



## Briefing: Climate change legislation programme bids 2024

Date submitted: 1 February

Tracking number: BRF- 4109

Security level: CLASSIFICATION

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon Simon WATTS <b>Minister of Climate Change</b>	<b>Approve</b> the three bids and their proposed priority categories. <b>Provide</b> feedback on the content, timelines and priority of the proposed draft legislation bids.	12 February
CC Hon Nicola WILLIS <b>Associate Minister of Climate Change</b>	N/A	N/A

Actions for Minister's office staff
<b>Return</b> the signed briefing to the Ministry for the Environment ( <a href="mailto:ministerials@mfe.govt.nz">ministerials@mfe.govt.nz</a> ). <b>Consult</b> with the Leader of the House Office prior to the submission of bids.

Appendices and attachments
1. Draft Cover Letter: Climate Change Portfolio Legislation Bids 2024
2. Draft Cabinet Paper: Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill: Request for priority in the 2024 Legislation Programme
3. [REDACTED] Out of scope
4. [REDACTED] Out of scope

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
Principal Author	Elliot Dunn		
Responsible Manager	Rachel Cooper	021 209 4038	✓
General Manager	Melody Guy		

**Minister's comments**

# Climate change legislation program bids

## Key messages

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1. This briefing requests your approval of the three draft legislation bids under the Climate Change Portfolio. Your feedback is sought on the proposed scope of each bid as well as the proposed priority categories. Officials recommend that you request that these bids, are included on the Legislation Programme for the 54th Parliament. This briefing also provides general information on the process and timelines for legislation bids.
2. A summary of the bids has been provided below and the content included is subject to further conversations with you.

### **Bid 1: Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill**

- **Category: 2** – Must be passed before the end of 2024
- **Expected Scope:**
  - Repeal obligations for agriculture activities in the Climate Change Response Act including the backstop that will bring surrender obligations for agricultural emissions into the New Zealand Emissions Trading Scheme (NZ ETS) from 1 January 2025.
- **Risks:**
  - Tight timeframes are required to ensure the Bill is enacted prior to 1 January 2025. Final policy decisions will be sought in February 2024 to ensure this timeframe is achievable.
  - Removal of agriculture from the NZ ETS is expected to be a contentious issue among environmental non-governmental organisations (NGOs)

### Out of scope

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Out of scope

[Redacted text block containing multiple paragraphs and bulleted points, all obscured by grey bars.]

3. A select committee process of 5 months is required to repeal agricultural surrender obligations before 1 January 2025. The Cabinet Office requires that “All bids proposing to refer a bill to select committee for less than six months must be discussed with the office of the Leader of the House first, and the outcomes of that discussion recorded in the bid”<sup>1</sup>.

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<sup>1</sup> Paragraph 23 of CO (23) 13

4. [REDACTED] 9(2)(h) [REDACTED]
5. [REDACTED] Out of scope [REDACTED]
6. You are required to submit the bids to the Legislation Coordinator in the Cabinet Office by 12:00pm on Monday, 19 February 2024 (as requested in Cabinet Office Circular CO (23) 13). A cover letter prepared for this purpose is attached.

## Recommendations

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We recommend that you:

- a. **approve** the proposed priority categories for the following the three Climate Change Portfolio bids to be submitted for inclusion in the Legislation Programme:
- i **bid one:** Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill – Category 2 (must be passed before the end of 2024)
- [REDACTED] Out of scope [REDACTED]
- [REDACTED]
- [REDACTED]
- b. **note** that we require your feedback on the draft bids by 12 February, to make any changes before you are required to submit the bids to the Cabinet Office on 19 February 2024.
- c. **note** that we will provide final versions of the bids along with the letter for transmission to the Cabinet Office to your office on 15 February, reflecting any feedback you provide.
- d. **note** that submission of these legislative bids does not prevent new bills being added to the Legislation Programme in future.

**OR**

Out of scope

- f. **note** officials will discuss the legislative bids with you at the officials meeting on 5 February.

