

## In Confidence

Office of the Minister for Climate Change

Chair, Cabinet Legislation Committee

## Approval of amendments to the Climate Change Response (Emissions Trading Reform) Amendment Bill through a supplementary order paper

### Proposal

- 1 I propose to amend the Climate Change Response (Emissions Trading Reform) Amendment Bill (**the Bill**) to make further policy changes to the New Zealand Emissions Trading Scheme (**NZ ETS**).
- 2 These policy changes were approved by Cabinet on 18 May 2020 [CAB-20-MIN-0233 refers].
- 3 Proposed amendments to the Bill to implement these policy changes have been drafted as a supplementary order paper (**SOP**), attached as **Appendix 1**. The SOP also contains various drafting tidy-ups identified during the editing process to give better effect to policy decisions.
- 4 I seek your approval to introduce these amendments through the SOP while the Bill is considered by the Committee of the whole House.

### Policy

- 5 I propose amending the Bill to implement the policy decisions summarised below.
- 6 Two amendments will provide contingency measures to ensure the NZ ETS reforms can be delivered effectively, given widespread disruptions stemming from COVID-19:
  - 6.1 Introducing a new power for the Minister for Climate Change to extend the Climate Change Commission's (**the Commission**) statutory deadlines under the Climate Change Response Act 2002 (**the Act**), in limited circumstances.
  - 6.2 Delaying implementation of the major forestry policies and transitional arrangements by one year, to 1 January 2023.
- 7 The remaining amendments will help make the reformed NZ ETS more effective in driving emission reductions to support Aotearoa New Zealand reaching its climate change targets. These amendments refine and improve provisions in the Bill by:
  - 7.1 delaying the new penalty regime for small foresters to allow more consideration of its impact;
  - 7.2 giving the Environmental Protection Authority (**EPA**) the ability to recalculate the surrender/repayment penalty if the emissions return the penalty is based

on is amended, and either apply further penalties or reimburse any overpayment;

- 7.3 extending the liability suspension for temporary adverse events to include existing post-1989 forests that use stock change accounting;
  - 7.4 extending access to the fixed-price option (**FPO**) for emissions occurring from the start of 2020 until auctioning begins, and raising the price from \$25 to \$35 (including related changes to the synthetic greenhouse gas levy rates);
  - 7.5 making technical changes to how unit entitlements and surrender obligation transfers occur in the Registry.
- 8 Note the SOP also makes minor editorial amendments and corrections. This includes correcting cross-references to reporting obligations in the Paris Agreement following further advice from officials (including in the purpose of the Act), to more accurately reference New Zealand's international reporting commitments.

## **Impact analysis**

### **Regulatory Impact Statement**

- 9 All required Regulatory Impact Statements or appropriate exemptions were provided with the Cabinet paper which proposed these policy changes [CAB-20-MIN-0233 refers].

### **Climate Implications of Policy Assessment**

- 10 All required Climate Implications of Policy Assessments or appropriate exemptions were provided with the Cabinet paper which proposed these policy changes [CAB-20-MIN-0233 refers].

## **Compliance**

- 11 The proposed legislative amendments in the SOP comply with:
- 11.1 the principles of the Treaty of Waitangi;
  - 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 11.3 the disclosure statement requirements. An updated disclosure statement for the Bill, with the SOP amendments incorporated, is attached to this paper;
  - 11.4 the principles and guidelines set out in the Privacy Act 1993;
  - 11.5 relevant international standards and obligations, including the Paris Agreement; and
  - 11.6 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Consultation**

- 12 This paper was prepared by the Ministry for the Environment in concert with the Ministry of Primary Industries. The Treasury, the Environmental Protection Authority, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Justice, Ministry of Transport, and the Department of Conservation were consulted in preparing the paper and all comments are reflected in the paper. The Department of Prime Minister and Cabinet and Te Puni Kōkiri were informed.

