

In Confidence

Office of the Minister of Agriculture
Office of the Minister of Climate Change

Chair, Economic Policy Committee

Final policy decisions on amending the Climate Change Response Act 2002 to repeal agricultural obligations in the New Zealand Emissions Trading Scheme

Proposal

- 1 This paper seeks agreement on final policy decisions to amend the Climate Change Response Act 2002 (CCRA) to remove agriculture as an activity from the New Zealand Emissions Trading Scheme (NZ ETS).

Relation to Government priorities

- 2 This supports the Government's coalition agreements and the National Party's Manifesto 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".

Executive Summary

- 3 This paper seeks agreement to amend the CCRA to keep agriculture out of the NZ ETS by repealing Part 5 of Schedule 3, which lists agriculture activities as mandatory NZ ETS participants.
- 4 The CCRA, via the NZ ETS, currently requires:
 - 4.1 agricultural processors to pay for their agricultural emissions by 1 January 2025 (processors currently report their emissions); and
 - 4.2 animal farmers to report their emissions by 1 January 2026, and pay for them by 1 January 2027.
- 5 We have been clear in our commitment to keep agriculture out of the NZ ETS, and so an amendment Bill needs to be passed by December 2024 to remove these requirements.
- 6 To provide further certainty to the sector, when making this amendment we will also announce our high-level plan for reducing agricultural emissions, including timelines to implement a fair and sustainable pricing system for on-farm agricultural emissions by 2030. Further detail of this will follow in Emissions Reduction Plan (ERP) 2.

Background

- 7 Since 2011, the CCRA has required fertiliser manufacturers and importers and animal processors to monitor and report their agricultural emissions under the NZ ETS. In 2020, the CCRA was amended to require fertiliser and animal processors to pay for these emissions through the NZ ETS from 2025.
- 8 In October 2023, the Minister of Climate Change deferred NZ ETS obligations for animal farmers, which require them to report and pay for their emissions via the NZ ETS, 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.
- 9 This requirement for processors and animal farmers to report and pay for their emissions in the NZ ETS, known as the ETS backstop, was put in place in 2020 to support progress towards developing an alternative pricing system for agricultural emissions by 2025. It also sends a signal to incentivise actions to reduce agricultural emissions to support New Zealand's emissions reduction goals. The intention was that these provisions would be repealed when an alternative pricing system was introduced.

Analysis

- 10 We have been clear in our commitment to keep agriculture out of the NZ ETS, and introduce fair and sustainable pricing for agricultural emissions by 2030 that reduces emissions without sending production overseas. Keeping agriculture out of the NZ ETS is a key part of this – and is something we must act quickly on, given the impending surrender obligations.
- 11 We gave consideration to a number of potential options for amending the CCRA, however only a full repeal of agricultural obligations at both processor and farm-level credibly meets our commitment to keep agriculture out of the NZ ETS. The other two options we considered were: 'deactivating' the requirement to report and pay for agricultural emissions, and removing requirements for farmers to report and pay for their emissions but requiring agricultural processors to pay for emissions at a later date—arguably these both keep agriculture within the NZ ETS, and so would be counter to our commitment.
- 12 Also relevant is that we are committed to fair and sustainable pricing no later than 2030. This itself may also help to incentivise earlier action from the sector to reduce emissions.

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- 13 Full repeal of agricultural obligations from the NZ ETS will require repealing Part 5 of Schedule 3 to remove the requirements for farmers and processors to surrender and report emissions from agricultural activities. Associated agriculture provisions will also be repealed as they will no longer be required once agriculture is removed from the NZ ETS, including¹:
- 13.1 those provisions relating to the commencement of NZ ETS obligations for agriculture activities;
 - 13.2 allocation of units to agricultural activities;
 - 13.3 transitional provisions for agriculture activities entering the NZ ETS;
 - 13.4 the associated secondary legislation for calculating emissions from agriculture activities in the NZ ETS; and
 - 13.5 the order in Council deferring farm-level reporting and surrender obligations for animal activities.
- 14 We recommend a transitional provision to provide for the de-registration of participants that are no longer required to report, alongside other transitional arrangements. The Environmental Protection Agency (EPA) estimates there are approximately 130 participants who could be deregistered in this way.
- 15 Note, where an agricultural processor is involved in processing activities (for example, dairy and meat processing or the import and manufacture of synthetic fertiliser), the emissions associated with non-farm activities such as transportation, or the energy to process, will continue to be covered by the NZ ETS. A small proportion of on-farm emissions are currently included in the NZ ETS, such as emissions from driving farm vehicles. No change is proposed in this regard.

