

Proposed changes to the New Zealand Emissions Trading Scheme and Climate Change Response Act 2002

After undertaking reviews of the New Zealand Emissions Trading Scheme (ETS) in 2015 – 2016, the Government has now acknowledged the current ETS is not being utilised to its full potential.

In pursuit of improving the ETS, the Government has introduced the Climate Change Response (Emissions Trading Reform) Amendment Bill (Bill). The Bill will amend the Climate Change Response Act 2002 (CCRA). The aim of the changes are to reduce New Zealand's overall emissions and bring international climate change targets within reach.

The key changes that will result from the Bill, as currently drafted, are as follows:

- **Updating the purpose of the CCRA**

The purpose of the CCRA will be updated to support implementation of New Zealand's international climate commitments under the Paris Agreement and domestic targets and emissions budgets, to be set under the Climate Change Response (Zero Carbon) Amendment Bill (**Zero Carbon Bill**). See our comments on the Zero Carbon Bill [here](#).

- **Allowing for cost containment reserve / robust and transparent auctions**

Currently participants within the ETS can purchase unlimited New Zealand Units (**NZUs**) from the Government at a fixed price of \$25 per NZU for immediate surrender. This arrangement will be replaced with an ETS auction mechanism and there will be a limited reserve supply of NZUs which will be released when NZU prices reach a certain level. As part of this process, the Minister of Climate Change (**Minister**) must ensure that emissions are reduced, or removals are increased, to match the reserve amount of NZUs released.

To support robust and transparent auctions, the Minister may also appoint an independent auction monitor to validate auction results and public reports on the results of auctions.

- **Enabling cap on emissions covered by ETS**

The Government will start introducing regulations to set an overall limit for the supply of NZUs for each year to apply for a period of five years. This means that in each year the Government will set a limit on the supply of the total NZUs available in the ETS whether by means of auction, other means, or approved overseas units. The overall limits and price controls must be generally in accordance with the relevant emissions budget and the relevant nationally determined contribution for New Zealand under the Paris Agreement, but subject to the discretion of the Minister when considering the factors set out at new sections 30GC(5) and 30GC(6) of the CCRA.

The proposed Section 30GC(5) records the **main matters** to be considered by the Minister as:

- the projected trends for New Zealand's greenhouse gas emissions in the 5 years after the current year;
- the proper functioning of the emissions trading scheme;
- international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions to access emissions reductions in their carbon markets;
- 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;
- any recommendations of the Climate Change Commission that are made after an emissions budget is first set, including any desirable carbon price path (if available); and

Proposed changes to the New Zealand Emissions Trading Scheme and Climate Change Response Act 2002 (Continued)

- any other matters that the Minister considers relevant.

The proposed Section 30GC(6) records the **additional matters** to be considered by the Minister as:

- the impact of emissions prices on households and the economy;
- the level and trajectory of international emissions prices (including price controls in linked markets); and
- inflation.

- **Phase-down of industrial allocation**

The ETR requires a phase-down of all industrial allocations from 2021. Currently, those that meet the criteria prescribed in the CCRA may be eligible to receive an industrial allocation of NZUs. Industrial allocation is targeted at activities (production processes) that are both emission-intensive and trade-exposed.

Industrial allocation aims to reduce competitiveness issues for New Zealand businesses impacted by ETS costs in the global marketplace. New Zealand businesses are unable to pass on increased costs to consumers solely because they are competing with overseas businesses. This competition could lead to businesses relocating to countries which do not have equivalent climate policies. Relocation would see a loss in production in New Zealand and may also increase global emissions – this is called carbon leakage.

The ETR reduces the level of allocation for every activity by 0.01 each year from 2021 to 2030, with greater reductions after 2030.

- **Strengthened compliance regime**

To encourage compliance with the ETS, the ETR will introduce new infringement offences for low-level offending. Emissions related penalties will be separated into two categories:

1. failure to surrender NZUs; and
2. failure to report emissions or make mandatory allocation applications.