## **Binding on the Crown**

- 13 The amendments to the Bill proposed in the SOP attached as Appendix 1 would bind the Crown.

## **Allocation of decision making powers**

- 14 The amendments proposed in the SOP provide the Minister for Climate Change a new power to decide whether to extend the Commission's statutory deadlines in certain circumstances.
- 15 Amendments proposed in the SOP also give the EPA a new power to recalculate the surrender/repayment penalty after amending an emissions return.

## **Associated regulations**

- 16 The Bill enables the making of regulations for a range of matters. The proposed amendments in the SOP will:
- 16.1 enable the Minister for Climate Change to make orders to extend the 1 February 2021 statutory deadlines for the Commission in certain circumstances;
  - 16.2 enable the Minister for Climate Change to make regulations providing temporary adverse event suspension for post-1989 stock change forests, in line with the broader application of the temporary adverse event provisions.
- 17 Consequent to delaying implementation of the major forestry policies, the implementation date for the Climate Change (Forestry Sector) Regulations 2008 will be extended by one year to 1 January 2023.

## **Other instruments**

- 18 The amendments proposed in the SOP do not empower the making of other instruments.

## **Commencement of legislation**

- 19 The amendments proposed in the SOP would join the Bill immediately. However, a number of these amendments come into force at different times, according to when the policies they amend are due to come into force in the Bill:
- 19.1 The major forestry policies come into force on 1 January 2023.

- 19.2 The delay in applying the new penalty regime to small foresters affects NZ ETS activities undertaken until that deferral ends on 1 January 2023.
- 19.3 The suspension of liabilities for existing post-1989 stock change forests during temporary adverse events takes effect with the suspension for averaging and permanent forests on 1 January 2023 (as part of the major forestry policies).
- 19.4 The \$35 FPO and associated changes to the synthetic greenhouse gas levy rates:
  - 19.4.1 first come into force on the day after Royal assent; and
  - 19.4.2 contain provisions that automatically restrict their use once auctioning begins.

### **Parliamentary stages**

- 20 The proposed amendments to the Bill will be introduced through the SOP attached as Appendix 1. The Bill holds a category 2 priority on the Legislation Programme. At the time of lodging this Cabinet paper:
  - 20.1 the second reading of the Bill is expected on 2 June 2020;
  - 20.2 the Committee of the whole House is expected to begin on 3 June 2020;
  - 20.3 the third reading of the Bill is expected on 18 June 2020.
- 21 I intend to lodge the SOP with the Clerk of the House for consideration by the Committee of the whole House.

### **Proactive release**

- 22 I propose to release this paper proactively on the Ministry for the Environment's website after the SOP is lodged, subject to any redactions as are appropriate under the Official Information Act 1982.

## Recommendations

The Minister for Climate Change recommends that the Committee:

- 1 note the Climate Change Response (Emissions Trading Reform) Amendment Bill (the Bill) holds a category 2 priority on the 2020 Legislation Programme;
- 2 note the Bill makes major reforms to the New Zealand Emissions Trading Scheme (NZ ETS) to help Aotearoa New Zealand deliver its climate change objectives and emission reduction targets, including targets under the Climate Change Response Act 2002 (the Act);
- 3 note that further policy changes requiring amendments to the Bill were approved by Cabinet on 18 May 2020 [CAB-20-MIN-0233 refers];
- 4 note these policy changes include two contingency measures for timelines in light of COVID-19, and refinements and improvements to provisions in the Bill to help make the reformed NZ ETS more effective;
- 5 note these amendments to the Bill have been drafted by the Parliamentary Counsel Office as the supplementary order paper (SOP) attached as Appendix 1;
- 6 note the SOP has also been subject to further minor editorial amendments and corrections, including adjusting a cross-reference to the Paris Agreement in the purpose section of the Act;
- 7 authorise lodgement of the SOP attached as Appendix 1 for consideration by the Committee of the whole House.

Authorised for lodgement

Hon James Shaw  
Minister for Climate Change