Climate Priorities for Agriculture

- 16 Removing agriculture from the NZ ETS shows demonstrable commitment to our coalition and manifesto priorities. However, to provide increased certainty, it is important we simultaneously provide clear signals to the agriculture sector, and New Zealand, related to the Government's direction for agricultural mitigation policy.
- 17 At the same time as announcing our proposed amendments, we therefore propose to publicly reaffirm the Government's commitment to implementing a fair and sustainable system to reduce on-farm agricultural emissions. As part of this, we will present as a package the following key agricultural emissions actions:
- 17.1 reviewing the methane science and targets (the review will be announced by 8 April 2024);
 - 17.2 establishing an agricultural emissions reduction advisory board;
 - 17.3 publishing the standardised farm-level methodology;
 - 17.4 commencing measurement of on-farm emissions in 2025, based on the published methodology;
 - 17.5 Investigate options to incentivise the uptake of mitigation technologies;

¹ s162 of the CCRA provides opportunities to recognise approved agricultural mitigation actions in the NZ ETS.

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- 17.6 9(2)(f)(iv)
- 17.7 introducing fair and sustainable pricing of on-farm emissions no later than 2030, that reduces emissions without resulting in emissions leakage and sending production overseas.
- 18 The presentation of this package of actions will help to substantiate our commitment to agricultural emissions action. As such we expect they will also help to mitigate concerns that repealing agricultural provisions in the CCRA will negatively impact our ability to meet our domestic and international emissions targets. ERP 2, which is currently being developed, will provide more detail on our agricultural emissions approach.

Timeframes for amending the CCRA

- 19 To remove the backstop obligations, we intend to introduce a Bill to amend the CCRA. The bill must be passed prior to 1 January 2025 to prevent surrender obligations for agricultural processors coming into effect. This means the Bill must be prioritised and introduced to the House in June 2024 to allow enough time for the Select Committee process, subsequent readings and royal assent to take place.
- 20 If there are any delays preparing the Bill, we may need to consider truncating the Parliamentary process to meet the 31 December 2024 deadline.

Emissions Reduction Plans and Emissions Budgets

- 21 Although pricing agricultural emissions by 2025 was included in ERP 1, repealing agricultural obligations from the NZ ETS does not significantly impact Emissions Budget 1 (which covers the period 2022 to 2025) as it was only expected to result in a small emission reduction over that period. Potential impacts on other emissions budgets can be mitigated via development of the second emissions reduction plan, which is legislatively required to be published this year, and as such will be a key vehicle to address this.

Treaty of Waitangi Analysis

- 22 The Crown and Māori have obligations through legislation, case law, and settlement agreements. As a partner to the Treaty of Waitangi, the Crown is required to adhere to principles of partnership, participation, and protection in their relationship with Māori.

- 23 Māori have significant interests in agribusiness and forestry, through both investment and settlement assets. Also relevant is that iwi, hapu, and Māori are likely to face unique challenges to transitioning to lower emissions agriculture (for example, as related to complex ownership structures, difficulties in changing land use and raising finance, and other historical barriers).
- 24 It will be important for Government to engage with Māori, along with other New Zealanders, on future decisions regarding agricultural emissions policy that could impact Māori interests and assets, to ensure unique circumstances and obligations are taken into account. There will be opportunity to engage further on this proposal as the Bill progresses through to Select Committee, and on wider agricultural emissions policy later this year through ERP2 and other policy development processes.

Cost-of-living Implications

- 25 Removing agricultural obligations from the NZ ETS does not create any direct cost of living implications.

Financial Implications

- 26 Implementing these changes will have associated operational costs for the EPA that are yet to be quantified. For example, they will be required to execute the deregistration of participants from the NZ ETS registry and the scope of their NZ ETS reporting will need to be updated. Any such costs will be met within existing baselines.

Legislative Implications

Bid for legislation

- 27 I, the Minister of Climate Change, have submitted a bid, '*Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill*', for inclusion in the Legislation Programme. The Amendment Bill has a category ranking of 1 and priority category of 2 which means it must be passed in 2024.
- 28 The Bill will amend the CCRA to repeal all NZ ETS obligations for agricultural activities (refer to paragraph 13).
- 29 The Bill is expected to be a medium bill with low complexity given it is primarily focused on repealing agricultural obligations in the NZ ETS.
- 30 We will instruct Parliamentary Counsel Office to begin drafting following Cabinet decisions on the proposals outlined in this paper.
- 31 As the Bill is amending the existing CCRA, I propose that the Bill is binding on the Crown.

