 2009, by section 22(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 54(5): substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **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 the ETS participant provisions as a—
    - (i) participant in relation to the activity; or
    - (ii) member of an unincorporated body; or
    - (iii) member of a consolidated group under section 150, if the associated person qualifies to be a member of a consolidated group.

Section 55: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 55(3)(b): amended, on 23 June 2020, by section 66 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 55(3)(b)(ii): substituted, on 8 December 2009, by section 23(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 55(3)(b)(iii): amended, on 8 December 2009, by section 23(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **56 Registration as participant in respect of activities listed in Schedule 3**

- (1) A person who carries out an activity listed in Schedule 3 must—
  - (a) notify the EPA that the person is a participant in respect of the activity; and

- (b) if the person does not already have a holding account—
  - (i) apply to open a holding account under section 18A at the time the person notifies the EPA under paragraph (a); and
  - (ii) supply the account number of the holding account, or ensure that the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.
- (2) A notice under subsection (1)(a) must—
  - (a) be submitted to the EPA 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—
    - (i) the name of the person; and
    - (ii) the details of the activity that the person carries out; and
    - (iii) any other information that the EPA may require; and
    - (iv) if the person already has 1 or more holding accounts, the account number of the holding account that the person wishes to use for the purpose of section 61(1).
- (3) The EPA must, as soon as practicable after receiving a notice under subsection (1)(a),—
  - (a) enter on a register kept by the EPA for the purpose of this section—
    - (i) the name of the person; and
    - (ii) the activity that the person carries out; and
  - (b) notify the person that the person's name and the activity the person carries out have been entered on the register.
- (4) If the EPA receives a notice under subsection (1)(a) from a person whose name is already on the register kept in accordance with subsection (3), the EPA need not re-enter the person's name on the register, but must enter next to the person's name the activity that is specified in the notice, and notify the person that the activity has been entered on the register next to the person's name.
- (5) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to notify the EPA under subsection (1)(a), merely because they—
  - (a) deforest pre-1990 forest land that may not be treated as deforested under section 179A(1)(b); or
  - (b) deforest land that has ceased to be forest land (and pre-1990 forest land) because it has been offset by pre-1990 offsetting forest land.

Section 56: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 56(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(1)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(1)(b)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(2)(c)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 56(5): inserted, on 23 June 2020, by section 67 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **57 Applicant to be registered as participant in respect of activities listed in Schedule 4**

- (1) A person who carries out an activity listed in Schedule 4, or who will do so at the time that the person's registration takes effect, may apply to be registered as a participant in respect of the activity by application to the EPA 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 information that the EPA may require; and
    - (ii) the prescribed fee (if any); and
  - (c) if the person already has 1 or more holding accounts, contain the account number of the holding account that the person wishes to use for the purpose of section 61(1).
- (3) Any person who does not have a holding account at the time the person submits an application under subsection (1) must—
  - (a) apply to open a holding account under section 18A at the time the person submits the application; and
  - (b) supply the account number of the holding account to the EPA within 10 working days of receiving an account number from the Registrar.

- (4) Following the receipt of an application under subsection (1), the EPA must register the person in accordance with subsections (5) and (7) if satisfied that the person—
  - (a) in respect of the activity listed in Schedule 4 specified in the application—
    - (i) is carrying out the activity in the year in which the EPA receives the application; or
    - (ii) will carry out the activity in the year in which the person's registration will take effect in accordance with subsection (8); and
  - (b) has met any conditions of registration in respect of the activity in the ETS participant provisions; and
  - (ba) has met any eligibility criteria prescribed in relation to the activity; and
  - (c) has paid any prescribed fees or charges.
- (5) The EPA registers a person by entering on a register kept by the EPA for the purpose of this section—
  - (a) the name of the applicant; and
  - (b) the activity carried out by the applicant; and
  - (c) the date from which the applicant's registration as a participant in respect of the activity will take effect in accordance with subsection (8).
- (6) After registering a person under subsection (5), the EPA must notify the person that they have been registered as a participant in respect of the activity and the date from which the registration will take effect.
- (7) If the EPA receives an application under subsection (1) in respect of an activity listed in Part 2, 3, or 4 of Schedule 4, then the EPA must, within 20 working days of receiving the application,—
  - (a) decline the application; or
  - (b) register the applicant under subsection (5), unless the EPA requires further information from the applicant in order to satisfy himself or herself that the person is carrying out the activity specified in the application, in which case the EPA must either register the person within 20 working days of receiving the further information or decline the application.
- (8) The registration of a person takes effect from the date the person's name is entered on the register under subsection (5) or any later date required by section 198(2) or 209(2).
- (9) If the EPA receives an application under subsection (1) from a person whose name is already on the register kept in accordance with subsection (5), and registers the person in respect of the activity specified in the application, the EPA need not re-enter the person's name on the register, but must enter next to the person's name the activity that is specified in the application, and notify the

person that the activity has been entered on the register next to the person's name.

Section 57: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 57 heading: amended, on 1 January 2013, by section 24(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 57(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(4)(b): amended, on 23 June 2020, by section 68(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 57(4)(b): amended, on 8 December 2009, by section 24(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(4)(ba): inserted, on 1 January 2013, by section 24(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 57(4)(c): added, on 8 December 2009, by section 24(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(6): replaced, on 23 June 2020, by section 68(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 57(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(7): amended, on 8 December 2009, by section 24(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 57(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 57(8): amended, on 23 June 2020, by section 68(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 57(9): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **58 Removal from register of participants in respect of activities listed in Schedule 4**

- (1) A person who is registered under section 57 as a participant in respect of an activity listed in Schedule 4 may apply to have that person's name removed from the register in respect of the activity by application to the EPA 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 EPA must—
- (a) note on the register—
    - (i) that the applicant has applied to be removed from the register as a participant in respect of 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 was, or is to be, removed from the register in accordance with subsection (4).
  - (c) *[Repealed]*
- (4) The EPA must remove the name of an applicant under subsection (1) from the register in respect of the activity specified in the application immediately or on any later date required by section 188(7), 198(3), or 209(3).

Section 58: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 58(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 58(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 58(3)(c): repealed, on 23 June 2020, by section 69(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 58(4): amended, on 23 June 2020, by section 69(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 58(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **59 Removal from register of participants in respect of 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 EPA as soon as practicable if the person ceases, or will cease, to carry out the activity for the remainder of the year and the whole of the following year.
- (2) The EPA must, after receiving notice under subsection (1), or otherwise being satisfied that the person has ceased to carry out the activity for the remainder of the year and the whole of the following year,—
  - (a) remove the name of the person from the register in respect of the activity immediately or, if the notice specifies that the person will cease the activity on a future date, on that date; and
  - (b) notify the person that the person's name—
    - (i) has been removed from the register in respect of the activity; or

- (ii) if the person's name will be removed from the register in respect of the activity on a future date, that the person's name will be removed from the register in respect of the activity on that date.
- (3) This section is subject to sections 200 and 211.
- Section 59: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).
- Section 59(1): amended, on 1 January 2013, by section 25 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 59(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 59(2): amended, on 1 January 2013, by section 25 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 59(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 59(2)(b): amended, on 23 June 2020, by section 70 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 59(3): amended, on 8 December 2009, by section 26(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### **59A Removal from register if participant never carried out activity**

- (1) The EPA must remove the name of a person from the register in respect of an activity if the EPA is satisfied that the person is not carrying out the activity and has never carried out the activity.
- (2) At least 60 days before removing the name of the person from the register, the EPA must notify the person—
  - (a) that the EPA proposes to remove the name of the person from the register; and
  - (b) of the reason for the proposed removal; and
  - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity).
- (3) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

Section 59A: inserted, on 23 June 2020, by section 71 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **60 Exemptions in respect of 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 respect of—
  - (a) the activity; or
  - (b) part of the activity; or
  - (c) a proportion of the emissions from the activity; or

- (d) a combination of the matters specified in paragraphs (a) to (c).
- (1A) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.
- (1B) To avoid doubt, an order made under subsection (1) may exempt a person from being a participant in respect of an activity or emissions that occurred before or after the commencement of the order.
- (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 emissions trading scheme; and
  - (b) the costs of making the order do not exceed the benefits of making the order.
- (3) In determining whether 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 emissions trading scheme; and
  - (b) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme; 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 the ETS participant provisions in respect of the matters covered by the order.
- (5) See sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.
- (6) Despite anything in subsection (2) or (3), the Minister may recommend 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) *[Repealed]*

(8) *[Repealed]*

Section 60: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 60(1)(a): amended, on 8 December 2009, by section 27(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1)(b): amended, on 8 December 2009, by section 27(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1)(c): amended, on 8 December 2009, by section 27(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1A): inserted, on 8 December 2009, by section 27(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(1B): inserted, on 23 June 2020, by section 72(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(2)(a): amended, on 23 June 2020, by section 72(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(2)(b): amended, on 8 December 2009, by section 27(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 60(3)(a): amended, on 23 June 2020, by section 72(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(3)(b): amended, on 23 June 2020, by section 72(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(4): amended, on 23 June 2020, by section 72(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(5): replaced, on 23 June 2020, by section 72(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(6): amended, on 23 June 2020, by section 72(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(7): repealed, on 23 June 2020, by section 72(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 60(8): repealed, on 23 June 2020, by section 72(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **60A Exemption for participants in activity listed in Part 1 of Schedule 4**

(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 Part 1 of Schedule 4 from any provision or provisions of—

- (a) Part 4 or 5; or
- (b) regulations made for the purposes of Part 4 or 5.

(2) An order under this section may—

- (a) specify any terms and conditions of the exemption that the Governor-General thinks fit;
- (b) exempt a person generally, or in respect of a specified act, matter, or thing, or class of acts, matters, or things:

- (c) exempt a person in respect of something that occurred before the order was made:
  - (d) require the EPA to deal with emissions returns or applications, update the register, or take other actions in respect of acts, matters, or things affected by the exemption.
- (3) The Minister must not recommend the making of an order under this section unless satisfied that—
- (a) the order will not materially undermine the environmental integrity of the emissions trading scheme; and
  - (b) the costs of making the order do not exceed the benefits of making the order.
- (4) In determining whether to recommend the making of an order under this section, the Minister must have regard to the following:
- (a) the need to maintain the environmental integrity of the emissions trading scheme:
  - (b) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme:
  - (c) the relative costs of giving the exemption or not giving it, and who bears the costs:
  - (d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption:
  - (e) any other matters that the Minister considers relevant.
- (5) See sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.

Section 60A: inserted, on 23 June 2020, by section 73 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **60B Incorporation by reference in order made under section 60 or 60A**

- (1) The following written material may be incorporated by reference in an order made under section 60 or 60A:
- (a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and
  - (b) standards, requirements, or recommended practices of a government agency, standard-setting organisation, or professional body.
- (2) Material may be incorporated by reference in the order—
- (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the order.
- (3) Material incorporated by reference in the order has legal effect as part of the order.

- (4) Sections 170 to 177 apply to material incorporated by reference in the order as if—
- (a) references to regulations, or regulations made under a relevant empowering section, were references to the order, or to another order made under section 60 or 60A, as appropriate; and
  - (b) sections 173(2)(c) and (4)(b) and 174(1)(d) required a targeted notice instead of a notice in the *Gazette*, but section 174(1)(d) does not apply to material described by section 174(2)(b).
- (5) In subsection (4)(b), **targeted notice** means a notice to, or that is likely to come to the attention of, the persons that the chief executive considers are likely to be substantially affected by the making of the relevant regulations.

Section 60B: inserted, on 23 June 2020, by section 73 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 61 Requirement to have holding account

- (1) A participant or an eligible person must have a holding account for the purpose of—
- (a) surrendering units or repaying units as required under the ETS participant provisions;
  - (b) receiving New Zealand units to which the participant or eligible person is entitled under the ETS participant provisions.
- (2) Despite anything in subsection (1), a person who does not have a holding account at the time the person becomes a participant complies with subsection (1) if the person complies with section 56(1)(b) or 57(3), as the case may require.
- (3) Despite anything in this Act, the Registrar must, subject to section 18A(5), open a holding account in the name of—
- (a) a person—
    - (i) who applies to open a holding account in accordance with section 56(1)(b) or 57(3); and
    - (ii) whose name has been entered on a register kept for the purposes of section 56 or 57; or
  - (b) an eligible person.

Section 61: substituted, on 8 December 2009, by section 28 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 61(1)(a): amended, on 23 June 2020, by section 74 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 61(1)(b): amended, on 23 June 2020, by section 74 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**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 by regulations made under this Act, be verified by a person or organisation recognised by the EPA under section 92); 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 by regulations made under this Act, have the calculations verified by a person or organisation recognised by the EPA under section 92; and
- (d) keep, in the prescribed format (if any), records of the data or information and calculations.

Section 62: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 62(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 62(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 62(d): substituted, on 8 December 2009, by section 29 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**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 EPA.
- (3) Subsection (1) is subject to section 191(1)(c).
- (4) If the provision of this Act that imposes a liability to surrender or repay units does not specify the deadline for doing so, the deadline is within 60 working days after the EPA gives the person a notice requiring the surrender or repayment.

Section 63: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 63(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 63(3): inserted (with effect on 16 May 2014), on 20 May 2014, by section 4 of the Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30).

Section 63(4): inserted, on 23 June 2020, by section 75 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **63A Modification of liability to surrender units to cover certain emissions**

*[Repealed]*

Section 63A: repealed, on 1 January 2019, by section 63A(3).

### **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.
- (1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under section 197 (grant-funded forests).
- (2) If a participant submits an emissions return to the EPA that contains an assessment of the participant's entitlement to receive New Zealand units, then the EPA must, within 20 working days of receiving the emissions return, direct the Registrar to transfer the number of New Zealand units contained in the assessment to the participant's holding account.
- (3) Subsection (2) does not apply—
  - (a) if, within 20 working days of the EPA receiving the emissions return, the EPA or an enforcement officer serves notice on the participant under section 94 requiring the participant to provide information in respect of any matter contained in the emissions return; or
  - (b) to the extent that subsection (4) requires units to be transferred elsewhere.
- (4) The EPA must apply section 64A as follows:
  - (a) the units the participant is entitled to receive are the **potential transfer units**;
  - (b) the participant is the **recipient**;
  - (c) the end of the emissions return period for the emissions return is the **relevant time**.
- (4) *[Repealed]*
- (5) *[Repealed]*

Section 64: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 64(1A): inserted, on 23 June 2020, by section 76(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 64(2): substituted, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 64(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 64(3): replaced, on 23 June 2020, by section 76(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 64(4): inserted, on 23 June 2020, by section 76(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 64(4): repealed, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 64(5): repealed, on 8 December 2009, by section 30 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**64A Transfer of units allocated, or entitled to be received or reimbursed, less any units that must be surrendered or repaid**

- (1) If this section applies, the EPA must calculate the **specified units** (if any) by counting as follows the units that the recipient was required to, but did not, surrender, or repay to a Crown holding account, by or before the relevant time:
  - (a) starting from the units that were required to be surrendered or repaid by the earliest dates; but
  - (b) stopping once they equal the number of potential transfer units (if they do).
- (2) If there are any specified units, the EPA must notify the recipient of the following:
  - (a) the number of specified units required for surrender:
  - (b) the number of specified units required for repayment:
  - (c) that the specified units will be deducted from the potential transfer units when they are transferred to the recipient, excluding any specified units that have already been surrendered or repaid by then.
- (3) The EPA must direct the Registrar to transfer—
  - (a) the specified units required for surrender to a surrender account designated by the EPA; and
  - (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
  - (c) any potential transfer units left after the specified units are deducted to the recipient's holding account.
- (4) However, the Registrar, in transferring—
  - (a) any units under subsection (3), must exclude any specified units that have already been surrendered or repaid by then:
  - (b) any specified units under subsection (3)(a) or (b), may first transfer them to the recipient's holding account and then immediately transfer them from that holding account.
- (5) The transfer of any specified units for surrender or repayment satisfies—

- (a) the recipient's entitlement to be transferred those units; and
  - (b) the recipient's obligation to surrender or repay the related units.
- (6) To avoid doubt, the recipient remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units).

Section 64A: inserted, on 23 June 2020, by section 77 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **64A Modification of entitlement to receive New Zealand units for removal activities**

*[Repealed]*

Section 64A: repealed, on 1 January 2019, by section 64A(3).

#### **65 Annual emissions returns**

- (1) In the period beginning on 1 January and ending on 31 March in each year, a participant—
- (a) must submit an annual emissions return to the EPA in respect of each of the activities listed in Schedule 3 or Part 2, 3, or 4 of Schedule 4 that the participant carried out in the immediately preceding year:
  - (b) must, in the case where approval for the participant's offsetting forest land application is treated as revoked under section 186D(2) or is revoked under section 186G(1), submit an annual emissions return to the EPA in respect of the activity listed in Part 1 of Schedule 3 that the participant carried out that covers the period—
    - (i) beginning when the activity first occurred; and
    - (ii) ending on the date that the revocation occurred.
- (1A) For the purposes of the annual emissions return, the activity carried out in the period specified in subsection (1)(b) is to be treated as if it were carried out in the immediately preceding year.
- (2) The annual emissions return must, in respect of activities that the participant carried out during the year 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

- (e) be accompanied by the prescribed fee (if any); and
  - (f) be signed by the participant.
- (2A) If section 186E(1) applies,—
- (a) subsection (2)(b) and (c) does not apply; and
  - (b) the annual emissions return must record the emissions for the relevant pre-1990 forest land under section 186D(3)(c) as emissions of the participant for an activity listed in Part 1A of Schedule 3 for which the participant is liable to surrender units.
- (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) a participant (other than a participant carrying out an activity listed in Part 5 of Schedule 3) must, by 31 May, surrender the number of units listed in the participant's assessment under subsection (2)(c)(i) or recorded under subsection (2A)(b); and
  - (b) a participant carrying out an activity listed in Part 5 of Schedule 3 must, by 31 May, surrender the number of units listed in the participant's assessment under subsection (2)(c)(i) less the number of units allocated to the participant for the year to which the assessment relates under section 86BA.
- (5) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to submit an annual emissions return under subsection (1)(a), merely because they—
- (a) deforest pre-1990 forest land that may not be treated as deforested under section 179A(1)(b); or
  - (b) deforest land that has ceased to be forest land (and pre-1990 forest land) because it has been offset by pre-1990 offsetting forest land.

Section 65: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 65(1): replaced, on 1 January 2013, by section 28(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(1A): inserted, on 1 January 2013, by section 28(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(2A): inserted, on 1 January 2013, by section 28(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 65(2A)(a): amended, on 23 June 2020, by section 78(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 65(4): replaced, on 23 June 2020, by section 78(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 65(5): replaced, on 23 June 2020, by section 78(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



**66 Quarterly returns for other removal activities**

- (1) Despite anything in this Act, a person who is a participant in respect of an activity listed in Part 2 of Schedule 4 may, within 20 working days after the following dates, submit an emissions return that complies with subsection (2):
  - (a) 31 March:
  - (b) 30 June:
  - (c) 30 September.
- (2) An emissions return referred to in subsection (1) must—
  - (a) only relate to activities listed in Part 2 of Schedule 4 in respect of which the person is a participant; and
  - (b) in respect of each activity covered by the return, be in respect of the period—
    - (i) commencing on the later of—
      - (A) the day the person became a participant in respect of the activity; or
      - (B) the day after the end of the period covered by the participant's last emissions return in respect of the activity; and
    - (ii) ending on a date specified in subsection (1); and
  - (c) contain the information specified in section 65(2) in respect of the period covered by the return; and
  - (d) be submitted in accordance with section 65(3).
- (3) Despite anything in section 65, the annual emissions return of a participant who has submitted a return for an activity under this section in any year must cover only the part of the year not covered by a return under this section.

Section 66: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**67 Retention of emissions records**

- (1) A participant must keep sufficient records to enable the EPA 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 an emissions return submitted by the participant.

- (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.

Section 67: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 67(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### Subpart 2—Issuing and allocating New Zealand units

Subpart 2 heading: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### **68 Issuing New Zealand units**

- (1) The Minister may, at any time, direct the Registrar to issue New Zealand units into a Crown holding account.
- (2) Before giving a direction, the Minister must—
  - (a) consult the Minister of Finance; and
  - (b) have regard to the following matters:
    - (i) *[Repealed]*
    - (ii) international climate change obligations; and
    - (iii) the proper functioning of the emissions trading scheme; and
    - (iv) any other matters that the Minister considers relevant; and
  - (c) if the direction under subsection (1) relates to issuing New Zealand units into a Crown holding account on or after 1 January 2031, and if the Paris Agreement does not provide for a commitment period that starts on that date, have regard to the following matters:
    - (i) New Zealand’s annual emissions for the 5 years (on record) before the year of the direction under consideration; and
    - (ii) the report of the most recent review completed under section 160(1); and
    - (iii) international climate change obligations; and
    - (iv) New Zealand’s anticipated future international obligations.
- (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—

- (a) publish a copy of the direction in the *Gazette*; and
  - (b) ensure that the direction is accessible via the Internet site of the EPA; and
  - (c) present a copy of the direction to the House of Representatives.
- (5) Each copy of the direction under subsection (4) must be accompanied by a statement setting out how the Minister has had regard to the matters specified in subsection (2)(b) and, if relevant, subsection (2)(c).

Section 68: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 68(2)(b)(i): repealed, on 23 June 2020, by section 79(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 68(2)(b)(ii): replaced, on 23 June 2020, by section 79(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 68(2)(b)(iii): amended, on 23 June 2020, by section 79(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 68(2)(c): amended, on 23 June 2020, by section 79(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 68(2)(c)(iii): replaced, on 23 June 2020, by section 79(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 68(4)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **69 Notification of intention regarding New Zealand units**

*[Repealed]*

Section 69: repealed, on 23 June 2020, by section 80 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Allocation of New Zealand units in relation to pre-1990 forest land*

Heading: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Heading: amended, on 23 June 2020, by section 81 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **70 Allocation plan issued**

- (1) The Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 was made under this section to issue an allocation plan in respect of pre-1990 forest land.
- (2) The allocation plan may be revoked but not amended or replaced.
- (3) The allocation plan came into force on the day after the date it was presented to the House of Representatives.
- (4) The allocation plan is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 70: replaced, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **71 Correction of allocation plans**

*[Repealed]*

Section 71: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **72 Allocation in respect of pre-1990 forest land**

*[Repealed]*

Section 72: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **73 Minister to appoint person to hold certain New Zealand units**

*[Repealed]*

Section 73: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **74 Allocation to owners of fishing quota**

*[Repealed]*

Section 74: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **75 Consultation on pre-1990 forest land allocation plan**

*[Repealed]*

Section 75: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **76 Consultation on fishing allocation plan**

*[Repealed]*

Section 76: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **77 Determinations made in accordance with allocation plan**

*[Repealed]*

Section 77: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **78 Power to revoke and replace determinations**

*[Repealed]*

Section 78: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**79 Effect of new determination**

*[Repealed]*

Section 79: repealed, on 23 June 2020, by section 82 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

*Allocation of New Zealand units in relation to industry and agriculture*

Heading: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**80 Criteria for allocation of New Zealand units to industry**

- (1) A person is eligible for an allocation of New Zealand units for an eligible industrial activity in respect of a year if the person carries out the activity at any time in a year.
- (2) Subsection (1) is subject to sections 86E and 161D(7).

Section 80: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**81 Entitlement to provisional allocation for eligible industrial activities**

- (1) Subject to section 82, an eligible person is entitled to a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year calculated in accordance with the following formula:

$$PA = LA \times \sum(PDCT \times AB)$$

where—

PA is the person's provisional allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the eligible industrial activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
  - (i) 0.6 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate;
- (b) for a highly emissions-intensive eligible industrial activity,—
  - (i) 0.9 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

$\sum$  is the symbol for summation (of each PDCT  $\times$  AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year immediately preceding the year to which the provisional allocation relates, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

- (2) In this section, the **applicable phase-out rate** is,—
- (a) if regulations have not been made under section 84A or 84B that relate to the eligible industrial activity,—
- (i) 0.01 for each year after 2020 until and including 2030; and
  - (ii) 0.02 for each year after 2030 until and including 2040; and
  - (iii) 0.03 for each year after 2040; and
- (b) if regulations have been made under section 84A or 84B that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

Section 81: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 81(1) formula item LA: replaced, on 23 June 2020, by section 83(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 81(2): inserted, on 23 June 2020, by section 83(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **82 Entitlement to allocation for eligible industrial activities where provisional allocation not received**

- (1) An eligible person who carries out an eligible industrial activity at any time in a year, but did not carry out that activity during the immediately preceding year (a **new entrant**) is not entitled to a provisional allocation calculated under section 81, but is entitled to an allocation under subsection (2).
- (2) A new entrant or other eligible person who did not receive a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year is entitled to an allocation of New Zealand units for the eligible industrial activity for the year calculated in accordance with the formula in section 83(2).

Section 82: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **83 Annual allocation adjustment**

- (1) A person who has received a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year must, subject to section 84, calculate the person's annual allocation adjustment for the activity for the year by—
- (a) determining the person's final allocation entitlement for the eligible industrial activity in respect of the year in accordance with the formula in subsection (2); and
  - (b) then determining the annual allocation adjustment in accordance with the formula in subsection (3).

- (2) The formula for the calculation of a person's final allocation entitlement is as follows:

$$FA = LA \times \sum(PDCT \times AB)$$

where—

FA is the person's final allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
  - (i) 0.6 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate:
- (b) for a highly emissions-intensive eligible industrial activity,—
  - (i) 0.9 in each year until and including 2020; and
  - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

$\sum$  is the symbol for summation (of each PDCT  $\times$  AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

- (2A) In subsection (2), the **applicable phase-out rate** is,—
- (a) if regulations have not been made under section 84A or 84B that relate to the eligible industrial activity,—
    - (i) 0.01 for each year after 2020 until and including 2030; and
    - (ii) 0.02 for each year after 2030 until and including 2040; and
    - (iii) 0.03 for each year after 2040; and
  - (b) if regulations have been made under section 84A or 84B that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

- (3) The formula for the calculation of a person's annual allocation adjustment is as follows:

$$AA = PA - FA$$

where—

AA is the person's annual allocation adjustment of units for the eligible industrial activity for the year

- PA is the person's provisional allocation for the eligible industrial activity notified by the EPA under section 86B
- FA is the person's final allocation entitlement for the eligible industrial activity for the year calculated under subsection (2).
- (4) If the figure for AA calculated under the formula in subsection (3)—
- (a) is a negative number, then the person is entitled to be allocated the number of units in the annual allocation adjustment:
  - (b) is a positive number, then the person is liable to repay the number of units in the annual allocation adjustment.
- (5) If an eligible person is entitled to be allocated the number of units in an annual allocation adjustment and the person—
- (a) makes an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must record the adjustment in the person's application for a provisional allocation for the following year:
  - (b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, the person may make a separate application under section 86 for an allocation of the number of units in the annual allocation adjustment.
- (6) If an eligible person is liable to repay the number of units in an annual allocation adjustment and the person—
- (a) makes an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then—
    - (i) the person must record the adjustment for the year in the person's application for a provisional allocation for the following year; and
    - (ii) subject to section 86B, the EPA must deduct the number of units in the adjustment from the provisional allocation for the following year, unless the number of units in the provisional allocation is less than the adjustment, in which case the person must, within 20 working days of being notified of the shortfall in the number of units by the EPA, repay the shortfall by transferring the relevant number of units to a Crown holding account designated by the EPA; or
  - (b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must—



- (i) by 30 April in the year following the year to which the annual allocation adjustment relates, notify the EPA of the person's annual allocation adjustment; and
  - (ii) by 31 May in the year following the year to which the annual allocation adjustment relates, repay the number of units in the annual allocation adjustment by transferring the units to a Crown holding account designated by the EPA.
- (7) If a person is required to repay units under this section, then the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid.

Section 83: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 83(2) formula item LA: replaced, on 23 June 2020, by section 84(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 83(2A): inserted, on 23 June 2020, by section 84(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 83(3) formula item PA: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(6)(b)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 83(7): replaced, on 23 June 2020, by section 84(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **84 Closing allocation adjustment**

- (1) An eligible person who has received a provisional allocation for an eligible industrial activity in respect of a year and who ceases during the year to carry out that activity must, within 20 working days of ceasing to carry out the activity,—
  - (a) calculate the person's final allocation entitlement for the activity for the year in accordance with the formula in section 83(2); and
  - (b) using the formula in section 83(3), calculate the person's closing allocation adjustment, and, for this purpose, section 83(3) applies, with any necessary modifications, as if the closing allocation adjustment were an annual allocation adjustment; and
  - (c) if the closing allocation adjustment is—
    - (i) a negative number, apply to the EPA under section 86 for an allocation of the number of units in the closing allocation adjustment:
    - (ii) a positive number, notify the EPA of the person's closing allocation adjustment and repay the number of units in the closing allo-

cation adjustment by transferring the units to a Crown holding account designated by the EPA.

- (2) For the purposes of subsection (1), a person who has received a provisional allocation for an eligible industrial activity in respect of a year and who temporarily does not carry out the activity—
- (a) is not immediately to be treated as having ceased to carry out the activity; but
  - (b) must, if the person does not carry out the activity for a period of 3 months in the year, notify the EPA as soon as practicable after the expiry of that 3-month period of that fact; and
  - (c) must, if given notice by the EPA (following receipt of the person's notice under paragraph (b)) that the EPA is satisfied that the person has ceased to carry out the activity for the year and that the person is required to comply with subsection (1), within 20 working days of the date of the EPA's notice, comply with subsection (1).
- (3) Subject to subsection (4), an eligible person who has complied with subsection (1) during the year in which the person ceased to carry out the eligible industrial activity—
- (a) is not required to comply with section 83 in respect of that activity; and
  - (b) may not calculate an annual allocation adjustment under section 83 in respect of that year.
- (4) A person who has applied for or notified a closing allocation adjustment in accordance with subsection (1) during a year, but who then recommences carrying out the activity in the year,—
- (a) may calculate an annual allocation adjustment for the year in accordance with the following formula:

$$AA = PA - FA - CAA$$

where—

AA is the person's annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person's provisional allocation for the eligible industrial activity for the year notified by the EPA under section 86B

FA is the person's final allocation entitlement for the eligible industrial activity for the year (which must be calculated in accordance with section 83(2))

CAA is the amount of the person's closing allocation adjustment for the eligible industrial activity; and

- (b) is entitled to be allocated the number of units in the person's annual allocation adjustment (as calculated under paragraph (a)) in accordance with section 83(5).

- (5) Section 83(7) applies to the repayment of units under this section as if the units were required to be repaid under section 83.

Section 84: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 84(1)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(1)(c)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(2)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 84(4)(a) formula item PA: amended, on 1 January 2013, by section 33 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **84A Regulations setting decreased phase-out rates**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set a decreased phase-out rate to be used—
- (a) in respect of 1 or more eligible industrial activities for the purposes of sections 81(1) and 83(2); and
  - (b) for a year or years beginning on or after 1 January 2031.
- (2) The Minister must not recommend the making or amendment of regulations under this section to set a decreased phase-out rate for an eligible industrial activity unless—
- (a) the Climate Change Commission has recommended (under section 5ZOB) that a decreased phase-out rate should be set for the activity; and
  - (b) the Minister has considered the recommendation and complied with the requirements of section 84C.
- (3) In order to apply to a year, the regulations must be made or amended before the beginning of the year.
- (4) In this section, **decreased phase-out rate** means any rate that, even if it is more than a rate previously set by regulations under this section, is—
- (a) less than the rate in sections 81(2)(a) and 83(2A)(a); and
  - (b) at least—
    - (i) 0.01 for a year in the period beginning on 1 January 2031 and ending on 31 December 2040; or
    - (ii) 0.02 for a year in the period beginning on 1 January 2041 and ending on 31 December 2050.

Section 84A: inserted, on 23 June 2020, by section 85 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**84A Temporary suspension of allocation entitlement for eligible industrial activities**

*[Repealed]*

Section 84A: repealed, on 1 January 2019, by section 84A(4).

**84B Regulations setting increased phase-out rates**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set an increased phase-out rate to be used—
  - (a) in respect of 1 or more eligible industrial activities for the purposes of sections 81(1) and 83(2); and
  - (b) for an emissions budget period beginning on or after 1 January 2026.
- (2) Regulations made in respect of an emissions budget period must include a statement of what phase-out rate the Minister intends to set in respect of the subsequent emissions budget period.
- (3) The Minister must not recommend the making or amendment of regulations under this section to set an increased phase-out rate for an eligible industrial activity unless—
  - (a) the Climate Change Commission has recommended (under section 5ZOB) whether or not an increased phase-out rate should be set for the activity; and
  - (b) the Minister has considered the recommendation and complied with the requirements of section 84C.
- (4) In order to apply to an emissions budget period, the regulations must be made or amended before the beginning of the emissions budget period.
- (5) However, the regulations may apply to an emissions budget period, despite being made or amended during that period, if—
  - (a) the emissions budget for the emissions budget period has been revised; or
  - (b) the Minister is satisfied that, since the regulations were made or last considered, there has been a significant change that affects the considerations listed in section 84C(3).
- (6) In this section, **increased phase-out rate** means any rate that is more than, or the same as, the rate in sections 81(2)(a) and 83(2A)(a), even if it is less than a rate previously set by regulations under this section.

Section 84B: inserted, on 23 June 2020, by section 85 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**84C Procedure for regulations setting phase-out rates**

- (1) Before recommending the making or amendment of regulations under section 84A or 84B, the Minister must be satisfied that the regulations or amendments

- are consistent with meeting the emissions budget that will apply when the regulations or amendments are in force.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making or amendment of regulations under section 84A or 84B.
  - (3) Before recommending the making or amendment of regulations under section 84B in respect of an eligible industrial activity, the Minister must consider—
    - (a) any targets or budgets set for reducing emissions of greenhouse gases; and
    - (b) New Zealand's nationally determined contributions under the Paris Agreement; and
    - (c) the level of risk of emissions leakage (increased emissions overseas as a result of emissions reductions in New Zealand, for example, an activity being relocated outside of New Zealand to reduce the emissions-related costs for the activity), based on—
      - (i) the emissions-related costs and policies in competing jurisdictions; and
      - (ii) the markets for international trade in the products produced by the activity; and
      - (iii) the ability of affected eligible persons to pass on increased costs to customers; and
    - (d) the risk that the value of the allocation for the activity will exceed the cost of meeting the emissions trading scheme obligations in relation to the activity; and
    - (e) other sources of supply into the emissions trading scheme, including off-shore emissions reductions; and
    - (f) the availability of low-emission technologies related to the activity; and
    - (g) international climate change obligations; and
    - (h) the proper functioning of the emissions trading scheme; and
    - (i) the cost to the taxpayer of providing allocations for the activity; and
    - (j) the recommendations made by the Climate Change Commission under section 5ZOB; and
    - (k) any other matters that the Minister considers relevant.
  - (4) Subsection (5) applies if—
    - (a) the Minister decides to recommend the making of regulations under section 84A or 84B but not as recommended by the Commission; or
    - (b) the Minister decides to recommend the amending of regulations under section 84A or 84B but the Commission—
      - (i) recommended that they be amended differently; or

- (ii) did not recommend that they be amended at all; or
  - (c) the Minister decides not to recommend the making or amending of regulations under section 84A or 84B despite the recommendation of the Commission.
- (5) The Minister must, as soon as is reasonably practicable, but within 16 weeks, after receiving the Commission's recommendation, prepare a report of the reasons for the difference between the Minister's and the Commission's recommendation and—
- (a) present a copy of the report to the House of Representatives; and
  - (b) make the report publicly available.

Section 84C: inserted, on 23 June 2020, by section 85 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **85 Allocation of New Zealand units in relation to agriculture**

- (1) A person is eligible for an allocation of New Zealand units for an eligible agricultural activity in respect of a year if the person carries out the activity at any time in the year.
- (2) An eligible person is entitled to an allocation for the eligible agricultural activity in respect of the year calculated in accordance with the following formula:

$$A = LA \times \sum(PDCT \times AB)$$

where—

A is the person's allocation entitlement for the eligible agricultural activity for the year

LA is the level of assistance for the eligible agricultural activity for the year, being—

- (a) 0.95 for the first year in which surrender obligations are applicable for the activity; and
- (b) in each year after the first year in which surrender obligations are applicable for the activity, the level of assistance from the previous year less 0.01 (the phase-out rate for an eligible agricultural activity)

$\sum$  is the symbol for summation (of each PDCT  $\times$  AB calculation)

PDCT is the total amount of each product from the eligible agricultural activity produced by the person in the year as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product.

- (3) Despite section 86(1)(c), a person who ceases to carry out an eligible agricultural activity in a year may, within 20 working days of ceasing to carry out the activity, apply under section 86 for an allocation for that year calculated in accordance with the formula in subsection (2).

- (4) A person—
- (a) is not to be treated as having ceased to carry out an eligible agricultural activity for the purposes of subsection (3) and section 59, if the person does not continuously carry out the activity during a year; but
  - (b) must, if the person does not carry out the eligible agricultural activity for a period of 3 months in a year, be treated as having ceased to carry out the activity in the year.
- (5) Subject to subsection (6), an eligible person who has applied for an allocation for a year (the **closing year**) in accordance with subsection (3) may not apply under section 86 for a further allocation in respect of the closing year.
- (6) An eligible person who has applied in accordance with subsection (3) for an allocation in respect of a closing year, but who then recommences carrying out the activity in the closing year may apply under section 86 for an allocation in respect of the part of the year after the date the person recommenced carrying out the activity (and which was not covered by the application made in accordance with subsection (3)) and, for that purpose, subsection (2) applies as if the year were the part of the year from the date the person recommenced carrying out the activity.

Section 85: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 85(2) formula item LA paragraph (a): replaced, on 1 January 2013, by section 35 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 85(2) formula item LA paragraph (a): amended, on 23 June 2020, by section 86 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85(2) formula item LA paragraph (b): replaced, on 1 January 2013, by section 35 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **85A Temporary suspension of phase-out rate for assistance under section 85(2)**

- (1) The purpose of this section is to suspend temporarily the phase-out rate for assistance under section 85(2) until the relevant participants face full surrender obligations.
- (2) Despite anything in section 85(2),—
- (a) the phase-out rate in that section may not reduce the level of assistance for an eligible activity from the level in the first year in which full surrender obligations are applicable for the activity during the period—
    - (i) beginning on the date that this section comes into force; and
    - (ii) ending, in respect of either or both of those activities, on the close of the date specified for the purpose of this section as the closure date in an Order in Council made by the Governor-General on the recommendation of the Minister; and
  - (b) the phase-out rate applies for each year after the year of the closure date specified in that order.

- (2A) Before recommending the making of an Order in Council under subsection (2)(a)(ii), the Minister must consider the advice of the Climate Change Commission about whether the phase-out rates should continue to be suspended.
- (3) The Minister must not make a recommendation under subsection (2)(a)(ii) before surrender obligations for the relevant participants start.
- (4) This section is repealed on the day after the closure date specified in the Order in Council made under subsection (2)(a)(ii) that specifies the end of all suspensions under this section.

Section 85A: inserted, on 1 January 2013, by section 36 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 85A heading: replaced, on 23 June 2020, by section 87(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(1): amended, on 23 June 2020, by section 87(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(1): amended, on 23 June 2020, by section 87(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(2): amended, on 23 June 2020, by section 87(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(2)(a): amended, on 23 June 2020, by section 87(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(2)(b): amended, on 23 June 2020, by section 87(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(2A): inserted, on 23 June 2020, by section 87(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 85A(3): replaced, on 23 June 2020, by section 87(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **85B Temporary suspension of allocation entitlement for eligible agricultural activities**

*[Repealed]*

Section 85B: repealed, on 1 January 2017, by section 7 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

## **86 Applications for allocation of New Zealand units for industry and agriculture**

- (1) An eligible person who wishes to be allocated New Zealand units for an eligible industrial activity or eligible agricultural activity under this subpart must apply to the EPA in the relevant period under subsection (1A), unless this subpart otherwise provides.
- (1A) The application must be made,—
  - (a) for a provisional allocation for an eligible industrial activity, in the period starting on 1 January and ending on 30 April in the year in respect of which the allocation is sought:



- (b) for an allocation for an eligible industrial activity (other than a provisional allocation), in the period starting on 1 January and ending on 30 April in the year after the year in respect of which the allocation is sought:
  - (c) for an allocation for an eligible agricultural activity, in the period starting on 1 January and ending on 31 March in the year after the year in respect of which the allocation is sought.
- (2) An application under subsection (1) must—
- (a) be in the prescribed form; and
  - (b) contain, as relevant, the applicant's assessment of,—
    - (i) in the case of an eligible industrial activity, the person's—
      - (A) provisional allocation entitlement in respect of the year calculated in accordance with section 81:
      - (B) final allocation entitlement in respect of the previous year calculated in accordance with section 83(2):
      - (C) annual allocation adjustment relating to the previous year calculated in accordance with section 83(3) or 84(4):
      - (D) closing allocation adjustment for the year calculated as required under section 84(1)(b):
    - (ii) in the case of an eligible agricultural activity, the person's—
      - (A) allocation entitlement in respect of the previous year calculated in accordance with section 85(2); or
      - (B) if section 85(3) applies, allocation entitlement in respect of the year in which the person ceased to carry out the eligible agricultural activity; and
  - (c) be accompanied by—
    - (i) any other information that the EPA may require; and
    - (ii) the prescribed fee (if any); and
  - (d) contain the account number of the eligible person's holding account, required by section 61.

Section 86: substituted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86(1): replaced, on 23 June 2020, by section 88 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86(1A): inserted, on 23 June 2020, by section 88 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86(2)(c)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**86A Provisional allocation to industry in and after 2013**

Despite section 86(1A)(a), if an eligible industrial activity is prescribed under section 161A(1)(a) in the year 1 January 2013 to 31 December 2013 or in any subsequent year (the **prescribing year**), an eligible person who carried out the activity in the year preceding the prescribing year may apply for a provisional allocation for the eligible industrial activity in respect of the prescribing year in the period—

- (a) commencing on the date the regulation prescribing the activity as an eligible industrial activity comes into force; and
- (b) ending on the date 3 months after the date in paragraph (a).

Section 86A: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86A: amended, on 23 June 2020, by section 89 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**86B Decisions on applications for allocations of New Zealand units to industry**

- (1) On receipt of an application under section 86 in respect of an eligible industrial activity, the EPA must decide—
  - (a) whether the applicant is eligible to receive an allocation in respect of the application:
  - (b) if in the EPA's opinion the applicant is eligible for an allocation in respect of the application, the number of units the applicant is entitled to be allocated in respect of the application that, if the application relates to a provisional allocation for an eligible industrial activity, must—
    - (i) include any units to which the person is entitled in respect of an annual allocation adjustment for the previous year; or
    - (ii) be net of any units required to be deducted from the person's provisional allocation entitlement in accordance with section 83(6)(a).
- (2) If the EPA decides under subsection (1) that an applicant is entitled to receive an allocation in respect of the application, then the EPA must—
  - (a) notify the applicant of—
    - (i) the number of units the applicant has been allocated in respect of the application and any adjustment to that allocation that the EPA has made under subsection (1); and
    - (ii) the person's right under section 144 to seek a review of the allocation decision; and
  - (b) comply with section 86BB, as long as the number of units allocated is greater than zero, even after any adjustment made under subsection (1).
- (3) If the EPA decides under subsection (1) that an applicant is not eligible to receive an allocation in respect of the application, or that the allocation to

- which the person is entitled in respect of the application is the same as or less than the number of units that the person is liable to repay in respect of an annual allocation adjustment recorded in the application in accordance with section 83(6)(a), then the EPA must notify the applicant of—
- (a) the EPA’s decision; and
  - (b) the reasons for the decision; and
  - (c) if the result of the decision is that the person is liable to repay more units than the number of units to which the person would have been entitled in respect of the application, the number of units in the shortfall; and
  - (d) the person’s right under section 144 to seek a review of the allocation decision.
- (4) If a person has failed to notify the EPA of an annual allocation adjustment or a closing allocation adjustment when required by section 83(6)(b) or 84(1)(c)(ii), or if the EPA is satisfied that an annual allocation adjustment or closing allocation adjustment notified by a person to the EPA under section 83(6)(b) or 84(1)(c)(ii) is incorrect, then the EPA may make a decision as to the person’s annual allocation adjustment, or closing allocation adjustment or correct annual allocation adjustment or closing allocation adjustment.
- (5) The EPA must, as soon as practicable, after deciding an eligible person’s final allocation for an eligible activity in respect of a year,—
- (a) publish the decision in the *Gazette*; and
  - (b) ensure it is accessible via the Internet site of the EPA.
- (6) For the purposes of subsection (5),—
- (a) the final allocation of a person who received a provisional allocation for an eligible industrial activity is the person’s provisional allocation for the activity in respect of the year adjusted by the annual allocation adjustment for the activity for the year (or closing allocation adjustment, as the case may be); and
  - (b) the EPA is not required to publish the final allocation of an eligible person for an eligible activity in respect of a year, or ensure it is accessible via the Internet, if the EPA considers that publishing that information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation.

Section 86B: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86B heading: amended, on 23 June 2020, by section 90(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86B(1): amended, on 23 June 2020, by section 90(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86B(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(2)(a)(i): amended, on 23 June 2020, by section 90(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86B(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(2)(b): replaced, on 23 June 2020, by section 90(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86B(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86B(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **86BA Decisions on applications for allocations of New Zealand units to agriculture**

- (1) This section applies if—
  - (a) the EPA receives an application under section 86 in respect of an eligible agricultural activity; and
  - (b) the applicant has submitted any emissions returns that are due.
- (2) The EPA must decide—
  - (a) whether the applicant is eligible to receive an allocation in respect of the application;
  - (b) if in the EPA's opinion the applicant is eligible for an allocation, the number of units the applicant is entitled to be allocated.
- (3) If the EPA decides that an applicant is entitled to receive an allocation, then the EPA must—
  - (a) notify the applicant of—
    - (i) the number of units the applicant has been allocated; and
    - (ii) the person's right under section 144 to seek a review of the allocation decision; and
  - (b) comply with section 86BC.
- (4) If the EPA decides that an applicant is not eligible to receive an allocation, then the EPA must notify the applicant of—

- (a) the EPA's decision; and
  - (b) the reasons for the decision; and
  - (c) the person's right under section 144 to seek a review of the allocation decision.
- (5) The EPA must, as soon as practicable after deciding an eligible person's allocation for an eligible agricultural activity in respect of a year,—
- (a) publish the decision in the *Gazette*; and
  - (b) ensure that it is accessible via the Internet site of the EPA.
- (6) However, the EPA is not required to publish the allocation of an eligible person for an eligible agricultural activity in respect of a year, or ensure that it is accessible via the Internet, if the EPA considers that publishing that information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation.

Section 86BA: inserted, on 23 June 2020, by section 91 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **86BB Transfer of allocated units to industry, less any units that must be surrendered or repaid**

The EPA must apply section 64A as follows:

- (a) the units allocated to an applicant under section 86B, after any adjustment made under section 86B(1), are the **potential transfer units**;
- (b) the applicant is the **recipient**;
- (c) the start of the year to which the allocation relates is the **relevant time**.

Section 86BB: inserted, on 23 June 2020, by section 91 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **86BC Transfer of allocated units to agriculture, less any units that must be surrendered or repaid**

- (1) This section applies to the units allocated to an applicant under section 86BA (the **potential transfer units**).
- (2) The EPA must calculate the **specified units** by counting units in the following order, but stopping once they equal the number of potential transfer units (if they do):
  - (a) first, the units required for surrender as a result of the assessment for the year to which the allocation relates;
  - (b) second, the units (if any) that the applicant was required to, but did not, surrender, or repay to a Crown holding account, as a result of an assessment for an earlier year, starting from the units that were required to be surrendered or repaid by the earliest dates.
- (3) The EPA must notify the applicant of the following:

- (a) the number of specified units calculated under subsection (2)(a) that are required for surrender;
  - (b) the number of specified units calculated under subsection (2)(b) that are required for surrender;
  - (c) the number of specified units calculated under subsection (2)(b) that are required for repayment;
  - (d) that the specified units will be deducted from the potential transfer units when they are transferred to the applicant, excluding any specified units that have already been surrendered or repaid by then.
- (4) The EPA must direct the Registrar to transfer—
- (a) the specified units required for surrender to a surrender account designated by the EPA; and
  - (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
  - (c) any potential transfer units left after the specified units are deducted to the applicant's holding account.
- (5) However, the Registrar, in transferring—
- (a) any units under subsection (4), must exclude any specified units that have already been surrendered or repaid by then;
  - (b) any specified units under subsection (4)(a) or (b), may first transfer them to the applicant's holding account and then immediately transfer them from that holding account.
- (6) The transfer of any specified units for surrender or repayment satisfies—
- (a) the applicant's entitlement to be transferred those units; and
  - (b) the applicant's obligation to surrender or repay the related units.
- (7) To avoid doubt, the applicant remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units).

Section 86BC: inserted, on 23 June 2020, by section 91 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **86C Reconsideration of allocation decisions**

- (1) Without limiting section 144, the EPA may reconsider, vary, or revoke any decision made under section 86B or 86BA if in the EPA's opinion the decision has resulted, or would otherwise result, in a person receiving an incorrect allocation because—
- (a) of an error in the calculation of the person's entitlement to an allocation or liability to repay units under this subpart; or
  - (b) the person has provided altered, false, incomplete, or misleading information in or with an application.