## Signatures

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Melody Guy  
General Manager – Markets  
**Climate Change Mitigation and  
Resource Efficiency**  
1 February



Katherine Wilson  
General Manager - Adaptation  
**Environmental Management and  
Adaptation**  
1 February

Hon Simon WATTS  
**Minister of Climate Change**

**Date**

# Climate change legislation program bids

## Purpose

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7. This briefing requests your approval of the three draft legislation bids under the Climate Change Portfolio. Your feedback is sought on the proposed scope of each bid as well as the proposed priority categories. Officials recommend that you request that these bids, are included on the Legislation Programme for the 54th Parliament. This briefing also provides general information on the process and timelines for legislation bids.

## Background

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8. Ministers and agencies have been asked by the Cabinet Office to consider foreseeable legislative priorities for the full term of the 54<sup>th</sup> Parliament from 2024 to 2026.
9. Officials have identified key policy areas that require amendments to support the Government in delivering on its commitments to addressing climate change. Three legislation bids have been proposed for Bills that will serve as the vehicles to deliver the necessary amendments.
10. The Cabinet Office has asked Ministers to deliver bids for the 2024 Legislation Programme by 12:00pm on Monday, 19 February 2024 [CO (23) 13 refers].

## Analysis and advice

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11. Officials propose that you request that three bids, focused on the government's legislative priorities for addressing climate change, are included on the Legislation Programme for the 54<sup>th</sup> Parliament. The content of the bids is subject to further conversations with you.
12. The bids and their proposed categories are:
  - **Bid one:** Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill: Priority category 2
  - [REDACTED] Out of scope
  - [REDACTED] Out of scope
13. New Bills can be added to the Legislation Programme during the year to address any unforeseen need for legislation. However, it is preferable to include Bills in

the Legislation Programme at the beginning of the year to assist in planning the timing in the House and the allocation of drafting resources.

14. Out of scope

15. You are required to submit bids to the Legislation Coordinator in the Cabinet Office by 12:00pm on Monday, 19 February 2024 (as requested in Cabinet Office Circular CO (23) 13). The bids must be proposed in order of priority.

### **Bid one: Climate Change Response (NZ ETS Obligations for Agricultural Activities) Amendment Bill**

16. The Climate Change Response (NZ ETS Obligations for Agricultural Activities) Amendment Bill is ranked as first priority of three for this portfolio and is proposed to be priority category 2 (to be passed before the end of 2024).

17. This Bill is specific to the New Zealand Emissions Trading Scheme (NZ ETS) component of the National Party's and the Government's commitment to "keep agriculture out of the Emissions Trading Scheme and implement a fair and sustainable pricing system for on-farm agricultural emissions by 2030 that reduces emissions without sending production overseas."

18. The Climate Change Response Act 2002 (the Act) includes an NZ ETS backstop that would introduce farm-level and/or processor-level surrender obligations from 1 January 2025. If surrender obligations are to be avoided, an amendment to the Act is required and must be passed prior to 1 January 2025.

19. The Bill will repeal sections 2A, 2B, and Part 5 of Schedule 3 of the Act to remove reporting and surrender obligations for both process and farm-level agricultural activities. It will also repeal associated sector-specific provisions for agriculture to enter the NZ ETS that are present throughout the Act, including sections related to reporting, agricultural free allocation, etc.

20. To ensure the Government remains on track to implement these changes before 01 January 2025 a select committee process of 5 months is required. Paragraph 23 of the Cabinet Office circular states that "All bids proposing to refer a bill to select committee for less than six months must be discussed with the office of the Leader of the House first, and the outcomes of that discussion recorded in the bid" [CO (23) 13 refers].

21. 9(2)(h)

Out of scope

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Out of scope

[Redacted]

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[Redacted]

Out of scope

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Out of scope

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## **Te Tiriti analysis**

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51. No Tiriti issues are associated with making the legislation bids proposed in this briefing.

## **Other considerations**

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### **Consultation and engagement**

52. The Parliamentary Counsel Office (PCO) has been consulted on the draft legislation bids. 9(2)(h)

[Redacted text block]

9(2)(h)

## Risks and mitigations

53. There are tight timeframes required to ensure that the Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill is enacted prior to January 2025. Policy decisions will be sought in February to ensure that this timeframe remains achievable.

Out of scope

## Legal issues

56. No legal issues are associated with making the legislation bids proposed in this briefing.

## Financial, regulatory and legislative implications

57. No financial, regulatory, or legislative implications are associated with making the legislation bids proposed in this briefing.

