



Cabinet

Minute of Decision

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Policy Decisions for Climate Change Response (Emissions Trading Reform) Amendment Bill Departmental Report

Portfolio Climate Change

On 2 March 2020, Cabinet:

Background

- 1 **noted** that the Climate Change Response (Emissions Trading Reform) Amendment Bill (the Bill) is currently being considered by the Environment Committee;
- 2 **noted** that, following input from submitters and officials, the Minister for Climate Change has refined a number of proposals to ensure that the objectives of the Bill and the government's wider climate change goals are being achieved, and that the reforms to the New Zealand Emissions Trading Scheme can be implemented effectively;
- 3 **noted** a range of issues were canvassed by submitters on the Bill, and a variety of proposals were made to change different parts of the Bill;
- 4 **noted** that a number of changes to the Bill are proposed to address both substantive and technical issues raised by submitters, as well as those identified by officials after the Bill's drafting;

Enabling the review of industrial allocation settings

- 5 **agreed** that the limitation in section 161E(3) to specific financial years does not apply where a data notice under section 161D is to provide the Minister with information to inform a review under section 160;
- 6 **invited** the Minister for Climate Change to report back to Cabinet by June 2020 on a planned review of industrial allocation policy, including proposed timeframes and a draft terms of reference;

Allowing for reductions in the general phase-out rate for specific eligible industrial activities

- 7 **noted** that a range of submitters supported enabling a reduction of the general phase-out rate for specific individual activities at risk of emissions leakage;
- 8 **agreed** to the addition in section 84A(1) of the Bill, the ability to reduce the general phase-out rate for individual eligible activities;

Requiring units provided through free allocation that exceed an emissions budget to be backed

- 9 **noted** that the Bill prohibits auctioning NZUs and using international units if doing so would exceed the New Zealand Emissions Trading Scheme (NZ ETS) cap in a budget year;
- 10 **noted** that this same restriction does not apply to free allocation, creating a risk it may exceed the NZ ETS cap in a budget year;
- 11 **agreed** to amend section 30IA to include free allocation so that New Zealand units (NZUs) provided through industrial allocation that exceed the overall limit are backed by additional emissions reductions or removals;

Units from the cost containment reserve should only be backed if they exceed an emissions budget

- 12 **noted** that there is fiscal risk in requiring units from the cost containment reserve to be backed with additional emissions reductions;
- 13 **agreed** that the fraction of reserve units resulting in total NZU supply exceeding the emission budget in any year must be backed by additional emission reductions;

Requiring future emission budgets and targets to be considered when making NZ ETS settings

- 14 **noted** that the Bill requires the Minister for Climate Change to consider relevant emissions budget and Nationally Determined Contributions under the Paris Agreement when making overall unit and auction settings and price control settings, but not explicitly future budgets and targets established under the Act;
- 15 **agreed** to amend section 30GC requiring the Minister to consider future budgets and targets when making regulations for unit supply and price control settings;

Providing advance notice of the publication of participant level emissions and removals data

- 16 **noted** that new section 89A requires the Environmental Protection Agency (EPA) to publish participant level emissions and removals data each year;
- 17 **noted** that there was concern from some submitters that they would have no forewarning of when the EPA would publish the data;
- 18 **agreed** to require the EPA to provide notice on its website of its intended date of publication of participant level emissions and removals data, at least ten working days before the publication date;

Membership of Climate Change Commission

- 19 **noted** that under section 5D Climate Change Response (Zero Carbon) Amendment Act (Zero Carbon Amendment) requires the board of the Climate Change Commission to have seven members;

- 20 **noted** that there may be times when the Commission's board has fewer than seven members and it is unclear in these circumstances if it can make decisions;
- 21 **agreed** to change section 5D of the Climate Change Response Act 2002 to provide that the Climate Change Commission consists of a Chairperson, a Deputy Chairperson, and three to seven other members;

Climate Change Commission's advice on industrial allocation

- 22 **noted** that under new section 84D, the Minister for Climate Change is required to publish and table in Parliament advice from the Climate Change Commission on setting regulations for the phase-out of industrial allocation as soon as possible but within 16 weeks of the Minister receiving the advice;
- 23 **noted** that this process is inconsistent with the requirements for the publication of advice from the Commission established under the Zero Carbon Amendment, which requires advice to be reported and tabled in Parliament ten working days after the document is provided to the government;
- 24 **agreed** that the process for publishing and tabling reports of the Climate Change Commission established under the Zero Carbon Amendment framework will apply to the Commission's advice on regulations setting phase-out rates for industrial allocation;
- 25 **agreed** that the process for government responses to advice from the Commission established by the Zero Carbon Amendment framework will apply to the Commission's advice on regulations setting phase-out rates for industrial allocation;

Process for changing the fixed price option

- 26 **noted** that public consultation on proposed settings for the NZ ETS is under way, testing the proposal to increase the fixed price option to \$35 for surrender obligations arising from 2020 activities;
- 27 **noted** that changing the fixed price option would require amendment to the Climate Change Response Act;
- 28 **noted** that this policy change could be made through the supplementary order paper to the Bill at its Committee of the whole House stage;
- 29 **agreed** that the Minister for Finance, Minister for Forestry and the Minister for Climate Change make in-principle policy decisions for the purpose of drafting any supplementary order paper;
- 30 **agreed** that final policy decisions on the supplementary order paper be taken directly to Cabinet as soon as practicable;
- 31 **noted** that this process is consistent with that proposed for a supplementary order paper for potential changes to the temporary adverse event exemption;

Further work on the repayment/surrender penalty

- 32 **noted** that some submissions on the Bill have highlighted a potential issue with how the non-surrender penalty will impact on smaller NZ ETS participants;

33 **directed** the Ministry for the Environment, the Ministry for Primary Industries, and the Ministry for Foreign Affairs and Trade to:

33.1 explore potential options for a more flexible approach to applying the penalty to small foresters s 9(2)(j)

33.2 report to the Minister for Climate Change and the Minister of Forestry with any potential amendments to penalties in the Bill;

Technical amendments

34 **noted** that the proposed technical amendments listed in Appendix 1 to the submission under CAB-20-SUB-0062 clarify how the Bill gives effect to government policy and will not substantially impact the outcomes sought by the Bill;

35 **agreed** to the technical amendments outlined in Appendix 1;

36 **agreed** that if these agreed substantive and technical changes are not adopted by the Environment Committee, then the Minister of Forestry and the Minister for Climate Change will introduce them through the supplementary order paper for consideration by the Committee of the whole House;

37 **invited** the Minister of Forestry and the Minister for Climate Change to instruct the Parliamentary Counsel Office to draft the agreed changes as a supplementary order paper if the Environment Committee does not include them in its reported back version of the Bill;

38 **noted** there are consequential changes to the Income Tax Act 2007 due to the rationalisation of Kyoto Units.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister for Climate Change
Minister for Forestry