- (2) The EPA may not make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) after the expiration of 4 years from the end of the year or other period to which the decision relates if the decision, or variation or revocation of the decision, would decrease the number of units allocated to a person.
- (3) However, if the EPA is satisfied that a notice under section 83(6)(b) or 84(1)(c)(ii) or application for an allocation, or any other document submitted under section 86, 86E, or 144, was submitted with intent to deceive, the EPA may make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or vary or revoke a decision under subsection (1) at any time so as to decrease the number of units allocated to the person to whom the notice or application related (including decreasing that number to zero).
- (4) If the EPA makes a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4) or varies or revokes a decision under subsection (1), the EPA must, as soon as practicable after doing so, notify the person who gave, or should have given, the notice under section 83(6)(b) or 84(1)(c)(ii) or the applicant, as the case may be, of—
  - (a) the particulars of the decision, or variation or revocation of the decision; and
  - (b) any grounds or information upon which the decision or variation or revocation of the decision was based; and
  - (c) the person's right under section 144 to seek a review of the allocation decision.
- (5) If the result of a decision in relation to an annual allocation adjustment or a closing allocation adjustment under section 86B(4), variation or revocation of an allocation decision under subsection (1), or review under section 144 is that a person allocated units is found to have been allocated and transferred—
  - (a) units to which the person was not entitled, or to have repaid too few units, the person must within 60 working days of the date of the notice under subsection (4) repay the number of units notified to the person by transferring the units to a Crown holding account designated by the EPA; or
  - (b) fewer units than the person was entitled to, or to have repaid too many units, the EPA must, as soon as practicable after the date of the notice under subsection (4), direct the Registrar to transfer to the holding account notified in the person's application (or any other holding account notified by the person) the number of New Zealand units recorded in the notice.

(5A) *[Repealed]*

- (6) Section 83(7) applies to repayment of units under subsection (5) as if it were repayment under section 83.

Section 86C: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86C(1): amended, on 23 June 2020, by section 92(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86C(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5)(a): amended, on 1 January 2013, by section 38(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 86C(5)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86C(5A): repealed, on 23 June 2020, by section 92(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **86D Retention of records and materials in relation to allocation**

- (1) A person who has been allocated New Zealand units for an eligible activity must keep sufficient records to enable the EPA to verify, for any year in respect of which the person received an allocation,—
- (a) that the person was an eligible person; and
  - (b) the person's calculations of the person's entitlement to be allocated New Zealand units or liability to repay units under the relevant subsections in sections 81 to 85; and
  - (c) the total amount of each product produced by the person from the eligible activity in the year, as determined, if relevant, in accordance with regulations made under this Act; and
  - (d) any other prescribed information.
- (2) The records specified in subsection (1)—
- (a) must include—
    - (i) a copy of any application made to the EPA under section 86 or notice given to the EPA under section 83(6)(b) or 84(1)(c)(ii); and
    - (ii) any information used to prepare the application or notice; and
  - (b) must be retained for a period of at least 7 years after the end of the year to which the application or notice relates.



Section 86D: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86D(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 86D(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**86E EPA may require further information for purpose of carrying out functions under subpart**

- (1) For the purposes of making a decision under section 86B or 86BA, the EPA may give to any of the following persons a notice requiring the person to supply information or further information to the EPA:
  - (a) a person who has made an application for an allocation of New Zealand units or notified an annual allocation adjustment or closing allocation adjustment:
  - (b) a person who has failed to notify an annual allocation adjustment or closing allocation adjustment as required by section 83(6)(b) or 84(1)(c)(ii):
  - (c) a person who may be affected by a reconsideration of the decision.
- (2) A notice under subsection (1) must be given before the decision is made.
- (3) A notice under subsection (1) may require the information to be provided that is necessary to determine whether a person is or was—
  - (a) eligible for an allocation of New Zealand units; or
  - (b) entitled to the allocation that the person has applied for or received (in relation to an annual allocation adjustment or a closing allocation adjustment).
- (4) The EPA may, for the purpose of verifying whether a decision made under section 86B or 86BA was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under that section requiring the person to supply to the EPA any records, data, or other information that the person is required to keep in relation to the allocation.
- (5) A person who has received a notice under this section must supply the information requested within the period specified in the notice.
- (6) A person who fails to comply with a notice under this section within the period specified in the notice, or any further period agreed with the EPA, and who has applied for an allocation under section 86, is not entitled to receive an allocation in respect of that application.

Section 86E: inserted, on 8 December 2009, by section 32 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 86E heading: amended, on 23 June 2020, by section 93(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(1): amended, on 23 June 2020, by section 93(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(1): amended, on 23 June 2020, by section 93(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(1)(c): amended, on 23 June 2020, by section 93(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(2): amended, on 23 June 2020, by section 93(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(4): replaced, on 23 June 2020, by section 93(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 86E(6): replaced, on 23 June 2020, by section 93(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **86F Balance of units at end of true-up period or other balance date**

*[Repealed]*

Section 86F: repealed, on 1 January 2013, by section 39 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **Subpart 3—Environmental Protection Authority**

Subpart 3 heading: substituted, on 5 December 2011, by section 11 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### *General administrative provisions*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **87 Functions of EPA**

- (1) The functions of the EPA are to—
  - (a) keep a register under section 56 of persons who carry out activities and a register of persons who register under section 57 as participants; and
  - (b) receive and collate the data and other information provided by participants under the ETS participant provisions; and
  - (ba) administer allocations relating to industry and agriculture in accordance with sections 80 to 86E; and
  - (c) approve the use of unique emissions factors by participants in accordance with section 91; and
  - (d) direct the Registrar to transfer New Zealand units to which participants are entitled for removal activities to participants' holding accounts; and
  - (e) ensure participants and eligible persons comply with the ETS participant provisions and to take any action that may be appropriate to enforce those provisions and any regulations made under those provisions; and
  - (f) publish information in accordance with section 89; and
  - (g) issue emissions rulings to help persons meet their obligations under the ETS participant provisions.
- (2) The EPA must comply with any direction that the Minister gives under section 88(1).

- (3) For the avoidance of doubt, the EPA undertakes the functions described in subsection (1) on behalf of the Crown.

Section 87: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 87 heading: amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(1): amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(1)(b): amended, on 23 June 2020, by section 94(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 87(1)(ba): inserted, on 8 December 2009, by section 33(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 87(1)(d): substituted, on 8 December 2009, by section 33(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 87(1)(e): amended, on 23 June 2020, by section 94(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 87(1)(e): amended, on 23 June 2020, by section 94(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 87(1)(e): amended, on 1 January 2013 (applying on and after 8 December 2009, being the commencement date of section 87(1)(ba)), by section 40 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 87(1)(g): amended, on 23 June 2020, by section 94(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 87(2): amended, on 5 December 2011, by section 12(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87(3): added, on 5 December 2011, by section 12(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **87A Delegation by EPA**

- (1) The EPA must not delegate its power to appoint the Registrar under section 11.
- (2) In all other respects, section 73 of the Crown Entities Act 2004 applies, except that subsection (1) of that section applies as if paragraph (d) were repealed and the following paragraph substituted:

(d) a person, or an office holder in a department of the public service, approved by the entity's responsible Minister:

Section 87A: inserted, on 5 December 2011, by section 13 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 87A(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

### **88 Directions to EPA**

- (1) The Minister may give general directions to the EPA in relation to the EPA's exercise of powers and performance of functions under the ETS participant provisions or any regulations made under those provisions.
- (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—
- (a) publish a copy of the direction in the *Gazette*; and
  - (b) make a copy of the direction accessible via the Internet site of the EPA; and
  - (c) present a copy of the direction to the House of Representatives.
- (4) Before giving a direction under subsection (1), the Minister must comply with section 115(1) of the Crown Entities Act 2004.

Section 88: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 88 heading: amended, on 5 December 2011, by section 14(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(1): amended, on 23 June 2020, by section 95 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 88(1): amended, on 5 December 2011, by section 14(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(1): amended, on 5 December 2011, by section 14(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(3)(b): amended, on 5 December 2011, by section 14(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 88(4): added, on 5 December 2011, by section 14(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **89 EPA to publish certain information**

- (1) The EPA must publish the following information for each reporting year:
- (a) in respect of 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 respect of each activity listed in Schedule 4, the total number of participants—
    - (i) registered under section 57; and
    - (ii) removed from the register under sections 58(4) and 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) *[Repealed]*
  - (f) the number of participants who failed to comply with their obligation to—
    - (i) submit an emissions return required by this Act; or
    - (ii) surrender or repay units as required by this Act; and

- (g) the total number of units surrendered; and
  - (h) the total number of New Zealand units transferred for removal activities; and
  - (i) the total number of New Zealand units allocated under subpart 2 less any units repaid; and
  - (j) the total sum of money paid to a Crown Bank Account in accordance with section 178A(2)(a)(ii) or (iii); and
  - (k) the total sum of money paid by the EPA in accordance with section 178A(2)(b)(ii) or (iii).
- (1A) The EPA must, for each reporting year, publish information about—
- (a) each qualifying penalty imposed in that reporting year; and
  - (b) each qualifying penalty imposed in a previous reporting year that has any amount still owing at any time in that reporting year.
- (1B) The information required for each of those penalties is—
- (a) the name of the person on whom the penalty was imposed; and
  - (b) the section under which the penalty was imposed; and
  - (c) the amount of the penalty; and
  - (d) the date on which the last payment for the penalty was due and, if the penalty has been paid in full, the date on which it was paid in full; and
  - (e) in the case of a penalty imposed under section 134, the provision under which the person was liable to surrender or repay units; and
  - (f) in the case of a penalty imposed under sections 134A to 134D, whether the penalty was imposed for behaviour that was grossly careless or behaviour that was knowing.
- (1C) In subsection (1A), **qualifying penalty** means—
- (a) a penalty imposed under section 134; or
  - (b) a penalty imposed under sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing.
- (2) The EPA—
- (a) must publish the information specified in subsections (1) to (1B) as soon as practicable after the end of the reporting year; and
  - (b) may publish the information specified in subsections (1) to (1B), in whole or in part, at any other time and in whatever manner and format that the EPA considers appropriate.
- (2A) In this section, **reporting year** means a 12-month period starting on 1 July of one year and ending with the close of 30 June of the following year.
- (3) *[Repealed]*

(4) *[Repealed]*

Section 89: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 89 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 89(1): amended, on 23 June 2020, by section 96(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 89(1)(e): repealed, on 1 January 2021, by section 213(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1)(f)(i): amended, on 23 June 2020, by section 96(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1)(f)(ii): amended, on 23 June 2020, by section 96(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1)(i): substituted, on 8 December 2009, by section 34(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 89(1)(i): amended, on 1 January 2013, by section 41(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(1)(j): inserted, on 1 January 2013, by section 41(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(1)(k): inserted, on 1 January 2013, by section 41(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(1A): inserted, on 1 January 2021, by section 213(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1B): inserted, on 1 January 2021, by section 213(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(1C): inserted, on 1 January 2021, by section 213(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(2): replaced, on 1 January 2013, by section 41(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(2)(a): amended, on 1 January 2021, by section 213(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(2)(b): amended, on 1 January 2021, by section 213(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(2A): inserted, on 1 January 2013, by section 41(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 89(3): repealed, on 23 June 2020, by section 96(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 89(4): repealed, on 1 January 2021, by section 213(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**89A EPA to publish participant data on emissions and removals**

- (1) The EPA must publish, for each participant or consolidated group for whom there is an emissions return,—
  - (a) the name of the participant, or names of the participants in the consolidated group; and

- (b) the period to which the return or returns relate; and
  - (c) the data in paragraphs (d) to (f) in tonnes of carbon dioxide equivalent and—
    - (i) broken down by participant if a return relates to more than 1 participant; and
    - (ii) broken down by activity if a return relates to more than 1 activity, except that the emissions or removals of a participant in any forestry activity must be combined for all of their forestry activities; and
  - (d) if available, the emissions set out in the participant's or group's return or returns; and
  - (e) if available, the removals set out in the participant's or group's return or returns; and
  - (f) if the data in paragraphs (d) and (e) is not available, the net emissions or removals set out in the participant's or group's return or returns.
- (2) The EPA—
- (a) must publish the information at least annually, as soon as practicable after the date on which emissions returns are due; and
  - (b) may publish the information, in whole or in part, at any other time.
- (3) The EPA must publish the information in whatever manner and format that the EPA considers appropriate.
- (4) The EPA must, at least 10 working days before publishing the information, give notice on its Internet site of the date on which it will publish the information.

Section 89A: inserted, on 23 June 2020, by section 97 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **90 EPA may prescribe form of certain documents**

- (1) The EPA may, for the purposes of the ETS participant provisions and Part 2, prescribe—
- (a) the form and electronic format of any forms, applications, returns, information accompanying any applications or 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 participant or person or for different activities or purposes; and
  - (c) the manner in which any application, return, information, or other document must be submitted or notified under the ETS participant provisions or Part 2 if this is not otherwise prescribed in regulations.
- (2) The EPA must publish any form or format prescribed under subsection (1) via the Internet site of the EPA.

- (3) The production by the EPA 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.
- (4) To avoid doubt, if the EPA prescribes an electronic form or format under subsection (1), the EPA may require any signature on that form or that relates to that format to be an electronic signature.

Section 90: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 90 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(1): amended, on 23 June 2020, by section 98(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 90(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(1)(b): replaced, on 23 June 2020, by section 98(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 90(1)(c): amended, on 23 June 2020, by section 98(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 90(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 90(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **91 Approval of unique emissions factors**

- (1) The EPA may approve the use by a participant of a unique emissions factor when calculating emissions or removals from an activity under section 62(b) if—
- (a) regulations made under section 164 provide a mechanism for participants to apply for approval to use a unique emissions factor for the activity; and
  - (b) the EPA is satisfied that the unique emissions factor that the participant has applied to use meets any requirements prescribed in regulations made under section 164.
- (2) An approval under subsection (1)—
- (a) may be subject to the conditions that the EPA considers appropriate; and
  - (b) ceases to have effect on the earliest of the following dates:
    - (i) the date of a material change in any of the information or factors on which the approval is based; or
    - (ii) the date of a material change to this Act or to any regulations to which the approval relates; or



- (iii) the date on which any of the conditions to which the approval is subject cease to be met or complied with.
- (3) If the EPA approves the use of a unique emissions factor under subsection (1), the EPA must—
  - (a) notify the applicant of the approval; and
  - (b) publish in the *Gazette*—
    - (i) the name of the participant; and
    - (ii) a description of the activity; and
    - (iii) the details of the unique emissions factor the EPA has approved the participant to use when calculating emissions or removals for the activity.

Section 91: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 91(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 91(3)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **91A Correction of unique emissions factors**

- (1) If the EPA is satisfied that the unique emissions factor approved for a participant under section 91 is incorrect for any reason, the EPA may amend the approval to correct the unique emissions factor.
- (2) The EPA must—
  - (a) notify the applicant of the amended approval; and
  - (b) publish a notice in the *Gazette* that specifies—
    - (i) the name of the participant; and
    - (ii) a description of the activity; and
    - (iii) the details of the unique emissions factor that the EPA has, by amendment, approved the participant to use when calculating emissions or removals for the activity (the **corrected unique emissions factor**); and
    - (iv) the date on which the corrected unique emissions factor has effect, which must be no earlier than the date on which the unique emissions factor became incorrect.

- (3) The corrected unique emissions factor has effect on and after the date specified by the notice in the *Gazette*, even if that date has passed.
- (4) Information contained in an emissions return, for that or any later date, that is based on the incorrect unique emissions factor may be treated as being incorrect for the purposes of section 120 (so that the EPA may amend the emissions return under that section to reflect the corrected unique emissions factor).

Section 91A: inserted, on 23 June 2020, by section 99 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **92 Recognition of verifiers**

- (1) The EPA may, in accordance with any regulations made under section 163, 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) or regulations made under section 164 relating to the process for approval of a unique emissions factor.
- (2) A person or organisation may be recognised by the chief executive as able to verify information or unique emissions factors in respect of—
  - (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 EPA may suspend or revoke any recognition given under this section in accordance with regulations made under section 163.

Section 92: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 92(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 92(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### *Verification and inquiry*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **93 Appointment of enforcement officers**

- (1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this Part (which relate to verification and inquiry about compliance with the ETS participant provisions).
- (2) If the EPA delegates the power to appoint a person as an enforcement officer to the chief executive of a department of the public service, the chief executive of the department may appoint a person as an enforcement officer only if the person is employed by a government department, in which case the chief executive must employ the person under the Public Service Act 2020.

- (3) The EPA must supply each enforcement officer with a warrant of authorisation that clearly states the powers and functions of the officer.
- (4) An enforcement officer who exercises, or purports to exercise, a power conferred on the enforcement officer under this Act must carry and 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) *[Repealed]*

Section 93: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 93(1): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(1): amended, on 23 June 2020, by section 100 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 93(2): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 93(3): substituted, on 5 December 2011, by section 15(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 93(6): repealed, on 5 December 2011, by section 15(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **94 Power to require information**

- (1) The EPA, 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 the ETS participant provisions; or
  - (b) ascertaining whether, or how, the EPA or the chief executive, as appropriate, should exercise any powers under the ETS participant provisions.
- (2) The information required to be provided under subsection (1) must,—
  - (a) if required by the EPA, 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 EPA, the chief executive, or an enforcement officer; and
    - (ii) within any reasonable time specified in the notice requiring the information; and

## (iii) free of charge.

Section 94: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 94(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 94(1)(a): amended, on 23 June 2020, by section 101(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 94(1)(b): replaced, on 23 June 2020, by section 101(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 94(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 94(2)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**95 Power to inquire**

- (1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of the ETS participant provisions, the EPA or the chief executive may require a person to—
  - (a) appear before the EPA, or 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 EPA, or 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 EPA, or the chief executive, or enforcement officer may administer an oath.

Section 95: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 95(1): amended, on 23 June 2020, by section 102 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 95(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 95(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 95(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**96 Inquiry before District Court Judge**

- (1) For the purpose of obtaining information for a purpose specified in section 94(1), or any other information required for the purposes of the administration or enforcement of the ETS participant provisions, the EPA or the chief executive, if the EPA or the chief executive, as appropriate, 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 EPA, 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 EPA, 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.

Section 96: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 96(1): amended, on 23 June 2020, by section 103 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 96(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 96(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 96(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **97 No criminal proceedings for statements under section 95 or 96**

- (1) No person summoned or examined under section 95 or 96 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.

Section 97: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **98 Expenses in relation to inquiries**

The EPA or the chief executive may pay, or a District Court Judge may order the EPA or the chief executive to pay, to any person who has appeared before the EPA, or the chief executive, or an enforcement officer under section 95 or the District Court Judge under section 96 the sum that in the EPA's, or the chief executive's, or the Judge's opinion, as the case may be, is reasonable in respect of that person's travelling and other expenses.

Section 98: substituted, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **99 Obligation to maintain confidentiality**

- (1) This section applies—
  - (a) to the chief executive, the EPA, an enforcement officer, and any other person who performs functions or exercises powers of the chief executive, the EPA, or an enforcement officer under the ETS participant provisions; and
  - (b) at the time during which, and any time after which, those functions are performed 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 performing any function or exercising any power under the ETS participant provisions; and
  - (b) must not disclose any information specified in paragraph (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 already in the public domain; or
    - (iii) for the purposes of, or in connection with, the exercise of powers conferred by this Part or for the administration of this Act; or
    - (iiia) for the purposes of, or in connection with, reporting requirements of the Public Finance Act 1989; or
    - (iiib) to the Climate Change Commission for the purpose of assisting the Commission to perform its functions and duties and exercise its powers under this Act; or
    - (iv) as provided under this Act or any other Act; or
    - (v) 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

- (vi) for the purpose of complying with international climate change obligations.
- (3) A person to whom this section applies commits an offence under section 130 if the person knowingly contravenes this section.
- (4) Nothing in subsection (2) may be treated as prohibiting the chief executive or the EPA from—
  - (a) providing or publishing general guidance in relation to the operation of the ETS participant provisions; 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—
    - (i) any land has a certain forestry classification or is exempt land; or
    - (ii) they consider any land to be land that could be given any particular forestry classification available under section 196(a).

Section 99: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 99(1)(a): substituted, on 5 December 2011, by section 16(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(1)(a): amended, on 23 June 2020, by section 104(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 99(2)(a): amended, on 23 June 2020, by section 104(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 99(2)(b): amended, on 14 November 2019, by section 10(1) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 99(2)(b)(iii): amended, on 5 December 2011, by section 16(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(2)(b)(iiiia): inserted, on 5 December 2011, by section 16(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(2)(b)(iiib): inserted, on 14 November 2019, by section 10(2) of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

Section 99(2)(b)(vi): amended, on 23 June 2020, by section 104(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 99(2)(b)(vi): amended, on 1 January 2013, by section 42(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 99(4): amended, on 5 December 2011, by section 16(4) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 99(4)(a): amended, on 23 June 2020, by section 104(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 99(4)(c): replaced, on 23 June 2020, by section 104(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**100 Power of entry for investigation**

- (1) An enforcement officer may enter land or premises (excluding any dwelling-house or marae) at any reasonable time during the ordinary hours of business to investigate whether a person is complying with the ETS participant provisions.
- (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, organic matter, or any other thing:
  - (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 the ETS participant provisions.
- (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 the enforcement officer 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.

Section 100: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 100(1): amended, on 23 June 2020, by section 105(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 100(2)(d): amended, on 23 June 2020, by section 105(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**101 Applications for warrants**

- (1) A District Court Judge, Justice of the Peace, Community Magistrate, or Registrar of any court who, on written application made on oath by an enforcement officer authorised by the EPA, 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



- 129, 132, or 133 may issue a warrant authorising the entry and search of the land, premises, dwellinghouse, or marae.
- (2) Every search warrant may authorise the enforcement officer executing the warrant to do any of the following things:
- (a) enter and search the land, premises, dwellinghouse, or marae, at any time that is reasonable in the circumstances during the ordinary hours of business, within—
    - (i) 10 working days of the date of the warrant; or
    - (ii) if the Judge or other person issuing the warrant is satisfied that special circumstances justify a longer period, any period of up to 20 working days that is specified in the warrant:
  - (b) seize any document or other thing that the enforcement officer has reasonable cause to suspect may be evidence of the commission of an offence under section 129, 132, or 133:
  - (c) take samples of water, air, soil, organic matter, or any other thing:
  - (d) use the assistance of any person that is reasonably necessary in the circumstances:
  - (e) use any force to enter (whether by breaking doors or otherwise) that is reasonable in the circumstances:
  - (f) 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 constable.
- (4) A person who provides assistance under subsection (2)(d) may exercise the powers provided to enforcement officers under subsection (2)(a), (b), (c), and (f).

Section 101: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 101(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 101(2)(a)(i): amended, on 1 January 2013, by section 43(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 101(2)(a)(ii): amended, on 1 January 2013, by section 43(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 101(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

## 102 Proof of authority must be produced

If powers are exercised under section 100 or 101, 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 100(3) or a search warrant issued under section 101, as the case may be.

Section 102: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **103 Notice of entry**

- (1) If, when powers are exercised under section 100 or 101, the occupier is not present, the enforcement officer must, in a prominent place, attach a written notice that states—
  - (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) the right, under the Official Information Act 1982, to access documentation relating to the application for a search warrant and the exercise of the search power; and
  - (e) an address at which inquiries may be made.
- (2) If the enforcement officer removes, or has removed, any document or other thing 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
  - (c) provides information about—
    - (i) the procedures to be followed to initiate a claim that privileged or confidential material has been seized; and
    - (ii) access to and the disposition of seized items.

Section 103: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **104 Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under ETS participant provisions**

No document or other information obtained from a person under section 100 or 101 is admissible against that person in any criminal or civil proceedings, other than proceedings for an alleged breach of an obligation imposed under the ETS participant provisions.

Section 104: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 104 heading: amended, on 23 June 2020, by section 106(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 104: amended, on 23 June 2020, by section 106(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **105 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 100 or 101 of this Act.

Section 105: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **106 Protection of persons acting under authority of this Part**

No enforcement officer or person called upon to assist an enforcement officer who does an act, or omits to do an act, when performing a function or exercising a power conferred on that person by this Part 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.

Section 106: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### *Emissions rulings*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **107 Applications for emissions rulings**

- (1) A person may apply to the EPA 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—
    - (i) 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; or
    - (ii) would be either of those things if certain proposals were carried out or events happened:

- (c) the correct application of any provision contained in regulations made under section 161A, 161G, 163, 164, 167, 168, 186F, 194C, 196F, or 197A in respect of a particular matter specified in the person's application:
  - (ca) whether any of this Act's requirements that relate to a decision that the EPA can make about forest land on land that the person has, or will have, an interest in are satisfied, or would be satisfied if certain proposals were carried out or events happened—for example, the requirements that must be satisfied—
    - (i) for any forest land that is cleared to not be treated as deforested (for the purposes of this Act) under section 179A:
    - (ii) for pre-1990 forest land to be eligible for a decision to be made under section 184(5)(a) (exemptions for deforestation of land with tree weeds):
    - (iii) for the EPA to approve an application relating to forest land:
  - (d) any other matters prescribed in regulations made under section 168(1)(b).
- (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) *[Repealed]*

Section 107: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 107(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 107(1)(b): replaced, on 23 June 2020, by section 107(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 107(1)(c): replaced, on 23 June 2020, by section 107(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 107(1)(ca): inserted, on 23 June 2020, by section 107(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 107(3): repealed, on 23 June 2020, by section 107(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**107A Insufficient information provided for ruling on entire application**

- (1) If the EPA is satisfied that an application under section 107 does not include all information that is relevant to a proper consideration of the application, the EPA must give notice to the applicant—
  - (a) requesting any further information from the applicant that the EPA considers necessary to assist in the consideration of the application; and
  - (b) if the EPA already has information that is relevant to the application, describing the information and inviting the applicant to comment on or object to the information.
- (2) The EPA must—
  - (a) provide a reasonable deadline for the applicant to reply to the notice; and
  - (b) consider as part of the application—
    - (i) any further information provided by the applicant; and
    - (ii) the information already held by the EPA that is relevant to the application, and the applicant's comments on or objections to that information.
- (3) If, after that, the EPA is satisfied that it has sufficient information to make a ruling on only part of the matter applied for (such as part of an activity or part of a geographical area), the EPA may—
  - (a) give notice of that decision to the applicant; and
  - (b) make a ruling under section 109 in respect of only that part of the matter.

Section 107A: inserted, on 23 June 2020, by section 108 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**108 Matters in relation to which EPA may decline to make emissions rulings**

- (1) The EPA may not make an emissions ruling—
  - (a) with respect to a provision that authorises or requires the EPA to—
    - (i) impose or remit a penalty; or
    - (ii) inquire into the correctness of any return or other information supplied by any person; or
    - (iii) prosecute any person; or
    - (iv) recover any debt owing by any person; or
  - (b) if the information submitted with the application for the ruling, including (but not limited to) information submitted under section 107A(1), raises questions of fact that the EPA would need to determine in order to make the ruling.
- (2) The EPA may decline to make an emissions ruling if—
  - (a) the EPA considers that the correctness of the ruling would depend on which assumptions were made about a future event or other matter; or

- (b) the matter on which the ruling is sought is subject to a review or appeal, or is the subject of proceedings, whether in relation to the applicant or any other person; or
- (c) the applicant has outstanding unpaid fees relating to an earlier emissions ruling application; or
- (d) the EPA considers the application is frivolous or vexatious; or
- (e) the matter on which the ruling is sought concerns an obligation to surrender units that are already due and payable, unless the application is received before the obligation arises; or
- (f) an assessment or amendment relating to the same person, activity, and period to which the proposed ruling would apply has been made (unless the application is received by the EPA before the date an assessment or amendment is made); or
- (g) in the EPA's opinion—
  - (i) the EPA has insufficient information to make the ruling but subject to section 107A; or
  - (ii) it would be unreasonable to make a ruling in view of the resources available to the EPA.

Section 108: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 108 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1): substituted, on 8 December 2009, by section 36 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 108(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(1)(b): amended, on 23 June 2020, by section 109(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 108(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g)(i): amended, on 23 June 2020, by section 109(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 108(2)(g)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 108(2)(g)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 109 Making of emissions rulings

- (1) The EPA must make an emissions ruling regarding the matter applied for as soon as practicable after the receipt of—
  - (a) a properly completed application for a ruling; and
  - (b) all information that the EPA considers relevant to the consideration of the application, including information requested under section 107A.
- (2) Subject to section 114(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 EPA considers appropriate, including any condition that a proposal is carried out or that something happens (*see* section 107(1)(b)(ii)).

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#### Example

The EPA may rule that a person is eligible to register as a participant in an activity listed in Part 1 of Schedule 4 on the condition that the relevant land is planted in forest species and meets the definition of forest land.

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- (4) Subsection (1) is subject to section 108 and the EPA's discretion in section 107A(3)(b) to make a ruling on only part of a matter.

Section 109: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 109(1): amended, on 23 June 2020, by section 110(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 109(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 109(1)(b): amended, on 23 June 2020, by section 110(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 109(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 109(3): replaced, on 23 June 2020, by section 110(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 109(4): replaced, on 23 June 2020, by section 110(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 110 Notice of emissions rulings

The EPA 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.

Section 110: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 110: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **111 Confirmation of basis of emissions rulings**

At any time after an emissions ruling is made, the EPA may, by notice, require an applicant to satisfy the EPA, within 20 working days of receipt of the notice, and in a manner that the EPA 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.

Section 111: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 111: amended, on 1 January 2013, by section 45 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 111: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **112 Notifying EPA of changes relevant to or failure to comply with emissions rulings**

- (1) A person must, as soon as practicable, notify the EPA of any material change that is relevant to the application if the person—
  - (a) has made an application for an emissions ruling under section 107; and
  - (b) becomes aware of a material change relating to the application before the emissions ruling is made by the EPA.
- (2) A person who has obtained an emissions ruling under section 109 must, as soon as practicable, notify the EPA 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.

Section 112: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 112 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 112(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).



### **113 Correction of emissions rulings**

- (1) The EPA may amend an emissions ruling to correct any error that the EPA is satisfied is contained in the ruling.
- (2) The EPA 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 that 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 that a person is entitled to receive, in respect of a year, then the corrected ruling must be applied to that year.

Section 113: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 113(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 113(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **114 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 EPA under section 111.
- (2) An emissions ruling does not come into effect if any information on which it is based is not accurate in all material respects.

Section 114: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 114(1)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**115 Appeal from decisions of EPA**

- (1) An applicant who is dissatisfied with an emissions ruling, or a decision to decline to make an emissions ruling, may, within 20 working days of the date on which notice of the ruling or decision is given, appeal to the District Court against the ruling or decision.
- (2) The District Court may confirm, reverse, or modify the emissions ruling or decision appealed against.
- (3) An emissions ruling or 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.

Section 115: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 115 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 115(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 115(1): amended, on 1 January 2013, by section 46 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**116 Effect of emissions rulings**

- (1) An emissions ruling is conclusive evidence of the determination of the matter that is ruled on.
- (2) If the EPA makes an emissions ruling under section 109,—
  - (a) the ruling applies to the matter that is ruled on; and
  - (b) if the applicant complies with the ruling, the EPA must apply this Act to that matter in accordance with the ruling.
- (2A) However, an emissions ruling is personal to the applicant and does not apply to, and cannot be transferred to, anyone else (including where land to which a ruling relates is transferred).
- (3) This section is subject to sections 113 and 114 and any decision of the District Court under section 115(2).

Section 116: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 116(1): amended, on 23 June 2020, by section 111(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 116(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 116(2)(a): amended, on 23 June 2020, by section 111(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 116(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 116(2A): inserted, on 23 June 2020, by section 111(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**117 EPA may publish certain aspects of emissions rulings**

- (1) For the purpose of providing general guidance about the application of the ETS participant provisions, the EPA may, after making an emissions ruling, publish information that relates to the ruling in whatever manner and format that the EPA considers appropriate.
- (2) The EPA 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 116.

Section 117: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 117 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 117(1): amended, on 23 June 2020, by section 112(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 117(1): amended, on 23 June 2020, by section 112(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 117(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 117(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

*Emissions returns*

Heading: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**118 Submission of final emissions returns**

- (1) Subsection (2) applies to the following persons:
  - (a) a person who the EPA believes is about to—
    - (i) cease carrying out an activity listed in Schedule 3 or 4 in relation to which the person is a participant; and
    - (ii) leave New Zealand:
  - (b) a participant who has ceased to carry out any activities in New Zealand:
  - (ba) a participant who has given the EPA notice under section 59 that the participant has ceased, or will cease, to carry out any activities for the remainder of the year and the whole of the following year:
  - (c) the executors or administrators of a deceased participant:
  - (d) a participant who has become bankrupt or has been put into liquidation.
- (2) The EPA may, at any time, require a person to whom subsection (1) applies to submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4.

- (3) Any of the following persons may, at any time, submit a final emissions return in relation to a specified activity listed in Schedule 3 or 4:
  - (a) a person who has—
    - (i) ceased to carry out an activity listed in Schedule 3 or 4 in relation to which the person was a participant; and
    - (ii) left, or is about to leave, New Zealand:
  - (b) a participant who has ceased to carry out any activities in New Zealand:
  - (c) the executor or administrator of a deceased participant:
  - (d) a participant who has become bankrupt or has been put into liquidation.
- (4) A final emissions return submitted under subsection (2) or (3) must—
  - (a) contain all of the information required in an annual emissions return under section 65(2), but only in respect of the following periods, as relevant:
    - (i) if the return is submitted in response to a requirement of the EPA under subsection (2), the period specified by the EPA:
    - (ii) if the return is made under subsection (3)(a) or (b), the period—
      - (A) beginning on the later of 1 January in the year in which the return is submitted, or the day after the end of the period covered by the last emissions return submitted by the person for the activity; and
      - (B) ending on the day the person ceased to carry out the specified activity, or the last of the specified activities covered by the return:
    - (iii) if the return is made under subsection (3)(c) or (d), the period determined by the submitter; and
  - (b) be submitted in accordance with section 65(3).
- (5) Following the submission of a final emissions return under this section, the person submitting the return must, within 20 working days, surrender the number of units in the assessment under section 65(2)(c)(i).
- (6) Despite anything in subsection (3),—
  - (a) a person who meets the conditions in that subsection, and who is (at the time of meeting those conditions) a member of a consolidated group, may not submit a final emissions return; and
  - (b) the nominated entity of the consolidated group of which the person is a member may not submit a final emissions return in respect of the person.
- (7) To avoid doubt, a person who submits a final emissions return in respect of a specified activity under this section—

- (a) is not required to submit an annual emissions return under section 65 that covers the activity for any period covered by the return submitted under this section; but
- (b) must, if the final emissions return does not cover the full period in which the activity was carried out by the participant in a year, submit an annual emissions return under section 65 in respect of the activity that covers any part of the year in which the activity was carried out by the participant that is not covered by the return submitted under this section.

Section 118: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 118(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(1)(ba): inserted, on 1 January 2013, by section 47 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 118(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(3)(a): substituted, on 8 December 2009, by section 37(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(4)(a): substituted, on 8 December 2009, by section 37(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(4)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 118(6): added, on 8 December 2009, by section 37(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 118(7): added, on 8 December 2009, by section 37(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **119 Power to extend date for emissions returns**

The EPA 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 by the date upon which the emissions return is due; and
- (b) the EPA is satisfied that the participant is unable to submit the required emissions return by the due date.

Section 119: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 119: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 119(a): amended, on 8 December 2009, by section 38 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 119(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**120 Amendment to emissions returns by EPA**

- (1) Subject to section 127, if the EPA is satisfied that the information contained in an emissions return is incorrect, the EPA 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 EPA thinks fit.
- (2) If the EPA proposes to amend a person's emissions return, the EPA must notify the person of that proposal as soon as practicable.
- (3) If the EPA then becomes satisfied that the information contained in the emissions return was correct,—
  - (a) the EPA must notify the person of that fact and of the effects of paragraph (b); and
  - (b) section 123 applies as if the EPA had assessed the matters in the emissions return under section 121.

Section 120: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 120 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 120(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 120(2): inserted, on 1 January 2021, by section 214 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 120(3): inserted, on 1 January 2021, by section 214 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**120A Liabilities, penalties, and interest when emissions returns amended**

- (1) This section applies if the EPA (on the **initial notice date**) notifies a person under section 120(2) that it proposes to amend their original emissions return. Terms used in this section are defined throughout, and at the end of, the section.
- (2) Until the EPA has amended the original emissions return by giving the amendment notice,—
  - (a) the person's surrender or repayment of any units for which they are liable under the original emissions return need not be made by the applicable due date; and
  - (b) the EPA must not give a penalty notice to the person in relation to the original emissions return; and
  - (c) if the EPA had already given a penalty notice to the person in relation to the original emissions return, the person's payment of the penalty or any interest need not be made by the applicable due date.
- (3) The EPA, in assessing the matters required to amend the original emissions return, must calculate all of the following that apply:

- (a) the number of units that the person is liable to surrender or repay under the amended emissions return (the **amended total units**):
- (b) the units that the person was liable to surrender or repay under the original emissions return (the **original total units**), and—
  - (i) the number of amended total units that do not exceed the original total units (the **base units**):
  - (ii) the number of units by which the amended total units exceed the original total units (the **additional units**):
- (c) if any of the base units were not surrendered or repaid by a due date before the initial notice date (the **unpaid base units**), the penalty under section 134 for the unpaid base units (the **amended penalty**):
- (d) if the EPA had already given a penalty notice specifying a penalty (the **original penalty**) in relation to the original emissions return,—
  - (i) the amount by which the original penalty exceeds the amended penalty (the **unnecessary penalty**):
  - (ii) and if any interest has become payable on the original penalty before the initial notice date (the **original interest**),—
    - (A) the interest that would have become payable before that date on the amended penalty instead of the original penalty (the **amended interest**):
    - (B) the amount by which the original interest exceeds the amended interest (the **unnecessary interest**).

*Penalty notice not already given*

- (4) If there are unpaid base units, and the EPA has not already given a penalty notice in relation to the original emissions return, the EPA must include with the amendment notice a penalty notice for those unpaid base units (specifying the amended penalty).

*Penalty notice already given*

- (5) If there are unpaid base units, and the EPA has already given a penalty notice in relation to the original emissions return, the EPA must include with the amendment notice a penalty notice for the unpaid base units that—
  - (a) complies with section 134, including by—
    - (i) specifying the amended penalty as required by section 134(3)(d); and
    - (ii) specifying the new due date as required by section 134(3)(f); but
  - (b) also—
    - (i) specifies the amount of the amended interest and states that it is payable on the amended penalty; and

- (ii) states that interest is not payable on the amended penalty in the period starting on the initial notice date and ending on the new due date; and
  - (iii) specifies the amount of any unnecessary penalty or unnecessary interest that the person has paid and states that the EPA is required to reimburse it.
- (6) The penalty notice given under subsection (5) has effect in accordance with its terms, instead of the penalty notice that was already given.

*Other provisions*

- (7) To avoid doubt, this section—
- (a) does not prevent the EPA, when requiring the surrender or repayment of units, or the payment of a penalty or interest, under this section, from taking into account any earlier surrender, repayment, or payment by the person; and
  - (b) does not prevent section 134 from separately applying to any additional units (that are not surrendered or repaid by their due date).
- (8) In this section,—

**amended emissions return** means the original emissions return as amended by the EPA under section 120, as notified in the amendment notice

**amendment notice** means the notice given by the EPA under section 123(1) for the amended emissions return

**interest** means interest payable on a penalty under section 137

**original emissions return** means the person's emissions return that the EPA proposes to amend

**penalty notice** means a notice given to a person under section 134(3) (because of the person's failure to surrender or repay units by the due date).

Section 120A: inserted, on 1 January 2021, by section 215 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **121 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 EPA 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 EPA may make an assessment of the matters that should have been in the person's emissions return.

Section 121: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 121(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).



Section 121(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **122 Amendment or assessment presumed to be correct**

An amendment made to an emissions return under section 120, or an assessment made under section 121, must be taken to be correct unless, on review or appeal, a different amendment or assessment is made.

Section 122: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **123 Effect of amendment or assessment**

- (1) If the EPA makes an amendment under section 120 or an assessment under section 121, the EPA 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 144.
- (2) A notice under subsection (1) must, if relevant, be accompanied by a penalty notice under section 134A or 134C or required by section 120A.
- (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 60 working days of the date of the notice under subsection (1).
- (4) If the amendment shows that a participant has surrendered too many units, the EPA must, within 20 working days of the date of the notice under subsection (1), arrange for reimbursement to the participant, in accordance with section 124, 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 EPA must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant's holding account.
- (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 60 working days of the date of the notice under subsection (1), repay the number of units to which the amendment shows the participant was not entitled by transferring them to a Crown holding account designated by the EPA.
- (7) Units repaid by any person under subsection (6) must be of a type that may be transferred to a surrender account at the time the unit is repaid.
- (8) The EPA is not required to meet the time frame in subsection (4) if consultation under section 124(3) on the units to be reimbursed makes this impracticable.

Section 123: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 123(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(2): amended, on 1 January 2021, by section 216 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 123(3): amended, on 1 January 2013, by section 48(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(4): amended, on 1 January 2013, by section 48(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(5): substituted, on 8 December 2009, by section 39 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 123(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(6): amended, on 1 January 2013, by section 48(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 123(8): amended, on 1 January 2013, by section 48(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 123(8): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 124 Reimbursement of units by EPA

- (1) If the EPA is required by this Act to arrange for the reimbursement of units to a person, the EPA must direct the Registrar to transfer the applicable number of New Zealand units or approved overseas units from the appropriate surrender account or Crown holding account to the person's holding account.
- (2) However, subsection (1) does not apply to the extent that subsection (2A) requires units to be transferred elsewhere.
- (2A) The EPA must apply section 64A as follows:
  - (a) the units the person is entitled to be reimbursed are the **potential transfer units**;
  - (b) the person is the **recipient**;
  - (c) the time when the requirement to reimburse arose is the **relevant time**.
- (3) The EPA must take into account the views of the person to whom units will be reimbursed about the type of units to be reimbursed when determining what units to reimburse.

Section 124: substituted, on 8 December 2009, by section 40 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 124 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 124(1): replaced, on 23 June 2020, by section 113 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 124(2): replaced, on 23 June 2020, by section 113 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 124(2A): inserted, on 23 June 2020, by section 113 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 124(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **125 Repayment of units by persons in case of error**

- (1) The EPA may, if satisfied that, as a result of an error, units to which a person is not entitled under the ETS participant provisions have been transferred from a Crown holding account or other account held by the Crown to the person's holding account, give a notice to the person requiring that person to repay that number of units.
- (2) The person must, within 30 days after the notice is given, repay that number of units by transferring units to the Crown holding account designated in the notice.
- (3) The repaid units must be of a type that may be transferred to a surrender account when they are repaid.

Section 125: replaced, on 23 June 2020, by section 114 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **126 Obligation to surrender or repay units not suspended by review or appeal**

- (1) The obligation to surrender or repay units under section 123 or 125 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 EPA must arrange for the reimbursement to the applicant or appellant of the number of units surrendered or repaid in excess of those that are determined to be required to be surrendered or repaid.
- (3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed by the EPA under section 146.

Section 126: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 126(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 126(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **127 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 required or permitted by—
  - (a) any section except those specified in paragraph (b), the EPA may not amend the emissions return, or the assessment made by the participant of

- the units to be surrendered or received, after the expiration of 4 years from the end of the year or other period in respect of which the emissions return was made, or in the case of a return under section 187 or 191, from the date of the submission of the emissions return, if the amendment would—
- (i) increase the number of units required to be surrendered by the participant; or
  - (ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities:
- (b) section 189 or 193, the EPA may not amend the emissions return, or the 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—
- (i) increase the number of units required to be surrendered by the participant; or
  - (ii) alter the number of New Zealand units that the participant is entitled to receive for removal activities.
- (2) However,—
- (a) the EPA may amend an emissions return or assessment at any time to give effect to the correction of a unique emissions factor under section 91A; and
  - (b) if the EPA 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 EPA may amend the emissions return at any time, under section 120, so as to—
    - (i) increase the number of units required to be surrendered by the participant;
    - (ii) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.
  - (c) if a person submits an emissions return on receiving a notice from the EPA under section 134A(1), the period of 4 or 7 years in which the EPA may amend an emissions return under subsection (1)(a) or (b) starts from the date of submission of the emissions return.
- (3) Without limiting subsection (2)(b), that paragraph applies in respect of all emissions returns by a person for an activity if the EPA is satisfied that the person's application to be registered was fraudulent or wilfully misleading.

Section 127: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 127(1): amended, on 23 June 2020, by section 115(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 127(1)(a): amended, on 23 June 2020, by section 115(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22)

Section 127(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 127(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 127(2): replaced, on 23 June 2020, by section 115(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 127(2)(c): inserted, on 1 January 2021, by section 217 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 127(3): inserted, on 23 June 2020, by section 115(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **128 Amendments and assessments made by electronic means**

Any amendment or assessment made by the EPA 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 EPA; and
- (b) is not invalid by virtue of the fact that it is made automatically by such means.

Section 128: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 128: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 128(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **Subpart 4—Offences and penalties**

Subpart 4: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **129 Offences in relation to failure to comply with various provisions**

- (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 (other than by submitting an emissions return containing incorrect calculations); or
  - (b) without reasonable excuse,—
    - (i) fails to notify the EPA under section 56 that the person is carrying out an activity listed in Schedule 3; or

- (ii) fails to submit an emissions return when required to do so; or
  - (iia) fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or closing allocation adjustment under section 83 or 84, including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or
  - (iii) fails to keep records as required—
    - (A) under section 67 or 86D; or
    - (B) *[Repealed]*
    - (C) by the pre-1990 forest land allocation plan; or
  - (iv) fails to notify the EPA of a matter that is required to be notified under section 112; or
  - (v) fails to notify the EPA, within the time required, of a matter required to be notified under section 84(2)(b) or 192(3).
- (2) Every person who is convicted of an offence against subsection (1) is liable on 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 \$16,000;
  - (c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding \$24,000.

Section 129: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 129 heading: replaced, on 1 January 2013, by section 50 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 129(1)(a): amended, on 1 January 2021, by section 218 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 129(1)(b)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(ii): amended, on 23 June 2020, by section 116(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 129(1)(b)(iia): inserted, on 8 December 2009, by section 42(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(iia): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(iii): substituted, on 8 December 2009, by section 42(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(iii)(B): repealed, on 23 June 2020, by section 116(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 129(1)(b)(iii)(C): amended, on 23 June 2020, by section 116(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 129(1)(b)(iv): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(1)(b)(v): substituted, on 8 December 2009, by section 42(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 129(1)(b)(v): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 129(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **130 Offence for breach of section 99**

Every person to whom section 99(1) applies who knowingly acts in contravention of section 99 commits an offence and is liable on conviction to—

- (a) imprisonment for a term not exceeding 6 months; or
- (b) a fine not exceeding \$15,000; or
- (c) both.

Section 130: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 130: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **131 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 EPA or an enforcement officer when required to do so under section 94; or
- (b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 95.

(2) Every person who is convicted of an offence against subsection (1) is liable on 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.

Section 131: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 131(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 131(1)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 131(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **132 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 95; or

- (b) refuses to answer any question when required to do so under section 95; or
  - (c) is a participant in any year and knowingly fails to comply with section 62 (other than by submitting an emissions return containing incorrect calculations); or
  - (d) knowingly fails to submit an emissions return when required to do so; or
  - (da) knowingly fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84, including when required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c); or
  - (e) knowingly fails to keep records as required—
    - (i) under section 67 or 86D; or
    - (ii) *[Repealed]*
    - (iii) by the pre-1990 forest land allocation plan; or
  - (f) knowingly provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of any matter in the ETS participant provisions; or
  - (g) wilfully obstructs, hinders, resists, or deceives a person exercising a power conferred on that person under the ETS participant provisions; 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 100; or
  - (i) refuses to provide information that an enforcement officer has demanded from that person under section 100(2)(d).
- (2) Every person who is convicted of an offence against subsection (1) is liable on 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.

Section 132: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 132(1)(c): amended, on 1 January 2021, by section 219 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(1)(d): amended, on 23 June 2020, by section 117(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(1)(da): inserted, on 8 December 2009, by section 43(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 132(1)(da): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 132(1)(e): substituted, on 8 December 2009, by section 43(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).



Section 132(1)(e)(ii): repealed, on 23 June 2020, by section 117(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(1)(e)(iii): amended, on 23 June 2020, by section 117(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(1)(f): amended, on 23 June 2020, by section 117(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(1)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 132(1)(f): amended, on 8 December 2009, by section 43(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 132(1)(g): amended, on 23 June 2020, by section 117(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 132(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### 133 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 to do so; or
  - (ba) fails to comply with the requirements relating to calculation and application for or notification of an annual allocation adjustment or a closing allocation adjustment under section 83 or 84 (including where required to comply with section 84(1)(a) to (c) by the EPA under section 84(2)(c)); or
  - (c) fails to keep records as required—
    - (i) under section 67 or 86D; or
    - (ii) *[Repealed]*
    - (iii) by the pre-1990 forest land allocation plan; or
  - (d) fails to provide information to the EPA or any other person when required to do so under the ETS participant provisions; or
  - (e) provides altered, false, incomplete, or misleading information (including emissions returns) to the Minister or the EPA or any other person in respect of a matter in the ETS participant provisions.
- (2) Every person who commits an offence against subsection (1) is liable on conviction 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.