## Next steps

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58. Officials will be available to discuss the draft legislation bids at the officials meeting on 5 February
59. We are seeking your feedback on the draft bids by 12 February. Following this we will incorporate any changes into the draft bids.
60. Final draft bids will be sent to your office on 15 February along with an accompanying letter.

61. Your office arranges for the signed letter and final bids to be delivered to the Legislation Coordinator in the Cabinet Office on 19 February.
62. Below is a timeline of key dates:

### Timeline of key dates

Step	Date
Officials to discuss leg bids with Minister	5 Feb
Feedback received from Minister	12 Feb
Incorporate feedback and send final drafts to PCO	12-14 Feb
Final bids and bid letter sent to Minister	15 Feb
Minister's office delivers letter and final bids to the Legislation Coordinator in the Cabinet Office.	19 Feb

## Appendices

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**Appendix one:** Draft Cover Letter - Climate Change Portfolio Legislation Bids 2024

**Appendix two:** Draft Cabinet Paper - Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill: Request for priority in the 2024 Legislation Programme

**Appendix three:** [REDACTED] Out of scope [REDACTED]  
[REDACTED]

**Appendix four:** [REDACTED] Out of scope [REDACTED]  
[REDACTED]

19 February 2024

Cabinet Office  
Level 10  
Executive Wing  
PARLIAMENT BUILDINGS

Attention: Legislation Coordinator

**2024 to 2026 54<sup>th</sup> Parliamentary Term Legislation Programme: Submission of Bids for the Climate Portfolio**

As requested in the Cabinet Office Circular CO (23) 13, I wish to submit the following bids, in order of rank within the Climate portfolio, for consideration for inclusion in the 2024 to 2026/54<sup>th</sup> Parliamentary Term Legislation Programme:

1. Climate Change Response (NZ ETS Obligations for Agricultural Activities) Amendment Bill (Category 2 – must be passed before the 2023 general election);

Out of scope

Yours sincerely,

Hon. Simon Watts  
**Minister of Climate Change**

In Confidence

Office of the Minister of Climate Change

**Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill: Request for priority in the 2024 Legislation Programme**

**Summary information**

1 The summary information for this Bill is:

<b>Portfolio of sponsoring Minister:</b>	Climate Change
<b>Department responsible:</b>	Ministry for the Environment  Rachel Cooper Acting Manager, Markets Development 021 209 4038
<b>Title of the proposed Bill:</b>	Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill
<b>Proposed ranking of Bill within the bids from this portfolio:</b>	1
<b>Estimated size:</b>	Medium
<b>Estimated complexity:</b>	Low
<b>Proposed priority:</b>	2 (must be passed before the end of 2024 if surrender obligations are to be avoided for fertiliser and animal processors).

**Policy**

- 2 The Government’s coalition agreements and the National Party’s Election Manifesto commit to “Keep agriculture out of the Emissions Trading Scheme and implement a fair and sustainable pricing system for on-farm agricultural emissions by 2030 that reduces emissions without sending production overseas.”
- 3 The bill is specific to the part to the commitment that relates to the New Zealand Emissions Trading Scheme (NZ ETS).

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- 4 The Climate Change Response Act 2002 (CCRA) has reporting obligations for both processor and farm level activities. Currently, processor level reporting obligations are in effect, and farm level reporting obligations commence on 1 January 2025.
- 5 The NZ ETS backstop currently in the CCRA consists of two parts:
  - NZ ETS surrender obligations for processor-level agriculture activities, commencing from 1 January 2025; and
  - NZ ETS surrender obligations for animal-farmers activities.
- 6 To remove these obligations, a bill is required to amend the CCRA. The bill must be passed prior to 1 January 2025 if surrender obligations are to be avoided.
- 7 The bill will amend the CCRA to repeal all NZ ETS obligations for agricultural activities by repealing Part 5 of Schedule 3 to remove surrender and reporting obligations for those activities and repealing associated sector-specific provisions. The associated secondary legislation for calculating emissions from agriculture activities in the NZ ETS will also need to be revoked.
- 8 To support the timeframes to repeal agricultural obligations prior to 1 January 2025 when surrender obligations will commence, the Bill will need to be prioritised with a priority category of 2, must be passed in 2024, if surrender obligations are to be avoided for fertiliser and animal processors.
- 9 This is the first step in a sequenced process to price agricultural emissions no later than 2030 outside of the NZ ETS.
- 10 The removal of agriculture from the NZ ETS is expected to be contentious with environmental non-governmental organisations who, in previous consultations related to agriculture and the NZ ETS, have expressed frustration over the delays to pricing agricultural emissions and raised concerns that any delay would have a detrimental effect on the path towards mitigating agricultural emissions.
- 11 The Minister of Climate Change will lodge a Cabinet paper in February 2024 seeking final policy decisions to inform the drafting of this legislation.