Impact Analysis

Regulatory Impact Statement

- 32 A Regulatory Impact Statement (RIS) was prepared for the proposed repeal of agricultural obligations under the NZ ETS (see **Appendix One**). The Quality Assurance Panel provided a statement indicating that the RIS ‘partially meets’ the standards for regulatory impact assessment.
- 33 The Quality Assurance Panel’s statement is as follows:
- “A quality assurance panel with members from the Treasury and the Ministry for the Environment has reviewed the Regulatory Impact Statement (RIS), “Repeal of Processor-level Surrender Obligations Provisions for the Primary Sector in the Climate Change Response Act” produced by the Ministry for the Environment and Ministry for Primary Industries dated 13 March 2024. The panel considers that it partially meets the quality assurance criteria.
- The RIS clearly states the problem with current surrender obligations at the processor-level and farm-level under the CCRA. The analysis shows that while the status quo could deliver emissions reductions and provide emissions pricing equity with other sectors, it is not practically feasible to implement due to administrative and compliance issues.
- The case for legislative change to prevent current NZ ETS obligations at the processor-level from taking effect has been based on the fundamental assumption that an alternative, farm-level pricing system would be introduced no later than 2030. This has influenced the framing of the analysis and conclusions in the RIS.
- As an alternative pricing system has yet to be developed outside the ETS, there is limited evidence about the effectiveness of the Ministers’ preferred option. The analysis has also been constrained by lack of recent modelling of potential options. Cost benefit analysis undertaken for the status quo, indicates that pricing emissions at a processor level in the ETS has a small positive benefit. It has been assumed that amending the CCRA to remove agricultural processor-level pricing would mean that the potential economic net benefit suggested by this modelling would be reversed, resulting in a net loss to New Zealand society. However, the applicability of this analysis is limited because under the CCRA, processor-level pricing used in the analysis would be superseded by farm-level surrender obligations in 2027 and this not included in the modelling.
- The RIS acknowledges that there are significant uncertainties and risks associated with the preferred option. The option to defer processor-level pricing, effectively extends out the current ETS backstop for processor only obligations and could potentially help to mitigate some of these risks if the alternative agricultural pricing mechanism is delayed or not progressed.
- Partial consultation has been undertaken previously, but the full range of options in the RIS has not had the benefit of broad public consultation and there will be limited opportunity for consultation during the Select Committee process.
- It will be important to continue monitoring the impact on emission reduction targets.”

Climate Implications of Policy Assessment

- 34 The Ministry for the Environment has been consulted and confirms that the CIPA requirements apply to these changes as the threshold for significance is met. Their statement is as follows:

“The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements apply to this proposal.

This paper requests Cabinet’s approval for the final policy decisions to draft legislation aimed at repealing agricultural obligations within the New Zealand Emissions Trading Scheme (NZ ETS), as outlined in the Climate Change Response Act 2002 (CCRA). Repeal of these obligations, with no alternative action taken (note alternative action is proposed), is anticipated to lead to a cumulative increase in expected emissions of around 24Mt CO₂-e for the 30-year period from 2020 to 2050. This equates to approximately 157kt CO₂e within the first emissions budget period (2022 - 2025), 2Mt CO₂e within the second emissions budget period (2026 - 2030), and 5Mt CO₂e within the third emissions budget period (2030 - 2035).

Relative to status quo, repealing these obligations (in the absence of additional obligations), is expected to lead to an increase in emissions because pricing serves as an incentive for emission reduction efforts. Associating a cost with emitting greenhouse gas emissions encourages the adoption of practices and technologies that lower emissions. The CIPA team has conducted a high-level review of the modelling and deems it reasonable in reflecting the impact of this proposed change.”

Population Implications

- 35 Our proposal would mean farmers and growers, agricultural processors, and Māori with agriculture interest will not face the regulatory burden associated with participating in the NZ ETS - which is not how we intend to price agricultural emissions.
- 36 The effectiveness of reducing agricultural emissions could have flow-on effects for the wider population of New Zealand. Agriculture is a large proportion of New Zealand’s emissions. The extent to which agricultural emissions reduce outside of the NZ ETS will determine what is required from other sectors and/or the quantum of offshore emissions reductions needed to meet New Zealand’s climate targets.

Human Rights

- 37 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.²

² Noting that the Ministry of Justice is responsible for scrutinising proposed legislation and advising the Attorney-General on whether it meets Bill of Rights Act requirements.