Section 133: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 133(1)(b): amended, on 23 June 2020, by section 118(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 133(1)(ba): inserted, on 8 December 2009, by section 44(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(1)(ba): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(c): substituted, on 8 December 2009, by section 44(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(1)(c)(ii): repealed, on 23 June 2020, by section 118(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 133(1)(c)(iii): amended, on 23 June 2020, by section 118(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 133(1)(d): amended, on 23 June 2020, by section 118(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 133(1)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(e): amended, on 23 June 2020, by section 118(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 133(1)(e): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 133(1)(e): amended, on 8 December 2009, by section 44(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 133(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **134 Penalty for failing to surrender or repay units by due date**

- (1) This section applies if a person fails, by the due date,—
- (a) to surrender units that the person is required to surrender; or
  - (b) to repay units that the person is required to repay.
- (2) The person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

$$3 \times a \times b$$

where—

- a is the number of units that the person failed to surrender or repay by the due date
  - b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W.
- (3) The EPA must give a notice to the person that—
- (a) refers to the person's failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and

- (b) refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and
  - (c) specifies the number of units that the person must surrender or repay; and
  - (d) specifies the amount of the penalty that the person must pay under this section; and
  - (e) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (f) advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (4) In this section, **due date** means the final date by which the person was required to surrender or repay the units.

Section 134: replaced, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **134A Penalty for failing to submit emissions return by due date**

- (1) This section applies if—
- (a) a person fails to submit an emissions return by the due date; and
  - (b) the EPA is satisfied that the person has not taken reasonable care; and
  - (c) the EPA gives a notice to the person stating that—
    - (i) the person has failed to submit the emissions return by the due date; and
    - (ii) if the person does not submit the return within 20 working days after the notice is given, the EPA will make an assessment under section 121 and a penalty may apply; and
  - (d) the person fails to submit the emissions return within 20 working days after the notice is given.
- (2) If the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry), the person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or
  - (b) **removals** equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units.
- (3) If the emissions return is for any other activity, the person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or

- (b) **removals** equal to the carbon dioxide equivalent tonnes of removals assessed for the return.
- (4) If the person has—
- (a) emissions, they must pay to the EPA the penalty calculated under subsection (5):
- (b) removals, they must pay to the EPA the penalty calculated under subsection (5), but the maximum penalty is \$1,000:
- (c) neither emissions nor removals, no penalty is payable.
- (5) The calculation is—

$$a \times b \times c$$

where—

- a is the person's emissions or removals in tonnes (whichever applies)
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (6).
- (6) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

<b>Person's level of culpability</b>	<b>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</b>	<b>Culpability factor</b>
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

*Notice of penalty*

- (7) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the person's failure to submit the emissions return by the due date and the provision under which the person is required to submit the return; and
- (b) refers to the notice issued under subsection (1)(c); and
- (c) specifies the amount of the penalty that the person must pay under this section; and
- (d) advises that the person may request to enter into a deferred payment arrangement under section 135A; and

- (e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

*Meaning of due date*

- (8) In this section, **due date**—
  - (a) means the final date by which the person—
    - (i) was originally required to submit the emissions return; or
    - (ii) would have been required to submit the emissions return had they complied with this Act in all respects; and
  - (b) excludes any extension under subsection (1)(d).

Section 134A: replaced, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**134B Penalty for failing to submit annual or closing allocation adjustment by due date**

- (1) This section applies if—
  - (a) a person fails to submit an annual allocation adjustment under section 83 or a closing allocation adjustment under section 84 by the due date; and
  - (b) the EPA is satisfied that the person has not taken reasonable care; and
  - (c) the EPA gives a notice to the person stating that—
    - (i) the person has failed to submit the allocation adjustment by the due date; and
    - (ii) if the person does not submit the allocation adjustment within 20 working days after the notice is given, the EPA will make a decision under section 86B(4) and a penalty may apply; and
  - (d) the person fails to submit the allocation adjustment within 20 working days after the notice is given.
- (2) If the result of a decision made under section 86B(4) is that—
  - (a) the person is liable to surrender or repay units, they must pay to the EPA the penalty calculated under subsection (3) (in addition to surrendering or repaying the units);
  - (b) the person is entitled to receive units, they must pay to the EPA the penalty calculated under subsection (3), but the maximum penalty is \$1,000;
  - (c) there is no change in the person's liability or entitlement, no penalty is payable.
- (3) The calculation is—

$$a \times b \times c$$

where—

- a is the number of units that the person—

- (i) is liable to surrender or repay; or
  - (ii) is entitled to receive
  - b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
  - c is the culpability factor determined under subsection (4).
- (4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

- (5) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the person's failure to submit the allocation adjustment by the due date and the provision under which the person is required to submit the allocation adjustment; and
  - (b) refers to the notice issued under subsection (1)(c); and
  - (c) specifies the amount of the penalty that the person must pay under this section; and
  - (d) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (6) In this section, **due date**—
- (a) means the final date by which the person was originally required to submit the allocation adjustment; and
  - (b) excludes any extension under subsection (1)(d).

Section 134B: inserted, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 134C Penalty for submitting incorrect emissions return

- (1) This section applies if—
- (a) the EPA amends a person's emissions return under section 120; and

- (b) the EPA is satisfied that the amendment was needed because the person failed to take reasonable care.
- (2) In particular,—
  - (a) subsections (3) to (5) apply if the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry):
  - (b) subsections (6) to (8) apply if the emissions return is for any other activity.

*Activities relating to post-1989 forestry*

- (3) The person has either—
  - (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or
  - (b) **removals** equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units.
- (4) If the effect of the amendment is that—
  - (a) the person's emissions are greater, removals are lesser, or removals have become emissions, they must pay to the EPA the penalty calculated under subsection (5):
  - (b) the person's removals are greater, emissions are lesser, or emissions have become removals, they must pay to the EPA the penalty calculated under subsection (5), but the maximum penalty is \$1,000:
  - (c) there is no change in the person's emissions or removals, no penalty is payable.
- (5) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
  - (a) the person's emissions or removals under the emissions return, as amended; and
  - (b) the difference between (whichever applies)—
    - (i) the person's emissions under the emissions return before and after amendment; or
    - (ii) the person's removals under the emissions return before and after amendment; or
    - (iii) the person's emissions and removals under the emissions return before and after amendment, with the emissions converted to a negative number

- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (9).

*Other activities*

- (6) The person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or
- (b) **removals** equal to the carbon dioxide equivalent tonnes of removals assessed for the return.
- (7) If the effect of the amendment is that—
- (a) the person's emissions are greater or removals are lesser, they must pay to the EPA the penalty calculated under subsection (8):
- (b) the person's removals are greater or emissions are lesser, they must pay to the EPA the penalty calculated under subsection (8), but the maximum penalty is \$1,000:
- (c) there is no change in the person's emissions or removals, no penalty is payable.
- (8) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
- (a) the person's emissions or removals under the emissions return, as amended; and
- (b) whichever of the following applies:
- (i) the difference between the person's emissions under the emissions return before and after amendment; or
- (ii) the difference between the person's removals under the emissions return before and after amendment
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
- c is the culpability factor determined under subsection (9).

*Culpability factor*

- (9) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
Person did not take reasonable care	Yes	0.1



Person's level of culpability	Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?	Culpability factor
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

*Notice of penalty*

- (10) If the person must pay a penalty, the EPA must give a notice to the person that—
- refers to the amendment under section 120; and
  - specifies the amount of the penalty that the person must pay under this section; and
  - advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

*Meaning of due date*

- (11) In this section, **due date**—
- means the final date by which the person—
    - was originally required to submit the emissions return; or
    - would have been required to submit the emissions return had they complied with this Act in all respects; and
  - excludes any extension under section 134A(1)(d).

Section 134C: inserted, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**134D Penalty for providing incorrect information in allocation application or adjustment**

- (1) This section applies if—
- the EPA reconsiders, varies, or revokes (**changes**) a decision on a person's allocation application or adjustment under section 86C; and
  - the EPA is satisfied that the change was needed because the person failed to take reasonable care.
- (2) If the effect of the change is that—
- the person is liable to surrender or repay additional units, or is entitled to receive fewer units, they must pay to the EPA the penalty calculated

under subsection (3) (in addition to surrendering or repaying any required units):

- (b) the person is liable to surrender or repay fewer units, or is entitled to receive additional units, they must pay to the EPA the penalty calculated under subsection (3), but the maximum penalty is \$1,000:
  - (c) there is no change in the person's liability or entitlement, no penalty is payable.
- (3) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
    - (a) the total number of units the person is liable to surrender or repay, or is entitled to receive, under the decision, as changed; and
    - (b) the number of units that the person—
      - (i) is now liable to surrender or repay as additional units, or is no longer entitled to receive, as a result of the change (if subsection (2)(a) applies); or
      - (ii) is no longer liable to surrender or repay, or is now entitled to receive as additional units, as a result of the change (if subsection (2)(b) applies)
  - b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W
  - c is the culpability factor determined under subsection (4).
- (4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

<b>Person's level of culpability</b>	<b>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</b>	<b>Culpability factor</b>
Person did not take reasonable care	Yes	0.1
	No	0.2
Person was grossly careless	Yes	0.2
	No	0.4
Person knowingly failed	Yes	1.0
	No	1.0

- (5) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the change under section 86C; and
  - (b) specifies the amount of the penalty that the person must pay under this section; and

- (c) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
  - (d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (6) In this section, **due date**—
- (a) means the final date by which the person was originally required to submit the allocation application or adjustment; and
  - (b) excludes any extension under section 134B(1)(d).

Section 134D: inserted, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **135 Date for payment of penalty**

- (1) A person must pay a penalty imposed under sections 134 to 134D within 20 working days after notice is given of the penalty.
- (2) However, if a deferred payment arrangement has been made under section 135A, the person must pay the penalty by the date or dates agreed under the arrangement.

Section 135: replaced, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **135A Deferred payment arrangements for payments of penalties**

- (1) A person who is liable to pay a penalty imposed under sections 134 to 134D may request to enter into an arrangement with the EPA for the person to pay the penalty after the date required by section 135(1), either in a single payment or in instalments.
- (2) The EPA must consider the request, taking into account the person's financial position on the date on which the request is made.
- (3) The EPA may—
  - (a) accept the request; or
  - (b) request further information from the person; or
  - (c) make a counter offer; or
  - (d) if subsection (5) applies, decline the request.
- (4) If the EPA requests further information from the person or makes a counter offer,—
  - (a) the person must provide the information or respond to the offer within 20 working days after the request or offer, or within a longer period allowed by the EPA; and
  - (b) if the person provides the information or responds to the offer later than required, the provision of the information or the response must be treated as a new request to enter into an arrangement.

- (5) The EPA may decline to enter into an arrangement with the person if the EPA considers that—
- (a) the person is in a position to pay all of the penalty immediately; or
  - (b) the person is being frivolous or vexatious; or
  - (c) the person has not met their obligations under a previous arrangement.
- (6) The renegotiation of an arrangement is treated as if it were a new request to enter into an arrangement. Renegotiation may be initiated—
- (a) by the person at any time; or
  - (b) by the EPA at any time after the end of 12 months after the date on which the arrangement was entered into.
- (7) The EPA may cancel an arrangement if—
- (a) it was entered into on the basis of false or misleading information provided by the person; or
  - (b) the person is not meeting their obligations under the arrangement.

Section 135A: inserted, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **136 Penalties are debt due to Crown**

The amount of a penalty imposed under sections 134 to 134D, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

Section 136: replaced, on 1 January 2021, by section 220 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **137 Interest for late payment**

- (1) This section applies if—
- (a) a person is liable to pay a penalty imposed under sections 134 to 134D; and
  - (b) the person has not paid the penalty by the date on which the penalty was due (as stated in the notice issued under the relevant section); and
  - (c) in the case of a penalty imposed under section 134, the person has not surrendered or repaid the units to which the penalty relates.
- (2) If this section applies, the person is liable to pay interest on the full amount of the 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 penalty and any interest due have been paid in full and, in the case of a penalty imposed under section 134, the person has surrendered or repaid the units to which the penalty relates.
- (3) *[Repealed]*

- (4) Despite anything in this section, the EPA may remit any amount of interest that has accrued under this section, if the EPA is satisfied that—
- (a) the failure of the person to comply with the requirement to surrender or repay units and pay the penalty arises as a result of an event or a 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 EPA'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 EPA may remit all or part of an amount of interest that has accrued under this section if the EPA is satisfied that it would be manifestly unfair or unjust to impose all, or that part, of the 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 EPA 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.

Section 137: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 137(1): replaced, on 1 January 2021, by section 221(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(2): amended, on 1 January 2021, by section 221(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(2)(b): replaced, on 1 January 2021, by section 221(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(3): repealed, on 1 January 2021, by section 221(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 137(4)(a): substituted, on 8 December 2009, by section 46(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 137(4)(a): amended, on 1 January 2021, by section 221(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 137(6): replaced, on 1 January 2021, by section 221(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 137(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **138 Obligation to pay penalty not suspended by appeal**

- (1) The obligation to pay and the right to receive and recover any penalty imposed under sections 134 to 134D or interest imposed under section 137 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 penalty or interest paid by the applicant must be refunded to the applicant or appellant by the EPA, and any units not required to be transferred to a Crown holding account or surrendered must be reimbursed in accordance with the procedure specified in section 124.
- (3) However, any obligation on the EPA under subsection (2) is suspended pending the outcome of any appeal filed under section 146.
- (4) The EPA must pay interest on any refunded 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 EPA; and
- (b) ends on the day on which the relevant penalty is refunded by the EPA; 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 137(2)(a).

Section 138: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 138(1): replaced, on 1 January 2021, by section 222(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 138(2): substituted, on 8 December 2009, by section 47(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 138(2): amended, on 1 January 2021, by section 222(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 138(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4): amended, on 1 January 2021, by section 222(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 138(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4) formula item X paragraph (a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 138(4) formula item X paragraph (b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **138A Penalties to be paid into Crown account**

The EPA must pay the amount of all penalties and interest on the penalties received from a person in accordance with sections 134 to 134D or 137 into a Crown Bank Account.

Section 138A: replaced, on 1 January 2021, by section 223 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **139 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.

Section 139: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **140 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.

Section 140: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **141 Liability of companies and persons for actions of director, agent, or employee**

- (1) Any act or omission on behalf of a body corporate or other person (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.
- (2) Despite subsection (1), if a principal is charged under this Part in relation to the act or omission of an agent for an offence against any of sections 132(1)(c) to (f) or 133, it is a defence to the charge if the principal proves that the principal took all reasonable steps to prevent the commission of the offence or the commission of offences of that kind.

Section 141: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **142 Limitation period for commencement of proceedings**

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of an offence against—
  - (a) section 131 or 132(1)(a), (b), (g), (h), or (i) ends on the date that is 2 years from the date on which the offence was committed:
  - (b) section 129, 130, or 132(1)(c) to (f) ends on the date that is 7 years from the date on which the offence was committed.
- (2) Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

Section 142: replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

#### **143 Evidence in proceedings**

- (1) In any proceedings for an offence against the ETS participant provisions, 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 a delegate of the EPA, 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 92; 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 the ETS participant provisions, 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.



Section 143: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 143(1): amended, on 23 June 2020, by section 119 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 143(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 143(1)(b): amended, on 23 June 2020, by section 119 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 5—Review and appeal provisions

Subpart 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### 144 Request for review of decisions

- (1) A person affected by a decision of the EPA under a provision in the ETS participant provisions who is dissatisfied with the decision may request the EPA to review the decision.
- (1A) The request must be made by notice to the EPA within the following period, or any further period that the EPA allows:
  - (a) within 20 working days after the person receives notice of the decision; or
  - (b) for a decision of the EPA about whether to give an area of land a new or changed forestry classification, within 20 working days after that decision is published in accordance with regulations made under section 196F.
- (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 EPA may—
  - (a) require the person requesting the review to supply information additional to that contained in the request; and
  - (b) consider any information that the EPA already holds and that is relevant to the review, as long as the EPA—
    - (i) gives a notice to the person requesting the review that describes the information and invites them to comment on or object to it; and
    - (ii) considers any comments or objections.
- (4) Following a review, the EPA may confirm, revoke, or vary the decision in the manner that the EPA thinks fit.
- (4A) Before revoking or varying the forestry classification of an area of land, the EPA must, in accordance with regulations made under section 196F, consult the persons (if any) that appear likely to be substantially affected by the revocation or variation.

- (5) The decision requested to be reviewed remains valid unless and until altered by the EPA.
- (6) The EPA 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 EPA under this section is final, unless determined otherwise by a court under an appeal under section 145 or 146.
- (8) This section does not apply to any decision that the EPA makes under section 90 or of the EPA in relation to emissions rulings (including a decision to decline making a ruling) under sections 107 to 117.

Section 144: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 144(1): replaced, on 23 June 2020, by section 120(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 144(1A): inserted, on 23 June 2020, by section 120(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 144(3): replaced, on 23 June 2020, by section 120(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 144(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(4A): inserted, on 23 June 2020, by section 120(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 144(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 144(8): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **145 Right of appeal to District Court**

- (1) A person has a right of appeal to the District Court if affected by a decision of the EPA under section 144.
- (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.

Section 145: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 145(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 145(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **146 Appeals to High Court on questions of law only**

If a party to any proceedings before the District Court under section 145 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.

Section 146: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **Subpart 6—Miscellaneous provisions**

Subpart 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

#### **147 Giving of notices by EPA**

- (1) This section applies if this Act requires the EPA to give a notice to a person.
- (2) If this section applies, the EPA—
  - (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 EPA complies with Part 4 of the Contract and Commercial Law Act 2017;
    - (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 EPA that the person accepts 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.

Section 147: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 147 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2)(b)(iii): amended, on 1 September 2017, by section 347 of the Contract and Commercial Law Act 2017 (2017 No 5).

Section 147(2)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 147(2)(b)(iv)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### 148 Giving of notices to EPA

- (1) This section applies if this Act requires a person to give a notice to the EPA.
- (2) If this section applies, the notice must be given in writing in 1 of the following ways to the EPA's office:
  - (a) by personal delivery during working hours;
  - (b) by an electronic means of communication in accordance with Part 4 of the Contract and Commercial Law Act 2017;
  - (c) by post to the post office box number for the office.
- (3) A notice given by post under subsection (2)(c) is treated as having been given at the time the notice would have been delivered in the ordinary course of the post.

Section 148: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 148 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 148(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 148(2): replaced, on 23 June 2020, by section 121(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 148(3): amended, on 23 June 2020, by section 121(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 149 Sharing information

- (1) The purpose of this section is to facilitate the exchange of information between any person 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.

Section 149: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**150 Formation of consolidated group**

- (1) Any 2 or more members of a group may elect to form and be treated as a consolidated group, for the purposes of the ETS participant provisions, in respect of any activity or activities listed in Schedule 3 or 4 other than forestry activities.
- (2) A consolidated group may consist of any of the following:
  - (a) 1 or more participants;
  - (b) 1 or more eligible persons for an eligible activity;
  - (c) 1 other member that is not a participant or an eligible person, if that entity is to act as the nominated entity.
- (3) An election under subsection (1) must be made by giving notice to the EPA in the prescribed form.
- (4) A notice given under subsection (3) must—
  - (a) include—
    - (i) the names of each of the entities that are to be members of the consolidated group (and contact details of any member that is not registered as a participant); and
    - (ii) the activities in respect of which the members elect to be treated as a consolidated group; and
  - (b) nominate one of the entities listed in the notice (the **nominated entity**) as the agent of the consolidated group in respect of the activities specified in the notice and the ETS participant provisions; 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 the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities specified in the notice; and
    - (ii) to the transfer to the consolidated group's holding account on behalf of the group of any units to which any member of the consolidated group may become entitled in respect of any removal activity, or by an allocation relating to an eligible activity, listed in the notice.
- (5) The EPA must acknowledge the formation of a consolidated group by notice to all members of the group given within 1 month after the EPA's receipt of a notice under subsection (3).
- (6) Two or more entities who make an election under subsection (1) must be treated, for the purposes of the ETS participant provisions, as being members of a consolidated group,—

- (a) if notice of the formation of the consolidated group is received by the EPA by 30 September in any year, from the beginning of that year:
  - (b) if notice of the formation of the consolidated group is received by the EPA after 30 September in any year, from the beginning of the following year.
- (6A) Despite subsection (1), 2 or more members of a group may, if they elect to form a consolidated group in respect of an activity to which subsection (1) applies, give notice to the EPA under subsection (3)—
- (a) at the same time they all give notice to the EPA under section 56 in respect of that activity; or
  - (b) at the same time they all submit an application under section 57 in respect of that activity; or
  - (c) at the same time they all submit an application under section 86 in respect of that eligible activity.
- (6B) Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6A) is not required to have its own holding account under section 61 to comply with its obligations as a participant or an eligible person in respect of an activity specified in the notice given under subsection (3) and is not required to open a holding account when giving notice under section 56 or making an application under section 57 in respect of an activity, or making an application under section 86 in respect of an eligible activity, if—
- (a) the notice given in accordance with subsection (6A) is received by the EPA by 30 September in the year in which that notice is given; and
  - (b) the nominated entity specified in the notice given in accordance with subsection (6A) has, or has applied for, a holding account in the name of the consolidated group.
- (7) To avoid doubt, a participant or an eligible person may be a member of more than 1 consolidated group in relation to different activities.

Section 150: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 150(1): replaced, on 23 June 2020, by section 122(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(2): replaced, on 23 June 2020, by section 122(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(4)(b): amended, on 23 June 2020, by section 122(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(4)(c)(i): amended, on 23 June 2020, by section 122(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(4)(c)(ii): amended, on 23 June 2020, by section 122(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6): amended, on 23 June 2020, by section 122(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6)(a): amended, on 8 December 2009, by section 48(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(a): amended, on 8 December 2009, by section 48(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6)(b): amended, on 8 December 2009, by section 48(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6)(b): amended, on 8 December 2009, by section 48(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6A): inserted, on 8 December 2009, by section 48(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6A): amended, on 23 June 2020, by section 122(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(6A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6A)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6A)(c): inserted, on 23 June 2020, by section 122(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(6B): inserted, on 8 December 2009, by section 48(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 150(6B): amended, on 23 June 2020, by section 122(8)(a) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(6B): amended, on 23 June 2020, by section 122(8)(b) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 150(6B): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(6B)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 150(7): amended, on 23 June 2020, by section 122(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **151 Changes to consolidated groups**

- (1) If a consolidated group has been formed and still has at least 1 member, any other person referred to in section 150(2)(a) to (c) may elect to join and be treated as a member of the consolidated group by giving notice to the EPA in a form that the EPA approves.
- (2) A notice given under subsection (1) must—
  - (a) include—

- (i) the name of the entity that elects to join the consolidated group (and the entity's contact details if it is not registered as a participant) and sufficient information for the EPA to identify the consolidated group that is to be joined; and
    - (ii) the activity or activities in respect of 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 the other members of the consolidated group for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities of the members of the group; and
    - (ii) to the transfer to the consolidated group's holding account on behalf of the group of any units to which the entity may become entitled in relation to any removal activities, or by an allocation relating to an eligible activity, specified in the notice; and
  - (c) contain the agreement of every existing member of the consolidated group—
    - (i) to be jointly and severally liable with the other members of the group for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to, the activities of the joining entity; and
    - (ii) to the transfer to the consolidated group's holding account, on behalf of the group, of any units to which the joining entity may become entitled in respect of the activity or activities of that entity, or by an allocation relating to an eligible activity of that entity, specified in the notice.
- (3) The EPA must acknowledge the joining of a member to a consolidated group by notice to all members of the group given within 1 month after the EPA's receipt of a notice under subsection (1).
- (4) Subject to subsection (6), a participant or eligible person that elects under subsection (1) to join a consolidated group must be treated, for the purposes of the ETS participant provisions, as being a member of that consolidated group from 1 January of the year in which they gave the notice under subsection (1).
- (5) An entity other than a participant or eligible person that elects under subsection (1) to join a consolidated group must be treated for the purposes of this Part as being a member of that consolidated group from the date of receipt by the EPA of the notice under subsection (1), or from any later date that may be specified in the notice.
- (6) A participant in respect of an activity, or an eligible person in respect of an eligible activity, may give notice to the EPA under subsection (1)—



- (a) at the same time as giving notice to the EPA under section 56 in respect of that activity; or
  - (b) when submitting an application under section 57 in respect of that activity; or
  - (c) when submitting an application under section 86 in respect of that eligible activity.
- (7) Despite sections 56(1), 57(3), and 61, an entity that gives notice to the EPA in accordance with subsection (6) is not required to have its own holding account under section 61 to comply with its obligations as a participant or an eligible person in respect of an activity specified in the notice given under subsection (1) and is not required to apply for a holding account, when—
- (a) giving notice to the EPA under section 56 in respect of that activity; or
  - (b) submitting an application under section 57 in respect of that activity; or
  - (c) submitting an application under section 86 in respect of that eligible activity.

Section 151: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 151(1): replaced, on 23 June 2020, by section 123(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(2)(a)(ii): amended, on 23 June 2020, by section 123(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(b)(i): amended, on 23 June 2020, by section 123(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(b)(ii): amended, on 23 June 2020, by section 123(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(b)(ii): amended, on 23 June 2020, by section 123(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(c)(i): amended, on 23 June 2020, by section 123(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(2)(c)(ii): amended, on 23 June 2020, by section 123(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(4): replaced, on 23 June 2020, by section 123(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(5): replaced, on 23 June 2020, by section 123(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(6): added, on 8 December 2009, by section 49(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151(6): amended, on 23 June 2020, by section 123(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(6)(c): inserted, on 23 June 2020, by section 123(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(7): added, on 8 December 2009, by section 49(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151(7): amended, on 23 June 2020, by section 123(11) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151(7)(c): inserted, on 23 June 2020, by section 123(12) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **151A Addition of activities to consolidated groups**

- (1) A member of a consolidated group may elect to add to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.
- (2) A notice given under subsection (1) must—
  - (a) include the name of the member and the activity or activities the member is electing to add to the activities in respect of which the member is treated as a member of the consolidated group; and
  - (b) contain the agreement of every existing member of the consolidated group—
    - (i) to be jointly and severally liable with the other members of the group for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the member's activity or activities specified in the notice; and
    - (ii) to the transfer to the consolidated group's holding account, on behalf of the group, of any units to which the adding member may become entitled in respect of the activity or activities, or by an allocation relating to an eligible activity, specified in the notice.
- (3) The EPA must acknowledge that the member has added the activity or activities specified in the notice under subsection (1) to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA's receipt of the notice.
- (4) If a member has elected under subsection (1) to add to the activities in respect of which the member is treated as a member of the consolidated group, the activity or activities specified in the notice are added,—

- (a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year:
- (b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.

Section 151A: inserted, on 8 December 2009, by section 50 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 151A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(2)(b)(i): amended, on 23 June 2020, by section 124(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151A(2)(b)(ii): amended, on 23 June 2020, by section 124(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 151A(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(4)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 151A(4)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 152 Nominated entities

- (1) The nominated entity for a consolidated group at any time is to be treated for the purposes of the ETS participant provisions 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) An entity that is a nominated entity for a consolidated group may give notice to the EPA, in a form that the EPA approves, that—
  - (a) the entity is to cease to be the agent for the consolidated group; and
  - (b) another member entity is to become the agent for the consolidated group.
- (4) If an entity gives notice under subsection (3), then, from the date of receipt by the EPA of the notice, or from a later date that may be specified in the notice,—
  - (a) the notifying entity ceases to be the agent for the consolidated group; and
  - (b) the other entity becomes the agent (nominated entity) for the consolidated group.

Section 152: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 152(1): amended, on 23 June 2020, by section 125 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 152(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 152(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **153 Effect of being member of consolidated group**

- (1) The nominated entity of a consolidated group—
  - (a) must have a holding account in the name of the consolidated group for the purposes of meeting the members' obligations under the ETS participant provisions; and
  - (b) must record in that holding account the names of all the members of the consolidated group; and
  - (c) must submit a single annual emissions return for the consolidated group in respect of a year, which must—
    - (i) meet the requirements of section 65(2) in respect of the activities listed in the notice under section 150(4)(a)(ii) or 151(2)(a)(ii) carried out by each member of the consolidated group;
    - (ii) be signed by the nominated entity in accordance with section 65(2)(f) on behalf of the consolidated group; and
  - (d) is responsible for applying for any allocation of units under section 86 for an eligible activity, in place of the eligible person who is a member of the consolidated group.
- (2) Each member of a consolidated group is jointly and severally liable to surrender or repay the amount of units assessed for the consolidated group or its members in any year.
- (3) Each member of a consolidated group is jointly entitled to be transferred, for removal activities or for allocations of New Zealand units, the amount of units assessed for the consolidated group or its members in any year.
- (4) The joint and several liability, or the joint entitlement,—
  - (a) applies to a member only as it relates to a period when they were a member of the consolidated group; and
  - (b) replaces the member's sole liability or entitlement; and
  - (c) must be met by transferring units from, or to, the consolidated group's holding account.
- (5) Despite this section, in calculating an allocation or provisional allocation of New Zealand units (including a related adjustment or repayment) for an eligible activity, only the member's liabilities and entitlements must be used.
- (5A) However, subsection (5) does not apply to any calculation of offset units under section 86BB, which must be done in accordance with this section.
- (5B) Each member of a consolidated group is jointly and severally liable to pay any penalty or interest imposed on the consolidated group in relation to a period when they were a member of the consolidated group.

- (6) This section—
- (a) does not prevent the nominated entity submitting—
    - (i) a quarterly emissions return under section 66 for other removal activities of the consolidated group; or
    - (ii) submitting an emissions return under section 187 in respect of an entity who is a member of the consolidated group; and
  - (b) applies with any necessary modifications to the period of an emissions return in either of those circumstances.
- (7) To avoid doubt, an emissions return for a consolidated group or any member of a consolidated group may be submitted only by the nominated entity of the consolidated group.

Section 153: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 153(1): replaced, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(2): replaced, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(3): replaced, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(4): replaced, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(5): replaced, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(5A): inserted, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(5B): inserted, on 23 June 2020, by section 126 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 153(6)(a)(ii): amended, on 8 December 2009, by section 51(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 153(7): added, on 8 December 2009, by section 51(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### **154 Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4**

*[Repealed]*

Section 154: repealed, on 23 June 2020, by section 127 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **155 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 EPA in a form that the EPA 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 ceases to be a participant or an eligible person, unless the entity is the nominated entity; or
  - (d) the entity ceases to be the nominated entity and is not a participant or an eligible person; or
  - (e) 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 and the notice of election to cease to be a member of the consolidated group is received by the EPA—
    - (i) by 30 September in any year, on and after 1 January of that year; or
    - (ii) after 30 September in any year, on and after 1 January of the following year; 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 that,—
    - (i) in the case of a participant, their name is removed from the register of participants under section 58 or 59; or
    - (ii) in the case of an eligible person, they ceased to be an eligible person; and
  - (d) if subsection (1)(d) applies, with effect from the date of receipt by the EPA of the notice under section 152(3) notifying that the entity has ceased to be the nominated entity for the consolidated group; and
  - (e) if subsection (1)(e) applies, with effect from the date on which the consolidated group ceased to have a nominated entity.
- (3) Subsection (1)(e) 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 of that liquidation, or within such further period as the EPA may allow, the other entities in the consolidated group have selected another nominated entity and notified the EPA 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 consoli-

- dated group that ceases to have a nominated entity, must as soon as practicable give notice to the EPA of this change of circumstances.
- (5) The EPA 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—
- (a) the EPA receiving a notice under—
    - (i) subsection (1)(a); or
    - (ii) section 152(3); or
  - (b) the EPA becoming aware that subsection (1)(b) or (e) applies; or
  - (c) the member being removed from the register of participants under section 58 or 59.
- (6) Subsection (7) applies to an entity that—
- (a) ceases to be a member of a consolidated group but remains a participant or an eligible person; and
  - (b) does not have its own holding account.
- (7) An entity to which this subsection applies must,—
- (a) immediately upon ceasing to be a member of the consolidated group, apply to open a holding account under section 18A; and
  - (b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

Section 155: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 155(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(1)(c): amended, on 23 June 2020, by section 128(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 155(1)(d): amended, on 23 June 2020, by section 128(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 155(2)(a): substituted, on 8 December 2009, by section 53(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(2)(c): replaced, on 23 June 2020, by section 128(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 155(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(2)(d): amended, on 8 December 2009, by section 53(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(3)(b): amended, on 1 January 2013, by section 59 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 155(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(5)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 155(6): added, on 8 December 2009, by section 53(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(6)(a): amended, on 23 June 2020, by section 128(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 155(7): added, on 8 December 2009, by section 53(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 155(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **156 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 the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities of the members of the consolidated group, and jointly entitled to any units transferred for the removal activities, or for allocations relating to the eligible activities, 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 the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the activities of other members of the group, or entitled to the benefit of any units transferred for the removal activities, or for allocations relating to the eligible activities, of other members of the group, for any period during which the entity is not a member of the consolidated group.

Section 156: replaced, on 23 June 2020, by section 129 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **156A Removal of activities from consolidated groups**

- (1) A member of a consolidated group may elect to remove 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the EPA in the prescribed form.
- (2) The activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group,—



- (a) if the notice of the election is received by the EPA by 30 September in a year, on and after 1 January of that year:
  - (b) if the notice of the election is received by the EPA after 30 September in a year, on and after 1 January of the next year.
- (3) The EPA must acknowledge that the activity or activities specified in the notice under subsection (1) are removed from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the EPA's receipt of the notice.
- (4) If a member has removed an activity from the activities in respect of which the member is treated as a member of a consolidated group, that member continues to be jointly and severally liable with the other members of the consolidated group for any obligations under the ETS participant provisions in respect of emissions, removals, and allocations related to the activity, and jointly entitled to any units transferred for the activity (if it is a removal activity or an eligible activity), in respect of the period in which the activity was an activity in respect of which the member was treated as a member of the consolidated group.
- (5) Subsection (6) applies to a member of a consolidated group that—
  - (a) removes 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group; and
  - (b) remains a participant in respect of 1 or more of those activities; but
  - (c) does not have its own holding account.
- (6) A member of a consolidated group to which this subsection applies must—
  - (a) apply to open a holding account under section 18A immediately upon removal of the activity or activities from the activities in respect of which the member is treated as a member of the consolidated group; and
  - (b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the EPA within 10 working days of receiving the account number from the Registrar.

Section 156A: inserted, on 8 December 2009, by section 54 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 156A(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 156A(4): amended, on 23 June 2020, by section 130(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 156A(4): amended, on 23 June 2020, by section 130(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 156A(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **157 Unincorporated bodies**

- (1) This section applies if the members of an unincorporated body—
  - (a) jointly carry out an eligible activity; or
  - (b) are required under section 180, 204, or 213 to be treated as jointly carrying out an activity listed in Schedule 3; or
  - (c) if paragraph (b) does not apply, jointly carry out an activity listed in Schedule 3 or 4.
- (2) If this section applies,—
  - (a) the members of the unincorporated body are not individually to be treated as persons carrying out the activity; and
  - (b) if the activity is an eligible activity,—
    - (i) the members of the unincorporated body may not apply individually for an allocation of New Zealand units for the eligible activity under section 86; but
    - (ii) the unincorporated body may, as the eligible person, make such an application under section 86; and
  - (c) if the activity is an activity listed in Schedule 3 or 4,—
    - (i) the members of the unincorporated body—
      - (A) are not liable to, and may not, be registered as a participant under section 56 in respect of the activity; and
      - (B) may not be registered as a participant under section 57 in respect of the activity; and
    - (ii) the unincorporated body—
      - (A) must notify the EPA that it is the participant under section 56 in respect of the activity (if the activity is an activity listed in Schedule 3):
      - (B) may apply to be registered as the participant under section 57 in respect of the activity (if the activity is an activity listed in Schedule 4):
      - (C) when notifying under section 56 or applying to be registered under section 57, as the case may be, must advise the EPA of the name of the unincorporated body that should be entered on the register of participants kept for the purposes of section 56 or 57; and
    - (iii) the EPA must, for the purpose of section 56(3) or 57(5) (as applicable), enter the name of the unincorporated body on the register kept for the purposes of section 56 or 57; and

- (d) the unincorporated body must, when applying for an allocation, or notifying the EPA under section 56, or applying to the EPA to be registered as a participant under section 57, as the case may be, provide the EPA with—
    - (i) the names and contact details of the members of the unincorporated body; and
    - (ii) the name and contact details of the person to whom notices are to be given under this Act on behalf of the unincorporated body; and
  - (e) subject to subsections (3) to (5), any change of members of the unincorporated body has no effect for the purposes of this Act.
- (3) Each person who is or has ceased to be a member of an unincorporated body is, in respect of the period during which the person is or was a member of the unincorporated body,—
- (a) jointly and severally liable for the obligations of the unincorporated body as an eligible person (or a person to whom units have been allocated) or as a participant in respect of the activity; and
  - (b) jointly entitled to the benefits of the unincorporated body as an eligible person or as a participant in respect of the activity.
- (4) If this Act requires any thing to be done by or on behalf of an eligible person (or a person to whom units have been allocated) or a participant that is an unincorporated body,—
- (a) it is the joint and several liability of all the members of the unincorporated body to do the thing; and
  - (b) any such thing done by 1 member of the unincorporated body is sufficient compliance with the requirement.
- (5) A notice that is addressed to an unincorporated body and given in accordance with this Act to the person nominated by the unincorporated body under subsection (2)(d)(ii) or (if relevant) notified under section 157A(2)(a) is to be treated as notice given to the unincorporated body and all members of the unincorporated body.
- (6) To avoid doubt, if this Act requires a landowner, registered leaseholder, holder of a registered forestry right, or party to a Crown conservation contract to be treated as the person carrying out an eligible activity or an activity listed in Schedule 3 or 4, and the land, registered lease, registered forestry right, or Crown conservation contract is owned, held, or has been entered into, as the case may be, jointly by 2 persons, those persons—
- (a) must together be treated as the person carrying out the activity for the purposes of this Act; and
  - (b) are, as relevant, together the eligible person in respect of the eligible activity, or the participant in respect of any activity listed in Schedule 3,

or may together be registered as the participant in respect of an activity listed in Schedule 4; and

- (c) are jointly and severally liable for the obligations, or entitled to the benefits, of an eligible person (or a person to whom units have been allocated) or a participant in respect of the activity.

Section 157: substituted, on 8 December 2009, by section 55 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 157(2)(c)(ii)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(c)(ii)(C): amended, on 23 June 2020, by section 131 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 157(2)(c)(ii)(C): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(c)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157(2)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **157A Changes to unincorporated bodies that are participants**

- (1) This section applies if—
- (a) a member of an unincorporated body joins or leaves an unincorporated body that is registered as a participant; or
  - (b) the name or contact details of the person to whom notices are to be given changes; or
  - (c) an unincorporated body wishes to change the name under which the body is registered as a participant.
- (2) If this section applies,—
- (a) the unincorporated body must, as relevant,—
    - (i) within 20 working days of a person joining or leaving the unincorporated body, give the EPA notice of—
      - (A) the name and contact details of the person joining or leaving; and
      - (B) the date on which the person joined or left the unincorporated body; or
    - (ii) within 20 working days of a change in the name or contact details of the person to whom notices are to be given, give the EPA notice of that matter; or
    - (iii) give the EPA notice if the unincorporated body wishes to change the name under which the body is recorded as a participant on the register kept for the purposes of section 56 or 57; and
  - (b) the EPA must, as soon as practicable after receiving the notice,—
    - (i) amend—

- (A) the EPA's records to reflect the change in membership of the unincorporated body or the change in the name or contact details of the person to whom notices are to be given; or
  - (B) the register kept under section 56 or 57, as the case may be, to record the change in the name of the unincorporated body; and
  - (ii) notify the Registrar of the change in membership of the unincorporated body, the change in the name or contact details of the person to whom notices are to be given, or the change in the unincorporated body's name; and
  - (iii) notify the unincorporated body of the amendment to the EPA's records or the participant register and the notification to the Registrar.
- (3) A notice given under subsection (2) must—
- (a) be in the prescribed form; and
  - (b) contain any other information the EPA may require; and
  - (c) be accompanied by the prescribed fee (if any).
- (4) For the purposes of subsection (1), the following transfers must be treated as changes in the membership of an unincorporated body and not as the transfer of an interest for the purposes of section 192(1)(a):
- (a) the transfer of land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer; and
  - (b) the transfer of a registered lease, registered forestry right, or Crown conservation contract relating to post-1989 forest land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer.

Section 157A: inserted, on 8 December 2009, by section 55 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 157A(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(a)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b)(i)(A): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(2)(b)(iii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 157A(3)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **158 Compensation for participants where public works result in liability to surrender units**

- (1) This section applies if a person becomes a participant in respect of an activity listed in Schedule 3 after being required to carry out the activity 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) For the purposes of this section, **public work** has the same meaning as in section 2 of the Public Works Act 1981.

Section 158: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

### **159 Recovery of costs**

- (1) This section applies if a person—
  - (a) is required to surrender or repay units and does not do so, or does not surrender or repay the total number of units required to be surrendered or repaid, within 90 days after the date of a penalty notice given under section 134 in relation to the units; or
  - (b) is a participant and enters into an insolvency process.
- (2) If this section applies, the chief executive may seek to recover from the person, in a court of competent jurisdiction,—
  - (a) the cost of the units owed by the person as a debt; and
  - (b) the cost of the units that the insolvent participant would be required to surrender or repay under this Act (other than this provision); and
  - (c) any costs associated with bringing and carrying out the action to recover the debt.
- (3) For the purposes of subsection (2)(a), the following formula must be used to calculate the total cost of the units:

$$A = B \times C$$

where—

- A is the total cost of the units  
B is the number of units

- C is the price, in dollars, of carbon per tonne on the relevant date, as set by or in accordance with regulations made under section 30W.
- (4) Any administrative costs incurred in the recovery of costs under subsection (2) and any penalties incurred under section 134 to 134D constitute a debt to the Crown and are recoverable by the chief executive in a court of competent jurisdiction.
- (5) In this section,—
- insolvency process** means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006
- relevant date** means the earlier of—
- (a) the date that is 90 days after the date of the penalty notice; and
- (b) the date on which the person enters into an insolvency process.
- Section 159: replaced, on 1 January 2013, by section 60 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 159(1)(a): amended, on 1 January 2021, by section 224(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 159(2)(b): amended, on 23 June 2020, by section 132 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 159(3) formula item C: replaced, on 1 January 2021, by section 224(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 159(4): amended, on 1 January 2021, by section 224(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 159(5): replaced, on 1 January 2021, by section 224(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 160 Review of operation of emissions trading scheme

- (1) The Minister may, at any time, initiate a review of the operation and effectiveness of the emissions trading scheme.
- (2) A review may be undertaken by any method the Minister considers appropriate.
- (3) Without limiting the Minister's discretion under subsections (1) and (2), the Minister may appoint a review panel—
- (a) to conduct a review under subsection (1); and
- (b) to report in accordance with the terms of reference.
- (4) If the Minister appoints a panel, the Minister must—
- (a) specify the written terms of reference for the review; and
- (b) make the report of the panel publicly available; and
- (c) present a copy of the report to the House of Representatives.
- (5) If the Minister initiates a review but does not appoint a panel, the Minister must—

- (a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and
- (b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and
- (c) specify the written terms of reference for the review; and
- (d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.

Section 160: replaced, on 1 January 2013, by section 61 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 160(1): amended, on 23 June 2020, by section 133(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 160(4)(b): replaced, on 23 June 2020, by section 133(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **161 Appointment and conduct of review panel**

- (1) If the Minister appoints a review panel under section 160, the Minister must—
  - (a) ensure that there are a minimum of 3 and a maximum of 7 members; and
  - (b) ensure that the majority of the members are not employees under the Public Service Act 2020; and
  - (c) consider whether the members have, in the Minister’s opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—
    - (i) this Act; and
    - (ii) international climate change obligations and any other relevant international agreement; and
    - (iii) the operation of the emissions trading scheme, including its environmental, social, and economic effects; and
  - (d) appoint 1 member as the chairperson of the panel.
- (2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.
- (3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.
- (4) The review panel must—
  - (a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and
  - (b) after considering the Minister’s response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.
- (5) In conducting a review, the review panel—



- (a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference for the review; and
- (b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and
- (c) may call for submissions.

Section 161: substituted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161(1): amended, on 1 January 2013, by section 62(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 161(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 161(1)(c)(ii): replaced, on 23 June 2020, by section 134(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161(1)(c)(iii): amended, on 23 June 2020, by section 134(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161(3): replaced, on 1 January 2013, by section 62(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161(4)(b): amended, on 1 January 2013, by section 62(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 161A Regulations in relation to eligible industrial activities

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing, for the purposes of subpart 2, the activities that are eligible industrial activities:
  - (b) prescribing in respect of each eligible industrial activity, as appropriate,—
    - (i) a description of the activity, including (but not limited to)—
      - (A) the input or inputs:
      - (B) the output or outputs:
      - (C) the physical, chemical, or biological transformation that takes place to transform the inputs into the outputs:
    - (ii) whether the activity is—
      - (A) highly emissions-intensive; or
      - (B) moderately emissions-intensive:
    - (iii) the products to be used as the basis for an allocation of New Zealand units in respect of the activity:
    - (iv) a methodology or methodologies for calculating the amount of each prescribed product for the purposes of sections 81 to 84:
  - (c) prescribing, for each prescribed product,—

- (i) 1 or more allocative baselines; and
    - (ii) for the purpose of sections 81 to 84, which allocative baseline any person carrying out the activity must use when calculating an allocation entitlement under those sections (which may include an allocative baseline that a particular person must use):
  - (d) prescribing an allocation factor or factors for—
    - (i) electricity:
    - (ii) natural gas feedstock:
  - (e) prescribing information that must be kept for the purposes of section 86D.
- (2) A regulation made under subsection (1) may permit persons to apply for and receive an allocation in respect of a period beginning on—
- (a) 1 January of the year in which the regulation is made even if the regulation comes into force on a later date in that year:
  - (b) 1 January or 1 July in a year before the year in which the regulation is made provided the regulation comes into force on or before 31 December 2012.
- (3) The Minister may recommend the making of regulations under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity is—
- (a) moderately emissions-intensive or highly emissions-intensive; and
  - (b) trade-exposed.
- (4) Despite anything in this section or section 161C, a regulation may not be made under subsection (1) that prescribes electricity generation as an eligible industrial activity.
- (5) The following regulations made under subsection (1) come into force on the day 5 years after the date of their notification in the *Gazette* or any later date that may be set by the regulations:
- (a) a regulation that revokes a regulation prescribing an activity as an eligible industrial activity:
  - (b) a regulation that amends a regulation providing that an eligible industrial activity is highly emissions-intensive to provide that the eligible industrial activity is moderately emissions-intensive.

Section 161A: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161A(1)(d): replaced, on 23 June 2020, by section 135(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161A(3): replaced, on 23 June 2020, by section 135(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161A(4): amended, on 23 June 2020, by section 135(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 161B Australian eligible industrial activities

*[Repealed]*

Section 161B: repealed, on 23 June 2020, by section 136 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 161C Eligible industrial activities

- (1) For the purposes of section 161A(3), an activity is—
  - (a) moderately emissions-intensive if the specified emissions from the activity are equal to or greater than 800 whole tonnes per \$1 million of specified revenue from the activity, but less than 1 600 whole tonnes per \$1 million of specified revenue from the activity;
  - (b) highly emissions-intensive if the specified emissions from the activity are equal to or greater than 1 600 whole tonnes per \$1 million of specified revenue from the activity;
  - (c) trade-exposed unless, in the Minister's opinion,—
    - (i) there is no international trade of the output of the activity across oceans; or
    - (ii) it is not economically viable to import or export the output of the activity.
- (2) If an activity meets the criteria in section 161A(3) in accordance with subsection (1), any regulations that prescribe the activity as an eligible industrial activity and the products to be used as the basis for an allocation of New Zealand units in respect of the activity must prescribe the allocative baseline or baselines of each product, calculated in accordance with the following formula:

$$AB = SE/STA$$

where—

AB is the allocative baseline of the product

SE is the specified emissions from the activity

STA is the specified total amount of the product from the activity.

- (3) For the purposes of this section,—
  - (a) the specified revenue from an activity is the amount of revenue obtained by adding together the revenue from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(A) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity;
  - (b) the specified emissions, in respect of the emissions intensity of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(B) to the

- Minister in accordance with a notice under section 161D(1) that contained a description of the activity:
- (c) the specified emissions, in respect of the allocative baselines of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in section 161D(1)(e)(i)(C) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity:
  - (d) the specified total amount of product from the activity is the amount of the product obtained by adding together the amount of the product produced by each person who provided the information referred to in section 161D(1)(e)(i)(D) to the Minister in accordance with a notice under section 161D(1) that contained a description of the activity.
- (4) Despite subsection (3)(c), the Minister may adjust the number of whole tonnes of included emissions shown in the information referred to in section 161D(1)(e)(i)(C) provided by any persons carrying out an activity specified in a notice given under section 161D(1) after taking into account any electricity-related contract that was in force on the date of the notice that affects the electricity cost increase that any of the persons will face due to the obligation imposed by this Act on participants to surrender units, or any information relating to any such contracts.
- (5) If the Minister has adjusted the tonnes of emissions of 1 or more persons under subsection (4), the Minister may use both the information as originally submitted and as adjusted to calculate different allocative baselines for the relevant product.