### **Need for legislation**

- 12 The Climate Change Response Act 2002 establishes, among other things, key policies to enable New Zealand to meet its climate change commitments. One of these policies is that agricultural emissions will be included in the NZ ETS from 1 January 2025. This is frequently referred to as the NZ ETS backstop. The CCRA also currently requires agricultural processors to report on their emissions in line with NZ ETS reporting requirements, in anticipation of surrender obligations commencing.
- 13 The National Party's Election Manifesto and the Government's coalition agreements commit to "Keep agriculture out of the Emissions Trading Scheme and implement a fair and sustainable pricing system for on-farm agricultural emissions by 2030 that reduces emissions without sending production overseas."

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- 14 To remove agricultural obligations from the NZ ETS, the CCRA will necessitate amending the CCRA to remove all agricultural obligations by:
- repealing Part 5 of Schedule 3 to remove surrender and reporting obligations for those agriculture activities;
  - repealing associated sector-specific provisions; and
  - revoking associated secondary legislation for calculating emissions from agriculture activities in the NZ ETS.
- 15 I propose this Bill be assigned priority of category 2 (must be passed in 2024) if surrender obligations are to be avoided for fertiliser and animal processors. The National Party's Election Manifesto and the Government's coalition agreements commit to "Keep agriculture out of the Emissions Trading Scheme and implement a fair and sustainable pricing system for on-farm agricultural emissions by 2030 that reduces emissions without sending production overseas."
- 16 If this Bill is not passed in 2024, surrender obligations will commence for agriculture processors on 1 January 2025.
- 17 The Climate Change Response Act has been amended in the last year. However, these amendments were not in relation to agriculture NZ ETS obligations. In October 2023, the Minister of Climate Change deferred NZ ETS obligations for animal farmers from 1 January 2024 to 1 January 2026 via an Order in Council [CAB-23-MIN-0457 refers]. This means that from 1 January 2026, the CCRA (as affected by the Climate Change (Animals–Farmer Activities) Order 2023) requires animal farmers to report their emissions, with surrender obligations commencing on 1 January 2027. At this point surrender obligations for animal processors would cease. There is no option to defer surrender obligations for processors in the interim.
- 18 I also do not propose broadening the scope of this Bill to include amendments that could impact timelines for the repeal of the agricultural emissions obligations.
- 19 A bid was made for the 2023 Legislation Programme for a Climate Change Response (Agricultural Emissions Pricing) Amendment Bill. The bid was for the repeal of NZ ETS obligations for agriculture activities and replacement with an alternative pricing system. Policy work progressed but a bill for this bid was not introduced in 2023. This Bill would progress the repeal of NZ ETS obligations whilst work continues on an alternative system for managing emissions from agriculture activities.

### Compliance

- 20 This Bill is likely to comply with each of the following:
- 18.1 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 18.2 the principles and guidelines set out in the Privacy Act 2020;
  - 18.3 the principles of the Treaty of Waitangi;

- 18.4 the relevant international standards and obligations; and
- 18.5 the [Legislation Guidelines \(2021 edition\)](#), which are maintained by the Legislation Design and Advisory Committee.

### **Binding on the Crown**

- 21 The resulting Act will be binding on the Crown.

### **Consultation**

#### *Relevant government departments*

- 22 The Department of the Prime Minister and Cabinet, Ministry for Primary Industries, Treasury, Te Puni Kōkiri, and the Environmental Protection Authority were consulted on this paper.