Next steps

- 41 Following Cabinet's approval, officials will begin the process of developing legislation in order to bring a Bill before the House by June 2024. We will also publicly signal our intention to meet timelines for key agricultural emission actions (see paragraph 17), including a fair and sustainable pricing system for on-farm agricultural emissions by 2030.
- 42 The following actions need to take place to support Royal Assent by December 2024:

Actions	2024
Bill drafting and LEG Committee	20 June
Introduction of the Bill	24 June
First Reading	27 June
Select Committee (four months)	27 June to 28 October
Second and Third reading and Committee of the Whole	November
Royal Assent	November/December

Consultation

Public consultation

- 43 Officials have not specifically consulted on amending the CCRA to 'keep agriculture out of the Emissions Trading Scheme' although the National party were very clear about intending to do this in their party manifesto. There will be an opportunity to hear from the public as part of the Select Committee process.
- 44 Last year, the Government consulted on deferring NZ ETS reporting obligations for animal farmers with 1,225 submissions received. Through this consultation, most agricultural 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.

- 45 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.

Departmental consultation

- 46 The Treasury, Te Puni Kōkiri (TPK), Te Arawhiti, and the EPA were consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Communications

- 47 The decisions will be announced via press release, email communications to sector stakeholders, and publication on the Ministry for the Environment's (MfE's) and Ministry for Primary Industries (MPI) website.

Proactive Release

- 48 Following Cabinet consideration, we will consider the release of this paper and attachments on the MfE website in whole or in part, subject to appropriate redactions.

Recommendations

The Minister of Agriculture and the Minister of Climate Change jointly recommends that Cabinet:

- 1 **Note** the Government has clearly committed 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.”
- 2 **Agree** to amend the Climate Change Response Act 2002 to repeal all New Zealand Emissions Trading Scheme obligations for agricultural activities by:
 - 2.1 repealing Part 5 of Schedule 3 which lists agriculture activities as mandatory NZ ETS participants, to remove surrender and reporting obligations for those activities;
 - 2.2 repealing associated agriculture-specific provisions, including provisions relating to the commencement of NZ ETS obligations for agriculture activities, allocation of units to agricultural activities, and transitional provisions for agriculture activities entering the NZ ETS;
 - 2.3 consequential amendments related to cross-references to the above provisions;
 - 2.4 revoking related secondary legislation, including relevant order in council; and
 - 2.5 creating transitional provisions, including for the de-registration of participants that are no longer required to report.
- 3 **Authorise** the Minister of Agriculture and Minister of Climate Change to issue drafting instructions to prepare an amendment to the Climate Change Response Act 2002 based on the decisions presented in this paper;
- 4 **Approve** the release of the drafting instructions and legislation in draft to the Environmental Protection Authority on an in-confidence basis and subject to legal professional privilege;
- 5 **Authorise** the Minister of Agriculture and Minister of Climate Change to make any further policy decisions relating to the amendments proposed in this paper, in a way consistent with Cabinet’s decisions;
- 6 **Agree** that the Bill will bind the Crown;
- 7 **Note** the Minister of Climate Change has submitted a legislative bid, *Climate Change Response (Emissions Trading Scheme Agricultural Obligations) Amendment Bill*, for inclusion in the Legislation Programme, and as a category ranking of 1 and priority category of 2, which means it must be passed in 2024;

Signalling the Government’s direction on actions to reduce agricultural emissions

- 8 **Note** it is important to provide clear signals to the agriculture sector and New Zealand on the Government’s direction for agricultural emissions policy, of which keeping agriculture out of the NZ ETS is only part;

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- 9 **Agree** that as part of this CCRA Amendment process, the Minister of Agriculture and Minister of Climate Change will publicly reaffirm the Government's commitment to implementing a fair and sustainable system to reduce on-farm agricultural emissions that reduces emissions without sending production overseas, and will announce the following package of key actions:
- 9.1 reviewing the methane science and targets (the review will be announced by 8 April 2024);
 - 9.2 establishing an agricultural emissions reduction advisory board;
 - 9.3 publishing the standardised farm-level methodology;
 - 9.4 commencing measurement of on-farm emissions in 2025, based on the published methodology;
 - 9.5 Investigating options to incentivise the uptake of mitigation technologies;
 - 9.6

9(2)(f)(iv)
 - 9.7 introducing fair and sustainable pricing of on-farm emissions no later than 2030, that reduces emissions without resulting in emissions leakage and sending production overseas.

Authorised for lodgement

Hon Todd McClay
Minister of Agriculture

Hon Simon Watts
Minister of Climate Change

Contextual note: The name of the proposed agricultural emissions advisory board has changed to the Pastoral Sector Group as announced by Ministers at Fieldays on 11 June 2024

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Regulatory Impact Statement: Amending the Climate Change Response Act to repeal New Zealand Emission Trading Scheme agricultural obligations

Appendix withheld under section 18(d) as it is publicly available.