Section 161C: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161C heading: amended, on 23 June 2020, by section 137(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161C(1): amended, on 23 June 2020, by section 137(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161C(2): amended, on 23 June 2020, by section 137(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **161D Power to require information for purposes of allocation to industry**

- (1) The Minister may, for any of the purposes in subsection (3), by notice in the *Gazette*—
- (a) specify a description of an activity, including the matters listed in section 161A(1)(b)(i) in respect of the activity:
  - (b) specify in respect of the activity each product that may be used, if the activity is prescribed in regulations as an eligible industrial activity, as the basis for an allocation of New Zealand units in respect of the activity (**a specified product**):

- (c) specify in respect of the activity—
  - (i) the emissions that must be included in any information provided under paragraph (e) (the **included emissions**); and
  - (ii) the emissions that may not be included in any information provided under paragraph (e) (the **excluded emissions**):
- (d) specify the financial years for which information must be provided under paragraph (e):
- (e) require any person carrying out the activity specified under paragraph (a) on the date of the notice to provide to the Minister—
  - (i) any or all of the following information for the financial years specified in the notice:
    - (A) financial statements that show the total revenue of the person from the activity in those years, calculated in accordance with any methodology specified under paragraph (g)(i):
    - (B) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(ii) (emissions-intensity):
    - (C) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under paragraph (g)(iii) (allocative baselines):
    - (D) information showing the amount of each specified product produced by the person in those years calculated in accordance with any methodology specified under paragraph (g)(iv):
  - (ii) copies of any electricity-related contracts in force on the date of the notice that affect the electricity cost increase that the persons carrying out the activity will face owing to the obligation imposed by this Act on participants to surrender units, or any information in relation to such contracts:
  - (iii) any other information that would, in the Minister’s opinion, assist the Minister to determine any of the matters listed in subsection (3):
- (f) specify the date by which the information required to be provided under paragraph (e) must be provided to the Minister, which date must be no earlier than 30 working days from the date of the notice:
- (g) specify a methodology or methodologies for calculating—
  - (i) revenue from the activity for the purpose of paragraph (e)(i)(A):

- (ii) emissions from the activity (emissions-intensity) for the purpose of paragraph (e)(i)(B):
  - (iii) emissions from the activity (allocative baselines) for the purpose of paragraph (e)(i)(C):
  - (iv) the amount of any specified product from the activity for the purpose of paragraph (e)(i)(D).
- (2) A methodology specified in a notice in accordance with subsection (1)(g) may incorporate by reference any material referred to in section 169(1), and if material is incorporated by reference, sections 169(2) and (3), 170, and 177 apply with any necessary modifications.
- (3) The purpose for which a notice may be issued under subsection (1) is to provide the Minister with the information necessary to determine any 1 or more of the following matters:
  - (a) whether an activity meets the criteria listed in section 161A(3) and, if so, determine—
    - (i) whether the activity is highly emissions-intensive or moderately emissions-intensive; and
    - (ii) the appropriate allocative baseline or baselines for each product of the activity:
  - (b) whether it is necessary to adjust any person's number of whole tonnes of included emissions provided under subsection (1)(e)(i)(C) in accordance with section 161C(4):
  - (c) any other matter listed in section 161A(1) in respect of an activity:
  - (d) whether any matter should be considered by a review under section 160.
- (4) A *Gazette* notice under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) Following the provision of information by any person in accordance with subsection (1)(e), the Minister may give notice to the person—
  - (a) requiring the person to provide any further information that the Minister considers is necessary to enable the verification of the accuracy of the information; and
  - (b) specifying the date by which the further information specified in the notice must be provided to the Minister.
- (6) If a person who is required to comply with a notice under subsection (1) or (5) fails to provide the required information by the date specified in the notice, the Minister may give a notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible

for an allocation of New Zealand units in respect of the activity specified in the notice if it is prescribed as an eligible industrial activity.

- (7) Despite anything in this Act, if an activity specified in a notice made under subsection (1)(a) is subsequently prescribed as an eligible industrial activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible industrial activity:
- (a) any person who carried out the activity at the date of the notice and who without reasonable excuse failed to supply the data and information required by the date specified in a notice given under subsection (6); and
  - (b) any associated person of a person referred to in paragraph (a).

Section 161D: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161D(3)(a): amended, on 23 June 2020, by section 138 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161D(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

#### **161E Requirements in respect of notice given under section 161D**

- (1) Before giving notice of an activity under section 161D(1), the Minister must have regard to the following matters:
- (a) the requirement to define each activity by reference to a physical, chemical, or biological transformation of inputs into outputs; and
  - (b) the undesirability of activities being defined by reference to the technology employed, the fuel used, the age of the plant, or the quality of the types of feedstock used when the activity is carried out; and
  - (c) the desirability of defining activities—
    - (i) consistently and equitably across industries; and
    - (ii) in a way that takes into account the impact that definitions may have on business investment, geographical location, and the structure of activities; and
    - (iii) in a way that takes into account the potential for intermediate inputs produced when the activity is carried out to be substituted for bought-in inputs; and
  - (d) the desirability of there being no overlap between activity definitions; and
  - (e) *[Repealed]*
  - (f) any other matters the Minister considers relevant.
- (2) For the purposes of section 161D(1)(c),—
- (a) the emissions that must be included in any information provided under section 161D(1)(e)(i)(B) and (C) may only include—
    - (i) emissions of greenhouse gases resulting from—

- (A) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil as part of the activity; and
  - (B) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil to generate steam that is used as part of the activity; and
  - (C) any of the activities listed in Part 4 of Schedule 3 carried out as part of the activity; and
  - (D) the direct use of any liquid fossil fuel in stationary equipment; and
  - (E) fugitive coal seam gas from coal that is used as part of, or to generate steam that is used as part of, the activity; and
- (ii) a number of whole tonnes of emissions, which must be treated for the purpose of this section and sections 161C and 161D as emissions from the activity, calculated in accordance with the following formula:

$$E = MWh \times pEAF$$

where—

E is the number of whole tonnes of emissions from the activity that may be included in any information submitted under section 161D(1)(e)(ii) and (iii)

MWh is the number of megawatt hours of electricity used when the activity is carried out

pEAF is a prescribed electricity allocation factor; and

- (b) the emissions that may not be included in any information provided under section 161D(1)(e)(ii) and (iii) must include (but are not limited to) emissions resulting from—
- (i) the use of machinery and equipment, and other processes, that are not integral to, nor essential to, the physical, chemical, biological, or other transformation taking place when the activity is carried out; and
  - (ii) any extraction or production of raw materials that are subsequently used when the activity is carried out; and
  - (iii) the transportation of inputs used in the activity to storage at the location where the activity is carried out; and
  - (iv) the transportation of outputs of the activity from storage at the location where the activity is carried out to another location; and
  - (v) the transportation of intermediate products between different locations where the activity is carried out; and
  - (vi) operations that are complementary to the activity, including (but not limited to) packaging, head office operations, and administra-



- tion and marketing (whether carried out at the same location where the activity is carried out or at another location); and
- (vii) the generation of electricity at the location where the activity is carried out; and
- (c) before giving notice of the emissions that must be included in, or excluded from, any information provided in accordance with a notice issued under section 161D, the Minister must have regard to the following matters:
- (i) the matters listed in subsection (1); and
- (ii) the desirability of all notices given under section 161D being consistent with respect to the classes of included and excluded emissions that are specified in the notices.
- (3) If an activity specified in a notice under section 161D was carried out by any person in each of the financial years 2006/07, 2007/08, and 2008/09, then the notice must specify those financial years as the financial years for which information must be provided in accordance with the notice.
- (4) However, subsection (3) does not apply if the purpose of the notice under section 161D is to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160.
- (5) *See* section 3B for consultation requirements that apply to the giving of a notice specifying a description of an activity under section 161D(1)(a).

Section 161E: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161E(1)(e): repealed, on 23 June 2020, by section 139(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161E(2)(a): amended, on 1 January 2013, by section 65(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161E(2)(a)(i)(D): inserted, on 1 January 2013, by section 65(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161E(2)(a)(i)(E): inserted, on 1 January 2013, by section 65(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 161E(4): inserted, on 23 June 2020, by section 139(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161E(5): inserted, on 23 June 2020, by section 139(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **161F Consultation on activities that may be prescribed as eligible industrial activities**

*[Repealed]*

Section 161F: repealed, on 23 June 2020, by section 140 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**161G Regulations in relation to eligible agricultural activities**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) prescribing in respect of each eligible agricultural activity, as appropriate,—
    - (i) the product or products of the activity;
    - (ii) an allocative baseline for each product;
  - (b) prescribing, for the purpose of subsection (2),—
    - (i) a methodology or methodologies for calculating—
      - (A) the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the prescribed product or products in the prescribed years; and
      - (B) the total amount of each prescribed product produced from the eligible agricultural activity in the prescribed years; and
    - (ii) the year or years for the purposes of subparagraph (i);
  - (c) prescribing a methodology or methodologies for calculating the amount of any prescribed product of an eligible agricultural activity for the purposes of sections 85 and 161H;
  - (d) prescribing information that must be kept for the purposes of section 86D.
- (2) For the purposes of subsection (1)(a)(ii), the allocative baseline for each prescribed product of an eligible agricultural activity must be calculated using the following formula:

$$AB = \sum(E) / \sum(PDCT)$$

where—

AB is the allocative baseline for the product

E is the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the product in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

PDCT is the total amount of the product produced from the eligible agricultural activity in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

$\sum$  is the symbol for the summation of E for the year or years for which E must be calculated (as prescribed by regulations made under this Act) and of PDCT for the year or years for which PDCT must be calculated (as prescribed in regulations made under this Act).

- (3) Before recommending the making of regulations under subsection (1)(a)(ii) prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must—
  - (a) have regard to the most recent New Zealand Greenhouse Gas Inventory; and
  - (b) comply with the consultation requirements in sections 3A and 3B.
- (4) See section 3A for consultation requirements that apply to the making of other regulations under this section.
- (5) For each eligible agricultural activity, the Minister—
  - (a) must recommend the making of regulations under this section before surrender obligations for participants in that activity start; and
  - (b) must review those regulations at least once in every 5-year period; and
  - (c) must not recommend the making of regulations that would result in there being no regulations in force under this section for the activity while surrender obligations for the activity exist.
- (6) In conducting a review under subsection (5)(b), the Minister must comply with subsections (3) and (4).

Section 161G: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161G(3): replaced, on 23 June 2020, by section 141 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161G(4): replaced, on 23 June 2020, by section 141 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161G(5): replaced, on 23 June 2020, by section 141 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 161G(6): replaced, on 23 June 2020, by section 141 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **161H Power to request information showing output from eligible agricultural activities**

- (1) The Minister may, after 1 January 2011, by notice in the *Gazette*,—
  - (a) specify an eligible agricultural activity in respect of which information must be provided under paragraph (d):
  - (b) specify, in respect of the eligible agricultural activity specified under paragraph (a), the product or products of the eligible agricultural activity in respect of which the information must be provided under paragraph (d):
  - (c) specify the year or years for which information must be provided under paragraph (d):
  - (d) require any person carrying out the eligible agricultural activity on the date of the notice to provide to the Minister information that shows the amount of each specified product from the activity specified by the per-

- son in the year or years specified in the notice, determined (if relevant) in accordance with any prescribed methodologies:
- (e) specify the date by which the information specified in the notice must be provided to the Minister, which must be no earlier than 30 working days from the date of the notice.
- (2) If a person who is required to comply with a notice given under subsection (1) fails to provide the required information by the date specified in the notice, the Minister may give written notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity.
- (3) Despite anything in this Act, if notice is given under subsection (1) requiring a person to provide information with respect to an eligible agricultural activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible agricultural activity:
- (a) any person who—
- (i) carried out the activity at the date of the notice given under subsection (1); and
- (ii) failed, without reasonable excuse, to supply the data and information required by the date specified in the notice given under subsection (2); and
- (b) any associated person of a person referred to in paragraph (a).
- (4) A *Gazette* notice under subsection (1) is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Section 161H: inserted, on 8 December 2009, by section 56 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 161H(4): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

## **162 Order in Council adding further activity to Part 2 of Schedule 4**

- (1) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, amend Part 2 of Schedule 4 by adding a further activity to that Part.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of an Order in Council under subsection (1).
- (3) *[Repealed]*
- (4) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—
- (a) 1 January of the next year, if made on or before 30 June in any year; or
- (b) 1 July of the next year, if made on or after 1 July in any year.

Section 162: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 162 heading: amended, on 23 June 2020, by section 142(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 162(2): replaced, on 23 June 2020, by section 142(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 162(3): repealed, on 23 June 2020, by section 142(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 162(4): replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### **162A Orders are confirmable instruments**

The explanatory note of an Order in Council made under section 162(1) must indicate that—

- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 162A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### **163 Regulations relating to methodologies and verifiers**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, 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
  - (ab) authorising, in respect of a forestry activity, the EPA to specify the location where, and the device by which, the data or other information prescribed in accordance with paragraph (a) must be collected; and
  - (b) prescribing a methodology or methodologies for calculating emissions or removals from an activity for the purposes of section 62(b); 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 EPA under section 92; and
  - (d) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to—
    - (i) the matters prescribed under paragraph (a); and
    - (ii) the method and format for determining the spatial extent of an area of forest land; and

- (e) prescribing, for the purposes of section 92,—
  - (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) or unique emissions factors for the purposes of regulations made under section 164; and
  - (ii) the expertise, technical competence, or qualifications required for recognition as a person or organisation able to verify unique emissions factors or 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 EPA; and
  - (vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and
  - (vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising 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.
- (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) A regulation made under subsection (1)(a) to (d) may have retrospective effect if the regulation is 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.
- (4) A regulation made under subsection (1)(b), and any associated regulations made under other paragraphs of subsection (1),—

- (a) may, without limiting subsection (1), relate to emissions or removals that—
    - (i) stem directly from an activity; or
    - (ii) are associated with a product or other thing that is the subject of the activity; and
  - (b) may require the use of a computer programme available via the Internet site of the EPA; and
  - (c) must not cover any emissions in respect of which another person is required to surrender units or any removals of greenhouse gases in respect of which another person is entitled to a transfer of New Zealand units under this Act.
- (5) In recommending the making of regulations under subsection (1)(a) or (b), the Minister must have regard to international climate change obligations (if any) in respect of the collection of data and information relating to, and the measurement of, emissions and removals from the activity.
- (6) Any guidelines or standards issued by the chief executive under regulations made under subsection (1)(d) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (7) A person who has complied with guidelines or standards issued by the EPA in regulations made under subsection (1)(d) is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

Section 163: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 163(1)(ab): inserted, on 8 December 2009, by section 57 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 163(1)(ab): amended, on 23 June 2020, by section 143(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 163(1)(ab): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(c): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(d): replaced, on 1 January 2013, by section 66(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 163(1)(e)(v): amended, on 5 December 2011, by section 18(1) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(1)(e)(vii): amended, on 5 December 2011, by section 18(2) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(4)(b): amended, on 5 December 2011, by section 18(3) of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 163(5): amended, on 23 June 2020, by section 143(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 163(5): amended, on 23 June 2020, by section 143(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 163(6): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 163(7): inserted, on 1 January 2013, by section 66(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **164 Regulations relating to unique emissions factors**

If regulations made under section 163(1)(b) require emissions or removals to be calculated by reference to a default emissions factor, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

- (a) providing for a process by which a participant may apply to the EPA for approval to use a unique emissions factor:
- (b) prescribing the information that must be collected to support an application for use of a unique emissions factor:
- (c) prescribing the criteria for a unique emissions factor, which may include (but are not limited to)—
  - (i) the percentage by which a unique emissions factor must vary from the default emissions factor, before an application for a unique emissions factor may be made:
  - (ii) the types of greenhouse gases to be reflected in the unique emissions factor:
  - (iii) how the unique emissions factor is to be calculated:
  - (iv) any criteria by which the default emissions factor has been set, that reflect the matters in section 163(4):
  - (v) a requirement that the unique emissions factor be verified by a recognised verifier.

Section 164: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 164(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **165 Regulations relating to offsetting of pre-1990 forest land**

*[Repealed]*

Section 165: repealed (without coming into force), on 1 January 2013, by section 67 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **166 Consultation and commencement for regulations about methodologies, verifiers, and unique emissions factors**

- (1) This section applies to regulations made under—
  - (a) section 163 (methodologies and verifiers):
  - (b) section 164 (unique emissions factors).



- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 166: replaced, on 23 June 2020, by section 144 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **167 Regulations relating to fees and charges**

- (1) The Governor-General may, by Order in Council, make regulations prescribing the amount of any fees payable under the ETS participant provisions and the procedures for payment.
- (2) The Governor-General may, by Order in Council, make regulations prescribing the fees or charges payable by a person—
  - (a) who has made an application for an emissions ruling under section 107, to enable the recovery of all or part of the direct and indirect costs of the EPA in—
    - (i) receiving and processing the application; and
    - (ii) considering whether to make the ruling, making the ruling, or declining to make the ruling; or
  - (b) who is a participant, or who has applied to be a participant, in respect of a removal activity, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing 1 or more of the following in relation to the activity:
    - (i) publicising and informing people about the operation of the ETS participant provisions:
    - (ii) administering the operation of the ETS participant provisions:
    - (iii) enforcing and monitoring compliance with the ETS participant provisions:
    - (iv) doing anything else authorised or required under the ETS participant provisions; or
  - (c) who submits an input return under section 194A, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing calculations and giving notice under section 194B.
- (3) Examples of the costs that may be recovered under subsection (2) include (but are not limited to)—
  - (a) the cost of processing applications and returns:
  - (b) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with—
    - (i) the making of emissions rulings; or

- (ii) the administration of the ETS participant provisions in relation to a removal activity; or
  - (iii) input returns:
- (c) the costs of services provided by third parties.
- (4) Regulations made under subsection (2) may—
  - (a) specify the persons or classes of persons by whom any fees and charges prescribed or fixed are payable; and
  - (b) provide for partial cost recovery from one class of persons and full cost recovery from another (if this is desirable to further the purposes of this Act); and
  - (c) prescribe the matters for which direct and indirect costs may be recovered; and
  - (d) prescribe a scale of fees and charges, or a rate based on the time involved in carrying out the function or duty or in exercising the power; and
  - (e) prescribe a scale of fees and charges, or a fee or charge for a prescribed function, power, or duty; and
  - (f) prescribe a formula for fixing fees and charges; and
  - (g) prescribe an annual fee or charge, or classes of fees or charges, payable by participants or classes of participants; and
  - (h) 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; and
  - (i) authorise the EPA to recover the full costs of services from third parties (other than services in respect of which a fee or charge is prescribed) in circumstances prescribed in the regulations; and
  - (j) authorise the EPA to grant, in whole or in part, an exemption, waiver, or refund in relation to any fee or charge.
- (5) Subsection (2) is subject to sections 173(2) and 174(1) (which relate to material incorporated by reference).

Section 167: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 167(1): amended, on 23 June 2020, by section 145(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 167(2): substituted, on 8 December 2009, by section 58(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 167(2)(b): replaced, on 23 June 2020, by section 145(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 167(2)(c): inserted, on 23 June 2020, by section 145(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 167(3)(b): substituted, on 8 December 2009, by section 58(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(3)(b)(ii): replaced, on 23 June 2020, by section 145(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 167(3)(b)(iii): inserted, on 23 June 2020, by section 145(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 167(4)(h): amended, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(i): added, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 167(4)(j): added, on 8 December 2009, by section 58(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 167(4)(j): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## 168 Other regulations

- (1) The Governor-General may, by Order in Council, make regulations for 1 or more of the following purposes:
  - (a) specifying the fuel that is obligation fuel and the jet fuel that is obligation jet fuel for the purposes of this Act; and
  - (b) prescribing matters in respect of which applications for emissions rulings may be made; and
  - (c) *[Repealed]*
  - (ca) prescribing a date by which an application to the EPA must be submitted under section 183; and
  - (d) prescribing forest species that are tree weeds; and
  - (e) prescribing criteria for carbon accounting areas; and
  - (f) requiring notification by the EPA of the status of forest land or any changes to the status of forest land under section 195; and
  - (g) providing for the circumstances in which a notice of the status of forest land must be cancelled by the Registrar-General of Land, a Registrar of the Maori Land Court, or the Registrar of Deeds; and
  - (h) *[Repealed]*
  - (i) *[Repealed]*
  - (j) prescribing a format or formats for the keeping of records under section 62(d); and
  - (k) prescribing the form and manner in which any application, return, information, or other document must be submitted or notified under the ETS

- participant provisions, and the particulars to be provided in the application, return, or other document; and
- (l) prescribing the information that must be provided in or with applications or other documents under the ETS participant provisions; and
  - (m) prescribing a threshold for the purposes of any removal activity listed in Part 2 of Schedule 4; and
  - (n) prescribing criteria for registering as a participant in relation to an activity listed in—
    - (i) subpart 1 of Part 2 of Schedule 4; and
    - (ii) subpart 2 of Part 2 of Schedule 4, which may include criteria for the type of carbon dioxide capture and storage in respect of which a person may register as a participant; and
    - (iii) subpart 3 of Part 2 of Schedule 4; and
  - (na) prescribing rules for the rounding of amounts of units calculated under, or referred to in, this Act; and
  - (nb) prescribing the meaning (or things that are included within the meaning) of New Zealand's best practice forest management for the purposes of section 179A; and
  - (o) providing for any other matters contemplated by the ETS participant provisions or Schedules 3 and 4, necessary for their administration, or necessary for giving them full effect.
- (2) The power to prescribe the form of any application, return, information, or other document under subsection (1) includes the power to prescribe an electronic format to be used for the electronic transmission of data to or between computers.
- (3) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(nb).

Section 168: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 168(1)(c): repealed, on 8 December 2009, by section 59(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(ca): inserted, on 1 July 2009, by section 4 of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 168(1)(ca): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 168(1)(ca): amended, on 8 December 2009, by section 59(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(d): amended, on 1 January 2013, by section 69(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 168(1)(f): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 168(1)(h): repealed, on 8 December 2009, by section 59(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(i): repealed, on 8 December 2009, by section 59(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 168(1)(k): amended, on 23 June 2020, by section 146(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 168(1)(l): amended, on 23 June 2020, by section 146(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 168(1)(n): replaced, on 1 January 2013, by section 69(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 168(1)(na): inserted, on 23 June 2020, by section 146(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 168(1)(nb): inserted, on 23 June 2020, by section 146(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 168(1)(o): amended, on 23 June 2020, by section 146(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 168(3): inserted, on 23 June 2020, by section 146(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 169 Incorporation by reference in certain regulations

- (1) The following written material may be incorporated by reference in regulations made under a relevant empowering section:
  - (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 government agency, standard-setting organisation, or 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.
- (4) In this section and sections 170 to 174, **relevant empowering section** means section 161A, 161G, 163, 164, 167, 168, 186F, 194C, 196F, or 197A.

Section 169: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 169 heading: amended, on 23 June 2020, by section 147(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 169(1): amended, on 23 June 2020, by section 147(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 169(4): inserted, on 23 June 2020, by section 147(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**170 Effect of amendments to, or replacement of, material incorporated by reference in regulations**

- (1) Subsection (2) applies to an amendment to, or a replacement of, material if the material—
  - (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
  - (b) is adopted, agreed on, made, or approved by an international government agency, international organisation, or international professional body.
- (2) The amendment or replacement of the material has legal effect as part of the regulations only if regulations made under the relevant empowering section after the original regulations were made state that the particular amendment or replacement has that effect.
- (3) Subsection (4) applies to an amendment to, or a replacement of, material if the material—
  - (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
  - (b) is not material described by subsection (1)(b).
- (4) The amendment or replacement of the material has immediate legal effect as part of the original regulations (without the need for an amendment to the original regulations, or the making of other regulations, to state that effect).

Section 170: replaced, on 23 June 2020, by section 148 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**171 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.

Section 171: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

**172 Effect of expiry of material incorporated by reference**

- (1) This section applies to material incorporated by reference in regulations, made under a relevant empowering section, that expires, is revoked, or ceases to have effect without being amended or replaced.

- (2) The material ceases to have legal effect as part of the regulations only if regulations made under the relevant empowering section state that the material ceases to have legal effect.

Section 172: replaced, on 23 June 2020, by section 149 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 173 Requirement to consult

- (1) This section applies to regulations made under a relevant empowering section that—
- (a) incorporate material by reference; or
  - (b) state, as required by section 170(2), that an amendment to, or a 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, via 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.

Section 173: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 173(1): replaced, on 23 June 2020, by section 150 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### 174 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, via an Internet site); and
  - (d) must give notice in the *Gazette* stating—
    - (i) that the material is incorporated in the regulations and—
      - (A) the date on which the regulations were made; or
      - (B) if the material has immediate legal effect under section 170(4), the date on which it had legal effect; 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 a relevant empowering section:
  - (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.

Section 174: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 174(1)(d)(i): replaced, on 23 June 2020, by section 151(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 174(2)(a): amended, on 23 June 2020, by section 151(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **175 Application of Legislation Act 2012 to material incorporated by reference**

- (1) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in regulations or to an amendment to, or a replacement of, that material.
- (2) Material incorporated by reference in regulations does not have to be presented to the House of Representatives under section 41 of the Legislation Act 2012.

Section 175: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 175(1): amended, on 23 June 2020, by section 152 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **176 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference**

*[Repealed]*

Section 176: repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

### **177 Application of Standards and Accreditation Act 2015 not affected**

Sections 169 to 176 do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.

Section 177: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 177 heading: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

Section 177: amended, on 1 March 2016, by section 45(1) of the Standards and Accreditation Act 2015 (2015 No 91).

### **178 Recovery of fees or charges**

- (1) A fee or charge that is not paid in accordance with regulations made under this Part may be recovered from the person liable to pay the fee or charge by the EPA in any court of competent jurisdiction.

- (2) The EPA may enter into any agreement or arrangement, on any terms that the EPA thinks fit, with any person to collect, or assist in the collection of, any fees or charges that are payable.

Section 178: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 178(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 178(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **178A Option to pay money instead of surrendering, repaying, or reimbursing units**

- (1) This section applies if—
- (a) either—
    - (i) a person is required to surrender or repay units—
      - (A) as a result of submitting an emissions return; or
      - (B) under section 123(3) or (6) or 183A(2)(b); or
    - (ii) the EPA is required by this Act to reimburse units to any person; and
  - (b) the units that must be surrendered, repaid, or reimbursed are in respect of,—
    - (i) for an activity on post-1989 forest land, emissions or removals that are attributed by section 178C(3) to a calendar year that ends before the start date for auctions; or
    - (ii) for any other activity, emissions or removals that occurred in a calendar year that ends before the start date for auctions; or
    - (iii) an activity that the person ceased to participate in, and for which the person has submitted an emissions return, before the start date for auctions.
- (1A) If subsection (1)(b)(i) applies, for the purposes of this section, the units in respect of the emissions or removals attributed to a calendar year must be rounded to the nearest whole number (where 0.5 is rounded up).
- (2) Despite anything in this Act, if this section applies, a person may satisfy the person's obligation to surrender, repay, or reimburse units,—
- (a) in the case of a person other than the EPA, by—
    - (i) surrendering or repaying the units in accordance with the relevant provision; or
    - (ii) paying the fixed price for each unit that the person is liable to surrender or repay, into a Crown Bank Account, by the date or within the period by which the units are required to be surrendered or repaid; or

- (iii) a combination of the actions provided for in subparagraphs (i) and (ii); or
  - (b) in the case of the EPA, by—
    - (i) reimbursing units to a person in accordance with the procedure specified in section 124; or
    - (ii) paying the fixed price for each unit into a bank account designated by the person; or
    - (iii) a combination of the actions provided for in subparagraphs (i) and (ii).
- (3) For the purposes of subsection (2)(a)(ii) and (iii), a person's obligation to surrender units or repay units is only satisfied when the funds paid into a Crown Bank Account are cleared.
- (4) For the purposes of subsection (3) and section 178B(1), funds paid into a Crown Bank Account are to be treated as cleared when it is no longer possible to reverse the payment and the funds are available for use by the Crown.
- (5) In this section and sections 178B and 178C,—

**fixed price** has the meaning given by section 178C

**start date for auctions** means the date specified by regulations made under section 30GA(2)(a) as the date on which the sale of New Zealand units by auction commences.

Section 178A: inserted, on 1 January 2013, by section 71 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 178A heading: amended, on 23 June 2020, by section 153(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(1): replaced, on 23 June 2020, by section 153(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(1A): inserted, on 23 June 2020, by section 153(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(2)(a)(i): amended, on 23 June 2020, by section 153(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(2)(a)(ii): amended, on 23 June 2020, by section 153(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(2)(b)(ii): amended, on 23 June 2020, by section 153(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178A(5): inserted, on 23 June 2020, by section 153(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **178B Issuing New Zealand units to meet surrender obligations**

- (1) If, in accordance with section 178A(2)(a)(ii) or (iii), a person pays the fixed price instead of surrendering a unit that the person is liable to surrender, the Registrar must, when the funds are cleared,—

- (a) issue a number of New Zealand units into a Crown holding account equal to the number of units in respect of which the person has paid the fixed price for each unit; and
  - (b) transfer the New Zealand units into the person's holding account held for the purpose of section 61(1); and
  - (c) immediately following the transfer under paragraph (b), transfer the New Zealand units to a surrender account designated by the EPA.
- (2) The Registrar may, for the purposes of subsection (1)(a), issue a number of New Zealand units equal to the number of units in respect of which 1 or more persons have paid the fixed price for each unit under section 178A(2)(a)(ii) or (iii).
- (3) If the EPA is required by this Act to reimburse units to any person and has satisfied its obligation to do so by paying to the person the fixed price for each unit in accordance with section 178A(2)(b)(ii) or (iii), then the Registrar must—
  - (a) transfer from the appropriate surrender account to the person's holding account held for the purpose of section 61(1) a number of New Zealand units equal to the number of units for which the EPA paid the person the fixed price for each unit; and
  - (b) immediately following the transfer under paragraph (a), transfer the New Zealand units from the person's holding account to a cancellation account.
- (4) For the avoidance of doubt, section 68 does not apply in respect of any New Zealand units issued under this section.
- (5) If subsection (1) applies, this Act applies with any necessary modification as if the payment of the fixed price for a unit by a person and the transfer of a unit to a surrender account by the Registrar under this section were a surrender of a unit by the person.
- (6) Despite anything in section 18CA(2), a New Zealand unit that is transferred to a surrender account under subsection (1)(c) may be further transferred in accordance with subsection (3)(a).

Section 178B: inserted, on 1 January 2013, by section 71 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 178B(1): amended, on 23 June 2020, by section 154(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(1)(a): amended, on 23 June 2020, by section 154(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(2): amended, on 23 June 2020, by section 154(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(3): amended, on 23 June 2020, by section 154(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(3): amended, on 23 June 2020, by section 154(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(3)(a): amended, on 23 June 2020, by section 154(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(5): amended, on 23 June 2020, by section 154(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 178B(6): amended, on 23 June 2020, by section 154(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**178C Fixed price (for option to pay money instead of surrendering, repaying, or reimbursing units)**

- (1) This section determines the **fixed price** of a unit for the purposes of sections 178A and 178B.
- (2) If the unit that must be surrendered, repaid, or reimbursed is in respect of emissions or removals that occurred in a calendar year that is—
  - (a) 2019 or earlier, the fixed price is \$25; or
  - (b) 2020 or later, but that ends before the start date for auctions, the fixed price is \$35.
- (3) For the purposes of section 178A, if an emissions return covers more than 1 calendar year of an activity on post-1989 forest land, emissions and removals are attributed to, and treated as having occurred in, each year in the proportion that the year bears to the emissions return period.

Section 178C: replaced, on 23 June 2020, by section 155 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**Part 5**

**Sector-specific provisions: forestry**

Part 5: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Part 5 heading: replaced, on 23 June 2020, by section 156(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**Subpart 1—Deforestation**

Subpart 1: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Subpart 1 heading: replaced, on 23 June 2020, by section 156(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

*General**[Repealed]*

Heading: repealed, on 23 June 2020, by section 156(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**179 Forest land to be treated as deforested in certain cases**

- (1) Without limiting paragraph (a) of the definition of deforest in section 4(1), a hectare of forest land must be treated as deforested for the purposes of this Act if the forest species on that hectare have been cleared and,—
- (a) 4 years after clearing, none of the following apply:
    - (i) the hectare has at least 500 stems of exotic forest species growing;
    - (ii) the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion;
    - (iii) the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or
  - (b) 10 years after clearing,—
    - (i) predominantly exotic forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height; or
    - (ii) predominantly indigenous forest species are growing, but that hectare is not forest land; or
  - (c) 20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height.
- (1A) Subsection (1)(a)(ii) applies only if the EPA is satisfied that the relevant local authority has determined that the soil erosion risk of the land is at least moderate.
- (2) If forest land is to be treated as deforested under subsection (1),—
- (a) the deforestation is to be treated as having been carried out 4 years, 10 years, or 20 years, after the clearing of the forest species, as the case may be; but
  - (b) the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees cleared 4 years, 10 years, or 20 years earlier, as the case may be.
- (3) Nothing in this section limits the EPA's ability to exercise powers under section 121 in respect of the deforestation of a hectare of forest land whenever the EPA considers that—
- (a) the hectare has been converted to land that is not forest land; and

- (b) any obligations imposed under this Act in respect of the deforestation have not been complied with.

Section 179: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 179(1): replaced, on 1 January 2013, by section 72 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 179(1)(a): replaced, on 1 January 2021, by section 225(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 179(1)(b)(i): amended, on 1 January 2021, by section 225(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 179(1)(c): amended, on 1 January 2021, by section 225(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 179(1A): inserted, on 1 January 2013, by section 72 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 179(1A): amended, on 1 January 2021, by section 225(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 179(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **179A Forest land may not be treated as deforested in certain cases**

- (1) Despite section 179 and the definition of deforest in section 4(1),—
- (a) in the case of pre-1990 forest land, pre-1990 forest land that is cleared may not be treated as deforested for the purposes of this Act if the cleared land is exempt land or—
- (i) is contiguous with the edge of pre-1990 forest land that existed on 31 December 2007; and
  - (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and
  - (iii) is required to be or remain cleared to implement New Zealand's best practice forest management; and
  - (iv) is used only for the purpose of implementing New Zealand's best practice forest management:
- (b) in the case of pre-1990 forest land that is the subject of an offsetting forest land application that the EPA has approved under section 186B, the pre-1990 forest land that is cleared may not be treated as deforested if cleared,—
- (i) in the case where the land is converted to a use other than forest land (for example, dairy), in the period—
    - (A) beginning on the date that the approval is given; and
    - (B) ending with the earlier of 2 years after the date that the approval was given or 4 years after the date that the pre-1990 forest land was cleared; or

- (ii) in the case where the land is not converted to another land use and remains forest land, in the period—
  - (A) beginning on the date that the pre-1990 forest land was cleared; and
  - (B) ending 4 years after the date that the pre-1990 forest land was cleared:
- (c) in the case of post-1989 forest land, the post-1989 forest land that is cleared may not be treated as deforested if the cleared land—
  - (i) is contiguous with the edge of post-1989 forest land that existed on the date of registration; and
  - (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and
  - (iii) is required to be or remain cleared to implement New Zealand’s best practice forest management; and
  - (iv) is used only for the purpose of implementing New Zealand’s best practice forest management.
- (2) Subsection (1)(b) does not apply if the EPA revokes its approval of an offsetting forest land application under section 186G(1).
- (3) This section applies to land that was cleared before, on, or after the commencement of this section.
- (4) If regulations prescribe any meaning for **New Zealand’s best practice forest management**, then that term has or includes that meaning in this section.

Section 179A: inserted, on 1 January 2013, by section 73 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 179A(4): inserted, on 23 June 2020, by section 157 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Subpart 2—Pre-1990 forest land

Subpart 2 heading: inserted, on 23 June 2020, by section 156(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Pre-1990 forest land*

*[Repealed]*

Heading: repealed, on 23 June 2020, by section 156(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **180 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 person carrying out the activity unless the EPA is satisfied that—
  - (a) the right to decide to deforest the pre-1990 forest land was vested by the landowner in a third party, whether before or after 1 January 2008; and



- (b) the landowner had no control over the decision.
- (2) If the EPA is satisfied that the criteria specified in subsection (1)(a) and (b) are met, the third party is to be treated as the person carrying out the activity.
- (3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances in subsection (2), a third party, is to be treated as carrying out an activity listed in Part 1 of Schedule 3.

Section 180: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 180(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 180(1)(a): amended, on 1 January 2013, by section 74 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 180(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **181 When deforestation to be treated as occurring in respect of pre-1990 forest land**

- (1) This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land.
- (1A) The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.
- (2) However, subsection (3) applies if the hectare of forest land was cleared but not deforested prior to—
  - (a) the forest land being transferred to the landowner; or
  - (b) control of the forest land reverting to that landowner following the expiry or termination of a forestry right, Crown forestry licence, lease, or other agreement that relates to the land.
- (3) The hectare of forest land is to be treated as being deforested on the date of the first action on it that—
  - (a) is inconsistent with the hectare remaining forest land; and
  - (b) happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land.
- (3A) In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless section 186(2) applies.
- (4) This section applies only if section 4(5) does not apply.
- (5) This section does not apply to pre-1990 forest land that is the subject of an off-setting forest land application that the EPA has approved under section 186B.

Section 181: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 181(1): replaced, on 1 January 2021, by section 226(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 181(1A): inserted, on 1 January 2021, by section 226(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 181(2): amended, on 1 January 2021, by section 226(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 181(3): replaced, on 1 January 2021, by section 226(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 181(3A): inserted, on 1 January 2021, by section 226(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 181(4): added, on 8 December 2009, by section 60 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 181(5): inserted, on 1 January 2013, by section 75 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **182 Offsetting in relation to pre-1990 forest land**

*[Repealed]*

Section 182: repealed (without coming into force), on 1 January 2013, by section 76 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **183 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land**

- (1) This section applies to a person who—
  - (a) is a landowner of an area of pre-1990 forest land at the date of issue of the pre-1990 forest land allocation plan; or
  - (b) was the landowner of an area of pre-1990 forest land at the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land.
- (2) A person to whom this section applies may apply to the EPA for the area of pre-1990 forest land to be declared exempt land if—
  - (a) the area is less than 50 hectares; and
  - (b) the area was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land; and
  - (c) no allocation of units to a landowner has been made in respect of the area under the pre-1990 forest land allocation plan.
- (3) An application under subsection (2) must—
  - (a) be submitted to the EPA by—
    - (i) the date prescribed by regulations made under section 168(1)(ca); or

- (ii) in the absence of a date prescribed by regulations made under section 168(1)(ca), the date specified by public notice given by the EPA; and
  - (b) be in the prescribed form and accompanied by the prescribed fee (if any); and
  - (c) contain details of the area of pre-1990 forest land to which the application relates; and
  - (d) be accompanied by evidence showing that the land is pre-1990 forest land; and
  - (e) be accompanied by a statutory declaration,—
    - (i) in the case of land owned by a sole professional trustee or owned by professional trustees only, from the trustee of the trust that is the subject of the exemption application stating that the total of pre-1990 forest land held in the trust on 1 September 2007—
      - (A) was less than 50 hectares; and
      - (B) was owned by a sole professional trustee or owned by professional trustees only;
    - (ii) in any other case, from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) stating that the person, together with any persons associated with that person, owned less than a total of 50 hectares of pre-1990 forest land on 1 September 2007; and
  - (f) be signed by the applicant; and
  - (g) be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is a person to whom this section applies, the land is pre-1990 forest land, and each of the criteria specified in subsection 2(a) to (c) is met, the EPA must—
- (a) declare the land to be exempt land; and
  - (b) notify the applicant that the land has been declared exempt land.
- (5) Despite subsection (3)(a), the EPA may, at its discretion, accept applications after the date specified in the public notice given under subsection (3)(a)(ii) or prescribed by regulations under section 168(1)(ca).
- (6) The following rules apply for the purposes of determining, under subsection (2)(b), whether an area of pre-1990 forest land was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land:
- (a) the EPA must consider only pre-1990 forest land in respect of which the person or associated person was a landowner on 1 September 2007; and
  - (b) if land was owned by persons as joint tenants,—

- (i) in the case where 1 or more of the joint tenants is a professional trustee, each of the joint tenants other than the professional trustee or trustees must individually have been a landowner of less than 50 hectares of pre-1990 forest land; or
  - (ii) in the case where none of the joint tenants is a professional trustee, each of the joint tenants must individually have been a landowner of less than 50 hectares of pre-1990 forest land; and
  - (c) if land was owned by persons as tenants in common, each tenant in common's interest in the land is to be treated as a divided interest on 1 September 2007; and
  - (d) if land was owned by a sole professional trustee or owned by professional trustees only, the total pre-1990 forest land held in the trust on 1 September 2007 was less than 50 hectares.
- (7) For the purposes of this section and section 183B,—
- own**, in relation to pre-1990 forest land, means to be a landowner of the land
- professional trustee**—
- (a) means a trustee whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others; and
  - (b) includes a trustee in whom property is vested under Te Ture Whenua Maori Act 1993.

Section 183: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 183(1)(a): amended, on 23 June 2020, by section 158(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183(1)(b): replaced, on 23 June 2020, by section 158(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(2)(c): amended, on 23 June 2020, by section 158(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183(3): amended, on 1 July 2009, by section 5(1) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(3)(a): substituted, on 1 July 2009, by section 5(2) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(3)(a)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(3)(a)(ii): amended, on 8 December 2009, by section 61(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 183(3)(e): replaced, on 1 January 2013, by section 77(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(4): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(5): amended, on 1 January 2013, by section 77(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(5): amended, on 1 July 2009, by section 5(3) of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19).

Section 183(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 183(6)(c): amended, on 1 January 2013, by section 77(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(6)(d): inserted, on 1 January 2013, by section 77(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183(7): amended, on 23 June 2020, by section 158(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183(7) **professional trustee**: replaced, on 1 January 2013, by section 77(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **183A Certain applications not otherwise permitted by section 183**

- (1) Despite section 183(2)(c) and (3)(a), a person may make an application under section 183 by 31 December 2013 if—
  - (a) the area concerned was owned, as at 1 September 2007, by a sole professional trustee or by professional trustees only; and
  - (b) an allocation of units has been made before the commencement of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 in respect of the area under the pre-1990 forest land allocation plan.
- (2) If the EPA proposes to accept the application, the EPA must notify the applicant that—
  - (a) it proposes to accept the application; but
  - (b) the applicant must first, within 30 working days after receiving the notice, surrender or repay to the Crown holding account specified in the notice the number of units specified in the notice; and
  - (c) if the units are not surrendered or repaid in accordance with paragraph (b), then the application will be declined.
- (3) The units referred to in subsection (2) must be the same number of units that have been allocated and transferred under the pre-1990 forest land allocation plan in relation to the land concerned.
- (4) The EPA must,—
  - (a) accept the application and declare the area concerned to be exempt land if, by the expiry of the 30 days, the units have been surrendered or repaid; or
  - (b) decline the application if, by the expiry of the 30 days, the units have not been surrendered or repaid.

- (5) To avoid doubt,—
- (a) section 183 (as amended by the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012) otherwise applies to an application permitted by this section, but subject to the modifications made by this section; and
  - (b) if an application is granted and an area is declared to be exempt land, the entitlement to units under the pre-1990 forest land allocation plan in respect of the land is cancelled.

Section 183A: inserted, on 1 January 2013, by section 78 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 183A(1)(b): amended, on 23 June 2020, by section 159(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183A(2)(b): amended, on 30 November 2020, by section 204 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183A(3): amended, on 23 June 2020, by section 159(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 183A(5)(b): amended, on 23 June 2020, by section 159(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **183B Applications for exemption for some Maori land or land with 10 or more owners**

- (1) This section applies to an area of pre-1990 forest land that—
- (a) is less than 50 hectares; and
  - (b) on 1 September 2007,—
    - (i) was all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
    - (ii) was Maori land or was owned by more than 10 persons; and
  - (c) was an area of pre-1990 forest land on the following date (the **qualifying date**):
    - (i) the date of issue of the pre-1990 forest land allocation plan; or
    - (ii) the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land; and
  - (d) after the qualifying date,—
    - (i) became owned by the trustees of a trust; or
    - (ii) in the case of Maori freehold land, had an agent appointed for it under Te Ture Whenua Maori Act 1993 with the power to apply under this section; and

- (e) has not been the subject of an allocation of units to a landowner under the pre-1990 forest land allocation plan.
- (2) The trustees or agent described in subsection (1)(d) may apply to the EPA for the area of pre-1990 forest land to be declared exempt land.
- (3) The application—
  - (a) may be submitted to the EPA at any time; and
  - (b) must be in the prescribed form and accompanied by the prescribed fee (if any); and
  - (c) must contain details of the area of pre-1990 forest land to which the application relates; and
  - (d) must be accompanied by evidence showing that the land is pre-1990 forest land; and
  - (e) must be accompanied by a statutory declaration from the applicant stating that the area of pre-1990 forest land was, on 1 September 2007, all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
  - (f) must be signed by the applicant; and
  - (g) must be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is 1 or more trustees or an agent described in subsection (1)(d), that the land is pre-1990 forest land, and that each of the criteria specified in subsection (1)(a) to (e) is met, the EPA must—
  - (a) declare the land to be exempt land; and
  - (b) notify the applicant that the land has been declared exempt land.

Section 183B: inserted, on 23 June 2020, by section 160 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **184 Exemptions for deforestation of land with tree weeds**

- (1) An application may be made under this section for pre-1990 forest land to be declared exempt land (in relation to deforestation) if a prescribed type of tree weed—
  - (a) is growing on the land; or
  - (b) was cleared from the land as part of the deforestation process on or after 1 January 2008.
- (2) The application may be made by—
  - (a) the landowner of the pre-1990 forest land; or
  - (b) a third party to whom section 180 applies.
- (3) *[Repealed]*
- (4) *[Repealed]*

- (5) The EPA must consider the application against the prescribed criteria and priorities and—
- (a) may declare the land, or any part of the land, to be exempt land, if satisfied that—
    - (i) the applicant is eligible to apply for the exemption under subsection (3); and
    - (ii) the land is pre-1990 forest land; and
    - (iii) the criteria specified in subsection (1) are met; and
  - (b) must, if the EPA declares any land to be exempt land, notify the applicant of—
    - (i) the declaration; and
    - (ii) any requirements or conditions that the EPA has decided to impose on the person whose land is exempted.
- (6) The clearing of tree weeds on exempt land that has not been cleared before the land was declared exempt land must be—
- (a) commenced within 24 months of the date of notification of the exemption; and
  - (b) completed by the end of the mandatory emissions return period in which the exemption was granted.
- (7) Any 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 132 or 133 in relation to an application under this section,—
- (a) the person must be treated as a person who has failed to submit an annual emissions return in respect of an activity listed in Part 1 of Schedule 3 when required to do so under this Act; and
  - (b) the EPA 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 123(1) to (3) and the other provisions of this Act apply as if the assessment under paragraph (b) was an assessment under section 121.
- (9) *[Repealed]*

Section 184: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 184(1): replaced, on 23 June 2020, by section 161(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



Section 184(2): replaced, on 23 June 2020, by section 161(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(3): repealed, on 23 June 2020, by section 161(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(4): repealed, on 23 June 2020, by section 161(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(5): amended, on 23 June 2020, by section 161(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(5)(b): replaced, on 23 June 2020, by section 161(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(6): substituted, on 8 December 2009, by section 62(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 184(6)(b): replaced, on 23 June 2020, by section 161(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 184(8)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 184(9): repealed, on 1 January 2013, by section 79 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **185 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.

Section 185: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **186 Methodology for pre-1990 forest land cleared in 8 years or less**

- (1) Subsection (2) applies where the trees cleared 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 prescribed methodology and calculate and record the emissions from the activity as if the trees cleared from the pre-1990 forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under section 163) cleared from the pre-1990 forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); 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 163 must relate to the trees that are cleared from the pre-1990 forest land as part of the deforestation activity.

Section 186: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 186 heading: amended, on 1 January 2013, by section 80(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 186(2)(a): amended, on 1 January 2013, by section 80(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### Subpart 3—Pre-1990 offsetting forest land

Subpart 3 heading: inserted, on 23 June 2020, by section 156(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### *Pre-1990 offsetting forest land*

*[Repealed]*

Heading: repealed, on 23 June 2020, by section 156(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **186A Persons who own pre-1990 forest land may submit offsetting forest land applications to EPA**

- (1) A person who owns pre-1990 forest land may submit an offsetting forest land application to the EPA if that forest land—
  - (a) was first planted before 1 January 1990; or
  - (b) was harvested and re-established after 1 January 1960.
- (2) If the proposed offsetting forest land and the pre-1990 forest land are owned by the same person, the application must be submitted by that person.
- (3) In the case where the proposed offsetting forest land and the pre-1990 forest land are owned by different persons, the application must be submitted jointly by those persons.
- (4) To avoid doubt, any pre-1990 forest land cleared, but not deforested, before the commencement of this section is eligible to be offset if that land meets the requirements specified in subsection (1).

