



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

New Zealand Emissions Trading Scheme Tranche Two: Improving Compliance and Penalties


Portfolio Climate Change

On 8 April 2019, following reference from the Cabinet Environment, Energy and Climate Committee (ENV), Cabinet:

- 1 **noted** that the New Zealand Emissions Trading Scheme (NZ ETS) is the government's key tool to assist New Zealand to meet its climate change targets:
 - 1.1 the government is reforming the NZ ETS to ensure it can support the transition to a low-emissions and climate resilient New Zealand;
 - 1.2 this requires amendments to the Climate Change Response Act 2002 (CCRA);
- 2 **noted** that these amendments are being developed in tranches:
 - 2.1 in December 2018, Cabinet agreed to tranche one of amendments to the CCRA and drafting has commenced [CAB-18-MIN-0606.01];
 - 2.2 tranche two comprises a series of papers with discrete proposals which will be considered by Cabinet over March to May 2019;
 - 2.3 tranches one and two will result in a single bill amending the CCRA to be introduced to the House in mid-2019, and to enter into force in 2020;
- 3 **noted** that accurate reporting and accounting of emissions is essential to safeguard the integrity of the NZ ETS;
- 4 **noted** that the 2015/2016 review of the NZ ETS identified the compliance regime as an area for improvement and Cabinet agreed to the first improvements by introducing infringement offences for low-level criminal offences [CAB-18-MIN-0606.01];
- 5 **noted** that further improvements are required to the compliance regime in relation to the excess emissions penalty because it is not sufficient to deter non-compliance, creates a significant administrative burden and creates uncertainty for participants;
- 6 **noted** that the ability to enforce compliance in the NZ ETS is a key consideration for New Zealand's most promising international linking partners;

- 7 **agreed** to restructure the relevant offences and penalties into two separate penalties:
- 7.1 a surrender/repayment penalty;
 - 7.2 a reporting penalty
- 8 **agreed** there will still be a requirement to make good on the outstanding obligation;

Surrender/repayment penalty

- 9 **agreed** the surrender/repayment penalty will apply only when a person fails to surrender or repay units by a due date;
- 10 **agreed in principle, subject to** confirmation that this will not create a barrier for linking with international carbon markets, that the surrender/repayment penalty will be three times the current carbon price, and will be updated annually in regulations;
- 11 **s 9(2)(j)** 

Reporting penalty

- 12 **agreed** that the reporting penalty will cover all default assessments and amendments to emissions returns made by enforcement agencies where a person has made an error, expanding the coverage of the current penalty;
- 13 **agreed** that the reporting penalty will reflect the current carbon price, as updated annually in regulations, and that it will be able to be reduced depending on participants' behaviour;
- 14 **agreed** that the level of the reporting penalty will be applied as a percentage of the error, based on the persons' behaviour:
- 14.1 0 percent where reasonable care was taken; or
 - 14.2 20 percent where the person has not taken reasonable care; or
 - 14.3 40 percent where the person has been grossly careless; or
 - 14.4 100 percent where the person has knowingly made an error;
- 15 **agreed** that, despite paragraphs 13 and 14, the maximum penalty for a reporting error will be based on the lesser, in tonnes of emissions, of:
- 15.1 the difference between the incorrectly documented figure and the correct figure; or
 - 15.2 the total emissions, removals, or allocation that should have been correctly documented (as relevant);
- 16 **agreed** that the level of the reporting penalty can be reduced by 50 percent if the non-compliance is voluntarily disclosed (except where the error was knowingly made);
- 17 **agreed** that, despite paragraphs 13 to 16, the reporting penalty following an assessment or amendment where the Crown owes further units, or no units are owed, will have a maximum penalty of \$1,000;

- 18 **noted** that the enforcement agencies will publish examples of what constitutes each type of behaviour, including what constitutes a voluntary disclosure;

Other changes

- 19 **agreed** to remove similar offences for reporting errors, except where the offence has been committed with the intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment (in this case the Environmental Protection Authority (EPA) could either prosecute or penalise the person);
- 20 **agreed** to the following additional operational changes to aid effective implementation of the new compliance regime:
- 20.1 reduce the one year time bar on enforcement to allow the EPA to take enforcement action from 90 days after a non-compliant party failing to meet their payment obligations;
 - 20.2 introduce an explicit ability for the EPA to enter into payment plans for the payment of penalties;
 - 20.3 waive the payment deadline while the EPA is amending an emissions return;
 - 20.4 the reporting penalty apply 10 working days after the EPA notifies a person they have missed the deadline for annual emissions returns;
- 21 **agreed** to require the EPA to publish, at least annually and as soon as practicable beginning in 2021, individual cases of non-compliance occurring from 1 January 2021 where the non-compliance was grossly careless, knowingly made or the result of failure to surrender/repay units by a due date;
- 22 **agreed** that publication of non-compliance will include the name of the account and details of the penalty including the type, amount, date it was due and date it was paid;
- 23 **authorised** the Minister for Climate Change, in consultation with the Minister of Forestry as appropriate, to further clarify policy decisions relating to the amendments proposed in the paper under ENV-19-SUB-0010, in a way not inconsistent with Cabinet's decisions;
- 24 **invited** the Minister for Climate Change to issue drafting instructions to the Parliamentary Counsel Office based on the "in principle" and agreed decisions above.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister for Climate Change