Offenders may be liable to pay infringement fees of no more than \$2,000 for a body corporate or \$1,000 for any other person other than a body corporate. A name and shame policy will apply, where information about significant non-compliance will be made public.

- **Transparent scheme**

Information on the emissions and removals of individual businesses will be made publicly available online. This will allow market researchers to have a more complete picture on the ETS and put a public spotlight on emitters captured by the ETS.

- **Averaging accounting for post-1989 forests registered from 1 January 2019**

Averaging accounting will allow participants to account under the ETS by reference to the expected long-term average level of carbon stock of the land over multiple forest rotations, rather than on a strict 1 unit per 1 tonne basis.

Averaging accounting will be optional for forests registered from 1 January 2019 and mandatory from 1 January 2021. There are three key features for post-1989 forestry under this average accounting approach:

1. removing liabilities for carbon lost from adverse events (such as storms or fires), as long as the forest is replanted (and if the damage is so severe that it prevents re-establishment of the forest, then there will be a mechanism by which the land can be removed from the ETS);
2. enabling liabilities to be offset by planting a carbon-equivalent forest elsewhere. In such circumstances, the swapped out carbon accounting areas will be removed from the

Proposed changes to the New Zealand Emissions Trading Scheme and Climate Change Response Act 2002 (Continued)

ETS and the NZU balance will be transferred to the swapped in land; and

3. closing a loophole that could allow foresters to deforest and re-register land in order to game the averaging accounting provisions.

- **Introducing new permanent forest activity into ETS**

The Permanent Forest Sink Initiative will be disestablished and replaced with a new permanent post-1989 forest activity in the ETS.

- **Operational and technical improvements for forestry**

The ETR will introduce a range of operational and technical improvements specific to the forestry sector to simplify the process and encourage the planting of new forests. The proposed improvements include:

1. enabling easier assessment of land eligibility for the ETS;
2. enabling new regulations to define how carbon credits are allocated in relation to grant-funded forests to ensure that the Act does not force forest owners to breach their 'One Billion Trees' contracts;
3. adjustments to the mandatory emission return periods to coincide with the deadlines prescribed in the Paris Agreement;
4. a number of changes to simplify the change of ownership process for registered post-1989 forest land under the ETS, including changes to the way transmissions of interest (**TOI**) for when registered post-1989 land is bought, sold or transferred. The main changes to TOI are:
 - a) making a TOI optional when a forest lease or right is granted; and
 - b) removing the need for executors /administrators of estates to become participants in the ETS and undertake a

TOI when they begin to administer the estate;

5. changes to offsetting to make offsetting more effective and flexible for pre-1990 forest land owners. This will be particularly important for owners, such as Māori landowners and farm foresters, who hold large areas of pre-1990 forest land that could be suited to another land use. The improvements will provide more flexibility around how to achieve an offset forest, the ability to adjust an offsetting application after it has been approved and only apply enforcement action to the specific areas of forest land that are not offset (as opposed to liability for all deforestation from the original application / revocation of the entire application);
6. better management of tree weed exemptions in respect of deforestation liabilities; and
7. enabling owners of land with multiple owners better access to exemptions in respect of deforestation liabilities.

It is expected that these changes will be particularly beneficial to small forest owners, farm foresters and, in some cases, to trusts and forest owners of Māori land under the Te Ture Whenua Māori Act 1993.

- **Price on agricultural emissions from 2025**

One of the major changes to be implemented by the ETR is the proposal to put a price on agricultural emissions from 2025. The ETR in its current form does not provide detailed provisions, and further changes are expected to be incorporated into the ETR through draft text provided to the relevant select committee and/or Supplementary Order Papers.

Want to know more?

If you would like further information or have any queries or concerns, please do not hesitate to contact Anderson Lloyd's specialist [Renewable energy and carbon trading team](#).