Section 186A: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **186B Criteria for approving offsetting forest land applications**

- (1) The EPA must approve land as offsetting forest land if—
  - (a) the land—
    - (i) is the subject of an offsetting forest land application that—
      - (A) is in the prescribed form, and accompanied by the payment of any prescribed fee; and
      - (B) complies with any relevant regulations made under section 186F; and
      - (C) is accompanied by any other relevant information that the EPA may require; and

- (ii) was—
    - (A) not forest land on or after 31 December 1989; or
    - (B) forest land on 31 December 1989 that was deforested between 1 January 1990 and 31 December 2007 and is (at the time the offsetting forest application is made) not forest land; or
    - (C) pre-1990 forest land (other than exempt land) that was deforested on or after 1 January 2008 and any liability in respect of it to surrender units in relation to the activity listed in Part 1 of Schedule 3 has been satisfied, and is (at the time the offsetting forest application is made) not forest land; or
    - (D) pre-1990 forest land (other than exempt land) that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land, and is (at the time the offsetting forest application is made) not forest land; or
    - (E) exempt land that has been deforested and in respect of which the number of units that would have been required to be surrendered in relation to the activity in Part 1A of Schedule 3 had the land not been exempt land has been surrendered, and is (at the time the offsetting forest application is made) not forest land; and
  - (b) the land is land—
    - (i) that has a total area (whether or not contiguous) that is equal to or greater than the total area of the pre-1990 forest land that is to be offset by that land (whether or not contiguous); and
    - (ii) in which each individual parcel that makes up the total area of the offsetting forest land is at least 1 hectare with an average width of at least 30 metres; and
  - (c) the EPA is satisfied that the land is likely to—
    - (i) achieve carbon equivalence with the pre-1990 forest land that is to be offset by that land within the usual rotation period for forest species of the pre-1990 forest land; and
    - (ii) become forest land before the pre-1990 forest land that is to be offset by that land is deforested; and
  - (d) any other requirements with respect to offsetting specified in this Act or regulations made under this Act are satisfied.
- (2) The EPA may decline any application that does not meet all or any of the requirements specified in subsection (1).

Section 186B: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**186C Conditions applicable to offsetting forest land**

- (1) If the EPA approves an offsetting forest land application, the following conditions apply:
  - (a) the offsetting forest land must—
    - (i) become forest land before the relevant pre-1990 forest land is deforested; and
    - (ii) be established by direct planting activities, including direct seeding but excluding natural forest regeneration; and
    - (iii) be established on the land specified in the application approved by the EPA; and
    - (iv) achieve carbon equivalence with the relevant pre-1990 forest land:
  - (b) the owner of the pre-1990 forest land must surrender or repay units if required to do so under section 186H:
  - (c) any relevant conditions prescribed by regulations made under section 186F must be satisfied.
- (2) Subsection (1)(a)(i) is subject to section 179A(1)(b).

Section 186C: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**186D Requirements relating to offsetting forest land**

- (1) A person who owns pre-1990 forest land must submit a declaration to the EPA in the prescribed form, before the end of the relevant period specified in section 179A(1)(b), stating that the offsetting forest land has become forest land.
- (2) If the EPA is not satisfied that the land subject to an approved offsetting forest land application has become forest land by the time that the relevant pre-1990 forest land is deforested,—
  - (a) the application is to be treated as revoked under section 186G; and
  - (b) the person who owns the pre-1990 forest land must surrender units for the deforested pre-1990 forest land.
- (3) If the EPA is satisfied that the offsetting forest land has become forest land by the time that the pre-1990 forest land is deforested, the EPA must, on a register kept for the purposes of this section, note—
  - (a) that the offsetting forest land is pre-1990 offsetting forest land; and
  - (b) any conditions placed on that forest land under section 186C or 186F; and
  - (c) the emissions for the relevant pre-1990 forest land.
- (4) The EPA must, upon written request by the person who owns or owned (or who is a prospective transferee of) the relevant pre-1990 offsetting forest land or the relevant pre-1990 forest land, provide a statement containing the information

specified in subsection (3) to the person or prospective transferee (as the case may be).

Section 186D: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**186E Deforesting pre-1990 offsetting forest land before usual rotation period of forest species on pre-1990 forest land**

- (1) If the owner of pre-1990 offsetting forest land carries out an activity in Part 1A of Schedule 3 before the usual rotation period for forest species on the relevant pre-1990 forest land is completed, the owner must surrender units equivalent to the emissions for the relevant pre-1990 forest land.
- (2) If subsection (1) applies, the EPA must remove the pre-1990 offsetting forest land from the register specified in section 186D(3).

Section 186E: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**186F Regulations relating to offsetting**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing the usual rotation period for a forest species;
  - (b) prescribing any conditions that land that is subject to an offsetting forest land application must meet—
    - (i) before the EPA may approve the application; and
    - (ii) after the EPA has approved the application;
  - (c) prescribing the methodology for determining and calculating carbon equivalence;
  - (d) providing for any other matters contemplated by sections 186B and 186C, necessary for their administration, or necessary for giving them full effect.
- (2) *See* sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 186F: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 186F(2): inserted, on 23 June 2020, by section 162 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186F(3): inserted, on 23 June 2020, by section 162 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**186G EPA may revoke approval in certain circumstances**

- (1) The EPA may, in relation to a person specified in section 186A(2) or (3), revoke any approval it has given under section 186B if—

- (a) the person fails to comply with section 186C; and
  - (b) the EPA has not noted on the register specified in section 186D(3) that the offsetting forest land is pre-1990 offsetting forest land.
- (2) If the EPA revokes an approval, the provisions of this Act, other than section 179A(1)(b), apply to the relevant pre-1990 forest land as if the relevant offsetting forest application had not been made.

Section 186G: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **186H Treatment of allocations in respect of pre-1990 forest land that is offset**

- (1) This section applies to any owner of pre-1990 forest land—
- (a) that was the subject of an offsetting forest land application approved under section 186B; and
  - (b) to which an allocation was made under the pre-1990 forest land allocation plan (before or after the commencement of this section).
- (2) If this section applies, the owner of the pre-1990 forest land must, within 30 working days of the date of notice given by the EPA,—
- (a) open a holding account under section 18A that has been approved by the Registrar if the owner does not have one; and
  - (b) surrender or repay units equivalent to the portion of units that are allocated, as part of the second tranche, to the pre-1990 forest land that is offset by transferring them to a Crown holding account (whether or not the allocation was actually transferred when allocated).
- (3) The notice referred to in subsection (2) must specify—
- (a) the number of units that must be repaid; and
  - (b) the Crown holding account to which the units must be transferred.
- (4) If the owner of the pre-1990 forest land complies with subsection (2), but approval is revoked under section 186G or treated as revoked under section 186D(2)(a), the EPA must, in accordance with section 124, reimburse the owner for any units that the owner has surrendered or repaid under subsection (2).
- (5) The EPA must, upon written request by a person who owns or owned (or is a prospective transferee of) pre-1990 forest land, provide a statement to the person or prospective transferee (as the case may be) about an allocation (if any) made under the pre-1990 forest land allocation plan.
- (6) For the purposes of subsection (2), **second tranche**, in relation to an allocation, means the units that are allocated to a person under the pre-1990 forest land allocation plan on or after 1 January 2013.

Section 186H: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 186H(1)(b): amended, on 23 June 2020, by section 163(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(2)(b): amended, on 30 November 2020, by section 205(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(3)(a): amended, on 30 November 2020, by section 205(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(4): amended, on 30 November 2020, by section 205(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(5): amended, on 23 June 2020, by section 163(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(6): replaced, on 23 June 2020, by section 163(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 186H(6): amended, on 30 November 2020, by section 205(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **186I Participant in respect of pre-1990 offsetting forest land**

If an activity listed in Part 1A of Schedule 3 is carried out, the landowner of the pre-1990 offsetting forest land is to be treated as the person carrying out the activity.

Section 186I: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **186J Methodology for pre-1990 offsetting forest land cleared after usual rotation period is completed**

- (1) Subsection (2) applies where the trees cleared from pre-1990 offsetting forest land by a person carrying out the activity in Part 1A of Schedule 3 after the usual rotation period is completed 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 prescribed methodology and calculate and record the emissions from the activity as if the trees cleared from the pre-1990 offsetting forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under section 163 or 186F) cleared from the pre-1990 offsetting forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); 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 1A of Schedule 3 prescribed in regulations under section 163 or 186F must relate to the trees that are cleared from the pre-1990 offsetting forest land as part of the deforestation activity.

Section 186J: inserted, on 1 January 2013, by section 81 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### Subpart 4—Post-1989 forest land

Subpart 4 heading: inserted, on 23 June 2020, by section 156(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### *Post-1989 forest land*

*[Repealed]*

Heading: repealed, on 23 June 2020, by section 156(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **187 Conditions on registration as participant in respect of certain activities relating to post-1989 forest land**

- (1) A person may not be registered as a participant under section 57 in respect of an activity listed in Part 1 of Schedule 4 that relates to—
  - (a) owning any post-1989 forest land, unless the person is the landowner of the post-1989 forest land and—
    - (i) there is no forestry right or lease registered in respect of that land; or
    - (ii) the person has the written agreement of any holder of a registered forestry right or registered lease in respect of that land to the person registering as a participant; or
  - (b) holding a registered forestry right or being the leaseholder under a registered lease in respect of any post-1989 forest land, unless the person,—
    - (i) is the holder of the registered forestry right or the leaseholder of the registered lease; and
    - (ii) has the written agreement of the landowner of the land to the forestry right holder or leaseholder, as the case may be, registering as a participant.
- (2) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in relation to exempt land that has been deforested 8 or less years ago unless the person—
  - (a) has submitted an emissions return to the EPA that—
    - (i) records the emissions from the deforestation of the land—
      - (A) that would have been required to have been recorded in an annual emissions return under section 65, had the land not been declared to be exempt land; and
      - (B) calculated in accordance with the methodology or methodologies prescribed for the deforestation activity listed in Part 1 of Schedule 3 that were applicable when the land was deforested; and



- (ii) contains an assessment of the liability to surrender units that would have arisen in relation to the deforestation had the land not been declared to be exempt land; and
    - (iii) is accompanied by the prescribed fee (if any) and any other prescribed information; and
    - (iv) is signed by the person submitting the application; and
  - (b) has surrendered, within 60 working days after the EPA gives the person a notice requiring the surrender, the number of units listed in the assessment under paragraph (a)(ii); and
  - (c) complies with subsection (1), if applicable.
- (3) To avoid doubt, if there is a person registered as a participant in respect of carrying out an activity listed in Part 1 of Schedule 4 in respect of any post-1989 forest land, no other person may be registered as a participant in respect of carrying out a different activity listed in Part 1 of Schedule 4 in respect of that land.
- (4) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land unless—
- (a) any action taken by the person in respect of the post-1989 forest land since 1 January 2008 (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949 that was in force at the time the action was taken; and
  - (b) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the person—
    - (i) has complied with the requirements; or
    - (ii) verified that any other person required to comply with the requirements has done so.
- (5) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in relation to post-1989 forest land where the forest species on the land is predominantly naturally regenerated tree weeds unless the EPA is satisfied that the risk of tree weed spread from the land that is the subject of the application for registration is low.
- (6) Subsection (5) does not apply to any person who has registered as a participant before 1 January 2013.

Section 187: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 187(2): amended, on 23 June 2020, by section 164(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 187(2)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 187(2)(b): replaced, on 23 June 2020, by section 164(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 187(3): amended, on 8 December 2009, by section 63(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 187(4): added, on 8 December 2009, by section 63(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 187(4)(b): amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 187(5): inserted, on 1 January 2013, by section 82 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 187(6): inserted, on 1 January 2013, by section 82 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 187(6): amended, on 23 June 2020, by section 164(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **187A EPA to give public notice of criteria for assessing risk of tree weed spread**

The EPA must give public notice of the criteria for assessing the risk of tree weed spread from land that is the subject of an application for registration under section 57.

Section 187A: inserted, on 1 January 2013, by section 83 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **188 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) may be submitted for all post-1989 forest land in respect of which the applicant carries out the activity, or any part of the land in respect of which the applicant carries out the activity; and
  - (b) must define the carbon accounting area or areas in respect of which the applicant wishes to be a participant; and
  - (c) must be accompanied by a declaration, in the prescribed form, that—
    - (i) any action taken by the applicant since 1 January 2008 in relation to the post-1989 forest land in respect of which the application is submitted (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949, that was in force at the time the action was taken; and
    - (ii) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the applicant has—
      - (A) complied with the requirements; or

- (B) verified that any other person required to comply with the requirements has done so; and
    - (d) must be accompanied by any information prescribed by regulations made under this Act.
- (2) The EPA must, for every person who is a participant in respect of an activity listed in Part 1 of Schedule 4, keep a record of—
  - (a) the carbon accounting area or areas in respect of which the person is a participant; and
  - (b) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated in accordance with section 190(2).
- (3) A person who is a participant in respect of an activity listed in Part 1 of Schedule 4—
  - (a) may apply to the EPA to—
    - (i) add or remove any carbon accounting area or areas to or from the post-1989 forest land in respect of which the person is recorded as a participant; or
    - (ii) remove post-1989 forest land from any carbon accounting area or areas in respect of which the person is recorded as a participant; and
  - (b) must, as soon as practicable, notify the EPA if—
    - (i) the person ceases to carry out the activity in respect of a carbon accounting area or any land in a carbon accounting area in respect of which the person is recorded as a participant; or
    - (ii) the post-1989 forest land in respect of which the person carries out the activity, or any part of the land in which the person carries out the activity, is affected by a natural event that permanently prevents re-establishing a forest on that land.
- (4) An application or a notice under subsection (3) must be—
  - (a) in the prescribed form; and
  - (b) accompanied by any prescribed fee and any prescribed information.
- (5) The EPA may not add a carbon accounting area to the post-1989 forest land in respect of which a person is recorded as a participant, unless satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of that land under section 187.
- (6) If the EPA—
  - (a) registers a person as a participant under section 57 in relation to an activity listed in Part 1 of Schedule 4, the EPA must notify the person in accordance with section 57(6); or
    - (i) *[Repealed]*

- (ii) *[Repealed]*
- (b) receives an application to add a carbon accounting area and is satisfied as to the matters specified in subsection (5), the EPA must—
  - (i) *[Repealed]*
  - (ii) update the participant's record to reflect the addition of the carbon accounting area; and
  - (iii) notify the participant accordingly.
- (7) If the EPA receives—
  - (a) 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 EPA must—
    - (i) *[Repealed]*
    - (ii) remove the person's name from the register—
      - (A) 10 working days after the date of the notification under section 58(3)(b); or
      - (B) as required under section 59(2):
  - (b) an application to remove a carbon accounting area, or remove land from a carbon accounting area in respect of which a person is recorded as a participant, or a notification that the person has ceased to carry out the activity in respect of a carbon accounting area or part of a carbon accounting area, the EPA must—
    - (i) *[Repealed]*
    - (ii) update the participant's record to reflect,—
      - (A) if a carbon accounting area is removed or the person has ceased to carry out the activity in respect of all of the carbon accounting area, the removal of the carbon accounting area from the post-1989 forest land in respect of which the person is recorded as a participant; or
      - (B) if land has been removed from a carbon accounting area or the person has ceased to carry out the activity in respect of part of a carbon accounting area, a new carbon accounting area constituted from the remaining land and the unit balance of the new carbon accounting area determined in accordance with section 190(3)(b); and
    - (iii) notify the participant accordingly.
- (7A) If the EPA is notified under subsection (3)(b)(ii), the EPA must, if satisfied that the post-1989 forest land is affected by a natural event that permanently prevents re-establishing a forest on that land, comply with the requirements specified in subsection (7)(b)(ii) and (iii).

- (8) A change made to the participant's record under subsection (6)(b)(ii) or (7)(b)(ii) has effect on and after the date of the relevant notice given under subsection (6)(b)(iii) or (7)(b)(iii), as the case may be.
- (9) Subsection (10) applies if a person terminates a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of the post-1989 forest land that was covered by the covenant.
- (10) If this subsection applies,—
- (a) despite section 57(8), the person registering as a participant is to be treated as being a participant in respect of the land formerly the subject of the covenant on and after the date the covenant was registered on the land under section 67ZD of the Forests Act 1949; and
  - (b) for the purposes of sections 189 to 194, any units transferred by or to the Crown in respect of the post-1989 forest land while it was the subject of the forest sink covenant must be treated as New Zealand units transferred for removals or surrendered for emissions from the land under this Act; and
  - (c) the post-1989 forest land formerly the subject of the covenant constitutes a single carbon accounting area in respect of which the person is registered as a participant for the purposes of subsection (2).
- (11) *See also* sections 188B and 188C (which require notice to the participant and notice to interested parties, if any).

Section 188: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 188(1)(c): substituted, on 8 December 2009, by section 64(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(1)(c)(ii): amended, on 18 September 2012, by section 93 of the Biosecurity Law Reform Act 2012 (2012 No 73).

Section 188(2): substituted, on 8 December 2009, by section 64(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(3)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(3)(a)(i): amended, on 8 December 2009, by section 64(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(3)(a)(ii): amended, on 8 December 2009, by section 64(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 188(3)(b): replaced, on 1 January 2013, by section 84(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 188(5): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 188(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

- Section 188(6)(a): amended, on 23 June 2020, by section 165(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 188(6)(a)(i): repealed, on 23 June 2020, by section 165(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(6)(a)(ii): repealed, on 23 June 2020, by section 165(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(6)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 188(6)(b)(i): repealed, on 23 June 2020, by section 165(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(6)(b)(ii): substituted, on 8 December 2009, by section 64(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(6)(b)(iii): added, on 8 December 2009, by section 64(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(7): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 188(7)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 188(7)(a)(i): repealed, on 23 June 2020, by section 165(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(7)(a)(ii)(A): amended, on 23 June 2020, by section 165(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).
- Section 188(7)(b)(i): repealed, on 23 June 2020, by section 165(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(7)(b)(ii): substituted, on 8 December 2009, by section 64(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(7)(b)(iii): added, on 8 December 2009, by section 64(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(7A): inserted, on 1 January 2013, by section 84(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).
- Section 188(7A): amended, on 23 June 2020, by section 165(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 188(8): substituted, on 8 December 2009, by section 64(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(9): substituted, on 8 December 2009, by section 64(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(10): added, on 8 December 2009, by section 64(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).
- Section 188(11): inserted, on 23 June 2020, by section 165(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**188A Person ceases to be participant in respect of post-1989 forest land if natural event permanently prevents re-establishing forest on that land**

If post-1989 forest land is affected by a natural event that permanently prevents re-establishing a forest on that land,—

- (a) a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 ceases to be a participant in respect of the affected carbon accounting area or affected land in that carbon accounting area; and
- (b) the person is to be treated as having ceased to carry out the activity listed in Part 1 of Schedule 4 when given notice by the EPA under section 188(7)(b)(iii).

Section 188A: inserted, on 1 January 2013, by section 85 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**188B Notice to forestry participant if their registration added or removed**

The EPA must give written or electronic notice to a participant, or former participant, of the following matters as soon as practicable after the EPA carries them out under any of Parts 5 to 5D:

- (a) the participant's registration or removal from registration in respect of an activity, and the date on which this took or takes effect:
- (b) the addition or removal of any area or land for which the participant is registered, and the date on which this took or takes effect.

Section 188B: inserted, on 23 June 2020, by section 166 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**188C Notice to interested party if forestry participant's registration added or removed**

- (1) A participant must notify the interested party (if any) of the following matters under this section, in writing or electronically, as soon as practicable after receiving the EPA's notice about, or becoming aware of, the matter:
  - (a) the participant's registration, or removal from registration, in respect of an activity, and the date that this took or takes effect:
  - (b) the addition or removal of any area or land for which the participant is registered, and the date that this took or takes effect.
- (2) The EPA must provide the participant with any address that it has recorded for the interested party.
- (3) In this section, **interested party** means—
  - (a) the landowner, in relation to a participant who is registered for an activity relating to—
    - (i) holding a registered forestry right or registered lease over land; or
    - (ii) being a party to a Crown conservation contract over land; or

- (b) any person with a registered forestry right or registered lease in respect of the land, in relation to a participant who is registered for an activity relating to owning post-1989 forest land.

Section 188C: inserted, on 23 June 2020, by section 166 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **189 Emissions returns for post-1989 forest land activities**

- (1) This section applies to a person who is a participant in respect of an activity listed in Part 1 of Schedule 4.
- (2) A person to whom this section applies—
  - (a) must not submit an annual emissions return under section 65 or an emissions return under section 118 in relation to that activity; and
  - (b) may submit an emissions return in accordance with subsection (3) in relation to that activity; and
  - (c) must submit any emissions return required by subsection (4) or section 191 or 193 in respect of that activity; and
  - (d) may submit an emissions return in accordance with subsection (4A), if—
    - (i) the person is considering entering into a transaction described in section 192(1)(a) or (b); or
    - (ii) the expiry of an interest referred to in section 192(1)(c) is imminent; or
    - (iii) within 20 working days of applying under section 188(3)(a)(i) to remove a carbon accounting area from the land in respect of which the person is recorded as carrying out an activity listed in Part 1 of Schedule 4 or being removed from the register as a participant in respect of all the land in respect of an activity listed in Part 1 of Schedule 4, the person applies to—
      - (A) add a carbon accounting area or areas consisting of all the post-1989 forest land that was the subject of the application under section 188(3)(a)(i); or
      - (B) register as a participant under section 57 in relation to all the post-1989 forest land in respect of which the person had ceased to be registered as a participant.
- (3) A person to whom this section applies may, on 1 occasion, on or before 30 June in any year, submit an emissions return that—
  - (a) relates to the preceding year or years; and
  - (b) is in respect of any or all of the carbon accounting areas in respect of which the person is recorded as a participant; and
  - (c) for each carbon accounting area covered by the return, is in respect of the period—



- (i) commencing on the later of—
    - (A) the first day of the mandatory emissions return period in which the return is submitted; or
    - (B) the date on which the land in the carbon accounting area became post-1989 forest land; or
    - (BA) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or
    - (C) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area; and
  - (ii) ending on 31 December in the last year to which it relates.
- (4) A person to whom this section applies must, if registered as a participant on the last day of any mandatory emissions return period, within 6 months of the end of that period, submit an emissions return that—
  - (a) is in respect of each of the carbon accounting areas in respect of which the person was recorded as a participant on the last day of the mandatory emissions return period; and
  - (b) for each carbon accounting area covered by the return, is in respect of the period—
    - (i) commencing on the later of—
      - (A) the first day of the mandatory emissions return period that has just ended; or
      - (B) the date on which the land in the carbon accounting area became post-1989 forest land; or
      - (C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or
      - (D) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under subsection (4A), if an emissions return has been submitted under that subsection in relation to the carbon accounting area during the mandatory emissions return period; and
    - (ii) ending on the last day of the mandatory emissions return period that has just ended.
- (4A) A person to whom this section applies may, in the circumstances in subsection (2)(d), submit an emissions return in respect of any carbon accounting area to

which a proposed transaction, or expiry of an interest, or an application under section 58, 59, or 188(3)(a)(i) relates that is in respect of the period—

- (a) commencing on the latest of—
    - (i) the first day of the mandatory emissions return period in which the return is submitted; or
    - (ii) the date on which the land in the carbon accounting area became post-1989 forest land; or
    - (iii) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or
    - (iv) if an emissions return has already been submitted under this subsection in relation to the carbon accounting area during the mandatory emissions return period, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under this subsection; and
  - (b) ending on the date of submission of the emissions return.
- (5) An emissions return submitted under subsection (3), (4), or (4A)—
- (a) must, in respect of each carbon accounting area covered by the return,—
    - (i) record the activity in respect of which the person is recorded as a participant for the carbon accounting area; and
    - (ii) record the emissions and removals from the carbon accounting area during the emissions return period as calculated under section 62(b) and, if required, as verified under section 62(c); and
    - (iii) contain an assessment of the participant's gross liability to surrender units for emissions or entitlement to receive New Zealand units for removals from the carbon accounting area that takes into account sections 188(10) and 190(1), but does not take into account any returns under subsection (3) that cover part of the same period as the emissions return; and
    - (iv) contain the information required by subsection (6), if relevant; and
    - (v) contain an assessment of the participant's net liability to surrender units in respect of emissions or entitlement to receive New Zealand units for removals from the carbon accounting area during the emissions return period, taking into account sections 188(10) and 190(1) and subsections (6) and (7); and
  - (b) may contain an assessment of the participant's net liability to surrender or repay units or net entitlement to receive New Zealand units in respect

- of all carbon accounting areas covered by the return, as referred to in subsection (8); and
- (c) must be—
    - (i) accompanied by—
      - (A) the prescribed fee (if any); and
      - (B) any prescribed information; and
    - (ii) signed by the participant; and
    - (iii) submitted in the prescribed manner and format.
- (6) If a person submits an emissions return under subsection (4) that covers a carbon accounting area in respect of a period for which a return has already been submitted under subsection (3), the return submitted under subsection (4) must—
- (a) record the number of units transferred for removals or surrendered for emissions in respect of the carbon accounting area in respect of the return or returns submitted under subsection (3); and
  - (b) contain an assessment of the difference between—
    - (i) the net number of units transferred for removals or surrendered for emissions from the carbon accounting area in respect of the return or returns submitted under subsection (3) (which must be determined by subtracting the number of units surrendered for emissions from the carbon accounting area from the number of units transferred in respect of removals from the carbon accounting area); and
    - (ii) the gross number of units assessed as the participant's liability to surrender or entitlement to receive in respect of the carbon accounting area under the return submitted under subsection (4) as recorded under subsection (5)(a)(iii).
- (7) If the assessment referred to in subsection (6)(b) shows that the person would be—
- (a) entitled to fewer units for removals from the carbon accounting area in respect of the return submitted under subsection (4) than the net units that have been transferred in respect of returns under subsection (3), the person is liable to repay the number of units transferred in excess of the entitlement in the return under subsection (4); or
  - (b) entitled to receive more units for removals from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units that have been transferred in respect of returns under subsection (3), the person is entitled to receive the number of units that is the difference between the entitlement in respect of the return under

- subsection (4) and the net number of units already transferred in respect of returns under subsection (3); or
- (c) liable to surrender more units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), the person is liable to surrender the number of units that is the difference between the net number surrendered and the number assessed as being required to be surrendered under the return under subsection (4); or
  - (d) liable to surrender fewer units for emissions from the carbon accounting area in respect of the return submitted under subsection (4) than the net number of units already surrendered in respect of returns under subsection (3), the EPA must arrange for reimbursement to the person, in accordance with section 124, of the number of units that is the difference between the net number surrendered and the number assessed as being required to be surrendered under the return under subsection (4).
- (7A) Subsections (6) and (7) apply to a return submitted under subsection (4A) as if it were a return submitted under subsection (4).
- (8) A person who submits an emissions return under this section—
- (a) may include in the return an assessment of the person's net liability to surrender or repay units, or the person's net entitlement to New Zealand units, calculated by determining the difference between the total number of units required to be surrendered for emissions from each of the carbon accounting areas covered by the return (or, if relevant, required to be repaid in respect of the carbon accounting areas covered by the return) and the total number of New Zealand units to which the person is entitled in respect of removals from each of the carbon accounting areas covered by the return (or, if relevant, is entitled to be reimbursed in respect of carbon accounting areas covered by the return); and
  - (b) may elect to surrender or repay the net number of units for which the person is liable, or to receive the net number of 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; and
  - (d) must, if an assessment in the emissions return shows a liability or a net liability to—
    - (i) surrender units, surrender those units; or
    - (ii) repay units, repay those units, by transferring the number of units required to be transferred to a Crown holding account designated by the EPA, and the provisions of sections 134, 134A, and 134C apply, with any necessary modifications, as if—

- (A) the units the person is required to repay were units transferred to the person in error; and
  - (B) the requirement to repay the units arose under section 125.
- (8A) Despite subsection (8)(d), a person who submits an emissions return under this section that shows a liability or a net liability is under no obligation to surrender units if—
- (a) the emissions return is in respect of post-1989 forest land; and
  - (b) that land is affected by a natural event that permanently prevents re-establishing a forest on that land.

- (9) In this section,—

**units surrendered**, in relation to an emissions return under subsection (3), include units that a person would have been required to surrender in respect of emissions covered by the return, but which were not actually surrendered because of an election under subsection (8)

**units transferred for removals**, in relation to an emissions return under subsection (3), include units that a person would have been entitled to receive for removals in respect of the return, but which were not actually transferred because of an election under subsection (8).

Section 189: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 189(2)(c): amended, on 8 December 2009, by section 65(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(2)(d): added, on 8 December 2009, by section 65(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(2)(d)(iii): amended, on 1 January 2013, by section 86(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(3): amended, on 1 January 2013, by section 86(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(3): amended, on 8 December 2009, by section 65(2)(a) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(3): amended, on 8 December 2009, by section 65(2)(b) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(3)(c)(i)(BA): inserted, on 8 December 2009, by section 65(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4): amended, on 1 January 2013, by section 86(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(4)(b)(i)(B): amended, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4)(b)(i)(C): added, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4)(b)(i)(D): added, on 8 December 2009, by section 65(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(4A): inserted, on 8 December 2009, by section 65(5) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(5): substituted, on 8 December 2009, by section 65(6) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(6)(b)(ii): amended, on 8 December 2009, by section 65(7) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(6)(b)(ii): amended, on 8 December 2009, by section 65(8) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(7)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 189(7A): inserted, on 8 December 2009, by section 65(9) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 189(8)(b): amended, on 30 November 2020, by section 206 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 189(8)(d)(i): amended, on 23 June 2020, by section 167(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 189(8)(d)(ii): amended, on 1 January 2021, by section 227 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 189(8)(d)(ii): amended, on 23 June 2020, by section 167(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 189(8)(d)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 189(8A): amended, on 1 January 2013, by section 86(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 189(9) **mandatory emissions return period**: repealed, on 23 June 2020, by section 167(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **190 Special rules regarding surrender of units in relation to post-1989 forest land**

- (1) Despite section 63, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 is not liable to surrender more units in relation to any carbon accounting area or part of a carbon accounting area than the unit balance of that carbon accounting area or part of a carbon accounting area.
- (2) The unit balance of a carbon accounting area must be calculated in accordance with the following formula:

$$UB = (A - B) + OUB$$

where—

UB is the unit balance of the carbon accounting area

A is the net number of New Zealand units transferred for removals from the carbon accounting area since the date it was constituted (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8))

B is the net number of New Zealand units surrendered for emissions from the carbon accounting area since the date it was constituted (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7))

- OUB is,—
- (a) if the carbon accounting area is constituted from land from another carbon accounting area (following the removal of land from a carbon accounting area, or transmission of an interest as defined in section 192), the opening unit balance of the carbon accounting area, as determined in accordance with subsection (3); or
  - (b) if the carbon accounting area is not constituted as described in paragraph (a), but is constituted from land that was subject to a forest sink covenant under section 67ZD of the Forests Act 1949, the net number of units transferred in respect of the land in the carbon accounting area while it was the subject of the forest sink covenant; or
  - (c) if the carbon accounting area is not constituted from land from another carbon accounting area or land that was subject to a forest sink covenant, zero.
- (3) The following provisions apply if a person is required by this subpart to calculate the unit balance of a newly constituted carbon accounting area:
- (a) if a carbon accounting area (**CAA2**) has been constituted under section 192(3)(b)(iii) from the land remaining in an affected carbon accounting area (**CAA1**) following transmission of an interest in part of the **CAA1**, the person must calculate the opening unit balance of **CAA2** in accordance with subsection (4), and for the purposes of that calculation—
    - (i)  $H$  is the number of hectares of post-1989 forest land in **CAA1**; and
    - (ii)  $H_p$  is the number of hectares of post-1989 forest land in **CAA2**; and
    - (iii)  $UB$  is the unit balance of **CAA1** calculated in accordance with subsection (2) (and includes any units transferred or surrendered in respect of the removals or emissions reported in the emissions return submitted under section 193(1)); and
    - (iv)  $UB_p$  is the opening unit balance for **CAA2** for the purposes of subsection (2):
  - (b) if a carbon accounting area (**CAA2**) has been constituted under section 188(7)(b)(ii)(B) from the land remaining in a carbon accounting area (**CAA1**) because the person has removed land from **CAA1** or ceased carrying out an activity listed in Part 1 of Schedule 4 in respect of part of **CAA1**, the opening unit balance of **CAA2** is the figure calculated under section 191(4) for  $UB_r$  for the purposes of the person's emissions return under section 191(3):

- (c) if a carbon accounting area (**CAA2**) has been constituted by operation of section 192(3)(b)(ii), the person must calculate the opening unit balance of CAA2 by—
- (i) calculating the unit balance of any whole carbon accounting areas that form part of CAA2 in accordance with subsection (2), including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and
  - (ii) calculating the unit balance of any part carbon accounting area that forms part of CAA2 in accordance with subsection (4), and for the purposes of that calculation—
    - (A) H is the number of hectares of post-1989 forest land in the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest; and
    - (B) Hp is the number of hectares of post-1989 forest land in the part carbon accounting area; and
    - (C) UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest, including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under section 193(1); and
  - (iii) adding together the unit balances obtained under subparagraphs (i) and (ii).
- (4) The unit balance of part of a carbon accounting area must be calculated in accordance with the following formula:
- $$UBp = UB/H \times Hp$$
- where—
- UBp is the unit balance of the part of the carbon accounting area
- UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part, calculated in accordance with subsection (2)
- H is the number of hectares in the carbon accounting area of which the part carbon accounting area formed a part
- Hp is the number of hectares in the part of the carbon accounting area for which a unit balance is calculated.
- (5) For the purposes of this section,—
- (a) units transferred for removals, surrendered, repaid, or reimbursed in respect of a carbon accounting area include units that a person would



have been entitled to receive, or would have been required to surrender or repay, in respect of a carbon accounting area, but which were not actually transferred, surrendered, repaid, or reimbursed because of an election under section 189(8); and

- (b) the date that a carbon accounting area is constituted is—
  - (i) the date the person's registration as a participant in respect of the activity in the application took effect in accordance with section 57(8) for a carbon accounting area defined in an application referred to in section 188(1); and
  - (ii) the date the participant's record is updated under section 188(6) or (7) for a carbon accounting area where land has been removed from a carbon accounting area, a person has ceased to carry out the activity on part of a carbon accounting area, or a person has applied to add a carbon accounting area under section 188(3)(a)(i); and
  - (iii) the date the carbon accounting area was constituted under that section for a carbon accounting area constituted by operation of section 192(3)(b); and
- (c) **hectare** includes any fraction of a hectare.

Section 190: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### **191 Ceasing to be registered as participant in respect of post-1989 forest land**

- (1) Subject to section 193, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4—
  - (a) must submit an emissions return to the EPA within 20 working days of—
    - (i) being removed from the register in respect of that activity; or
    - (ii) removing a carbon accounting area or ceasing to be a participant in respect of a carbon accounting area in respect of which the person is recorded as a participant under section 188; or
    - (iii) removing land from a carbon accounting area or ceasing to carry out the activity in respect of part of a carbon accounting area in respect of which the person is recorded as a participant under section 188; and
  - (b) is, in respect of any carbon accounting area,—
    - (i) required to be covered by the return under subsection (2), liable to surrender the unit balance of the carbon accounting area; and
    - (ii) required to be covered by the return under subsection (3),—
      - (A) liable to surrender the unit balance relating to any land removed from the carbon accounting area or on which the

- person has ceased to carry out the activity, plus or minus any units that the person is required to surrender for emissions or entitled to receive for removals in respect of the land remaining in the carbon accounting area, as calculated under subsection (4); or
- (B) entitled to receive the number of units assessed as the participant's entitlement for removals from the land remaining in the carbon accounting area, less the unit balance relating to any land removed from the carbon accounting area or upon which the person has ceased to carry out the activity, calculated under subsection (4).
- (c) *[Repealed]*
- (1A) *[Repealed]*
- (2) An emissions return submitted under this section—
- (a) must,—
- (i) if subsection (1)(a)(i) applies, be in respect of all the carbon accounting areas in respect of which the person is or was recorded as a participant in relation to that activity; or
- (ii) if subsection (1)(a)(ii) applies, be in respect of the carbon accounting area or areas being removed in respect of which the person is ceasing to be a participant; and
- (b) must record the unit balance of each carbon accounting area required to be covered by the return under paragraph (a), calculated in accordance with section 190(2).
- (3) An emissions return submitted under this section because subsection (1)(a)(iii) applies must—
- (a) be in respect of each carbon accounting area from which land is removed or in respect of which the person is ceasing to carry out the activity on part of the land in the carbon accounting area; and
- (b) for each carbon accounting area required to be covered by the return under paragraph (a), be for the period,—
- (i) commencing on the latest of—
- (A) the first day of the mandatory emissions return period in which the land was removed from the carbon accounting area (or the person ceased to carry out the activity on part of the land in the carbon accounting area); or
- (B) the date on which the land in the carbon accounting area became post-1989 forest land; or
- (C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area

- was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or
- (D) if an emissions return has been submitted under section 189(4A) in relation to the carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and
- (ii) ending on the date the land is removed from the carbon accounting area or the person ceases to carry out the activity on part of the land in the carbon accounting area; and
- (c) in respect of each carbon accounting area required to be covered by the return under paragraph (a),—
- (i) comply with section 189(5)(a) and (6), as if any references in section 189(6) to subsection (4) of that section were references to this section; and
- (ii) record the notional unit balance of the carbon accounting area, calculated by taking the unit balance of the carbon accounting area (as calculated under section 190(2)) before submission of the return under this section and, if the assessment recorded in the return under section 189(5)(a)(v) shows the person would be—
- (A) entitled to receive units in respect of removals from the carbon accounting area during the emissions return period, adding that number of units to the unit balance; or
- (B) liable to surrender units in respect of emissions from the carbon accounting area during the emissions return period, subtracting that number of units from the unit balance; and
- (iii) record the person's assessment of the person's net liability to surrender units or entitlement to receive units in respect of the post-1989 forest land being removed from and the land remaining in the carbon accounting area calculated in accordance with subsection (4).
- (4) Net liability to surrender units or entitlement to receive units in respect of a carbon accounting area required to be covered by the return under subsection (3)(a) must be calculated in accordance with the following formula:

$$X = UB_{CAA} - UB_r$$

where—

X is,—

- (a) if positive, the number of units the person must surrender in respect of the land being removed from the carbon accounting area or upon which the person has ceased to carry out the activity

(as adjusted by any units required to be surrendered for emissions, or units to which the person is entitled for removals, from the land remaining in the carbon accounting area); or

- (b) if negative, the number of units to which the person is entitled in respect of removals from the land remaining in the carbon accounting area (as adjusted by any units required to be surrendered for the land being removed from the carbon accounting area or in respect of which the person has ceased to carry out the activity)

$UB_{CAA}$  is the unit balance of the carbon accounting area before the removal of the land and submission of the return under this section, calculated in accordance with section 190(2)

$UB_r$  is the unit balance of the land remaining in the carbon accounting area calculated as follows:

$$UB_r = (NUB_{CAA}/H_{CAA}) \times H_r$$

where—

$NUB_{CAA}$  is the notional unit balance of the carbon accounting area calculated under subsection (3)(c)(ii)

$H_{CAA}$  is the number of hectares in the carbon accounting area before removal of the land or before the person ceased to carry out the activity in respect of part of the land

$H_r$  is the number of hectares in the carbon accounting area, less the number of hectares being removed or in respect of which the person has ceased to carry out the activity.

- (5) If a person submits an emissions return under subsection (3), section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section.
- (6) Section 189(8) applies, with any necessary modifications, to a person who—
- (a) submits an emissions return under this section; or
- (b) submits an emissions return in respect of post-1989 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land because subsection (1)(a)(ii) or (iii) applies.
- (7) An emissions return submitted under this section must be—
- (a) submitted in the prescribed manner and format; and
- (b) accompanied by any prescribed fee and any other prescribed information.

Section 191: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 191(1)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 191(1)(c): repealed, on 30 November 2020, by section 207 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 191(1A): repealed, on 30 November 2020, by section 207 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 191(3)(b)(i)(A): amended, on 23 June 2020, by section 168 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 191(6): replaced, on 1 January 2013, by section 87 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **191A If participant has never carried out activity in carbon accounting area**

- (1) This section applies if the EPA is satisfied that a person is not carrying out, and has never carried out, the activity in Part 1 of Schedule 4 in a carbon accounting area, or part of an accounting area, for which they are registered.
- (2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area.
- (3) The person must surrender the unit balance that relates to the carbon accounting area (or part area).
- (4) At least 60 days before amending the register, the EPA must notify the person—
  - (a) that the EPA proposes to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area; and
  - (b) of the reason for the proposed removal; and
  - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity in the carbon accounting area).
- (5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

Section 191A: inserted, on 23 June 2020, by section 169 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **192 Effect of transmission of interest in post-1989 forest land**

- (1) This section applies—
  - (a) if, subject to section 157A(4), a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part A of the following table transfers, including by way of sale, assignment, or by operation of law, all or any of the interest described in the second column of Part A of the table to a person described in the third column of Part A of the table:
  - (b) if a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part B

of the following table grants an interest or enters into a contract described in the second column of Part B of the table:

- (c) if an interest described in the second column of Part C of the following table expires or is terminated, and the person described in the first column of Part C of the table is, in relation to that interest, registered as a participant in respect of an activity listed in Part 1 of Schedule 4:

**Part A**

<b>Existing participant</b>	<b>Interest transferred</b>	<b>New participant</b>	<b>New activity in Part 1 of Schedule 4</b>
Landowner of post-1989 forest land	Post-1989 forest land in respect of which the person is recorded as a participant	New land owner	Owning post-1989 forest land
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	New forestry right holder	Holding a registered forestry right over post-1989 forest land
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	New lessee	Being the leaseholder under a registered lease of post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	New party to the Crown conservation contract	Being a party to a Crown conservation contract

**Part B**

<b>Existing participant</b>	<b>Interest entered into</b>	<b>New participant</b>	<b>New activity in Part 1 of Schedule 4</b>
Landowner of post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Holder of a registered forestry right over post-1989 forest land (only if agreed under subsection (1A))	Being the holder of a registered forestry right over post-1989 forest land (only if agreed under subsection (1A))
Landowner of post-1989 forest land	Registered lease of post-1989 forest land	Lessee under a registered lease of post-1989 forest land	Being a lessee under a registered lease of post-1989 forest land

**Part B**

<b>Existing participant</b>	<b>Interest entered into</b>	<b>New participant</b>	<b>New activity in Part 1 of Schedule 4</b>
	land in respect of which the person is recorded as a participant	land (only if agreed under subsection (1A))	land (only if agreed under subsection (1A))
Landowner of Crown land that is post-1989 forest land	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Party to the Crown conservation contract	Being a party to a Crown conservation contract

**Part C**

<b>Existing participant</b>	<b>Interest expired or terminated</b>	<b>New participant</b>	<b>New activity in Part 1 of Schedule 4</b>
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land.

(1A) Despite subsection (1)(b), if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of Part B of the table in that subsection, this section applies only if, before the date of transmission,—

- (a) the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post-1989 forest land to which the transmitted interest relates; and
- (b) the transferor has given written notice of the agreement to the EPA.

- (2) In subsections (1), (1A), and (3) to (7) and section 193,—
- (a) **affected carbon accounting area**—
- (i) means a carbon accounting area that contains post-1989 forest land to which a transmitted interest relates; and
  - (ii) includes, where a transmitted interest relates to post-1989 forest land in part of a carbon accounting area, that carbon accounting area:
- (b) each of the persons described in the first column of the table in subsection (1) is a **transferor**:
- (c) each of the persons described in the third column of the table in subsection (1) is a **transferee**:
- (d) **transmitted interest** means,—
- (i) in the circumstances described in subsection (1)(a), the post-1989 forest land, registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is transferred:
  - (ii) in the circumstances described in subsection (1)(b), the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is granted or entered into:
  - (iii) in the circumstances described in subsection (1)(c), the interest in the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that has expired or been terminated:
- (e) **date of transmission** means,—
- (i) in the circumstances described in subsection (1)(a), the date of transfer of—
    - (A) the post-1989 forest land:
    - (B) the registered forestry right over post-1989 forest land:
    - (C) the registered lease of post-1989 forest land:
    - (D) the Crown conservation contract:
  - (ii) in the circumstances described in subsection (1)(b), the date of registration of the registered forestry right over post-1989 forest land, the date of registration of the registered lease of post-1989 forest land, or the date the Crown conservation contract is entered into:
  - (iii) in the circumstances described in subsection (1)(c), the date that the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract expires or is terminated.



- (3) If this section applies, then,—
- (a) within 20 working days of the date of transmission of the transmitted interest,—
    - (i) the transferor and transferee must notify the EPA of the transmission; and
    - (ii) the transferor must submit an emissions return as required by section 193 in relation to any affected carbon accounting areas; and
  - (b) from the date of transmission,—
    - (i) the transferor ceases to be a participant under this Act in relation to the post-1989 forest land to which the transmitted interest relates and the transferee becomes a participant in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1) in relation to the post-1989 forest land to which the transmitted interest relates; and
    - (ii) the area of post-1989 forest land to which the transmitted interest relates constitutes a new carbon accounting area in respect of which the transferee is the participant; and
    - (iii) any post-1989 forest land remaining in an affected carbon accounting area and to which the transmitted interest does not relate constitutes a new carbon accounting area in respect of which the transferor is the participant.
- (4) If this section applies because a transmitted interest has been transmitted by operation of law, then—
- (a) the notice given under subsection (3)(a)(i) must be given as soon as practicable after the date of transmission; and
  - (b) the emissions return required under section 193 must be submitted as soon as possible after the date of the transmission.
- (5) A notice given under subsection (3)(a)(i) must be—
- (a) in the prescribed form; and
  - (b) accompanied by any prescribed fees or charges and any prescribed information; and
  - (c) signed by both the transferor and the transferee.
- (5A) However, if the transmitted interest is part of a deceased participant's estate,—
- (a) for the transfer to the executor or administrator,—
    - (i) subsections (3)(a), (4), and (5) do not apply (so that no notice or emissions return is required); but
    - (ii) subsection (3)(b) still applies and the EPA must act under subsection (6); and
  - (b) for the transfer from the executor or administrator to a successor,—

- (i) the transferee (not the transferor) must submit the emissions return required by section 193; and
    - (ii) for the purposes of that emissions return, the affected carbon accounting areas are those that relate to the transfer to the executor or administrator; and
  - (c) in every case, the executor or administrator of more than 1 deceased participant's estate is treated under this Act as if they were a separate participant for each of those estates.
- (6) Following receipt of a notice complying with subsection (5) and the emissions return required under section 193, the EPA must take such of the following actions as are relevant:
- (a) if the transferee is not already registered under section 57, enter the transferee's name on the register kept under section 57 as a participant in respect of an activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1):
  - (b) if the transferee is already registered under section 57, but not in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in subsection (1), amend that registration to show that the transferee is now a participant in respect of that activity:
  - (c) if the transferor is registered under section 57 only in respect of carrying out the activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land to which the transmitted interest relates, remove the transferor's name from the register in respect of that activity:
  - (d) update the EPA's records under section 188(2) by—
    - (i) removing the affected carbon accounting areas from the transferor's record (if the transferor remains a participant only in respect of an activity listed in Part 1 of Schedule 4); and
    - (ii) recording any new carbon accounting areas constituted by operation of subsection (3)(b)(ii) or (iii) on the transferor's or transferee's record; and
    - (iii) recording the opening unit balance of any carbon accounting area referred to in subparagraph (ii), calculated in accordance with section 190(3)(a) or (c):
  - (e) as applicable, give notice to the transferor and transferee of the action taken by the EPA under paragraphs (a) to (d).
- (7) To avoid doubt,—
- (a) for the purposes of section 54(4), a transferor continues to be liable in respect of any obligations that arose in relation to the carbon accounting area or part of the carbon accounting area while the transferor was a participant in respect of the post-1989 forest land to which the transmitted

interest relates (for example, in respect of the submitting of returns and surrendering of units required under section 189); and

- (b) a transferor is not required to notify the EPA separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity; and
- (c) the EPA is not required to notify any person under section 188(6)(a) of the registration of the transferee under section 57 if that registration is in accordance with this section.

Section 192: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 192(1) table Part B: amended, on 1 January 2021, by section 228(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 192(1A): inserted, on 1 January 2021, by section 228(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 192(2): amended, on 1 January 2021, by section 228(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 192(3)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(5A): inserted, on 23 June 2020, by section 170 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 192(6): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(6)(d): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(6)(e): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(7)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 192(7)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

### **193 Emissions returns in relation to transmitted interests**

- (1) If section 192 applies, the transferor is not required to submit an emissions return under section 191 in respect of any post-1989 forest land to which the transmitted interest relates, but must submit an emissions return under this section by the date specified in section 192(3)(a) or 192(4)(b), as applicable.
- (2) An emissions return under this section must—
  - (a) be in respect of all affected carbon accounting areas; and
  - (b) in respect of each carbon accounting area covered by the return, be for the period—
    - (i) commencing on the latest of—
      - (A) the first day of the mandatory emissions return period in which the interest was transmitted; or

- (B) the date on which the land in the affected carbon accounting area became post-1989 forest land; or
- (C) the date of constitution of the carbon accounting area (as specified in section 190(5)), if the carbon accounting area was constituted following removal of land from a carbon accounting area under section 188(7)(b)(ii)(B) or transmission of an interest under section 192(3)(b); or
- (D) if an emissions return has been submitted under section 189(4A) in relation to the affected carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and
  - (ii) ending on the date of transmission; and
- (c) comply with section 189(5) and (6), as if the references in those provisions to subsection (4) were references to this section.
- (3) If a person submits an emissions return under this section,—
  - (a) section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section; and
  - (b) section 189(8) applies to the person as if the reference in that provision to “this section” was a reference to section 193.