#### *Public Consultation*

- 23 In November 2022, the Government consulted on the design for an alternative agricultural emissions pricing system. As part of this consultation submissions were invited on an interim processor level levy system, with a similar architecture to the processor-level backstop in the NZ ETS.
- 24 Most Māori submitters did not support an interim processor-level levy, likewise, the sector's submitters were also opposed to the interim processor-level levy citing the blunt nature of such a levy, the uncertainty it would create for farmers, and the equity implications of putting the levy burden on farmers who use processors. Ministers made public a report under section 215 of the CCRA, outlining details of a farm-level pricing system as an alternative to pricing agricultural emissions in the NZ ETS.
- 25 The Government consulted on deferring NZ ETS reporting obligations for animal farmers in August 2023. Through this consultation, most sector submitters continued to support an agricultural emissions pricing system outside of the NZ ETS as they considered it would provide greater opportunities to develop a more effective solution.
- 26 Māori submitters considered that there would be increased administrative costs as a result of animal farmers' obligations under the NZ ETS. The majority of submissions received who opposed the deferral expressed frustration over the delays to pricing agricultural emissions and raised concerns that any delay would have a detrimental effect on the path towards mitigating agricultural emissions.
- 27 In summary, while the sector is generally accepting of a pricing system for agricultural emissions to serve as an incentive to drive emissions reductions, they were in favour of a system that did so outside the NZ ETS due to its complexity and cost.

#### *Legislation Design and Advice Committee*

- 28 This Bill will not be referred to the Legislation Design and Advice Committee as it is primarily a repeal bill rather than creating new legislation provisions.

#### *Government caucus and other parties in Parliament*

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29 I will consult with the Government caucus and other parties in Parliament as necessary to support the introduction of this Bill.

**Secondary legislation**

30 Secondary legislation is not anticipated to be required to give effect to the provisions of the Bill. The Bill will revoke sector-specific secondary legislation used for the calculation of emissions under the NZ ETS for these activities.

**Timeline**

31 The Bill must come into force prior to 1 January 2025, as set out in paragraph 10.

32 The proposed timing for the bill is set out in the table below.

33 9(2)(h)

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date on which final policy approvals were, or will be, obtained from Cabinet	February 2024	Consultation undertaken in 2022 and 2023 as summarised above
Date on which complete drafting instructions were or will be sent to PCO	March 2024	
Date by which the Bill will be released for exposure draft (if an exposure draft is planned)	Not applicable	
Date by which the Bill will go to the Ministry of Justice (or Crown Law if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990	May 2024	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction	May 2024	

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Date by which any policy decisions for associated secondary legislation will be before Cabinet		Not applicable, no associated secondary legislation is anticipated.
Date requested for introduction of the Bill	End of May 2024	
Date of report back from select committee	October 2024	5 month Select Committee process. A period shorter than 6 months is required to enable the Bill to be passed in 2024, which is necessary to avoid surrender obligations commencing from 1 January 2025.
Date on which final policy approvals will be obtained from Cabinet for any substantive Amendment Paper (AP) to Bill (if already introduced)		No substantive Amendment Paper is anticipated.
Date on which final drafting instructions were or will be sent to PCO for any substantive AP to Bill (if already introduced)		Not applicable, as no substantive Amendment Paper is anticipated.
Date by which final drafting instructions for any associated secondary legislation will be sent to PCO		Not applicable.
Date of enactment	November 2024	
Date of commencement	The day after Royal assent.	

**Recommendations**

The Minister Climate Change recommends that the Committee:

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- 1 note that the Bill will amend the Climate Change Response Act 2002 to repeal all New Zealand Emissions Trading Scheme obligations for agricultural activities
- 2 note that the Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill ranks 2 within the bids from my Climate Change portfolio;
- 3 approve the inclusion of the Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill in the 2024 Legislation Programme, with a priority of category 2 (must be passed in 2024);
- 4 note that priority of category 2 is sought to avoid surrender obligations for fertiliser and animal processors and to meet the National Party's manifesto and the Government's coalition agreements that commit 'to keep agriculture out of the ETS';
- 5 note that drafting instructions will be provided to the Parliamentary Counsel Office by March 2024;
- 6 note that the Bill should be introduced no later than the end of May 2024;
- 7 note that the Bill should be passed no later than December 2024.

Authorised for lodgement

Hon Simon Watts  
Minister of Climate Change