Section 193: substituted, on 8 December 2009, by section 66 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 193(2)(b)(i)(A): amended, on 23 June 2020, by section 171 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Information about status of forest land*

Heading: inserted, on 23 June 2020, by section 172 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **194 Information about status of forest land**

- (1) Despite anything in this Act, the EPA must, on receipt of a written request for information about the carbon accounting area or areas to which it relates, provide a statement containing the information in subsection (2) to—
  - (a) the landowner of any post-1989 forest land in respect of which the holder of a registered forestry right or registered lease or party to a Crown conservation contract is a participant; or
  - (b) a prospective transferee, holder of a registered forestry right or registered lease, or party to a Crown conservation contract who has the written consent of the participant in respect of any post-1989 forest land.
- (2) A statement under subsection (1) must set out—
  - (a) the emissions returns (if any) that have been submitted in respect of the carbon accounting area or areas covered by the information request since

the carbon accounting area or areas were constituted, and the period covered by those returns; and

- (b) the unit balance of the carbon accounting area or areas covered by the information request.
  - (c) *[Repealed]*
- (3) *[Repealed]*

Section 194: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 194(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 194(2)(a): amended, on 8 December 2009, by section 67(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(2)(b): substituted, on 8 December 2009, by section 67(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(2)(c): repealed, on 8 December 2009, by section 67(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 194(3): repealed, on 8 December 2009, by section 67(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### Subpart 5—General

Subpart 5 heading: inserted, on 23 June 2020, by section 156(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### *Post-1989 forest land and pre-1990 forest land*

*[Repealed]*

Heading: repealed, on 23 June 2020, by section 156(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### *Input returns may be submitted before actual emissions returns*

Heading: inserted, on 23 June 2020, by section 173 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **194A Input returns may be submitted for certain emissions returns for forestry activities**

- (1) This section applies before a person submits an emissions return (for a forestry activity) of a type specified in the regulations.
- (2) The person may first submit, for the activity and 1 or more of the areas or carbon accounting areas covered by the emissions return, an input return that contains the data or information required by the regulations.
- (3) The input return must be submitted by—
  - (a) the deadline specified in the regulations; or
  - (b) any extended deadline granted by the EPA under the regulations.
- (4) In this section, **regulations** means regulations made under section 194C.

Section 194A: inserted, on 23 June 2020, by section 173 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **194B EPA may do calculations based on input return**

- (1) This section applies if the EPA receives an input return in accordance with section 194A.
- (2) As soon as practicable after receipt, the EPA must—
  - (a) calculate for each area or carbon accounting area covered by the input return, as required for the relevant emissions return,—
    - (i) the participant's emissions and removals; and
    - (ii) the participant's liability to surrender units for their emissions or entitlement to receive New Zealand units for their removals; and
  - (b) give a notice to the participant that includes—
    - (i) the calculations and the calculated amounts; and
    - (ii) the data, information, or other matters on which the calculations are based; and
    - (iii) a statement that the participant may choose to include the calculations and the calculated amounts in the relevant emissions return; and
    - (iv) a statement about the effect of subsection (3).
- (3) The EPA is not liable for anything that results from the calculations that it makes in good faith under this section, and the EPA's calculations and notice do not affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return).

Section 194B: inserted, on 23 June 2020, by section 173 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **194C Regulations for input returns**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) specifying the 1 or more types of emissions return for a forestry activity for which input returns may be submitted, which may be specified by reference to 1 or more of the following:
    - (i) the type of forestry activity;
    - (ii) any feature of the forest or land to which the activity relates;
    - (iii) any other matter;
  - (b) specifying the data or information that must be contained in any input return or the input return for each type of emissions return:

- (c) specifying the deadline for submitting the input return for each type of emissions return, which must be a reasonable period before the deadline for submitting the emissions return:
  - (d) providing for how, and for how long, the EPA may extend a deadline for submitting the input return for any emissions return or for each type of emissions return:
  - (e) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to the matters specified under paragraphs (b) to (d).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) Any guidelines or standards issued by the EPA under regulations made under subsection (1)(e) are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) A person who has complied with guidelines or standards issued by the EPA under regulations made under subsection (1)(e) is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

Section 194C: inserted, on 23 June 2020, by section 173 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### *Notification of status of forest land*

Heading: inserted, on 23 June 2020, by section 173 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **195 Notification of status of forest land**

- (1) The EPA must, if required by regulations made under section 168, notify the following persons of the details of the land that the EPA is satisfied is pre-1990 forest land, pre-1990 offsetting forest land, or post-1989 forest land in respect of which a person has registered as a participant under section 57, or that the EPA has declared to be exempt land:
- (a) the Registrar of the Maori Land Court in whose jurisdiction the land is situated in relation to Maori land; and
  - (b) the Registrar-General of Land in relation to land registered under the Land Transfer Act 2017; and
  - (c) the Registrar of Deeds in relation to land that is registered under the Deeds Registration Act 1908.
- (2) On receipt of a notice under subsection (1), the Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must record the notice on the appropriate register under the Land Transfer Act 2017, record of the Maori Land Court, or deeds index under the Deeds Registration Act 1908.

- (3) The Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must cancel any notices recorded under subsection (2) if required under regulations made under section 168.

Section 195: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 195(1): amended, on 1 January 2013, by section 88 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 195(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 195(1)(b): replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 195(2): amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

### *Forestry classifications of land*

Heading: replaced, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **196 Meaning of forestry classification**

In this Act, **forestry classification** means 1 or more classifications of an area of land that—

- (a) classifies the area by whether or how—
  - (i) a definition or matter in the Act that relates to forestry applies to the area; or
  - (ii) the area is eligible to have a definition or matter in the Act apply to it if certain requirements are satisfied; and
- (b) is given—
  - (i) by the EPA under section 196A (initial classification), 196C (change of classification to correct error), 196D (change of classification to update for changes), or 144 (review of classification); or
  - (ii) by the decision of the District Court or High Court under section 145 or 146.

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### **Examples**

If specified by regulations, an area of land might be classified as—

- pre-1990 forest land:
- post-1989 forest land:
- land that is eligible to become post-1989 forest land (if it becomes forest land):
- pre-1990 offsetting forest land:
- land that has been deforested, or deforested on specified dates:



- land that is eligible to be declared exempt land under section 184 (because of tree weeds):
- land that was forest land on 31 December 1989:
- exempt land:
- pre-1990 forest land to which the pre-1990 forest land allocation plan applies:
- something else.

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Section 196: replaced, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **196A EPA may give forestry classifications to areas of land**

The EPA may give 1 or more forestry classifications to an area of land in accordance with regulations made under section 196F.

Section 196A: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **196A Power to withdraw or suspend certain draft allocation plans**

*[Repealed]*

Section 196A: repealed, on 8 December 2009, by section 69 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### **196B Effect of forestry classifications**

- (1) The forestry classification of an area of land is conclusive evidence of how the relevant definition or matter in the Act applies to the area.
- (2) The EPA must apply this Act to the area in accordance with the forestry classification.
- (3) If a person's application, notice, emissions return, or other document under this Act specifies the forestry classification of an area of land, the document—
  - (a) need not include any information that is covered by the forestry classification; but
  - (b) for a forestry classification that an area of land is eligible for something if certain requirements are satisfied, must include information about whether the requirements are satisfied.
- (4) The EPA, or any person carrying out its powers, duties, or functions,—
  - (a) does not warrant that any forestry classification is correct and not based on, or affected by, something that is incorrect or that has materially changed; and
  - (b) is not liable for anything that results from a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed, as long as the forestry classification was given in good faith.

Section 196B: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **196C Change of forestry classification to correct error**

- (1) The EPA may change the forestry classification of an area of land to correct any error that the EPA is satisfied is contained in the classification, including where the classification was based on incorrect information.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

Section 196C: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **196D Change of forestry classification to update for changes**

- (1) The EPA may change the forestry classification of an area of land if—
  - (a) there is a material change in any of the information or facts on which the classification is based; or
  - (b) there is a material change to this Act, or to any regulations made under this Act, that affects the classification.
- (2) The EPA must make the change in accordance with regulations made under section 196F.

Section 196D: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **196E Forestry classification with effect before date classification given**

- (1) This section applies if a forestry classification has effect before the date on which the classification is given, whether—
  - (a) by the EPA under section 196A, 196C, or 196D or on review under section 144; or
  - (b) by the decision of a court on appeal under section 145 or 146.
- (2) The forestry classification must be ignored in respect of the period before the date of the decision—
  - (a) to the extent that it would increase the number of units that a person is required to surrender, or decrease the number of New Zealand units that a person is entitled to receive, in respect of that period; and
  - (b) in respect of any other matter specified by regulations made under section 196F.
- (3) In all other respects, the forestry classification must be applied to that period.
- (4) To avoid doubt, where the forestry classification is ignored under subsection (2), the earlier forestry classification (if any) applies instead.

Section 196E: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 196F Regulations for forestry classifications

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) specifying the forestry classifications that the EPA may give to areas of land:
  - (b) prescribing 1 or more methods or processes by which the EPA may give a new or changed forestry classification to an area, and those methods or processes—
    - (i) may or may not provide for a person to apply for a classification; and
    - (ii) may prescribe the fees or charges payable by an applicant for a classification to enable the recovery of all or part of the direct and indirect costs of the EPA in—
      - (A) receiving and processing the application; and
      - (B) considering, granting, or declining the application; and
    - (iii) must require the EPA to first consult the persons that the regulations specify are likely to be substantially affected by the classification, unless the only persons likely to be substantially affected have applied for, or agreed to, the classification:
  - (c) providing for when a forestry classification comes into effect, which may, for example,—
    - (i) subject to section 196E, be before the date of the decision if the classification is changed under section 196C or 196D, on review by the EPA under section 144, or on appeal to the court under section 145 or 146:
    - (ii) differ for different forestry classifications or circumstances, such as whether a person is responsible for a material change described in section 196D(1)(a):
  - (d) specifying matters for the purposes of section 196E(2)(b) (in respect of which a forestry classification is ignored for the period before the date of the decision):
  - (e) providing for the publication of the following in 1 or more notices, instruments, maps, or tools, which may be electronic:
    - (i) any decision to give a forestry classification to an area of land:
    - (ii) the current forestry classifications of all areas of land, and any related matters.
- (2) Examples of the costs that may be recovered under regulations made under subsection (1)(b)(ii) include (but are not limited to)—
  - (a) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with the application:

- (b) the costs of services provided by third parties.
- (3) Section 167(4) also applies to regulations made under subsection (1)(b)(ii).
- (4) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (5) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 196F: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Grant-funded forests*

Heading: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **197 Entitlement to units for removals from grant-funded forests**

A participant in an activity of standard forestry or permanent forestry in a carbon accounting area is not entitled to receive New Zealand units for removals that—

- (a) are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under section 197A (a **grant-funded forest**); and
- (b) occur during the stand-down period for that forest prescribed in regulations made under section 197A.

Section 197: replaced, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **197A Regulations for grant-funded forests**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing Crown grant schemes relating to forestry:
  - (b) prescribing stand-down periods for grant-funded forests:
  - (c) prescribing methodologies for attributing removals to grant-funded forests:
  - (d) providing for any other matters contemplated by section 197, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
  - (a) for different grant schemes:
  - (b) for different periods of time:
  - (c) for different forest species:

- (d) for different parts of New Zealand.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under subsection (1)(c) may relate to emissions or removals that—
  - (a) stem directly from the activity; or
  - (b) are associated with a product or other thing that is the subject of the activity.

Section 197A: inserted, on 23 June 2020, by section 174 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Part 5A

### Sector-specific provisions: liquid fossil fuels

Part 5A heading: inserted, on 23 June 2020, by section 156(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### Subpart 2—Liquid fossil fuels sector

*[Repealed]*

Subpart 2 heading: repealed, on 23 June 2020, by section 156(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **198 Registration as participant by purchasers of obligation fuel**

- (1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 3 of Schedule 4 may be submitted to the EPA at any time.
- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 3 of Schedule 4, the registration takes effect 12 months after the date of the notice issued under section 57(6).
- (3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 3 of Schedule 4, the EPA must remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the notice issued under section 58(3)(b).
- (4) The participant who is registered, or removed from registration, under this section must give notice of that matter, and the date that it took or takes effect, to every person who is registered under section 56 in respect of an activity in Part 2 of Schedule 3.
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA's notice about, or becomes aware of, the matter.
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

Section 198: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 198 heading: amended, on 1 July 2013, by section 89 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 198(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 198(2): replaced, on 23 June 2020, by section 175 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 198(3): replaced, on 23 June 2020, by section 175 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 198(4): inserted, on 23 June 2020, by section 175 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 198(5): inserted, on 23 June 2020, by section 175 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 198(6): inserted, on 23 June 2020, by section 175 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **199 Historical information sufficient to satisfy EPA**

- (1) A person who carries out an activity listed in Part 3 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of obligation fuel purchased by the person in the year prior to the year in which the person submits the application (and any other prior years the person wishes).
- (2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4), satisfy itself that the person is, or will be when the person's registration takes effect, carrying out the activity listed in Part 3 of Schedule 4 on the basis of that information.
- (3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy him or herself that the person is, (or will, when the person's registration takes effect, be) carrying out the activity listed in Part 3 of Schedule 4.

Section 199: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 199 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 199(1): amended, on 1 July 2013, by section 90(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 199(2): amended, on 1 July 2013, by section 90(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 199(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 199(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **200 Effect of purchasing less than threshold level of obligation fuel**

If a person is a participant in respect of the activity listed in Part 3 of Schedule 4, and in any year the volume of obligation fuel that the person purchases is less than, or the person knows that the volume purchased will be less than, the threshold specified in Part 3 of Schedule 4—

- (a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and
- (b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and
- (c) the person remains a participant in respect of the activity until the person's name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

Section 200: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 200 heading: amended, on 1 July 2013, by section 91(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 200: amended, on 1 July 2013, by section 91(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 200(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 200(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **201 Effect of registration by purchasers of obligation fuel**

A participant in respect of an activity listed in Part 2 of Schedule 3 is not required to surrender units in respect of obligation fuel that is purchased by a person who is a participant in respect of an activity listed in Part 3 of Schedule 4.

Section 201: substituted, on 8 December 2009, by section 70 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 201 heading: amended, on 1 July 2013, by section 92(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 201: amended, on 1 July 2013, by section 92(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **202 Activities added to Part 2 of Schedule 3**

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, amend Part 2 of Schedule 3 by adding activities relating to the following matters:
  - (a) owning or operating a ship onto which goods are loaded at any port in New Zealand for carriage to and unloading at any other port in New Zealand, if the ship consumes fuel that is purchased—
    - (i) outside New Zealand; or

- (ii) in New Zealand, but in respect of which no participant is required to surrender units under this Act; or
  - (b) fishing within New Zealand's exclusive economic zone, if the vessel used for fishing consumes fuel that is purchased outside New Zealand.
- (2) The Minister may only recommend the making of an Order in Council under subsection (1) if—
  - (a) no participant is, prior to making the recommendation, liable to surrender units in respect of the emissions from the fuel consumed while the activity that is to be the subject of the recommendation is carried out; and
  - (b) adding the activity is—
    - (i) necessary to ensure that A is similar to B, where—
      - (A) A is the cost increases that a person carrying out the activity will face, if the activity is added, due to the obligation imposed by this Act on the person to surrender units in respect of the emissions from the fuel consumed while carrying out the activity; and
      - (B) B is the cost increases that a person carrying out a comparable activity faces due to any obligations imposed by this Act on persons carrying out an activity listed in Part 2 of Schedule 3 to surrender units in respect of the emissions from the fuel consumed while the comparable activity is carried out; and
    - (ii) not inconsistent with international climate change obligations; and
  - (c) recommending the order will not result in costs to the Crown that exceed the benefits that the Crown expects to receive after the order is made.
- (3) An Order in Council made under subsection (1) takes effect for the removal activity or activities concerned on and from—
  - (a) 1 January of the next year, if made on or before 30 June in any year; or
  - (b) 1 July of the next year, if made on or after 1 July in any year.

Section 202: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 202(2): amended, on 23 June 2020, by section 176(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 202(2)(b)(ii): amended, on 23 June 2020, by section 176(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 202(3): replaced, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

## 202A Orders are confirmable instruments

The explanatory note of an Order in Council made under section 202(1) must indicate that—



- (a) it is a confirmable instrument under section 47B of the Legislation Act 2012; and
- (b) it is revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
- (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 202A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

### **203 Treatment of obligation fuels**

- (1) This section applies if, in breach of the Customs and Excise Act 2018, 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 2018.

Section 203: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 203(1): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 203(2): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

## **Part 5B**

### **Sector-specific provisions: stationary energy**

Part 5B heading: inserted, on 23 June 2020, by section 156(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **Subpart 3—Stationary energy sector**

*[Repealed]*

Subpart 3 heading: repealed, on 23 June 2020, by section 156(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **204 Participant with respect to mining coal or natural gas**

- (1) This section applies if the following activities listed in Part 3 of Schedule 3 are carried out—
  - (a) mining coal where the volume of coal mined exceeds 2 000 tonnes in a year;
  - (b) mining natural gas, other than for export.
- (2) If this section applies and—
  - (a) a permit is required under the Crown Minerals Act 1991 to carry out the mining, then the person who holds the permit is to be treated as the person carrying out the activity; or

- (b) no permit is required to carry out the mining, then the owner of the mine is to be treated as the person carrying out the activity.
- (3) Despite subsection (2)(a), subsection (4) applies if—
  - (a) a permit relating to mining coal is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the coal mined under the permit; or
  - (b) a permit relating to mining natural gas is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the gas mined under the permit.
- (4) If this subsection applies,—
  - (a) section 157 does not apply; and
  - (b) each of the individual holders referred to in subsection (3)—
    - (i) is to be treated as the person carrying out the activity referred to in subsection (1) in relation to any natural gas or coal (as applicable) to which the person is entitled under the permit; and
    - (ii) must comply with the obligations of a participant under this Act in relation to the natural gas or coal (as applicable) to which the person is entitled under the permit.

Section 204: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 204(2)(a): amended, on 1 January 2013, by section 93 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 204(3): added, on 8 December 2009, by section 71 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 204(4): added, on 8 December 2009, by section 71 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## 205 Mining natural gas in exclusive economic zone and continental shelf

- (1) This Act applies to the activity of mining natural gas, other than for export, listed in Part 3 of Schedule 3, if that activity is carried out anywhere within the territorial limits of New Zealand, the exclusive economic zone, or in, on, or above the continental shelf.
- (1A) To avoid doubt, a person who carries out the activity of mining natural gas, other than for export, anywhere within the territorial limits of New Zealand, the exclusive economic zone, or in, on, or above the continental shelf is not to be treated as importing the natural gas mined from that activity for the purposes of this Act.
- (2) For the purposes of this section,—
  - continental shelf** has the same meaning as in section 2(1) of the Continental Shelf Act 1964
  - exclusive economic zone** has the same meaning as in section 9 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977.

Section 205: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 205(1A): inserted, on 8 December 2009, by section 72 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **206 Obligation with respect to combusting used oil, waste oil, and waste**

A participant who carries out the activity of combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat listed in Part 3 of Schedule 3 is not required to surrender units in respect of any—

- (a) emissions that result from the combustion of used oil or waste oil if the used oil or waste oil combusted is an obligation fuel; or
- (b) carbon dioxide that results from the combustion of waste that is organic waste.

Section 206: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **207 Obligation with respect to mining coal**

A participant who carries out the activity of mining coal, where the volume of coal mined exceeds 2 000 tonnes in a year, listed in Part 3 of Schedule 3—

- (a) is not required to surrender units in respect of any carbon dioxide emissions from any coal that is exported;
- (b) is required to surrender units in respect of any coal seam gas emissions that result from the activity.

Section 207: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

## **208 Purchase of coal or natural gas from certain related companies of Part 3 of Schedule 3 participant**

- (1) For the purposes of the activities listed in Part 4 of Schedule 4, the reference to a participant who mines coal or natural gas includes the following persons:
  - (a) a wholly owned subsidiary of a participant who mines coal or natural gas;
  - (b) a holding company of which a participant who mines coal or natural gas is a wholly owned subsidiary;
  - (c) another wholly owned subsidiary of a holding company of which a participant who mines coal or natural gas is the wholly owned subsidiary.
- (2) In subsection (1), **subsidiary** and **holding company** have the same meaning as in section 5 of the Companies Act 1993.

Section 208: substituted, on 8 December 2009, by section 73 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**209 Registration as participant by purchasers of coal or natural gas**

- (1) An application under section 57 to be registered as a participant in respect of an activity listed in Part 4 of Schedule 4 may be submitted to the EPA at any time.
- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 4 of Schedule 4, the registration takes effect 12 months from the date of the notice issued under section 57(6).
- (3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 4 of Schedule 4, the EPA must remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the date of the notice issued under section 58(3)(b).
- (4) The participant who is registered, or removed from registration, under this section in respect of an activity must give notice of that matter, and the date that it took or takes effect, to every person who—
  - (a) mines—
    - (i) coal, if the activity is purchasing coal; or
    - (ii) natural gas, if the activity is purchasing natural gas; and
  - (b) is registered under section 56.
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA's notice about, or becomes aware of, the matter.
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

Section 209: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 209(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 209(2): replaced, on 23 June 2020, by section 177 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 209(3): replaced, on 23 June 2020, by section 177 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 209(4): replaced, on 23 June 2020, by section 177 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 209(5): inserted, on 23 June 2020, by section 177 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 209(6): inserted, on 23 June 2020, by section 177 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**210 Historical information sufficient to satisfy EPA**

- (1) A person who carries out an activity listed in Part 4 of Schedule 4 may, in an application to register as a participant in respect of that activity submitted under section 57, include with the application information about the total volume of coal or natural gas, as the case may be, purchased by the person in the

year prior to the year in which the person submits the application (and any other prior years the person wishes).

- (2) If the EPA receives an application under section 57 that includes the information specified in subsection (1), the EPA may, for the purposes of section 57(4), satisfy itself that the person is (or will, when the person's registration takes effect, be) carrying out an activity listed in Part 4 of Schedule 4 that is specified in the application on the basis of that information.
- (3) Nothing in this section prevents the EPA from requiring a person specified in subsection (1) to provide any further information that the EPA requires to satisfy itself that the person is, or will be when the person's registration takes effect, carrying out the activity listed in Part 4 of Schedule 4 that is specified in the application.

Section 210: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 210 heading: amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 210(2): amended, on 1 January 2013, by section 94(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 210(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 210(3): amended, on 1 January 2013, by section 94(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 210(3): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## **211 Effect of purchasing less than threshold level of coal or natural gas**

If a person is a participant in respect of an activity listed in Part 4 of Schedule 4, and in any year the volume of coal or natural gas that the person purchases is less than, or the person knows that the volume purchased will be less than, the thresholds specified in Part 4 of Schedule 4,—

- (a) the person is not required to notify the EPA under section 59(1) that the person has ceased, or will cease, to carry out the activity; and
- (b) the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and
- (c) the person remains a participant in respect of the activity until the person's name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.

Section 211: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 211(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 211(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

**212 Effect of registration by purchasers of coal or natural gas**

A participant who mines coal or mines natural gas is not required to surrender units in respect of coal or natural gas that is purchased by a person who is a participant in respect of an activity listed in Part 4 of Schedule 4.

Section 212: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 212: amended, on 8 December 2009, by section 74 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

**Part 5C****Sector-specific provisions: agriculture**

Part 5C heading: inserted, on 23 June 2020, by section 156(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**Subpart 4—Agriculture**

*[Repealed]*

Subpart 4 heading: repealed, on 23 June 2020, by section 156(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**213 Participant in respect of subpart 4 of Part 5 of Schedule 3**

- (1) If an activity listed in subpart 4 of Part 5 of Schedule 3 is carried out, the landowner of the land on which it is carried out is to be treated as the person carrying out the activity unless the EPA is satisfied that there is a written agreement in place between the landowner and a third party that—
  - (a) allows access by the third party to the land on which the activity listed in subpart 4 of Part 5 of Schedule 3 is being carried out and the third party is carrying out the activity listed in subpart 4 of Part 5 of Schedule 3 on the land; and
  - (b) was entered into—
    - (i) on or after the date appointed in the Order in Council under section 2A(5D) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and is for a term of at least 3 years; or
    - (ii) before the date appointed in the Order in Council under section 2A(5D) that applies the activity listed in subpart 4 of Part 5 of Schedule 3 to the person carrying out the activity, and had at least 3 years until expiry at the date appointed in the Order in Council.
- (2) If the EPA is satisfied that the criteria specified in subsection (1)(a) and (b) are met, the third party is to be treated as the person carrying out the activity.
- (3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances specified in subsection (2), a third party, is to be treated as carrying out an activity listed in subpart 4 of Part 5 of Schedule 3.

Section 213: substituted, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 213(1): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 213(1)(b)(i): amended, on 23 June 2020, by section 178 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 213(1)(b)(ii): amended, on 23 June 2020, by section 178 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 213(2): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

#### **214 Units not required to be surrendered for fertilisers embedded in products**

A participant who carries out the activity listed in subpart 1 of Part 5 of Schedule 3 of importing or manufacturing synthetic fertilisers containing nitrogen is not required to surrender units in respect of any synthetic fertiliser containing nitrogen that—

- (a) is permanently embedded in a product as part of a manufacturing process; and
- (b) does not result in any emissions.

Section 214: substituted, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### **215 Ministers to report on alternative pricing system for farm-level agriculture emissions**

- (1) The Minister and the Minister of Agriculture must prepare a report that outlines a system to put a price on emissions from agricultural activities (including, but not limited to, the activities listed in Part 5 of Schedule 3) as an alternative to the emissions trading scheme currently provided for in this Act.
- (2) The report must be prepared and made publicly available by 31 December 2022.
- (3) The report must discuss the following matters in relation to the emissions trading scheme and the alternative system outlined under subsection (1):
  - (a) how emissions from those activities would be priced and accounted for:
  - (b) whether other activities or participants would be included in the system:
  - (c) what methodologies would be used for calculating emissions and removals:
  - (d) what assistance, if any, would be given to participants:
  - (e) how emissions of methane would be treated relative to other greenhouse gases, including whether, how, and what types of removals would be recognised:
  - (f) what information participants would need to provide and how that information would be used, shared, or made publicly available:

- (g) how participants and relevant industry groups would be engaged with in designing, implementing, and operating the system:
  - (h) who would be responsible for administering the system:
  - (i) what amendments would need to be made to legislation to enable the system to work.
- (4) Before preparing the report, the Ministers must—
- (a) request a report from the Climate Change Commission under section 5K about what assistance, if any, should be given to participants; and
  - (b) consider that advice.
- (5) In this section, **Minister of Agriculture** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Commodity Levies Act 1990.

Section 215: inserted, on 23 June 2020, by section 179 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 215 Effect of purchasing or farming less than threshold level

*[Repealed]*

Section 215: repealed, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## 216 Regulations for voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) providing for a process by which a person carrying out an activity described by the fertiliser–farmer subpart or animals–farmer subpart (of Part 5 of Schedule 3) may choose to be treated as a participant in the activity described:
  - (b) providing that the person may choose to be treated in that way in respect of 1 or both of—
    - (i) obligations to report under this Act on the emissions from the activity:
    - (ii) obligations to surrender units under this Act for the emissions from the activity:
  - (c) providing for the following participants in **corresponding processor activities** to be notified:
    - (i) a participant in a fertiliser–processor activity that corresponds to a fertiliser–farmer activity for which a participant has become subject to obligations to surrender units under this Act:



- (ii) a participant in an animals–processor activity that corresponds to an animals–farmer activity for which a participant has become subject to obligations to surrender units under this Act:
- (d) if regulations are made under paragraph (b)(ii), providing for a process by which a participant in a corresponding processor activity—
  - (i) ceases to be subject to obligations to surrender units under this Act in respect of that activity, or becomes subject to such obligations as varied to ensure that only 1 person is liable to surrender units in respect of the corresponding processor activities or the activities to which they correspond; and
  - (ii) ceases to be entitled to allocations of units in respect of the activities for which they are no longer liable to surrender units.
- (2) Before recommending the making of the regulations, the Minister must consult the Minister of Agriculture.
- (3) *See* section 3B for consultation requirements that apply to the making of the regulations.

Section 216: inserted, on 23 June 2020, by section 179 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **216 Effect of registration by farmers**

*[Repealed]*

Section 216: repealed, on 8 December 2009, by section 75 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## **Part 5D**

### **Sector-specific provisions: transitional provisions**

Part 5D heading: inserted, on 23 June 2020, by section 156(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **Subpart 5—Transitional provisions**

*[Repealed]*

Subpart 5 heading: repealed, on 23 June 2020, by section 156(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **217 Transitional provision for penalties**

- (1) This section applies in respect of the first year in which a participant is required to surrender units for emissions in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3.
- (1A) Subsection (2) applies—
  - (a) to the participant if they submit an annual emissions return that relates to that first year; and

- (b) in respect of the units that the participant is required to surrender in respect of the activity.
- (2) Despite anything in this Act,—
  - (a) *[Repealed]*
  - (b) if the emissions return of a participant to whom subsection (1) applies is amended by the EPA under section 120, the participant—
    - (i) is liable to surrender any units or additional units required to be surrendered under section 123(3); but
    - (ii) is not liable to pay a penalty under section 134, 134A, or 134C in relation to those units:
  - (c) if a participant to whom subsection (1) applies fails to surrender units or additional units as required under section 123(3), section 159(1)(a) applies as if the date of the notice given under section 123(3) were the date of the penalty notice given under section 134.
- (3) The participant—
  - (a) is not liable to pay a penalty under section 134B or 134D that relates to an allocation of units in respect of that first year; and
  - (b) is not liable for any infringement offence (as defined by section 30L) in respect of an act or omission in that first year.

Section 217: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Section 217(1): replaced, on 23 June 2020, by section 180(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 217(1A): inserted, on 23 June 2020, by section 180(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 217(2)(a): repealed, on 23 June 2020, by section 180(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 217(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 217(2)(b)(ii): amended, on 1 January 2021, by section 229(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 217(2)(c): amended, on 1 January 2021, by section 229(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 217(3): inserted, on 1 January 2021, by section 229(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **218 Transitional provision for voluntary reporting**

*[Repealed]*

Section 218: repealed, on 23 June 2020, by section 181 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**219 Transitional provision for surrender obligations of certain participants**

- (1) This section applies to a person who carries out the following in the specified period (the **excluded period**):
  - (a) a fertiliser–processor activity in the period starting on 1 January 2011 and ending on—
    - (i) 31 December 2024, if by that date no earlier end date has been appointed for that activity; or
    - (ii) an earlier end date appointed for that activity by an Order in Council made under subsection (3)(a); or
  - (b) a fertiliser–farmer activity in the first year in which the fertiliser–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on a date appointed by an Order in Council made under section 2A(5B)); or
  - (c) an animals–processor activity in the period starting on 1 January 2011 and ending on—
    - (i) 31 December 2024, if by that date no earlier end date has been appointed for that activity; or
    - (ii) an earlier end date appointed for that activity by an Order in Council made under subsection (3)(b); or
  - (d) an animals–farmer activity in the first year in which the animals–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on 1 January 2024 or a later date appointed by an Order in Council made under section 2A(5D)).
- (2) Even if the person’s emissions return reports emissions for the excluded period, the person is not liable under this Act to surrender units for those emissions.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint 1 or both of the following (an **earlier end date**):
  - (a) a date for the purpose of subsection (1)(a)(ii):
  - (b) a date for the purpose of subsection (1)(c)(ii).
- (4) Before recommending the making of an order appointing an earlier end date, the Minister must—
  - (a) consult with the Minister of Agriculture (as defined in section 215); and
  - (b) consider the report provided by the Climate Change Commission under section 220; and
  - (c) be satisfied that progress of the kind referred to in section 220(b) has been insufficient.
- (5) In recommending the making of an order appointing an earlier end date, the Minister must not recommend a date that is before 1 July 2022.

Section 219: replaced, on 23 June 2020, by section 182 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **220 Commission to report on progress towards meeting farm-level obligations**

The Commission must, not later than 30 June 2022, provide written advice to the Minister on—

- (a) the progress that has been made towards meeting the primary sector climate change commitments set out in Schedule 5; and
- (b) the progress that has been made towards participants in an activity listed in subpart 4 of Part 5 of Schedule 3 being ready to start complying with reporting and surrender obligations under this Act in respect of that activity; and
- (c) any barriers to those participants being ready to start complying with those obligations; and
- (d) what further steps (if any) are required by the primary sector or the Government for those participants to be ready to start complying with those obligations.

Section 220: replaced, on 23 June 2020, by section 182 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **221 Additional transitional provisions for Part 3 of Schedule 4 participants**

*[Repealed]*

Section 221: repealed, on 23 June 2020, by section 182 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **222 Transitional provisions regarding regulations that replace existing unit register regulations**

*[Repealed]*

Section 222: repealed, on 23 June 2020, by section 182 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **222A Transitional provision for liability to surrender units to cover emissions from activities relating to liquid fossil fuels, stationary energy, and industrial processes**

*[Repealed]*

Section 222A: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **222B Transitional provision for entitlement to receive New Zealand units for removal activities**

*[Repealed]*

Section 222B: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222C Transitional provision permitting payment of money instead of surrender of units to cover emissions**

*[Repealed]*

Section 222C: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222D Issuing New Zealand units to meet surrender obligation**

*[Repealed]*

Section 222D: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222E Transitional provisions relating to reporting**

*[Repealed]*

Section 222E: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222F Transitional provision for allocation to industry**

*[Repealed]*

Section 222F: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222G Transitional provision regarding prohibition on ability to export New Zealand units**

*[Repealed]*

Section 222G: repealed, on 1 January 2013, by section 97 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**222H Transitional provision for unincorporated bodies**

- (1) This section applies to 3 or more joint owners of land, leaseholders, forestry right holders, or parties to a Crown conservation contract who registered together as a participant (**joint participants**) in accordance with section 157 before the commencement of this section.
- (2) If this section applies, then—
  - (a) the joint participants are, on and after the commencement of this section, to be treated as members of an unincorporated body that is a participant, but the unincorporated body is not required to—
    - (i) notify the EPA that it is a participant as specified in section 157(2)(c)(ii)(A); or
    - (ii) apply to be registered as a participant as specified in section 157(2)(c)(ii)(B); and
  - (b) the EPA must notify the joint participants that they are—
    - (i) now members of an unincorporated body for the purposes of this Act:

- (ii) required to provide the details specified in section 157(2)(c)(ii)(C) and (2)(d) to the EPA within 20 working days of receiving the notice, unless the EPA has these details; and
  - (c) the EPA must, after receiving the information specified in paragraph (b)(ii), update any records relating to the joint participants, including (but not limited to) by removing the names of the joint participants from any register kept under this Act and substituting the name of the unincorporated body.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) Despite subsection (2),—
  - (a) until the EPA updates any records in relation to any joint participants, the joint participants together remain registered as a participant, and are jointly and severally liable for all obligations, and jointly and severally entitled to all benefits, arising from their status as a participant; and
  - (b) the joint participants whose names have been removed from a register and the unincorporated body whose name has been substituted on that register are to be treated for the purposes of this Act as the same participant.

Section 222H: inserted, on 8 December 2009, by section 81 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

Section 222H(2)(a)(i): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(b): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(b)(ii): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(2)(c): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

Section 222H(3): repealed, on 23 June 2020, by section 183 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 222H(4): repealed, on 23 June 2020, by section 183 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 222H(5): repealed, on 23 June 2020, by section 183 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 222H(6)(a): amended, on 5 December 2011, by section 19 of the Climate Change Response Amendment Act 2011 (2011 No 15).

## Part 6 Targets

Part 6: added, on 26 September 2008, by section 50 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Part 6 heading: replaced, on 1 January 2013, by section 98 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 223 Establishment of Household Fund

*[Repealed]*

Section 223: repealed, on 8 December 2009, by section 82 of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### 224 Gazetting of targets

*[Repealed]*

Section 224: repealed, on 14 November 2019, by section 11 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

### 225 Regulations relating to targets

*[Repealed]*

Section 225: repealed, on 14 November 2019, by section 11 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

## Part 7 Synthetic greenhouse gas levy

Part 7: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### 226 Overview of functions and responsibilities of EPA and agencies under this Part, Customs and Excise Act 2018, and Land Transport Act 1998

- (1) This section is a guide to the functions and responsibilities of the EPA and the agencies in relation to the synthetic greenhouse gas levy, but it does not affect the interpretation or the application of the provisions of this Part, the Customs and Excise Act 2018, or the Land Transport Act 1998.
- (2) Under this Part,—
  - (a) the functions of the EPA are to—
    - (i) receive and collate information from the agencies under section 241; and
    - (ii) publish information in accordance with section 250; and
    - (iii) monitor compliance with subpart 1; and
  - (b) the function of the Registrar of Motor Vehicles is to receive payment of the motor vehicle levy under section 228; and

- (c) the function of the New Zealand Customs Service is to receive payment of the goods levy under section 229; and
  - (d) it is a function of the EPA and the agencies to recover unpaid levies under section 230.
- (3) Under the Customs and Excise Act 2018, the function of the New Zealand Customs Service is to assess and collect the goods levy and, for this purpose,—
- (a) assess and collect the levy on goods as if the levy were a duty; and
  - (b) recover unpaid levies as if they were unpaid duties.
- (4) Under the Land Transport Act 1998, the function of the Registrar of Motor Vehicles is to assess and collect the motor vehicle levy.

Section 226: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 226 heading: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 226(1): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 226(3): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### Subpart 1—Synthetic greenhouse gas levy

Subpart 1: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### *Levy imposed*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **227 Synthetic greenhouse gas levy imposed**

- (1) A levy is imposed on—
- (a) a leviable motor vehicle that is registered on or after 1 July 2013, but is not imposed on a motor vehicle that was registered before 1 July 2013 and registered again on or after 1 July 2013; and
  - (b) an item of leviable goods that is imported into New Zealand on or after 1 July 2013.
- (2) However, if a leviable motor vehicle is registered more than once on or after 1 July 2013, it is liable for the levy only once.

Section 227: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **228 Person who registers leviable motor vehicle responsible for paying levy**

- (1) The person who registers a leviable motor vehicle on or after 1 July 2013 is responsible for paying the levy.



- (2) The levy (including any goods and services tax payable on it) must be paid to the Registrar of Motor Vehicles at the same time as the person pays for the registration of the vehicle.

Section 228: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **229 Importer of leviable goods must pay levy**

- (1) A person who imports leviable goods on or after 1 July 2013 must pay the levy at the prescribed rate for the goods.
- (2) The person must pay the levy (including any goods and services tax payable on it) to the New Zealand Customs Service at the same time as duty under the Tariff Act 1988 or excise-equivalent duty would be paid on the goods if any were payable.

Section 229: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **230 Levies are debt due to the Crown**

- (1) A levy that becomes payable is a debt due to the Crown.
- (2) The EPA may, on behalf of the Crown, recover the debt in a court of competent jurisdiction.
- (3) This section does not limit—
- (a) the power of the Customs to recover an unpaid amount of goods levy as a debt under the Customs and Excise Act 2018; or
  - (b) the power of the Registrar of Motor Vehicles to recover an unpaid amount of motor vehicle levy as a debt under the Land Transport Act 1998.

Section 230: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 230(3)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### **231 Penalties for failure to pay levy**

*[Repealed]*

Section 231: repealed, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### **232 Application of provisions of Customs and Excise Act 2018**

- (1) The provisions of the Customs and Excise Act 2018 that apply to the collection of duties (including, without limitation, subpart 8 of Part 3 of that Act) apply, with all necessary modifications, to the collection of the goods levy under this Act as if the levy were a duty to which that Act applies.
- (2) However,—

- (a) section 138(2) of that Act applies as if the reference to dutiable goods were a reference to leviable goods:
  - (b) section 138(3) and (4) of that Act apply as if they did not refer to the owner of the goods or the licensee of a Customs controlled area.
- (3) Despite subsection (1), the following provisions of the Customs and Excise Act 2018 do not apply to the collection of the levy:
- (a) section 139:
  - (b) section 144:
  - (c) section 146:
  - (d) section 147:
  - (e) section 153.

Section 232: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 232 heading: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(1): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(2)(a): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(2)(b): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 232(3): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

### *Calculation of levy*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **233 Rate of synthetic greenhouse gas levy**

- (1) The levy rate that applies to a leviable motor vehicle, a class of leviable motor vehicle, or an item or a class of leviable goods in a levy year must be calculated in accordance with the following formula:

$$R = A \times B \times GWP$$

where—

A is the amount of synthetic greenhouse gas contained in the class of leviable motor vehicle or leviable goods, or the item of leviable goods

B is the price of carbon specified by or under regulations made under section 30W or, if section 236(2) applies, set by that provision

GWP is the global warming potential specified in regulations for the specified synthetic greenhouse gas

R is the rate of the levy.

- (2) In this section, **amount** means the weight or any other unit of measurement of a synthetic greenhouse gas prescribed for the purpose of this section in regulations made under section 246(1)(c) or (e).
- (3) For the purpose of variable A, the amount of synthetic greenhouse gas contained in a leviable motor vehicle or leviable good is—
  - (a) the amount specified by regulations for that class of leviable motor vehicle or leviable good, or for an item of leviable good; and
  - (b) if no amount is specified by regulations, the actual amount contained in the leviable motor vehicle or leviable good.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*

Section 233: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 233(1) formula item B: replaced, on 1 January 2021, by section 230(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 233(3): amended, on 23 June 2020, by section 184(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 233(4): repealed, on 1 January 2021, by section 230(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 233(5): repealed, on 1 January 2021, by section 230(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 233(6): repealed, on 1 January 2021, by section 230(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **234 Transitional provision for synthetic greenhouse gas levy**

*[Repealed]*

Section 234: repealed, on 23 June 2020, by section 185 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **235 Temporary suspension of levy set by section 233**

*[Repealed]*

Section 235: repealed, on 1 January 2019, by section 235(5).

#### **236 Maximum price of carbon for purpose of levy calculation**

- (1) This section applies to the calculation of variable B of the formula set out in section 233(1).
- (2) If the methodology prescribed under section 30W(1)(a) would result in a price of carbon that is higher than the following price (the **maximum price**) for the levy year specified, the price of carbon is set at the maximum price for that levy year but only for the purposes of the calculation in section 233:
  - (a) \$25, for a levy year that is 2020 or earlier; or

- (b) \$35, for a levy year that is 2021 or later, but that starts before the start date for auctions.
- (3) In this section, **start date for auctions** means the date specified by regulations made under section 30GA(2)(a) as the date on which the sale of New Zealand units by auction commences.
- Section 236: replaced, on 23 June 2020, by section 186 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 236(2): amended, on 1 January 2021, by section 231(a) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).
- Section 236(2): amended, on 1 January 2021, by section 231(b) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### 237 Levy rate exclusive of GST

A levy rate calculated in accordance with section 233 is exclusive of goods and services tax.

Section 237: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 237: amended, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 238 Levy rate for period from 1 July 2013 to 31 December 2013

*[Repealed]*

Section 238: repealed, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### 239 Levy rate to apply for single calendar year on and after 1 January 2014

- (1) A levy rate applies for 1 levy year.
- (2) *[Repealed]*
- (3) If no rate is set before the beginning of a levy year, the levy rate for that year is the same as it was for the preceding levy year.
- (4) However, if a levy rate is set for a levy year after the beginning of the levy year, the new levy rate applies from the beginning of the quarter of the levy year following the date on which the levy rate was set until the close of the levy year.
- (5) For the purposes of this section and section 241,—
- (a) a levy rate is set on the date on which the regulations prescribing the rate come into force:
- (b) the quarters of a levy year are—
- (i) 1 January to 31 March:
- (ii) 1 April to 30 June:
- (iii) 1 July to 30 September:
- (iv) 1 October to 31 December.

Section 239: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 239(2): repealed, on 1 January 2019, by section 9 of the Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24).

### *Levies to be paid into Crown Bank Account*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **240 Agencies to pay levy into Crown Bank Account**

The EPA and the agencies must pay the amount of all levies received under this Part into a Crown Bank Account.

Section 240: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Information*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **241 Agencies to provide information to EPA quarterly**

- (1) The agencies must, for each quarter of a levy year, keep records of and provide to the EPA all the following information:
  - (a) the amount of levy money received:
  - (b) the number of—
    - (i) leviable motor vehicles registered:
    - (ii) consignments of leviable goods imported:
  - (c) the number of persons who were required to pay the levy by section 228 or 229 (as applicable):
  - (d) the number of persons who failed to pay the levy as required by section 228 or 229 (as applicable):
  - (e) the amount of levy money refunded:
  - (f) the amount of levy money unable to be recovered.
- (2) The information described in subsection (1) must be provided for each class of leviable motor vehicle or and for each class of leviable goods.

Section 241: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **242 Agencies and EPA to share information**

Section 149(2) applies as if the EPA and the agencies were referred to in section 149(1).

Section 242: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**243 Circumstances where levy may be refunded**

- (1) Subsection (2) applies in relation to a levy paid under section 228 on—
  - (a) a motor vehicle containing a leviable good; or
  - (b) a motor vehicle containing a synthetic greenhouse gas that is, because it is imported after 1 July 2013, subject to the emissions trading scheme under subpart 2 of Part 4 of Schedule 3.
- (2) The EPA, upon application in an approved manner by the person responsible for the payment required under section 228, must refund the motor vehicle levy paid on the relevant motor vehicle, but only if the person applying for the refund establishes, to the satisfaction of the EPA, that—
  - (a) the motor vehicle levy has been paid in relation to the relevant motor vehicle; and
  - (b) the relevant motor vehicle is one to which subsection (1) applies.

Section 243: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 243(1)(b): amended, on 23 June 2020, by section 187 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**244 Exemptions from payment of synthetic greenhouse gas levy**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons from—
  - (a) paying the whole or part of the levy for certain leviable motor vehicles or leviable goods; or
  - (b) being subject to the whole or part of the levy for certain leviable motor vehicles or leviable goods; or
  - (c) a combination of the matters specified in paragraphs (a) and (b).
- (2) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.
- (3) 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 synthetic greenhouse gas levy; and
  - (b) the costs of making the order do not exceed the benefits of making the order.
- (4) In determining whether 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 synthetic greenhouse gas levy; and

- (b) the desirability of minimising any compliance and administrative costs associated with the synthetic greenhouse gas levy; 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.
- (5) 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 obligation to pay the levy.
- (6) *See* sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.

Section 244: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 244(6): replaced, on 23 June 2020, by section 188 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Regulations*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **245 Regulations specifying levy rates**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) prescribing the rate of the levy to apply to 1 or more classes of leviable motor vehicles;
  - (b) prescribing the rate of the levy to apply to 1 or more items or classes of leviable goods.
- (2) Regulations made under subsection (1)(a) may specify different rates for different classes of leviable motor vehicles.
- (3) Regulations made under subsection (1)(b) may specify different rates for different classes of leviable goods.
- (4) Regulations made under subsection (1) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Section 245: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 245(4): replaced, on 23 June 2020, by section 189 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**246 Regulations relating to synthetic greenhouse gas levy**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:

*Specified synthetic greenhouse gases*

- (a) specifying a hydrofluorocarbon or perfluorocarbon as a specified synthetic greenhouse gas for the purposes of the levy:

*Leviable motor vehicles*

- (b) specifying classes of leviable motor vehicles to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):
- (c) specifying the amount of a specified synthetic greenhouse gas that each class of leviable motor vehicles is to be treated as containing:

*Leviable goods*

- (d) specifying leviable goods or classes of leviable goods to which the levy may apply (which may be by reference to the amount of synthetic greenhouse gas that they contain):
- (e) specifying the amount of a specified synthetic greenhouse gas that an item or class of leviable goods is to be treated as containing:

*General*

- (f) specifying accounts and records that must be kept by persons collecting levies, or persons who are or may be liable to pay a levy:
- (g) specifying the information that persons collecting levies must provide to the EPA and when the information must be provided:
- (h) prescribing the data or other information that must be collected under section 248(1)(a) in relation to a class of leviable goods or synthetic greenhouse gases, and, if relevant, the mechanism or method by which the data or information must be collected:
- (i) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.
- (2) Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations relating to synthetic greenhouse gases.
- (3) See sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(a) to (e).
- (4) Regulations made under subsection (1)(a) to (e) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.



Section 246: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 246(2): replaced, on 23 June 2020, by section 190 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 246(3): replaced, on 23 June 2020, by section 190 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 246(4): inserted, on 23 June 2020, by section 190 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 247 Process for making orders and regulations

*[Repealed]*

Section 247: repealed, on 23 June 2020, by section 191 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Obligations of importers of leviable goods*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 248 Collecting information and keeping records

- (1) An importer must, in relation to the importation of leviable goods containing a specified synthetic gas,—
  - (a) collect the prescribed data or other prescribed information (which data or information must, if required by regulations, be verified by a person or an organisation recognised by the EPA for the purpose); and
  - (b) keep records of the data or information in the prescribed format (if any); and
  - (c) keep sufficient records to enable the EPA to verify, in relation to any levy year,—
    - (i) the quantity of leviable goods of each class imported; and
    - (ii) the total amount of levy paid on those goods.
- (2) The records specified in subsection (1) must be kept for a period of at least 7 years after the end of the year to which they relate.

Section 248: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### Subpart 2—Administrative provisions and verification

Subpart 2: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## 249 Application of section 88 (Directions to EPA)

Section 88 applies in relation to the EPA's exercise of powers and performance of functions under this Part or any regulations made under this Part as if a reference to the ETS participant provisions were a reference to Part 7.

Section 249: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 249: amended, on 23 June 2020, by section 192 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **250 EPA to publish information relating to levies**

- (1) The EPA must publish the following information in relation to leviable goods imported and leviable motor vehicles registered in each reporting year in accordance with subsection (2):
  - (a) for each class of leviable motor vehicle, the total number of persons who registered a vehicle of that class; and
  - (b) for each specified synthetic greenhouse gas used in the air-conditioning system of a leviable motor vehicle, the total number of leviable motor vehicles registered; and
  - (c) for each class of leviable goods, the total number of persons who imported leviable goods of that class; and
  - (d) for each specified synthetic greenhouse gas treated as contained in a class of leviable goods, the total quantity of goods of that class imported; and
  - (e) in respect of each class of leviable motor vehicle, the number of leviable motor vehicles registered; and
  - (f) in respect of each class of leviable goods, the number of consignments imported; and
  - (g) the total quantity of synthetic greenhouse gas treated as contained in the air-conditioning systems of leviable motor vehicles of each class registered; and
  - (h) the total quantity of synthetic greenhouse gas treated as contained in leviable goods of each class imported; and
  - (i) the total amount of levy money collected; and
  - (j) the number of persons who failed to comply with their obligation to pay a levy.
- (2) The EPA—
  - (a) must publish the information specified in subsection (1) as soon as practicable after the end of the reporting 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 EPA considers appropriate.
- (3) The EPA is not required to publish the information required under subsection (1)(b), (d), (g), and (h) in respect of an activity if the EPA is satisfied that publishing the information would result in the disclosure of the amount of syn-

thetic greenhouse gas imported by an identifiable person or in motor vehicles registered by an identifiable person, unless—

- (a) the person to whom the information relates has consented to the publication of the information; or
  - (b) the information is already in the public domain.
- (4) In this section, **reporting year** means a 12-month period starting on 1 July and ending with the close of 30 June.

Section 250: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **251 Recognition of verifiers**

- (1) The EPA may, in accordance with regulations made under section 258, recognise a person or an organisation with the prescribed expertise, technical competence, or qualifications as a person or an organisation that may undertake verification functions for the purposes of section 248(1)(a).
- (2) A person or an organisation may be recognised by the EPA as able to verify information in respect of 1 or more classes of leviable motor vehicles or leviable goods, or 1 or more items of leviable goods.
- (3) The EPA may suspend or revoke any recognition given under this section in accordance with regulations made under section 258.

Section 251: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **252 Enforcement officers**

The EPA may appoint 1 or more enforcement officers under section 93 to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this Part (which relates to verification and inquiry about compliance with this Part).

Section 252: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 252: amended, on 23 June 2020, by section 193 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **253 Power to require information**

- (1) The EPA or an enforcement officer may, by notice, require a person to provide any information that is reasonably necessary for the purposes of ascertaining whether—
  - (a) a person is complying with this Part; or
  - (b) the EPA should exercise any powers under this Part.
- (2) The EPA or an enforcement officer may require the person who is to provide the information to also provide a statutory declaration attesting to the truthfulness of the information provided.

- (3) The information must be provided—
- (a) in the form specified by the person who requested it; and
  - (b) within any reasonable time specified in the notice; and
  - (c) free of charge.

Section 253: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **254 Power to inquire**

- (1) This section applies for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any other information required for the purposes of the administration or enforcement of this Part.
- (2) The EPA may, by notice, require a person to—
  - (a) appear before it or an enforcement officer at a time and place specified in the notice to give evidence; and
  - (b) produce a document or class of documents in the person's possession or under the person's control.
- (3) The EPA or an enforcement officer may require the evidence to be given under oath, and either orally or in writing.
- (4) For the purpose of subsection (3), the EPA or an enforcement officer may administer an oath.
- (5) Sections 97 and 98 apply to an inquiry under this section.

Section 254: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **255 Inquiry before District Court Judge**

- (1) The EPA may apply in writing to a District Court Judge to hold an inquiry under this section, if the EPA considers it necessary for the purpose of obtaining information for a purpose specified in section 253(1), or obtaining any other information required for the purposes of the administration or enforcement of this Part.
- (2) Section 96(2) to (4) apply in relation to an inquiry under this section as if there were no reference to the chief executive.
- (3) Section 96(5) applies as if the reference to the chief executive were a reference to the EPA.
- (4) Sections 97 and 98 apply to an inquiry under this section.

Section 255: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **256 Obligation to maintain confidentiality**

- (1) The EPA and every enforcement officer—

- (a) must keep confidential all information that comes into their knowledge when performing any function or exercising any power under this Part; and
  - (b) may not disclose any information described in paragraph (a), except in the circumstances described in section 99(2)(b).
- (2) However, to avoid doubt, the EPA may,—
- (a) provide or publish general guidance in relation to the operation of this Part; and
  - (b) with the prior approval of the Minister, prepare statistical information and provide it to any person in a form that does not identify any individual.

Section 256: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **257 Power of entry for investigation, warrants, etc**

- (1) Sections 100 and 102 to 106 apply in relation to this Part as if every reference to the ETS participant provisions were a reference to Part 7.
- (2) Section 101 applies as if every reference to section 129, 132, or 133 included a reference to sections 259, 261, and 263.

Section 257: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 257: amended, on 23 June 2020, by section 194 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **258 Regulations relating to verifiers**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
  - (a) prescribing the data or other information that must be verified by a person or an organisation recognised by the EPA under section 251; and
  - (b) prescribing, for the purposes of section 251,—
    - (i) the process by which a person or an organisation may be recognised as being able to verify information or calculations for the purposes of section 248; and
    - (ii) the expertise, technical competence, or qualifications required for recognition as a person or an organisation able to verify data or information; 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 an organisation may be recognised, and the process for the renewal of recognition; and
  - (v) conditions of recognition, which may include ongoing competency and professional standard requirements, membership of a professional body, and the provision of reports to the EPA; and
  - (vi) the procedure for, and circumstances in which, recognition may be suspended or revoked; and
  - (vii) fees to enable the recovery of the direct and indirect costs of the EPA in recognising a person or an organisation, which may vary depending on the class of persons or organisations, or the type of verification in respect of which recognition is sought.
- (2) Regulations made under subsection (1) may apply—
- (a) generally or with respect to different classes of activity, persons, parts of New Zealand, or other specified things; or
  - (b) in respect of the same classes of activity, persons, parts of New Zealand, or other specified things, in different circumstances; or
  - (c) generally or at any specified time of each year.
- (3) Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations in respect of the collection of data and information relating to specified synthetic greenhouse gases.
- (4) *See* sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.

Section 258: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 258(3): replaced, on 23 June 2020, by section 195 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Section 258(4): inserted, on 23 June 2020, by section 195 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 3—Offences and penalties

Subpart 3: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### *Offences relating to synthetic greenhouse gas levy*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### **259 Offence in relation to failure to collect data and keep records**

- (1) A person who is an importer commits an offence against this Act if the person, without reasonable excuse, fails to comply with section 248(1) (requirement to collect data or other information and keep records).

- (2) Every person who is convicted of an offence against subsection (1) is liable on 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 \$16,000;
  - (c) on every subsequent occasion that the person is convicted of that offence, to a fine not exceeding \$24,000.

Section 259: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 259(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **260 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 EPA or an enforcement officer when required to do so under section 253; or
  - (b) fails to appear before the EPA or an enforcement officer, or fails to produce any document or documents, when required to do so under section 254.
- (2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$12,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$24,000.

Section 260: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 260(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **261 Other offences**

- (1) A person commits an offence against this Act if the person, without reasonable excuse,—
- (a) refuses to take an oath when required to do so under section 254; or
  - (b) refuses to answer any question when required to do so under section 254; or
  - (c) knowingly fails to comply with section 248(1) (requirement to collect data or other information and keep records); or
  - (d) knowingly provides altered, false, incomplete, or misleading information to the EPA, an enforcement officer, or any other person in respect of any matter in this Part; or

- (e) wilfully obstructs, hinders, resists, or deceives—
  - (i) the EPA or an enforcement officer exercising a power conferred on that person under this Part; or
  - (ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority in relation to a power conferred on that person under the Customs and Excise Act 2018 in relation to the goods levy; or
  - (iii) the Registrar of Motor Vehicles in relation to a power conferred on him or her under the Land Transport Act 1998 in relation to the motor vehicle levy.
- (2) Every person who is convicted of an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$25,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 261: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 261(1)(e)(ii): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 261(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## 262 Offence for breach of confidentiality

A person who knowingly contravenes section 256 commits an offence and is liable on conviction to either or both of—

- (a) imprisonment for a term not exceeding 6 months;
- (b) a fine not exceeding \$15,000.

Section 262: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 262: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## 263 Evasion

- (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 section 248(1) (requirement to collect data or other information and keep records); or
  - (b) fails to provide information to—
    - (i) the EPA, an enforcement officer, or any other person when required to do so under this Part; or



- (ii) the New Zealand Customs Service, a Customs officer, or a Customs Appeal Authority when required to do so under the Customs and Excise Act 2018 in relation to the goods levy; or
  - (iii) the Registrar of Motor Vehicles when required to do so under the Land Transport Act 1998 in relation to the motor vehicle levy; or
  - (c) provides altered, false, incomplete, or misleading information to the Minister or the EPA or any other person in respect of a matter in this Part.
- (2) Every person who is convicted of an offence against subsection (1) is liable on conviction to either or both of—
- (a) imprisonment for a term not exceeding 5 years;
  - (b) a fine not exceeding \$50,000.

Section 263: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 263(1)(b)(ii): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 263(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

#### *Offence in relation to release of synthetic greenhouse gases*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### **264 Offence in relation to release of synthetic greenhouse gases**

- (1) A person commits an offence against this Act if the person, in the course of undertaking an activity described in subsection (2), knowingly and without lawful justification or excuse releases any hydrofluorocarbon, perfluorocarbon, or sulphur hexafluoride into the atmosphere.
- (2) The activities are installing, operating, servicing, modifying, dismantling, or disposing of any electrical switchgear, refrigeration or air-conditioning equipment, or other heat-transfer medium.
- (3) A person who is convicted of an offence against subsection (1) is liable on conviction,—
  - (a) in the case of an individual, to a fine not exceeding \$25,000;
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 264: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 264(3): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

### **265 Defence for release of synthetic greenhouse gas**

The circumstances in which a person described in section 264(1) may have a lawful justification or excuse for releasing any hydrofluorocarbon, perfluoro-

carbon, or sulphur hexafluoride into the atmosphere include (but are not limited to) circumstances where the release could not reasonably have been avoided.

Section 265: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Proceedings and liability*

Heading: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

## **266 Limitation period for commencement of proceedings**

Despite section 25 of the Criminal Procedure Act 2011, the limitation period for an offence against—

- (a) section 260 or 261(1)(a), (b), or (e) ends on the date that is 2 years from the date on which the offence was committed:
- (b) section 259 or 261(1)(c) or (d) ends on the date that is 7 years from the date on which the offence was committed.

Section 266: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 266: amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 266(a): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Section 266(b): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

## **267 Evidence in proceedings**

- (1) In any proceedings for an offence against this Part, a certificate or document (including an electronic copy) of any of the kinds described in subsection (2)—
  - (a) is admissible in evidence; and
  - (b) 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.
- (2) The kinds of certificate or document are—
  - (a) a certificate purporting to be signed by a delegate of the EPA to the effect that, at any specified date or during any specified period, a named person is or was, or is not or was not, an enforcement officer or a person or an organisation recognised under section 251; or
  - (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, 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.
- (3) The production of a certificate or document purporting to be a certificate to which subsection (2) 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.

Section 267: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**268 Liability of body corporate, directors, managers of companies, companies, and persons for actions of directors, agents, and employees**

- (1) Sections 139 and 140 apply in relation to proceedings against, or conviction of, a body corporate for an offence under this Part as if a reference to Part 4 were a reference to Part 7.
- (2) Section 141 applies as if a reference to sections 132(1)(c) to (f) or 133 included a reference to section 261(1)(c) or (d) or 263.

Section 268: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**Subpart 4—Other matters**

Subpart 4: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

**269 Review of operation and effectiveness of levy**

- (1) The Minister may, at any time, initiate a review of the operation and effectiveness of the synthetic greenhouse gas levy.
- (2) A review may be undertaken by any method that the Minister considers appropriate.
- (3) Without limiting the Minister's discretion under subsection (1), the Minister may appoint an independent panel—
  - (a) to conduct a review under subsection (1); and
  - (b) to report in accordance with the terms of reference.
- (4) If the Minister appoints a panel, the Minister must—
  - (a) specify in writing the terms of reference for the review; and
  - (b) make the report of the panel publicly available; and
  - (c) present a copy of the report to the House of Representatives.
- (5) If the Minister initiates a review but does not appoint a panel, the Minister must—

- (a) consult persons (or their representatives) who appear to the Minister likely to have an interest in the review; and
  - (b) consult representatives of iwi and Māori who appear to the Minister to be likely to have an interest in the review; and
  - (c) specify written terms of reference for the review; and
  - (d) establish a procedure that the Minister is satisfied is appropriate, fair in the circumstances, and in accordance with the terms of reference.
- (6) The Minister may, but need not, initiate a review under subsection (1) at the same time as he or she initiates a review under section 160 of the operation and effectiveness of the emissions trading scheme.

Section 269: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 269(4)(b): replaced, on 23 June 2020, by section 196 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **270 Appointment and conduct of independent panel**

- (1) If the Minister appoints an independent panel under section 269, the Minister must—
- (a) ensure that there is no fewer than 3 but not more than 7 members; and
  - (b) ensure that the majority of the members are not employees under the Public Service Act 2020; and
  - (c) consider whether the members have, in the Minister's opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—
    - (i) this Act; and
    - (ii) international climate change obligations and any other relevant international agreement; and
    - (iii) the operation of the synthetic greenhouse gas levy; and
  - (d) appoint 1 member as the chairperson of the panel.
- (2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.
- (3) A review panel must complete a draft report on the review and provide the report to the Minister by the date set out in the terms of reference.
- (4) The review panel must—
- (a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and
  - (b) after considering the Minister's response and comments (if any), prepare a final report and provide it to the Minister by the date set out in the terms of reference.
- (5) In conducting a review, the review panel—

- (a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference of the review; and
  - (b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and
  - (c) may call for submissions.
- (6) If the Minister initiates a review under section 269(1) and a review under section 160, the Minister may appoint 1 independent panel to undertake both reviews.

Section 270: inserted, on 1 January 2013, by section 100 of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Section 270(1)(b): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 270(1)(c)(ii): replaced, on 23 June 2020, by section 197 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Schedule 1AA

### Transitional, savings, and related provisions

s 4A

Schedule 1AA: inserted, on 14 November 2019, by section 9 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### Part 1

### Provisions relating to Climate Change Response (Zero Carbon) Amendment Act 2019

Schedule 1AA Part 1: inserted, on 14 November 2019, by section 9 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **1 Appointment of first members of Commission**

- (1) This clause applies in respect of the appointment of the first 7 members of the Commission.
- (2) The Minister may recommend to the Governor-General that a person be appointed as a member if the Minister has, either before or after the commencement of Part 1A,—
  - (a) had regard to the matters in section 5H; and
  - (b) consulted representatives of all other political parties in Parliament.
- (3) This clause overrides section 5E.

Schedule 1AA clause 1: inserted, on 14 November 2019, by section 9 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

#### **2 Preparatory work for first national climate change risk assessment**

- (1) This clause applies if, before the commencement of Part 1C, the Minister takes any steps referred to in section 5ZR(1).
- (2) Part 1C must be treated as if it were in force when the steps are taken.
- (3) If the Minister makes a national climate change risk assessment publicly available before the commencement of Part 1C,—
  - (a) the national climate change risk assessment must be treated as the first national climate change risk assessment under Part 1C; and
  - (b) the Minister must present the first national adaptation plan to the House of Representatives and make it publicly available no later than 2 years after the date on which Part 1C commences.

Schedule 1AA clause 2: inserted, on 14 November 2019, by section 9 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**3 Savings of targets for greenhouse gas emissions made under section 224**

- (1) A target for greenhouse gas emissions made under section 224 before the commencement of the Climate Change Response (Zero Carbon) Amendment Act 2019—
  - (a) continues in force as if section 224 had not been repealed; and
  - (b) may be amended or revoked as if section 224 had not been repealed.
- (2) This clause does not apply to the target set in the Climate Change Response (2050 Emissions Target) Notice 2011 (*Gazette* 2011, p 987).

Schedule 1AA clause 3: inserted, on 14 November 2019, by section 9 of the Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61).

**Part 2**

**Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2020**

Schedule 1AA Part 2: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**4 Interpretation**

In this Part,—

**amendment Act** means the Climate Change Response (Emissions Trading Reform) Amendment Act 2020

**third mandatory emissions return period** means the 5-year period starting on 1 January 2018 and ending on 31 December 2022.

Schedule 1AA clause 4: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**Subpart 1—Provisions that commence on day after Royal assent**

Schedule 1AA subpart 1: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**5 Satisfying requirements for making regulations**

- (1) This clause applies to any requirement for the making of any regulations under this Act as amended by the amendment Act.
- (2) Anything done before the commencement of this clause satisfies the requirement as long as it would have satisfied the requirement if it had been done after the commencement.

Schedule 1AA clause 5: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**6 New regulations may commence on or after commencement of clause**

Any regulations made under this Act before the commencement of this clause may come into force on, or at any time after, that commencement, despite any-

thing in this Act that prevents them from coming into force within a certain period after the date of their notification in the *Gazette*.

Schedule 1AA clause 6: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **7 Making first regulations about limits and price controls for units**

- (1) If regulations are to be made under section 30GB before there is an emissions budget, section 30GC(2)(a) applies as if it instead referred to any provisional budget for the emission of greenhouse gases that is set by the Crown.
- (2) When an emissions budget is first set,—
  - (a) the Minister must recommend the making of regulations under section 30GB to prescribe new limits or price control settings as required to comply with section 30GC(2); and
  - (b) the Minister may recommend prescribing a new limit or price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made, despite section 30GB(5).

Schedule 1AA clause 7: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **8 Existing accounts continue**

If any account established in the Registry (under section 7(1)(a), for example) existed immediately before the commencement of this clause, it continues to exist after the commencement.

Schedule 1AA clause 8: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **9 Information accessible by search of unit register**

If section 27 applies to information immediately before its amendment by the amendment Act, it continues to apply in accordance with that section as if it were not amended.

Schedule 1AA clause 9: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **10 Information to be published by EPA**

- (1) For a reporting year beginning before 1 January 2023, the EPA is not required to publish the information required under section 89(1)(e) in respect of an activity or the information required under section 89(1)(i) if the EPA is satisfied that publishing the information would result in the disclosure of a participant's individual emissions or an eligible person's own allocation, unless—
  - (a) the participant or eligible person to whom the information relates has consented to the publication of the information; or
  - (b) the information is already in the public domain.



- (2) Section 89A does not apply in respect of an emissions return for emissions or removals before 1 January 2020, unless—
  - (a) the return also relates to a period after 1 January 2020; and
  - (b) it is possible for emissions or removals occurring before 1 January 2020 to be excluded from the published information.
- (3) Section 89A—
  - (a) applies in respect of emissions returns submitted under section 189, 191, or 193 for emissions or removals on or after 1 January 2020; but
  - (b) does not apply in respect of any other emissions returns in relation to post-1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.
- (4) Section 89(1A) and (1B) does not apply in respect of failures or errors made by a person before 1 January 2021.

Schedule 1AA clause 10: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 1AA clause 10(4): inserted, on 1 January 2021, by section 232(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 11 Members of existing consolidated groups jointly and severally liable

- (1) The joint and several liability to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it were joint and several liability for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the relevant activities.
- (2) The transfer of units to the consolidated group's holding account (on behalf of the group) to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it included the transfer of any units to which a member becomes entitled by an allocation relating to a relevant eligible activity.

Schedule 1AA clause 11: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 12 Consolidated group for activity relating to forestry

- (1) In this clause, an **existing forestry consolidated group** means a consolidated group that—
  - (a) was formed in respect of an activity or activities listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4; and
  - (b) exists immediately before the commencement of this clause.
- (2) Sections 150 and 151A do not apply to an existing forestry consolidated group (so that no members or activities may be added to the group).
- (3) The nominated entity of an existing forestry consolidated group—

- (a) may submit a single emissions return under section 189(3) in respect of 1 or more of the activities listed in Part 1 of Schedule 4 carried out by a member of the group in a year; and
  - (b) must submit any emissions return required under a provision of Part 5 on behalf of any member of the group when the member is required to do so; and
  - (c) must sign any emissions return submitted by the nominated entity in accordance with section 65(2)(f) on behalf of the group.
- (4) In relation to an existing forestry consolidated group, section 153(2) to (4) applies to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in subclause (3) as if the references in that section to a year were references to the period covered by the emissions return.
- (5) To avoid doubt, only the nominated entity for an existing forestry consolidated group may submit an emissions return for the group.

Schedule 1AA clause 12: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **13 Fixed price (for option to pay money instead of surrendering or repaying)**

Section 178A does not apply if the person's emissions return described by section 178A(1)(a)(i)(A)—

- (a) is in respect of an activity listed in Part 1 of Schedule 4; and
- (b) does not impose a net liability to surrender or repay units for all of the carbon accounting areas covered by the return (for example, under section 189(8)).

Schedule 1AA clause 13: inserted, on 23 June 2020, by section 198 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **Subpart 2—Provisions that commence on 30 November 2020**

Schedule 1AA subpart 2: inserted, on 30 November 2020, by section 208 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### **14 Cancellation of historic approved overseas units**

- (1) This clause applies to approved overseas units that were issued in the first commitment period starting on 1 January 2008 and ending on 31 December 2012, other than those that are held by the Crown in a Crown holding account or an account established under section 7.
- (2) If any person holds any of the approved overseas units, the Registrar must transfer the units to a cancellation account.
- (3) The EPA must direct the Registrar to transfer a New Zealand unit from a Crown holding account to a person's holding account for each of that person's approved overseas units—

- (a) that is a New Zealand assigned amount unit (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); and
  - (b) that the Registrar transfers to a cancellation account under this clause.
- (4) No compensation is payable for any other units that the Registrar transfers to a cancellation account under this clause.

Schedule 1AA clause 14: inserted, on 30 November 2020, by section 208 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### Subpart 3—Provisions that commence on 1 January 2021

Schedule 1AA subpart 3: inserted, on 1 January 2021, by section 232(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 15 Existing regulations about price of carbon

- (1) This clause applies to any regulations made under section 233(4) that, immediately before the commencement of this clause,—
- (a) prescribe the methodology for specifying the price of carbon; or
  - (b) specify the price of carbon by applying the methodology.
- (2) On and after the commencement of this clause, the regulations continue in force and must be treated as if they were made under section 30W.

Schedule 1AA clause 15: inserted, on 1 January 2021, by section 232(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 16 Penalties

- (1) This clause applies in respect of a person who, before the commencement of this clause,—
- (a) fails to surrender or repay units by the due date; or
  - (b) fails to submit an emissions return or annual or closing allocation adjustment; or
  - (c) submits an incorrect emissions return, allocation application, or allocation adjustment.
- (2) Sections 134 to 134D, as inserted by the amendment Act, do not apply in respect of the person for the failure or error.
- (3) This Act, as in force immediately before the commencement of this clause, applies in respect of the person for the failure or error.

Schedule 1AA clause 16: inserted, on 1 January 2021, by section 232(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## 17 Penalties for forestry activities before 2023 with liability for lower amounts

- (1) This clause applies if—
- (a) new section 134 would otherwise apply to the person (because they have failed to surrender or repay units by a due date); and

- (b) that liability to surrender or repay the units resulted from—
- (i) a forestry activity carried out before 1 January 2023; and
  - (ii) 1 or more of the following things in relation to the forestry activity:
    - (A) an emissions return with an emissions return period and under which the average liability per year of that period is less than 25,000 units;
    - (B) an emissions return without an emissions return period and under which the liability is less than 25,000 units;
    - (C) any other requirement in this Act (for example, the requirement to repay units under section 125 or any requirement to surrender units equal to a unit balance) and under which the liability is less than 25,000 units.
- (2) Under this clause, instead of new section 134 (and other new provisions of this Act that refer to that section) applying, the following provisions apply to the person with the modifications specified:
- Excess emissions penalty for failing to surrender or repay units*
- (a) former section 134(1)(a) and (c), (2)(a) and (b)(i) and (iii), (3)(a), and (4), as if—
    - (i) former section 134(1)(a) applied to the failure to surrender the units (if any); and
    - (ii) former section 134(1)(c) applied to the failure to repay the units (if any):
- Further excess emissions penalty for failing to surrender or repay units when required by notice under section 134*
- (b) former section 134A:
    - Reductions in penalty*
  - (c) former section 135(1) and (1A):
    - Deferred payment arrangements for payments of penalties*
  - (d) new section 135A, as if—
    - (i) a penalty imposed under former section 134, 134A, or 136 were imposed under new section 134; and
    - (ii) new section 135A(1) referred to the date required by that former section (instead of by new section 135(1)):
- Additional excess emissions penalty for knowing failure to comply*
- (e) former section 136(1)(a)(ii) and (b)(ii), (2)(a)(ii) and (b), and (3) to (5):

*Interest for late payment*

- (f) former section 137(1)(a)(i) and (iii) and (b), (2) to (5), and (7), and new section 137(6):

*Obligation to pay penalty not suspended by appeal*

- (g) former section 138:

*Penalties to be paid into Crown account*

- (h) former section 138A:

*Review and appeal*

- (i) former sections 144 to 146:

*Recovery of costs*

- (j) former section 159, as if its subsection (3) specified that variable C is the price, in dollars, of carbon per tonne 1 year after the date of the penalty notice given under former section 134 or 136 in relation to the units, as set by or in accordance with regulations made under new section 30W:

*Transitional provision*

- (k) former section 217(2)(b)(ii) and (c):

*Other former provisions*

- (l) any other former provision of this Act that provides for a process that applies to any former provision applied by this clause:

*EPA to publish certain information*

- (m) new section 89, as if a penalty imposed under former section 134, 134A, or 136 were a qualifying penalty.

- (3) In this section,—

**former**, in relation to a provision, means the provision as in force immediately before the commencement of this clause

**new**, in relation to a provision, means the provision as in force on or after the commencement of this clause.

Schedule 1AA clause 17: inserted, on 1 January 2021, by section 232(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Schedule 1

### United Nations Framework Convention on Climate Change

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The Parties to this Convention.

Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

Aware of the role and importance in terrestrial and marine ecosystems of sinks and reservoirs of greenhouse gases,

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

Recalling the pertinent provisions of the Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16 June 1972,

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

Reaffirming the principle of sovereignty of States in international cooperation to address climate change,

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

Recalling the provisions of General Assembly resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on protection of global climate for present and future generations of mankind,

Recalling also the provisions of General Assembly resolution 44/206 of 22 December 1989 on the possible adverse effects of sea-level rise on islands and coastal areas, particularly low-lying coastal areas and the pertinent provisions of General Assembly resolution 44/172 of 19 December 1989 on the implementation of the Plan of Action to Combat Desertification,

Recalling further the Vienna Convention for the Protection of the Ozone Layer, 1985, and the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987, as adjusted and amended on 29 June 1990,

Noting the Ministerial Declaration of the Second World Climate Conference adopted on 7 November 1990,

Conscious of the valuable analytical work being conducted by many States on climate change and of the important contributions of the World Meteorological Organization, the United Nations Environment Programme and other organs, organizations and bodies of the United Nations system, as well as other international and intergovernmental bodies, to the exchange of results of scientific research and the coordination of research,

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all greenhouse gases, with due consideration of their relative contributions to the enhancement of the greenhouse effect,

Recognizing further that low-lying and other small island countries, countries with low-lying coastal, arid and semi-arid areas or areas liable to floods, drought and desertification, and developing countries with fragile mountainous ecosystems are particularly vulnerable to the adverse effects of climate change,

Recognizing the special difficulties of those countries, especially developing countries, whose economies are particularly dependent on fossil fuel production, use and exportation, as a consequence of action taken on limiting greenhouse gas emissions,

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

Recognizing that all countries, especially developing countries, need access to resources required to achieve sustainable social and economic development and that, in order for developing countries to progress towards that goal, their energy consump-



tion will need to grow taking into account the possibilities for achieving greater energy efficiency and for controlling greenhouse gas emissions in general, including through the application of new technologies on terms which make such an application economically and socially beneficial,

Determined to protect the climate system for present and future generations,

Have agreed as follows:

## **Article 1** **Definitions<sup>1</sup>**

For the purposes of this Convention:

1. “Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
2. “Climate change” means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.
3. “Climate system” means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.
4. “Emissions” means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.
5. “Greenhouse gases” means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.
6. “Regional economic integration organization” means an organization constituted by sovereign States of a given region which has competence in respect of matters governed by this Convention or its protocols and has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to the instruments concerned.
7. “Reservoir” means a component or components of the climate system where a greenhouse gas or a precursor of a greenhouse gas is stored.
8. “Sink” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere.
9. “Source” means any process or activity which releases a greenhouse gas, an aerosol or a precursor of a greenhouse gas into the atmosphere.

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<sup>1</sup> Titles of articles are included solely to assist the reader.

## Article 2

### Objective

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

## Article 3

### Principles

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.
4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.

#### **Article 4**

#### **Commitments**

1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:
  - (a) Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;
  - (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;
  - (c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;
  - (d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;
  - (e) Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;
  - (f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and

- actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;
- (g) Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;
  - (h) Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;
  - (i) Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and
  - (j) Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.
2. The developed country Parties and other Parties included in Annex I commit themselves specifically as provided for in the following:
- (a) Each of these Parties shall adopt national<sup>2</sup> policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of greenhouse gases and protecting and enhancing its greenhouse gas sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures

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<sup>2</sup> This includes policies and measures adopted by regional economic integration organizations.

jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

- (b) In order to promote progress to this end, each of these Parties shall communicate, within six months of the entry into force of the Convention for it and periodically thereafter, and in accordance with Article 12, detailed information on its policies and measures referred to in subparagraph (a) above, as well as on its resulting projected anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol for the period referred to in subparagraph (a), with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other greenhouse gases not controlled by the Montreal Protocol. This information will be reviewed by the Conference of the Parties, at its first session and periodically thereafter, in accordance with Article 7;
- (c) Calculations of emissions by sources and removals by sinks of greenhouse gases for the purposes of subparagraph (b) above should take into account the best available scientific knowledge, including of the effective capacity of sinks and the respective contributions of such gases to climate change. The Conference of the Parties shall consider and agree on methodologies for these calculations at its first session and review them regularly thereafter;
- (d) The Conference of the Parties shall, at its first session, review the adequacy of subparagraphs (a) and (b) above. Such review shall be carried out in the light of the best available scientific information and assessment on climate change and its impacts, as well as relevant technical, social and economic information. Based on this review, the Conference of the Parties shall take appropriate action, which may include the adoption of amendments to the commitments in subparagraphs (a) and (b) above. The Conference of the Parties, at its first session, shall also take decisions regarding criteria for joint implementation as indicated in subparagraph (a) above. A second review of subparagraphs (a) and (b) shall take place not later than 31 December 1998, and thereafter at regular intervals determined by the Conference of the Parties, until the objective of the Convention is met;
- (e) Each of these Parties shall:
  - (i) Coordinate as appropriate with other such Parties, relevant economic and administrative instruments developed to achieve the objective of the Convention; and
  - (ii) Identify and periodically review its own policies and practices which encourage activities that lead to greater levels of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol than would otherwise occur;

- (f) The Conference of the Parties shall review, not later than 31 December 1998, available information with a view to taking decisions regarding such amendments to the lists in Annexes I and II as may be appropriate, with the approval of the Party concerned;
  - (g) Any Party not included in Annex I may, in its instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by subparagraphs (a) and (b) above. The Depositary shall inform the other signatories and Parties of any such notification.
3. The developed country Parties and other developed Parties included in Annex II shall provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.
  4. The developed country Parties and other developed Parties included in Annex II shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects.
  5. The developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.
  6. In the implementation of their commitments under paragraph 2 above, a certain degree of flexibility shall be allowed by the Conference of the Parties to the Parties included in Annex I undergoing the process of transition to a market economy, in order to enhance the ability of these Parties to address climate change, including with regard to the historical level of anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol chosen as a reference.
  7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementa-

tion by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

8. In the implementation of the commitments in this Article, the Parties shall give full consideration to what actions are necessary under the Convention, including actions related to funding, insurance and the transfer of technology, to meet the specific needs and concerns of developing country Parties arising from the adverse effects of climate change and/or the impact of the implementation of response measures, especially on:
- (a) Small island countries;
  - (b) Countries with low-lying coastal areas;
  - (c) Countries with arid and semi-arid areas, forested areas and areas liable to forest decay;
  - (d) Countries with areas prone to natural disasters;
  - (e) Countries with areas liable to drought and desertification;
  - (f) Countries with areas of high urban atmospheric pollution;
  - (g) Countries with areas with fragile ecosystems, including mountainous ecosystems;
  - (h) Countries whose economies are highly dependent on income generated from the production, processing and export, and/or on consumption of fossil fuels and associated energy-intensive products; and
  - (i) Land-locked and transit countries.

Further, the Conference of the Parties may take actions, as appropriate, with respect to this paragraph.

9. The Parties shall take full account of the specific needs and special situations of the least developed countries in their actions with regard to funding and transfer of technology.
10. The Parties shall, in accordance with Article 10, take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

## Article 5

### Research and systematic observation

In carrying out their commitments under Article 4, paragraph 1(g), the Parties shall:

- (a) Support and further develop, as appropriate, international and intergovernmental programmes and networks or organizations aimed at defining, conducting, assessing and financing research, data collection and systematic observation, taking into account the need to minimize duplication of effort;
- (b) Support international and intergovernmental efforts to strengthen systematic observation and national scientific and technical research capacities and capabilities, particularly in developing countries, and to promote access to, and the exchange of, data and analyses thereof obtained from areas beyond national jurisdiction; and
- (c) Take into account the particular concerns and needs of developing countries and cooperate in improving their endogenous capacities and capabilities to participate in the efforts referred to in subparagraphs (a) and (b) above.

## Article 6

### Education, training and public awareness

In carrying out their commitments under Article 4, paragraph 1(i), the Parties shall:

- (a) Promote and facilitate at the national and, as appropriate, subregional and regional levels, and in accordance with national laws and regulations, and within their respective capacities:
  - (i) The development and implementation of educational and public awareness programmes on climate change and its effects;
  - (ii) Public access to information on climate change and its effects;
  - (iii) Public participation in addressing climate change and its effects and developing adequate responses; and
  - (iv) Training of scientific, technical and managerial personnel.
- (b) Cooperate in and promote, at the international level, and, where appropriate, using existing bodies:
  - (i) The development and exchange of educational and public awareness material on climate change and its effects; and
  - (ii) The development and implementation of education and training programmes, including the strengthening of national institutions and the exchange or secondment of personnel to train experts in this field, in particular for developing countries.



## Article 7

### Conference of the parties

1. A Conference of the Parties is hereby established.
2. The Conference of the Parties, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any related legal instruments that the Conference of the Parties may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To this end, it shall:
  - (a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;
  - (b) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
  - (c) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under the Convention;
  - (d) Promote and guide, in accordance with the objective and provisions of the Convention, the development and periodic refinement of comparable methodologies, to be agreed on by the Conference of the Parties, inter alia, for preparing inventories of greenhouse gas emissions by sources and removals by sinks, and for evaluating the effectiveness of measures to limit the emissions and enhance the removals of these gases;
  - (e) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the Parties, the overall effects of the measures taken pursuant to the Convention, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
  - (f) Consider and adopt regular reports on the implementation of the Convention and ensure their publication;
  - (g) Make recommendations on any matters necessary for the implementation of the Convention;
  - (h) Seek to mobilize financial resources in accordance with Article 4, paragraphs 3, 4 and 5, and Article 11;
  - (i) Establish such subsidiary bodies as are deemed necessary for the implementation of the Convention;

- (j) Review reports submitted by its subsidiary bodies and provide guidance to them;
  - (k) Agree upon and adopt, by consensus, rules of procedure and financial rules for itself and for any subsidiary bodies;
  - (l) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
  - (m) Exercise such other functions as are required for the achievement of the objective of the Convention as well as all other functions assigned to it under the Convention.
3. The Conference of the Parties shall, at its first session, adopt its own rules of procedure as well as those of the subsidiary bodies established by the Convention, which shall include decision-making procedures for matters not already covered by decision-making procedures stipulated in the Convention. Such procedures may include specified majorities required for the adoption of particular decisions.
  4. The first session of the Conference of the Parties shall be convened by the interim secretariat referred to in Article 21 and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, ordinary sessions of the Conference of the Parties shall be held every year unless otherwise decided by the Conference of the Parties.
  5. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
  6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not Party to the Convention, may be represented at sessions of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

## **Article 8**

### **Secretariat**

1. A secretariat is hereby established.
2. The functions of the secretariat shall be:

- (a) To make arrangements for sessions of the Conference of the Parties and its subsidiary bodies established under the Convention and to provide them with services as required;
  - (b) To compile and transmit reports submitted to it;
  - (c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;
  - (d) To prepare reports on its activities and present them to the Conference of the Parties;
  - (e) To ensure the necessary coordination with the secretariats of other relevant international bodies;
  - (f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and
  - (g) To perform the other secretariat functions specified in the Convention and in any of its protocols and such other functions as may be determined by the Conference of the Parties.
3. The Conference of the Parties, at its first session, shall designate a permanent secretariat and make arrangements for its functioning.

## Article 9

### Subsidiary body for scientific and technological advice

1. A subsidiary body for scientific and technological advice is hereby established to provide the Conference of the Parties and, as appropriate, its other subsidiary bodies with timely information and advice on scientific and technological matters relating to the Convention. This body shall be open to participation by all Parties and shall be multidisciplinary. It shall comprise government representatives competent in the relevant field of expertise. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, and drawing upon existing competent international bodies, this body shall:
  - (a) Provide assessments of the state of scientific knowledge relating to climate change and its effects;
  - (b) Prepare scientific assessments on the effects of measures taken in the implementation of the Convention;
  - (c) Identify innovative, efficient and state-of-the-art technologies and know-how and advise on the ways and means of promoting development and/or transferring such technologies;
  - (d) Provide advice on scientific programmes, international cooperation in research and development related to climate change, as well as on ways

- and means of supporting endogenous capacity-building in developing countries; and
- (e) Respond to scientific, technological and methodological questions that the Conference of the Parties and its subsidiary bodies may put to the body.
3. The functions and terms of reference of this body may be further elaborated by the Conference of the Parties.

## Article 10

### Subsidiary body for implementation

1. A subsidiary body for implementation is hereby established to assist the Conference of the Parties in the assessment and review of the effective implementation of the Convention. This body shall be open to participation by all Parties and comprise government representatives who are experts on matters related to climate change. It shall report regularly to the Conference of the Parties on all aspects of its work.
2. Under the guidance of the Conference of the Parties, this body shall:
- (a) Consider the information communicated in accordance with Article 12, paragraph 1, to assess the overall aggregated effect of the steps taken by the Parties in the light of the latest scientific assessments concerning climate change;
- (b) Consider the information communicated in accordance with Article 12, paragraph 2, in order to assist the Conference of the Parties in carrying out the reviews required by Article 4, paragraph 2(d); and
- (c) Assist the Conference of the Parties, as appropriate, in the preparation and implementation of its decisions.

## Article 11

### Financial mechanism

1. A mechanism for the provision of financial resources on a grant or concessional basis, including for the transfer of technology, is hereby defined. It shall function under the guidance of and be accountable to the Conference of the Parties, which shall decide on its policies, programme priorities and eligibility criteria related to this Convention. Its operation shall be entrusted to one or more existing international entities.
2. The financial mechanism shall have an equitable and balanced representation of all Parties within a transparent system of governance.
3. The Conference of the Parties and the entity or entities entrusted with the operation of the financial mechanism shall agree upon arrangements to give effect to the above paragraphs, which shall include the following:

- (a) Modalities to ensure that the funded projects to address climate change are in conformity with the policies, programme priorities and eligibility criteria established by the Conference of the Parties;
  - (b) Modalities by which a particular funding decision may be reconsidered in light of these policies, programme priorities and eligibility criteria;
  - (c) Provision by the entity or entities of regular reports to the Conference of the Parties on its funding operations, which is consistent with the requirement for accountability set out in paragraph 1 above; and
  - (d) Determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.
4. The Conference of the Parties shall make arrangements to implement the above-mentioned provisions at its first session, reviewing and taking into account the interim arrangements referred to in Article 21, paragraph 3, and shall decide whether these interim arrangements shall be maintained. Within four years thereafter, the Conference of the Parties shall review the financial mechanism and take appropriate measures.
5. The developed country Parties may also provide and developing country Parties avail themselves of, financial resources related to the implementation of the Convention through bilateral, regional and other multilateral channels.

## Article 12

### Communication of information related to implementation

1. In accordance with Article 4, paragraph 1, each Party shall communicate to the Conference of the Parties, through the secretariat, the following elements of information:
  - (a) A national inventory of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, to the extent its capacities permit, using comparable methodologies to be promoted and agreed upon by the Conference of the Parties;
  - (b) A general description of steps taken or envisaged by the Party to implement the Convention; and
  - (c) Any other information that the Party considers relevant to the achievement of the objective of the Convention and suitable for inclusion in its communication, including, if feasible, material relevant for calculations of global emission trends.
2. Each developed country Party and each other Party included in Annex I shall incorporate in its communication the following elements of information:

- (a) A detailed description of the policies and measures that it has adopted to implement its commitment under Article 4, paragraphs 2(a) and 2(b); and
  - (b) A specific estimate of the effects that the policies and measures referred to in subparagraph (a) immediately above will have on anthropogenic emissions by its sources and removals by its sinks of greenhouse gases during the period referred to in Article 4, paragraph 2(a).
3. In addition, each developed country Party and each other developed Party included in Annex II shall incorporate details of measures taken in accordance with Article 4, paragraphs 3, 4 and 5.
4. Developing country Parties may, on a voluntary basis, propose projects for financing, including specific technologies, materials, equipment, techniques or practices that would be needed to implement such projects, along with, if possible, an estimate of all incremental costs, of the reductions of emissions and increments of removals of greenhouse gases, as well as an estimate of the consequent benefits.
5. Each developed country Party and each other Party included in Annex I shall make its initial communication within six months of the entry into force of the Convention for that Party. Each Party not so listed shall make its initial communication within three years of the entry into force of the Convention for that Party, or of the availability of financial resources in accordance with Article 4, paragraph 3. Parties that are least developed countries may make their initial communication at their discretion. The frequency of subsequent communications by all Parties shall be determined by the Conference of the Parties, taking into account the differentiated timetable set by this paragraph.
6. Information communicated by Parties under this Article shall be transmitted by the secretariat as soon as possible to the Conference of the Parties and to any subsidiary bodies concerned. If necessary, the procedures for the communication of information may be further considered by the Conference of the Parties.
7. From its first session, the Conference of the Parties shall arrange for the provision to developing country Parties of technical and financial support, on request, in compiling and communicating information under this Article, as well as in identifying the technical and financial needs associated with proposed projects and response measures under Article 4. Such support may be provided by other Parties, by competent international organizations and by the secretariat, as appropriate.
8. Any group of Parties may, subject to guidelines adopted by the Conference of the Parties, and to prior notification to the Conference of the Parties, make a joint communication in fulfilment of their obligations under this Article, provided that such a communication includes information on the fulfilment by each of these Parties of its individual obligations under the Convention.

9. Information received by the secretariat that is designated by a Party as confidential, in accordance with criteria to be established by the Conference of the Parties, shall be aggregated by the secretariat to protect its confidentiality before being made available to any of the bodies involved in the communication and review of information.
10. Subject to paragraph 9 above, and without prejudice to the ability of any Party to make public its communication at any time, the secretariat shall make communications by Parties under this Article publicly available at the time they are submitted to the Conference of the Parties.

### **Article 13**

#### **Resolution of questions regarding implementation**

The Conference of the Parties shall, at its first session, consider the establishment of a multilateral consultative process, available to Parties on their request, for the resolution of questions regarding the implementation of the Convention.

### **Article 14**

#### **Settlement of disputes**

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party which is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory *ipso facto* and without special agreement, in relation to any Party accepting the same obligation:
  - (a) Submission of the dispute to the International Court of Justice, and/or
  - (b) Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in an annex on arbitration.

A Party which is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with the procedures referred to in subparagraph (b) above.

3. A declaration made under paragraph 2 above shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.
4. A new declaration, a notice of revocation or the expiry of a declaration shall not in any way affect proceedings pending before the International Court of Justice or the arbitral tribunal, unless the parties to the dispute otherwise agree.

5. Subject to the operation of paragraph 2 above, if after twelve months following notification by one Party to another that a dispute exists between them, the Parties concerned have not been able to settle their dispute through the means mentioned in paragraph 1 above, the dispute shall be submitted, at the request of any of the parties to the dispute, to conciliation.
6. A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall be composed of an equal number of members appointed by each party concerned and a chairman chosen jointly by the members appointed by each party. The commission shall render a recommendatory award, which the parties shall consider in good faith.
7. Additional procedures relating to conciliation shall be adopted by the Conference of the Parties, as soon as practicable, in an annex on conciliation.
8. The provisions of this Article shall apply to any related legal instrument which the Conference of the Parties may adopt, unless the instrument provides otherwise.

## **Article 15**

### **Amendments to the Convention**

1. Any Party may propose amendments to the Convention.
2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to the Convention.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.
6. For the purposes of this Article, "Parties present and voting" means Parties present and casting an affirmative or negative vote.



## **Article 16**

### **Adoption and amendment of annexes to the Convention**

1. Annexes to the Convention shall form an integral part thereof and, unless otherwise expressly provided, a reference to the Convention constitutes at the same time a reference to any annexes thereto. Without prejudice to the provisions of Article 14, paragraphs 2(b) and 7, such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Annexes to the Convention shall be proposed and adopted in accordance with the procedure set forth in Article 15, paragraphs 2, 3 and 4.
3. An annex that has been adopted in accordance with paragraph 2 above shall enter into force for all Parties to the Convention six months after the date of the communication by the Depositary to such Parties of the adoption of the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex. The annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.
4. The proposal, adoption and entry into force of amendments to annexes to the Convention shall be subject to the same procedure as that for the proposal, adoption and entry into force of annexes to the Convention in accordance with paragraphs 2 and 3 above.
5. If the adoption of an annex or an amendment to an annex involves an amendment to the Convention, that annex or amendment to an annex shall not enter into force until such time as the amendment to the Convention enters into force.

## **Article 17**

### **Protocols**

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

## **Article 18**

### **Right to vote**

1. Each Party to the Convention shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to the Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

## **Article 19**

### **Depositary**

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 17.

## **Article 20**

### **Signature**

This Convention shall be open for signature by States Members of the United Nations or of any of its specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at Rio de Janeiro, during the United Nations Conference on Environment and Development, and thereafter at United Nations Headquarters in New York from 20 June 1992 to 19 June 1993.

## **Article 21**

### **Interim arrangements**

1. The secretariat functions referred to in Article 8 will be carried out on an interim basis by the secretariat established by the General Assembly of the United Nations in its resolution 45/212 of 21 December 1990, until the completion of the first session of the Conference of the Parties.
2. The head of the interim secretariat referred to in paragraph 1 above will cooperate closely with the Intergovernmental Panel on Climate Change to ensure that the Panel can respond to the need for objective scientific and technical advice. Other relevant scientific bodies could also be consulted.
3. The Global Environment Facility of the United Nations Development Programme, the United Nations Environment Programme and the International Bank for Reconstruction and Development shall be the international entity entrusted with the operation of the financial mechanism referred to in Article 11 on an interim basis. In this connection, the Global Environment Facility

should be appropriately restructured and its membership made universal to enable it to fulfil the requirements of Article 11.

## **Article 22**

### **Ratification, acceptance, approval or accession**

1. The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organizations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to the Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to the Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.
3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by the Convention. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

## **Article 23**

### **Entry into force**

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.
2. For each State or regional economic integration organization that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

## **Article 24**

### **Reservations**

No reservations may be made to the Convention.

## **Article 25**

### **Withdrawal**

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

## **Article 26**

### **Authentic texts**

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have signed this Convention.

**DONE** at New York this ninth day of May one thousand nine hundred and ninety-two.

## Annex I

Australia  
Austria  
Belarus<sup>a/</sup>  
Belgium  
Bulgaria<sup>a/</sup>  
Canada  
Croatia<sup>a/\*</sup>  
Czech Republic<sup>a/\*</sup>  
Denmark  
European Economic Community  
Estonia<sup>a/</sup>  
Finland  
France  
Germany  
Greece  
Hungary<sup>a/</sup>  
Iceland  
Ireland  
Italy  
Japan  
Latvia<sup>a/</sup>  
Liechtenstein\*  
Lithuania<sup>a/</sup>  
Luxembourg  
Monaco\*  
Netherlands  
New Zealand  
Norway  
Poland<sup>a/</sup>  
Portugal  
Romania<sup>a/</sup>  
Russian Federation<sup>a/</sup>  
Slovakia<sup>a/\*</sup>

Slovenia<sup>a/\*</sup>

Spain

Sweden

Switzerland

Turkey

Ukraine<sup>a/</sup>

United Kingdom of Great Britain and Northern Ireland

United States of America

<sup>a/</sup> Countries that are undergoing the process of transition to a market economy.

\* Countries added to Annex I by an amendment that entered into force on 13 August 1998 pursuant to decision 4/CP.3 adopted at COP 3.

## **Annex II**

Australia  
Austria  
Belgium  
Canada  
Denmark  
European Economic Community  
Finland  
France  
Germany  
Greece  
Iceland  
Ireland  
Italy  
Japan  
Luxembourg  
Netherlands  
New Zealand  
Norway  
Portugal  
Spain  
Sweden  
Switzerland  
Turkey  
United Kingdom of Great Britain and Northern Ireland  
United States of America

**Schedule 2**  
**Kyoto Protocol to the United Nations Framework Convention on  
Climate Change**

s 4

Schedule 2: replaced, on 31 December 2020, by clause 4 of the Climate Change (Kyoto Protocol) Order 2020 (LI 2020/301).

*The Parties to this Protocol,*

*Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,*

*In pursuit of the ultimate objective of the Convention as stated in its Article 2,*

*Recalling the provisions of the Convention,*

*Being guided by Article 3 of the Convention,*

*Pursuant to the Berlin Mandate adopted by decision 1/CP.1 of the Conference of the Parties to the Convention at its first session,*

Have agreed as follows:

**Article 1**

For the purposes of this Protocol, the definitions contained in Article 1 of the Convention shall apply. In addition:

1. “Conference of the Parties” means the Conference of the Parties to the Convention.
2. “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992.
3. “Intergovernmental Panel on Climate Change” means the Intergovernmental Panel on Climate Change established in 1988 jointly by the World Meteorological Organization and the United Nations Environment Programme.
4. “Montreal Protocol” means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1987 and as subsequently adjusted and amended.
5. “Parties present and voting” means Parties present and casting an affirmative or negative vote.
6. “Party” means, unless the context otherwise indicates, a Party to this Protocol.
7. “Party included in Annex I” means a Party included in Annex I to the Convention, as may be amended, or a Party which has made a notification under Article 4, paragraph 2(g), of the Convention.



## Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:
  - (a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:
    - (i) Enhancement of energy efficiency in relevant sectors of the national economy;
    - (ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;
    - (iii) Promotion of sustainable forms of agriculture in light of climate change considerations;
    - (iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;
    - (v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;
    - (vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;
    - (vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;
    - (viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;
  - (b) Cooperate with other such Parties to enhance the individual and combined effectiveness of their policies and measures adopted under this Article, pursuant to Article 4, paragraph 2(e)(i), of the Convention. To this end, these Parties shall take steps to share their experience and exchange information on such policies and measures, including developing ways of improving their comparability, transparency and effectiveness. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable there-

after, consider ways to facilitate such cooperation, taking into account all relevant information.

2. The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively.
3. The Parties included in Annex I shall strive to implement policies and measures under this Article in such a way as to minimize adverse effects, including the adverse effects of climate change, effects on international trade, and social, environmental and economic impacts on other Parties, especially developing country Parties and in particular those identified in Article 4, paragraphs 8 and 9, of the Convention, taking into account Article 3 of the Convention. The Conference of the Parties serving as the meeting of the Parties to this Protocol may take further action, as appropriate, to promote the implementation of the provisions of this paragraph.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol, if it decides that it would be beneficial to coordinate any of the policies and measures in paragraph 1(a) above, taking into account different national circumstances and potential effects, shall consider ways and means to elaborate the coordination of such policies and measures.

### Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.
- 1 bis. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in the third column of the table contained in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 18 per cent below 1990 levels in the commitment period 2013 to 2020.
- 1 ter. A Party included in Annex B may propose an adjustment to decrease the percentage inscribed in the third column of Annex B of its quantified emission limitation and reduction commitment inscribed in the third column of the table contained in Annex B. A proposal for such an adjustment shall be communicated to the Parties by the secretariat at least three months before the meeting of

the Conference of the Parties serving as the meeting of the Parties to this Protocol at which it is proposed for adoption.

- 1 quater. An adjustment proposed by a Party included in Annex I to increase the ambition of its quantified emission limitation and reduction commitment in accordance with Article 3, paragraph 1 ter, above shall be considered adopted by the Conference of the Parties serving as the meeting of the Parties to this Protocol unless more than three-fourths of the Parties present and voting object to its adoption. The adopted adjustment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties, and shall enter into force on 1 January of the year following the communication by the Depositary. Such adjustments shall be binding upon Parties.
2. Each Party included in Annex I shall, by 2005, have made demonstrable progress in achieving its commitments under this Protocol.
3. The net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I. The greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner and reviewed in accordance with Articles 7 and 8.
4. Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. Such a decision shall apply in the second and subsequent commitment periods. A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990.
5. The Parties included in Annex I undergoing the process of transition to a market economy whose base year or period was established pursuant to decision 9/CP.2 of the Conference of the Parties at its second session shall use that base

year or period for the implementation of their commitments under this Article. Any other Party included in Annex I undergoing the process of transition to a market economy which has not yet submitted its first national communication under Article 12 of the Convention may also notify the Conference of the Parties serving as the meeting of the Parties to this Protocol that it intends to use an historical base year or period other than 1990 for the implementation of its commitments under this Article. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall decide on the acceptance of such notification.

6. Taking into account Article 4, paragraph 6, of the Convention, in the implementation of their commitments under this Protocol other than those under this Article, a certain degree of flexibility shall be allowed by the Conference of the Parties serving as the meeting of the Parties to this Protocol to the Parties included in Annex I undergoing the process of transition to a market economy.
7. In the first quantified emission limitation and reduction commitment period, from 2008 to 2012, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by five. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.
- 7 bis. In the second quantified emission limitation and reduction commitment period, from 2013 to 2020, the assigned amount for each Party included in Annex I shall be equal to the percentage inscribed for it in the third column of the table contained in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by eight. Those Parties included in Annex I for whom land-use change and forestry constituted a net source of greenhouse gas emissions in 1990 shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in 1990 from land-use change for the purposes of calculating their assigned amount.
- 7 ter. Any positive difference between the assigned amount of the second commitment period for a Party included in the Annex I and average annual emissions for the first three years of the preceding commitment period multiplied by eight shall be transferred to the cancellation account of that Party.
8. Any Party included in Annex I may use 1995 as its base year for hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride, for the purposes of the calculations referred to in paragraph 7 and 7 bis above.

- 8 bis. Any Party included in Annex I may use 1995 or 2000 as its base year for nitrogen trifluoride for the purposes of the calculation referred to in paragraph 7 bis above.
9. Commitments for subsequent periods for Parties included in Annex I shall be established in amendments to Annex B to this Protocol, which shall be adopted in accordance with the provisions of Article 21, paragraph 7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall initiate the consideration of such commitments at least seven years before the end of the first commitment period referred to in paragraph 1 above.
10. Any emission reduction units, or any part of an assigned amount, which a Party acquires from another Party in accordance with the provisions of Article 6 or of Article 17 shall be added to the assigned amount for the acquiring Party.
11. Any emission reduction units, or any part of an assigned amount, which a Party transfers to another Party in accordance with the provisions of Article 6 or of Article 17 shall be subtracted from the assigned amount for the transferring Party.
12. Any certified emission reductions which a Party acquires from another Party in accordance with the provisions of Article 12 shall be added to the assigned amount for the acquiring Party.
- 12 bis. Any units generated from market-based mechanisms to be established under the Convention or its instruments may be used by Parties included in Annex I to assist them in achieving compliance with their quantified emission limitation and reduction commitments under Article 3. Any such units which a Party acquires from another Party to the Convention shall be added to the assigned amount for the acquiring Party and subtracted from the quantity of units held by the transferring Party.
- 12 ter. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that, where units from approved activities under market-based mechanisms referred to in paragraph 12 bis above are used by Parties included in Annex I to assist them in achieving compliance with their quantified emission limitation and reduction commitments under Article 3, a share of these units is used to cover administrative expenses, as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation if these units are acquired under Article 17.
13. If the emissions of a Party included in Annex I in a commitment period are less than its assigned amount under this Article, this difference shall, on request of that Party, be added to the assigned amount for that Party for subsequent commitment periods.
14. Each Party included in Annex I shall strive to implement the commitments mentioned in paragraph 1 above in such a way as to minimize adverse social, environmental and economic impacts on developing country Parties, particu-

larly those identified in Article 4, paragraphs 8 and 9, of the Convention. In line with relevant decisions of the Conference of the Parties on the implementation of those paragraphs, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, consider what actions are necessary to minimize the adverse effects of climate change and/or the impacts of response measures on Parties referred to in those paragraphs. Among the issues to be considered shall be the establishment of funding, insurance and transfer of technology.

#### Article 4

1. Any Parties included in Annex I that have reached an agreement to fulfil their commitments under Article 3 jointly, shall be deemed to have met those commitments provided that their total combined aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of Article 3. The respective emission level allocated to each of the Parties to the agreement shall be set out in that agreement.
2. The Parties to any such agreement shall notify the secretariat of the terms of the agreement on the date of deposit of their instruments of ratification, acceptance or approval of this Protocol, or accession thereto, or on the date of deposit of their instruments of acceptance of any amendment to Annex B pursuant to Article 3, paragraph 9. The secretariat shall in turn inform the Parties and signatories to the Convention of the terms of the agreement.
3. Any such agreement shall remain in operation for the duration of the commitment period specified in Article 3 to which it relates.
4. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization, any alteration in the composition of the organization after adoption of this Protocol shall not affect existing commitments under this Protocol. Any alteration in the composition of the organization shall only apply for the purposes of those commitments under Article 3 that are adopted subsequent to that alteration.
5. In the event of failure by the Parties to such an agreement to achieve their total combined level of emission reductions, each Party to that agreement shall be responsible for its own level of emissions set out in the agreement.
6. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Protocol, each member State of that regional economic integration organization individually, and together with the regional economic integration organization acting in accordance with Article 24, shall, in the event of failure to achieve the total combined level of emission reductions, be responsible for its level of emissions as notified in accordance with this Article.

## Article 5

1. Each Party included in Annex I shall have in place, no later than one year prior to the start of the first commitment period, a national system for the estimation of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol. Guidelines for such national systems, which shall incorporate the methodologies specified in paragraph 2 below, shall be decided upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session.
2. Methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its first session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.
3. The global warming potentials used to calculate the carbon dioxide equivalence of anthropogenic emissions by sources and removals by sinks of greenhouse gases listed in Annex A shall be those accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties at its third session. Based on the work of, *inter alia*, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise the global warming potential of each such greenhouse gas, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to a global warming potential shall apply only to commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.

## Article 6

1. For the purpose of meeting its commitments under Article 3, any Party included in Annex I may transfer to, or acquire from, any other such Party emission reduction units resulting from projects aimed at reducing anthropogenic emissions by sources or enhancing anthropogenic removals by sinks of greenhouse gases in any sector of the economy, provided that:
  - (a) Any such project has the approval of the Parties involved;

- (b) Any such project provides a reduction in emissions by sources, or an enhancement of removals by sinks, that is additional to any that would otherwise occur;
  - (c) It does not acquire any emission reduction units if it is not in compliance with its obligations under Articles 5 and 7; and
  - (d) The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.
2. The Conference of the Parties serving as the meeting of the Parties to this Protocol may, at its first session or as soon as practicable thereafter, further elaborate guidelines for the implementation of this Article, including for verification and reporting.
3. A Party included in Annex I may authorize legal entities to participate, under its responsibility, in actions leading to the generation, transfer or acquisition under this Article of emission reduction units.
4. If a question of implementation by a Party included in Annex I of the requirements referred to in this Article is identified in accordance with the relevant provisions of Article 8, transfers and acquisitions of emission reduction units may continue to be made after the question has been identified, provided that any such units may not be used by a Party to meet its commitments under Article 3 until any issue of compliance is resolved.

### Article 7

1. Each Party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties, the necessary supplementary information for the purposes of ensuring compliance with Article 3, to be determined in accordance with paragraph 4 below.
2. Each Party included in Annex I shall incorporate in its national communication, submitted under Article 12 of the Convention, the supplementary information necessary to demonstrate compliance with its commitments under this Protocol, to be determined in accordance with paragraph 4 below.
3. Each Party included in Annex I shall submit the information required under paragraph 1 above annually, beginning with the first inventory due under the Convention for the first year of the commitment period after this Protocol has entered into force for that Party. Each such Party shall submit the information required under paragraph 2 above as part of the first national communication due under the Convention after this Protocol has entered into force for it and after the adoption of guidelines as provided for in paragraph 4 below. The frequency of subsequent submission of information required under this Article shall be determined by the Conference of the Parties serving as the meeting of



the Parties to this Protocol, taking into account any timetable for the submission of national communications decided upon by the Conference of the Parties.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts.

### **Article 8**

1. The information submitted under Article 7 by each Party included in Annex I shall be reviewed by expert review teams pursuant to the relevant decisions of the Conference of the Parties and in accordance with guidelines adopted for this purpose by the Conference of the Parties serving as the meeting of the Parties to this Protocol under paragraph 4 below. The information submitted under Article 7, paragraph 1, by each Party included in Annex I shall be reviewed as part of the annual compilation and accounting of emissions inventories and assigned amounts. Additionally, the information submitted under Article 7, paragraph 2, by each Party included in Annex I shall be reviewed as part of the review of communications.
2. Expert review teams shall be coordinated by the secretariat and shall be composed of experts selected from those nominated by Parties to the Convention and, as appropriate, by intergovernmental organizations, in accordance with guidance provided for this purpose by the Conference of the Parties.
3. The review process shall provide a thorough and comprehensive technical assessment of all aspects of the implementation by a Party of this Protocol. The expert review teams shall prepare a report to the Conference of the Parties serving as the meeting of the Parties to this Protocol, assessing the implementation of the commitments of the Party and identifying any potential problems in, and factors influencing, the fulfilment of commitments. Such reports shall be circulated by the secretariat to all Parties to the Convention. The secretariat shall list those questions of implementation indicated in such reports for further consideration by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the review of implementation of this Protocol by expert review teams taking into account the relevant decisions of the Conference of the Parties.

5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, with the assistance of the Subsidiary Body for Implementation and, as appropriate, the Subsidiary Body for Scientific and Technological Advice, consider:
  - (a) The information submitted by Parties under Article 7 and the reports of the expert reviews thereon conducted under this Article; and
  - (b) Those questions of implementation listed by the secretariat under paragraph 3 above, as well as any questions raised by Parties.
6. Pursuant to its consideration of the information referred to in paragraph 5 above, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take decisions on any matter required for the implementation of this Protocol.

### **Article 9**

1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall periodically review this Protocol in the light of the best available scientific information and assessments on climate change and its impacts, as well as relevant technical, social and economic information. Such reviews shall be coordinated with pertinent reviews under the Convention, in particular those required by Article 4, paragraph 2(d), and Article 7, paragraph 2(a), of the Convention. Based on these reviews, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall take appropriate action.
2. The first review shall take place at the second session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Further reviews shall take place at regular intervals and in a timely manner.

### **Article 10**

All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, without introducing any new commitments for Parties not included in Annex I, but reaffirming existing commitments under Article 4, paragraph 1, of the Convention, and continuing to advance the implementation of these commitments in order to achieve sustainable development, taking into account Article 4, paragraphs 3, 5 and 7, of the Convention, shall:

- (a) Formulate, where relevant and to the extent possible, cost-effective national and, where appropriate, regional programmes to improve the quality of local emission factors, activity data and/or models which reflect the socio-economic conditions of each Party for the preparation and periodic updating of national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties, and consis-

- tent with the guidelines for the preparation of national communications adopted by the Conference of the Parties;
- (b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:
    - (i) Such programmes would, *inter alia*, concern the energy, transport and industry sectors as well as agriculture, forestry and waste management. Furthermore, adaptation technologies and methods for improving spatial planning would improve adaptation to climate change; and
    - (ii) Parties included in Annex I shall submit information on action under this Protocol, including national programmes, in accordance with Article 7; and other Parties shall seek to include in their national communications, as appropriate, information on programmes which contain measures that the Party believes contribute to addressing climate change and its adverse impacts, including the abatement of increases in greenhouse gas emissions, and enhancement of and removals by sinks, capacity building and adaptation measures;
  - (c) Cooperate in the promotion of effective modalities for the development, application and diffusion of, and take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies, know-how, practices and processes pertinent to climate change, in particular to developing countries, including the formulation of policies and programmes for the effective transfer of environmentally sound technologies that are publicly owned or in the public domain and the creation of an enabling environment for the private sector, to promote and enhance the transfer of, and access to, environmentally sound technologies;
  - (d) Cooperate in scientific and technical research and promote the maintenance and the development of systematic observation systems and development of data archives to reduce uncertainties related to the climate system, the adverse impacts of climate change and the economic and social consequences of various response strategies, and promote the development and strengthening of endogenous capacities and capabilities to participate in international and inter-governmental efforts, programmes and networks on research and systematic observation, taking into account Article 5 of the Convention;
  - (e) Cooperate in and promote at the international level, and, where appropriate, using existing bodies, the development and implementation of education and training programmes, including the strengthening of national capacity building, in particular human and institutional capacities and the exchange or secondment of personnel to train experts in this field, in particular for developing countries, and facilitate at the national level public awareness of, and public access to information on, climate change. Suitable modalities should be developed to implement these activities through the relevant bodies of the Convention, taking into account Article 6 of the Convention;

- (f) Include in their national communications information on programmes and activities undertaken pursuant to this Article in accordance with relevant decisions of the Conference of the Parties; and
- (g) Give full consideration, in implementing the commitments under this Article, to Article 4, paragraph 8, of the Convention.

### Article 11

1. In the implementation of Article 10, Parties shall take into account the provisions of Article 4, paragraphs 4, 5, 7, 8 and 9, of the Convention.
2. In the context of the implementation of Article 4, paragraph 1, of the Convention, in accordance with the provisions of Article 4, paragraph 3, and Article 11 of the Convention, and through the entity or entities entrusted with the operation of the financial mechanism of the Convention, the developed country Parties and other developed Parties included in Annex II to the Convention shall:
  - (a) Provide new and additional financial resources to meet the agreed full costs incurred by developing country Parties in advancing the implementation of existing commitments under Article 4, paragraph 1(a), of the Convention that are covered in Article 10, subparagraph (a); and
  - (b) Also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of advancing the implementation of existing commitments under Article 4, paragraph 1, of the Convention that are covered by Article 10 and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention, in accordance with that Article.

The implementation of these existing commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among developed country Parties. The guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply *mutatis mutandis* to the provisions of this paragraph.

3. The developed country Parties and other developed Parties in Annex II to the Convention may also provide, and developing country Parties avail themselves of, financial resources for the implementation of Article 10, through bilateral, regional and other multilateral channels.

### Article 12

1. A clean development mechanism is hereby defined.
2. The purpose of the clean development mechanism shall be to assist Parties not included in Annex I in achieving sustainable development and in contributing

- to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3.
3. Under the clean development mechanism:
    - (a) Parties not included in Annex I will benefit from project activities resulting in certified emission reductions; and
    - (b) Parties included in Annex I may use the certified emission reductions accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3, as determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
  4. The clean development mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by an executive board of the clean development mechanism.
  5. Emission reductions resulting from each project activity shall be certified by operational entities to be designated by the Conference of the Parties serving as the meeting of the Parties to this Protocol, on the basis of:
    - (a) Voluntary participation approved by each Party involved;
    - (b) Real, measurable, and long-term benefits related to the mitigation of climate change; and
    - (c) Reductions in emissions that are additional to any that would occur in the absence of the certified project activity.
  6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary.
  7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, elaborate modalities and procedures with the objective of ensuring transparency, efficiency and accountability through independent auditing and verification of project activities.
  8. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall ensure that a share of the proceeds from certified project activities is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
  9. Participation under the clean development mechanism, including in activities mentioned in paragraph 3(a) above and in the acquisition of certified emission reductions, may involve private and/or public entities, and is to be subject to whatever guidance may be provided by the executive board of the clean development mechanism.

10. Certified emission reductions obtained during the period from the year 2000 up to the beginning of the first commitment period can be used to assist in achieving compliance in the first commitment period.

### **Article 13**

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Protocol.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.
3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.
4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:
  - (a) Assess, on the basis of all information made available to it in accordance with the provisions of this Protocol, the implementation of this Protocol by the Parties, the overall effects of the measures taken pursuant to this Protocol, in particular environmental, economic and social effects as well as their cumulative impacts and the extent to which progress towards the objective of the Convention is being achieved;
  - (b) Periodically examine the obligations of the Parties under this Protocol, giving due consideration to any reviews required by Article 4, paragraph 2(d), and Article 7, paragraph 2, of the Convention, in the light of the objective of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge, and in this respect consider and adopt regular reports on the implementation of this Protocol;
  - (c) Promote and facilitate the exchange of information on measures adopted by the Parties to address climate change and its effects, taking into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;
  - (d) Facilitate, at the request of two or more Parties, the coordination of measures adopted by them to address climate change and its effects, tak-

- ing into account the differing circumstances, responsibilities and capabilities of the Parties and their respective commitments under this Protocol;
- (e) Promote and guide, in accordance with the objective of the Convention and the provisions of this Protocol, and taking fully into account the relevant decisions by the Conference of the Parties, the development and periodic refinement of comparable methodologies for the effective implementation of this Protocol, to be agreed on by the Conference of the Parties serving as the meeting of the Parties to this Protocol;
  - (f) Make recommendations on any matters necessary for the implementation of this Protocol;
  - (g) Seek to mobilize additional financial resources in accordance with Article 11, paragraph 2;
  - (h) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;
  - (i) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies; and
  - (j) Exercise such other functions as may be required for the implementation of this Protocol, and consider any assignment resulting from a decision by the Conference of the Parties.
5. The rules of procedure of the Conference of the Parties and financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
  6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held every year and in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.
  7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
  8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Protocol as observers.

Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Protocol and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Protocol as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

#### **Article 14**

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Protocol.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention on arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Protocol. The secretariat shall, in addition, exercise the functions assigned to it under this Protocol.

#### **Article 15**

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve as, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol. The provisions relating to the functioning of these two bodies under the Convention shall apply *mutatis mutandis* to this Protocol. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Protocol shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.
2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Protocol, decisions under this Protocol shall be taken only by those that are Parties to this Protocol.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Protocol, any member of the Bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a party to this Protocol, shall be replaced by an additional member to be elected by and from amongst the Parties to this Protocol.



### **Article 16**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, as soon as practicable, consider the application to this Protocol of, and modify as appropriate, the multilateral consultative process referred to in Article 13 of the Convention, in the light of any relevant decisions that may be taken by the Conference of the Parties. Any multilateral consultative process that may be applied to this Protocol shall operate without prejudice to the procedures and mechanisms established in accordance with Article 18.

### **Article 17**

The Conference of the Parties shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article.

### **Article 18**

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session, approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance. Any procedures and mechanisms under this Article entailing binding consequences shall be adopted by means of an amendment to this Protocol.

### **Article 19**

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Protocol.

### **Article 20**

1. Any Party may propose amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been

- exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least three fourths of the Parties to this Protocol.
  5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

### **Article 21**

1. Annexes to this Protocol shall form an integral part thereof and, unless otherwise expressly provided, a reference to this Protocol constitutes at the same time a reference to any annexes thereto. Any annexes adopted after the entry into force of this Protocol shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.
2. Any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol.
3. Annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.
4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
5. An annex, or amendment to an annex other than Annex A or B, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depos-

itary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

6. If the adoption of an annex or an amendment to an annex involves an amendment to this Protocol, that annex or amendment to an annex shall not enter into force until such time as the amendment to this Protocol enters into force.
7. Amendments to Annexes A and B to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 20, provided that any amendment to Annex B shall be adopted only with the written consent of the Party concerned.

### **Article 22**

1. Each Party shall have one vote, except as provided for in paragraph 2 below.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Protocol. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

### **Article 23**

The Secretary-General of the United Nations shall be the Depositary of this Protocol.

### **Article 24**

1. This Protocol shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations which are Parties to the Convention. It shall be open for signature at United Nations Headquarters in New York from 16 March 1998 to 15 March 1999. This Protocol shall be open for accession from the day after the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes a Party to this Protocol without any of its member States being a Party shall be bound by all the obligations under this Protocol. In the case of such organizations, one or more of whose member States is a Party to this Protocol, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Protocol. In such cases, the organization and the member States shall not be entitled to exercise rights under this Protocol concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Protocol. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

### **Article 25**

1. This Protocol shall enter into force on the ninetieth day after the date on which not less than 55 Parties to the Convention, incorporating Parties included in Annex I which accounted in total for at least 55 per cent of the total carbon dioxide emissions for 1990 of the Parties included in Annex I, have deposited their instruments of ratification, acceptance, approval or accession.
2. For the purposes of this Article, “the total carbon dioxide emissions for 1990 of the Parties included in Annex I” means the amount communicated on or before the date of adoption of this Protocol by the Parties included in Annex I in their first national communications submitted in accordance with Article 12 of the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after the conditions set out in paragraph 1 above for entry into force have been fulfilled, this Protocol shall enter into force on the ninetieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by States members of the organization.

### **Article 26**

No reservations may be made to this Protocol.

### **Article 27**

1. At any time after three years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from this Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Protocol.

## Article 28

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**DONE** at Kyoto this eleventh day of December one thousand nine hundred and ninety-seven.

**IN WITNESS WHEREOF** the undersigned, being duly authorized to that effect, have affixed their signatures to this Protocol on the dates indicated.

## Annex A

### **Greenhouse gases**

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride (SF<sub>6</sub>)

Nitrogen trifluoride (NF<sub>3</sub>)<sup>3</sup>

### **Sectors/source categories**

Energy

- Fuel combustion
  - Energy industries
  - Manufacturing industries and construction
  - Transport
  - Other sectors
  - Other
- Fugitive emissions from fuels
  - Solid fuels
  - Oil and natural gas
  - Other

Industrial processes

- Mineral products

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<sup>3</sup> Applies only from the beginning of the second commitment period.

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- Chemical industry
  - Metal production
  - Other production
  - Production of halocarbons and sulphur hexafluoride
  - Consumption of halocarbons and sulphur hexafluoride
  - Other

Solvent and other product use

Agriculture

- Enteric fermentation
- Manure management
- Rice cultivation
- Agricultural soils
- Prescribed burning of savannas
- Field burning of agricultural residues
- Other

Waste

- Solid waste disposal on land
- Wastewater handling
- Waste incineration
- Other

Annex B

1	2	3	4	5	6
Party	Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)	Quantified emission limitation or reduction commitment (2013–2020) (percentage of base year or period)	Reference year <sup>1</sup>	Quantified emission limitation or reduction commitment (2013–2020) (expressed as percentage of reference year) <sup>1</sup>	Pledges for the reduction of greenhouse gas emissions by 2020 (percentage of reference year) <sup>2</sup>
Australia	108	99.5	2000	98	–5 to –15% or –25% <sup>3</sup>
Austria	92	80 <sup>4</sup>	NA	NA	NA
Belarus <sup>5</sup> *		88	1990	NA	–8%
Belgium	92	80 <sup>4</sup>	NA	NA	NA
Bulgaria*	92	80 <sup>4</sup>	NA	NA	NA
Croatia*	95	80 <sup>6</sup>	NA	NA	–20%/–30% <sup>7</sup>
Cyprus		80 <sup>4</sup>	NA	NA	NA
Czech Republic*	92	80 <sup>4</sup>	NA	NA	NA
Denmark	92	80 <sup>4</sup>	NA	NA	NA
Estonia*	92	80 <sup>4</sup>	NA	NA	NA
European Union	92	80 <sup>4</sup>	1990	NA	–20%/–30% <sup>7</sup>
Finland	92	80 <sup>4</sup>	NA	NA	NA
France	92	80 <sup>4</sup>	NA	NA	NA
Germany	92	80 <sup>4</sup>	NA	NA	NA
Greece	92	80 <sup>4</sup>	NA	NA	NA
Hungary*	94	80 <sup>4</sup>	NA	NA	NA
Iceland	110	80 <sup>8</sup>	NA	NA	NA
Ireland	92	80 <sup>4</sup>	NA	NA	NA
Italy	92	80 <sup>4</sup>	NA	NA	NA
Kazakhstan*		95	1990	95	–7%
Latvia*	92	80 <sup>4</sup>	NA	NA	NA
Liechtenstein	92	84	1990	84	–20%/–30% <sup>9</sup>
Lithuania*	92	80 <sup>4</sup>	NA	NA	NA
Luxembourg	92	80 <sup>4</sup>	NA	NA	NA
Malta		80 <sup>4</sup>	NA	NA	NA
Monaco	92	78	1990	78	–30%
Netherlands	92	80 <sup>4</sup>	NA	NA	NA
Norway	101	84	1990	84	–30% to –40% <sup>10</sup>

1	2	3	4	5	6
Party	Quantified emission limitation or reduction commitment (2008–2012) (percentage of base year or period)	Quantified emission limitation or reduction commitment (2013–2020) (percentage of base year or period)	Reference year <sup>1</sup>	Quantified emission limitation or reduction commitment (2013–2020) (expressed as percentage of reference year) <sup>1</sup>	Pledges for the reduction of greenhouse gas emissions by 2020 (percentage of reference year) <sup>2</sup>
Poland*	94	80 <sup>4</sup>	NA	NA	
Portugal	92	80 <sup>4</sup>	NA	NA	
Romania*	92	80 <sup>4</sup>	NA	NA	
Slovakia*	92	80 <sup>4</sup>	NA	NA	
Slovenia*	92	80 <sup>4</sup>	NA	NA	
Spain	92	80 <sup>4</sup>	NA	NA	
Sweden	92	80 <sup>4</sup>	NA	NA	
Switzerland	92	84.2	1990	NA	–20% to –30% <sup>11</sup>
Ukraine*	100	76 <sup>12</sup>	1990	NA	–20%
United Kingdom of Great Britain and Northern Ireland	92	80 <sup>4</sup>	NA	NA	
Canada <sup>13</sup>	94				
Japan <sup>14</sup>	94				
New Zealand <sup>15</sup>	100				
Russian Federation <sup>16*</sup>	100				

*Abbreviation:* NA = not applicable.

\* Countries that are undergoing the process of transition to a market economy.

All footnotes below, except for footnotes 1, 2 and 5, have been provided through communications from the respective Parties.

<sup>1</sup> A reference year may be used by a Party on an optional basis for its own purposes to express its quantified emission limitation or reduction commitment (QELRC) as a percentage of emissions of that year, that is not internationally binding under the Kyoto Protocol, in addition to the listing of its QELRC(s) in relation to the base year in the second and third columns of this table, which are internationally legally binding.

<sup>2</sup> Further information on these pledges can be found in documents FCCC/SB/2011/INF.1/Rev.1 and FCCC/KP/AWG/2012/MISC.1, Add.1 and Add.2.



<sup>3</sup> Australia's QELRC under the second commitment period of the Kyoto Protocol is consistent with the achievement of Australia's unconditional 2020 target of 5 per cent below 2000 levels. Australia retains the option later to move up within its 2020 target of 5 to 15, or 25 per cent below 2000 levels, subject to certain conditions being met. This reference retains the status of these pledges as made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol or its associated rules and modalities.

<sup>4</sup> The QELRCs for the European Union and its member States for a second commitment period under the Kyoto Protocol are based on the understanding that these will be fulfilled jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol. The QELRCs are without prejudice to the subsequent notification by the European Union and its member States of an agreement to fulfil their commitments jointly in accordance with the provisions of the Kyoto Protocol.

<sup>5</sup> Added to Annex B by an amendment adopted pursuant to decision 10/CMP.2. This amendment has not yet entered into force.

<sup>6</sup> Croatia's QELRC for a second commitment period under the Kyoto Protocol is based on the understanding that it will fulfil this QELRC jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol. As a consequence, Croatia's accession to the European Union shall not affect its participation in such joint fulfilment agreement pursuant to Article 4 or its QELRC.

<sup>7</sup> As part of a global and comprehensive agreement for the period beyond 2012, the European Union reiterates its conditional offer to move to a 30 per cent reduction by 2020 compared to 1990 levels, provided that other developed countries commit themselves to comparable emission reductions and developing countries contribute adequately according to their responsibilities and respective capabilities.

<sup>8</sup> The QELRC for Iceland for a second commitment period under the Kyoto Protocol is based on the understanding that it will be fulfilled jointly with the European Union and its member States, in accordance with Article 4 of the Kyoto Protocol.

<sup>9</sup> The QELRC presented in column three refers to a reduction target of 20 per cent by 2020 compared to 1990 levels. Liechtenstein would consider a higher reduction target of up to 30 per cent by 2020 compared to 1990 levels under the condition that other developed countries commit themselves to comparable emission reductions and that economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities.

<sup>10</sup> Norway's QELRC of 84 is consistent with its target of 30 per cent reduction of emissions by 2020, compared to 1990. If it can contribute to a global and comprehensive agreement where major emitting Parties agree on emission reductions in line with the 2° C

target, Norway will move to a level of 40 per cent reduction for 2020 based on 1990 levels. This reference retains the status of the pledge made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol.

<sup>11</sup> The QELRC presented in the third column of this table refers to a reduction target of 20 per cent by 2020 compared to 1990 levels. Switzerland would consider a higher reduction target up to 30 per cent by 2020 compared to 1990 levels subject to comparable emission reduction commitments from other developed countries and adequate contribution from developing countries according to their responsibilities and capabilities in line with the 2° C target. This reference retains the status of the pledge made under the Cancun Agreements and does not amount to a new legally binding commitment under this Protocol or its associated rules and modalities.

<sup>12</sup> Should be full carry-over and there is no acceptance of any cancellation or any limitation on use of this legitimately acquired sovereign property.

<sup>13</sup> On 15 December 2011, the Depositary received written notification of Canada's withdrawal from the Kyoto Protocol. This action will become effective for Canada on 15 December 2012.

<sup>14</sup> In a communication dated 10 December 2010, Japan indicated that it does not have any intention to be under obligation of the second commitment period of the Kyoto Protocol after 2012.

<sup>15</sup> New Zealand remains a Party to the Kyoto Protocol. It will be taking a quantified economy-wide emission reduction target under the United Nations Framework Convention on Climate Change in the period 2013 to 2020.

<sup>16</sup> In a communication dated 8 December 2010 that was received by the secretariat on 9 December 2010, the Russian Federation indicated that it does not intend to assume a quantitative emission limitation or reduction commitment for the second commitment period.

## Schedule 2A

### Paris Agreement

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Schedule 2A: inserted, on 23 June 2020, by section 199 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

*The Parties to this Agreement,*

*Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,*

*Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session,*

*In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,*

*Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,*

*Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,*

*Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology,*

*Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,*

*Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty,*

*Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,*

*Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities,*

*Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,*

*Recognizing the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,*

*Noting* the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change,

*Affirming* the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,

*Recognizing* the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change,

*Also recognizing* that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change,

Have agreed as follows:

### **Article 1**

For the purpose of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

- (a) “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992;
- (b) “Conference of the Parties” means the Conference of the Parties to the Convention;
- (c) “Party” means a Party to this Agreement.

### **Article 2**

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
  - (a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
  - (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and
  - (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

### **Article 3**

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

### **Article 4**

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.
5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.
6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.

7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.
8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement.
9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14.
10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session.
11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat.
13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article.
15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.
16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat

shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15.
19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

#### **Article 5**

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests.
2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches.

#### **Article 6**

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity.
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double

- counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties.
  4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim:
    - (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
    - (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party;
    - (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and
    - (d) To deliver an overall mitigation in global emissions.
  5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.
  6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation.
  7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.
  8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to:
    - (a) Promote mitigation and adaptation ambition;



- (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and
  - (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.
9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article.

### Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2.
2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change.
3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session.
4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs.
5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate.
6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.
7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

- (a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;
  - (b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties;
  - (c) Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making;
  - (d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and
  - (e) Improving the effectiveness and durability of adaptation actions.
8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.
9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include:
  - (a) The implementation of adaptation actions, undertakings and/or efforts;
  - (b) The process to formulate and implement national adaptation plans;
  - (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems;
  - (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and
  - (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources.
10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties.
11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication.

12. The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat.
13. Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11.
14. The global stocktake referred to in Article 14 shall, inter alia:
  - (a) Recognize adaptation efforts of developing country Parties;
  - (b) Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article;
  - (c) Review the adequacy and effectiveness of adaptation and support provided for adaptation; and
  - (d) Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article.

## **Article 8**

1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.
2. The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change.
4. Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include:
  - (a) Early warning systems;
  - (b) Emergency preparedness;
  - (c) Slow onset events;
  - (d) Events that may involve irreversible and permanent loss and damage;
  - (e) Comprehensive risk assessment and management;
  - (f) Risk insurance facilities, climate risk pooling and other insurance solutions;
  - (g) Non-economic losses; and
  - (h) Resilience of communities, livelihoods and ecosystems.

5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

### **Article 9**

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.
2. Other Parties are encouraged to provide or continue to provide such support voluntarily.
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts.
4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation.
5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis.
6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance.
7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so.
8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.
9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to

financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

### **Article 10**

1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.
2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer.
3. The Technology Mechanism established under the Convention shall serve this Agreement.
4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article.
5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties.
6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties.

### **Article 11**

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology develop-

- ment, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information.
2. Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive.
  3. All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties.
  4. All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement.
  5. Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building.

### **Article 12**

Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.

### **Article 13**

1. In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established.
2. The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility.

3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.
4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article.
5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14.
6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14.
7. Each Party shall regularly provide the following information:
  - (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and
  - (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.
8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.
9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.
10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.
11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building

needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.

12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties.
13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support.
14. Support shall be provided to developing countries for the implementation of this Article.
15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis.

#### **Article 14**

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.



### Article 15

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties.
3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement.

### Article 16

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement.
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.
4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall:
  - (a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and
  - (b) Exercise such other functions as may be required for the implementation of this Agreement.
5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties.
8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article.

### Article 17

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

### Article 18

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bod-

ies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary 14 bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.
3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

### Article 19

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

### Article 20

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.
2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their

respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence.

### Article 21

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession.
2. Solely for the limited purpose of paragraph 1 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention.
3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States.

### Article 22

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

### Article 23

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement.
2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character.

### **Article 24**

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

### **Article 25**

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa.

### **Article 26**

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

### **Article 27**

No reservations may be made to this Agreement.

### **Article 28**

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement.

### **Article 29**

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Paris this twelfth day of December two thousand and fifteen.

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

## Schedule 3

### Activities with respect to which persons must be participants

s 2A

Schedule 3: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Schedule 3 heading: amended, on 8 December 2009, by section 85(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### Part 1

#### Forestry

*(applies on and after 1 January 2008)*

Deforesting pre-1990 forest land other than forest land that under section 179A may not be treated as deforested, if the area deforested is more than 2 hectares in any mandatory emissions return period, but excluding any pre-1990 forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

Schedule 3 Part 1: amended, on 23 June 2020, by section 200(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 1: amended, on 1 January 2013, by section 101(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

#### Part 1A

#### Pre-1990 offsetting forest land

*(applies on and after 1 January 2013)*

Schedule 3 Part 1A: inserted, on 1 January 2013, by section 101(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Deforesting pre-1990 offsetting forest land, but excluding any pre-1990 offsetting forest land that is affected by a natural event that permanently prevents re-establishing a forest on that land.

#### 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 2018; 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 year.

Schedule 3 Part 2: amended, on 23 June 2020, by section 200(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 2 paragraph (a)(i): amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

## Part 3 Stationary energy

### *Subpart 1*

*(applies on and after 1 January 2010)*

Schedule 3 Part 3 subpart 1 heading: inserted, on 1 January 2013, by section 101(3) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Importing coal.

Satisfying 1 or both of the following in respect of a year (**mining coal**):

- (a) mining more than 2,000 tonnes of coal in the year (**direct coal mining**):
- (b) owning at least 2,000 tonnes of coal, from the person's direct coal mining, at the start of the year, and where the year is immediately after (**coal stockpiling**)—
- (i) a year of direct coal mining; or
- (ii) 1 or more consecutive years of owning at least 2,000 tonnes of coal (from the person's direct coal mining) at the start of the year, after an initial year of direct coal mining.

Importing natural gas where the volume of natural gas imported exceeds 10 000 litres in a year.

Mining natural gas, other than for export.

Using geothermal fluid for the purpose of generating electricity or industrial heat (initial use only).

Combusting used oil, waste oil, used tyres, or waste for the purpose of generating electricity or industrial heat.

Refining petroleum where the refining involves the use of intermediate crude oil products (for example, refinery fuels and gases) for energy or feedstock purposes.

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### Example

A person mines 2,500 tonnes of coal in 2022, which is "direct coal mining" and therefore "mining coal" in 2022. They stop direct coal mining, but still own (from their mining) 2,250 tonnes of coal at the start of 2023 and 2,000 tonnes at the start of 2024, which is "coal stockpiling" and therefore "mining coal" in 2023 and 2024 (under paragraph (b)(i) and (ii) of that term, respectively).

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Schedule 3 Part 3 subpart 1: amended, on 23 June 2020, by section 200(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 3 subpart 1: amended, on 23 June 2020, by section 200(4) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 3 subpart 1: amended, on 1 January 2013, by section 101(5) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

### *Subpart 2*

*(applies on and after 1 January 2014)*

Schedule 3 Part 3 subpart 2: inserted, on 1 January 2013, by section 101(4) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Using crude oil or other liquid hydrocarbons (other than obligation fuel or as specified in Part 3) where any prescribed threshold is met.

## **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, or calcium carbonates.

Producing glass using soda ash.

Producing gold.

Schedule 3 Part 4 subpart 1: amended, on 8 December 2009, by section 85(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### *Subpart 2*

*(applies on and after 1 January 2011)*

Schedule 3 Part 4 subpart 2: replaced, on 1 January 2013, by section 101(6) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Operating electrical switchgear that uses sulphur hexafluoride where any prescribed threshold is met.

Importing hydrofluorocarbons or perfluorocarbons, excluding hydrofluorocarbons or perfluorocarbons contained in goods.

Manufacturing hydrofluorocarbons or perfluorocarbons other than through producing aluminium, resulting in the consumption of anodes or the production of anode effects.

Schedule 3 Part 4 subpart 2: amended, on 23 June 2020, by section 200(5) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).



## Part 5 Agriculture

### *Subpart 1—Fertiliser (processor)*

*(applies on and after 1 January 2011, but is subject to section 219)*

Importing or manufacturing synthetic fertilisers containing nitrogen.

Schedule 3 Part 5 subpart 1: amended, on 23 June 2020, by section 200(6) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Subpart 2—Fertiliser (farmer)*

*(applies on and after a date appointed by Order in Council, but is subject to section 219)*

Purchasing, other than for on-selling, synthetic fertiliser containing nitrogen for application to land.

Schedule 3 Part 5 subpart 2: amended, on 23 June 2020, by section 200(7) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 5 subpart 2: amended, on 8 December 2009, by section 85(3) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

### *Subpart 3—Animals (processor)*

*(applies on and after 1 January 2011, but is subject to section 219)*

Slaughtering ruminant animals, pigs, horses, or poultry by a person who is the operator of a risk management programme registered under the Animal Products Act 1999 for the slaughter of animals.

Dairy processing of milk or colostrum.

Exporting from New Zealand live cattle, sheep, or pigs in accordance with an animal welfare export certificate.

Schedule 3 Part 5 subpart 3: amended, on 23 June 2020, by section 200(8) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

Schedule 3 Part 5 subpart 3: amended, on 1 January 2013, by section 101(7) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Schedule 3 Part 5 subpart 3: amended, on 1 January 2013, by section 101(8) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Schedule 3 Part 5 subpart 3: amended, on 8 December 2009, by section 85(4) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

*Subpart 4—Animals (farmer)*

*(applies on and after 1 January 2024 or a later date appointed by Order in Council, but is subject to section 219)*

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.

Schedule 3 Part 5 subpart 4: amended, on 23 June 2020, by section 200(9) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

**Part 6**  
**Waste**

*(applies on and after 1 January 2011)*

Operating a disposal facility.

Schedule 3 Part 6: amended, on 23 June 2020, by section 200(10) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## Schedule 4

### Activities with respect to which persons may be participants

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Schedule 4: added, on 26 September 2008, by section 52 of the Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85).

Schedule 4 heading: amended, on 8 December 2009, by section 86(1) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

#### 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.

Being a party to a Crown conservation contract.

#### Part 2

#### Other removal activities

*Subpart 1*

*(applies on and after 1 January 2010)*

Producing a product that contains a substance—

- (a) that—
  - (i) is permanently embedded in the product; or
  - (ii) is temporarily embedded in the product, and the product is exported with the substance embedded; and
- (b) that would result in emissions if not embedded; and
- (c) where—
  - (i) a person is required to surrender units under this Act in respect of the emissions that would result if the substance was not embedded; and
  - (ii) the result of the substance being embedded in the circumstances in paragraph (a)(i) or (ii) is a reduction from emissions reported in any emissions report provided by New Zealand under its international climate change obligations; and
  - (iii) any prescribed threshold is met.

Schedule 4 Part 2 subpart 1 paragraph (c)(ii): amended, on 23 June 2020, by section 201(1) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Subpart 2*

*(applies on and after a date determined by Order in Council)*

Storing of carbon dioxide after capture, where—

- (a) a person is required to surrender units under this Act in respect of the emissions that would result if the carbon dioxide was not captured and stored; and
- (b) the result of the carbon dioxide being captured and stored is a reduction from emissions reported in any emissions report provided by New Zealand under its international climate change obligations; and
- (c) any prescribed threshold is met.

Schedule 4 Part 2 subpart 2 paragraph (b): amended, on 23 June 2020, by section 201(2) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

### *Subpart 3*

*(applies on and after 1 January 2011)*

Schedule 4 Part 2 subpart 3: replaced, on 1 January 2013, by section 102(1) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Exporting hydrofluorocarbons or perfluorocarbons, including hydrofluorocarbons or perfluorocarbons contained in goods, where any prescribed threshold is met.

Destroying hydrofluorocarbons or perfluorocarbons where any prescribed threshold is met.

Schedule 4 Part 2 subpart 3: amended, on 23 June 2020, by section 201(3) of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

## **Part 3**

### **Liquid fossil fuels**

*(applies on and after 1 July 2013)*

Schedule 4 Part 3: replaced, on 1 July 2013, by section 102(2) of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89).

Purchasing obligation fuel from 1 or more participants who carry out an activity listed in Part 2 of Schedule 3 where any prescribed threshold is met.

## **Part 4**

### **Stationary energy**

*(applies on and after 1 January 2009)*

Purchasing coal from 1 or more participants who mine coal where the total coal purchased exceeds 250 000 tonnes per year.

Purchasing natural gas from 1 or more participants who mine natural gas where the total natural gas purchased exceeds 2 petajoules per year.

**Part 5**  
**Agriculture**

*[Repealed]*

Schedule 4 Part 5: repealed, on 8 December 2009, by section 86(2) of the Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57).

## Schedule 5

### Primary sector climate change commitments

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Schedule 5: inserted, on 23 June 2020, by section 202 of the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22).

#### **Farm emissions reporting**

- (1) For 25% of farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2021.
- (2) For all farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2022.
- (3) A pilot of a farm-level accounting and reporting system has been completed by 1 January 2024 across a range of farm types.
- (4) A system for farm-level accounting and reporting of 2024 agricultural greenhouse gas emissions at farm level is in use by all farms by 1 January 2025.

#### **Farm plans**

- (5) Guidance is provided to farmers on how to measure and manage greenhouse gas emissions through farm planning by 1 January 2021.
- (6) A quarter of farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2022.
- (7) All farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2025.

## Reprints notes

### 1 *General*

This is a reprint of the Climate Change Response Act 2002 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### 3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### 4 *Amendments incorporated in this reprint*

Climate Change (Kyoto Protocol) Order 2020 (LI 2020/301)

Public Service Act 2020 (2020 No 40): section 135

Education and Training Act 2020 (2020 No 38): section 668

Privacy Act 2020 (2020 No 31): section 217

Climate Change Response (Emissions Trading Reform) Amendment Act 2020 (2020 No 22)

Climate Change Response (Zero Carbon) Amendment Act 2019 (2019 No 61)

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Land Transfer Act 2017 (2017 No 30): section 250

Contract and Commercial Law Act 2017 (2017 No 5): section 347

District Court Act 2016 (2016 No 49): section 261

Climate Change Response (Removal of Transitional Measure) Amendment Act 2016 (2016 No 24)

Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14

Standards and Accreditation Act 2015 (2015 No 91): section 45(1)

Climate Change Response (Unit Restriction) Amendment Act 2014 (2014 No 30)

Financial Reporting (Amendments to Other Enactments) Act 2013 (2013 No 102): section 126

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)

Crown Minerals Amendment Act 2013 (2013 No 14): section 65

Legislation Act 2012 (2012 No 119): section 77(3)

Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 (2012 No 89)

Biosecurity Law Reform Act 2012 (2012 No 73): section 93

Criminal Procedure Act 2011 (2011 No 81): section 413

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Climate Change Response Amendment Act 2011 (2011 No 15)  
Climate Change Response (Moderated Emissions Trading) Amendment Act 2009 (2009 No 57)  
Climate Change Response (Emissions Trading Forestry Sector) Amendment Act 2009 (2009 No 19)  
Climate Change Response (Emissions Trading) Amendment Act 2008 (2008 No 85)  
Policing Act 2008 (2008 No 72): section 116(a)(ii)  
Climate Change Response Act Commencement Order 2007 (SR 2007/336)  
Climate Change Response Amendment Act 2006 (2006 No 59)  
Climate Change Response Act Commencement Order 2003 (SR 2003/151)  
Local Government Act 2002 (2002 No 84): section 262  
Climate Change Response Act 2002 (2002 No 40): section 63A, 64A, 84A, 235