

The New Zealand Business Council  
for Sustainable Development

Submission to the Finance and Expenditure Committee  
CLIMATE CHANGE RESPONSE (MODERATED EMISSIONS TRADING)  
AMENDMENT BILL

13 October 2009

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## **1.0 Introduction**

### **1.1 Background**

The New Zealand Business Council for Sustainable Development (the Business Council) believes sustainable businesses are profitable, contribute to social progress and ecological balance and protect New Zealand's quality of life.

In the context of this submission our members include energy suppliers as well as large energy users, world climate science leaders and leading consultants on carbon, business and policy management.

The Business Council takes a long term perspective and makes evidence-based proposals in an attempt to achieve the optimal balance between New Zealand's contribution to reducing global emissions and what is best for our national economy.

The Business Council member companies are committed to sustainable business policies and practices. The Business Council is affiliated to the World Business Council for Sustainable Development and is the only local business group with formal links to a worldwide sustainable business organisation.

Our membership in New Zealand includes companies from almost every sector of the economy and range from medium sized to some of the country's largest companies. With such a broad representation it is inevitable that the current ETS (and that now drafted for amendment) will have an uneven impact on individual council members exposed to local and international competition.

We respect the right of individual members to hold and advocate a different position from the official Business Council submission in terms of emissions intensity without a cap and timing. In this respect, for example, Fonterra and Fletcher Building will be making their own representations.

The Council's position on ETS therefore represents the majority view of members rather than a unanimous one on some points. However, it is the Business Council's unanimous view that there should be an all-sectors, all-gases ETS.

Please note this submission was drafted before the release of background briefing documents on 9 October, just two business days prior to the date for submissions. We reserve the right to amend or update our recommendations once we have had the opportunity to review all those documents.

## **2.0 MAIN ISSUES FOR THE COMMITTEE**

### **2.1 What does the Business Council want the Finance and Expenditure Select Committee to do?**

This Bill represents the third time that a Select Committee of the New Zealand Parliament has considered the public policy response to climate change in the last two years.

The issues have been well canvassed in previous reports and we do not think that there is value in the Committee rehearsing the need for New Zealand to be part of global efforts to address climate change or the appropriate core domestic policy instrument. There is now broad support within Parliament and the wider community that New Zealand needs to

address climate change and that a world-class emissions trading scheme, designed with New Zealand specific circumstances in mind, should be at the centre of that response.

We submit that the Committee should focus on three main issues in its consideration of this Bill:

- ▶ The policy rationale for the proposed amendments to the ETS;
- ▶ Making detailed improvements to the Bill; and
- ▶ Establishing a better architecture for climate change policy development in New Zealand.

## **2.2 The policy rationale for the proposed amendments to the ETS**

We agree with the Treasury that “the level and quality of analysis presented is not commensurate with the significance of the proposals, which represent major design changes to the Emissions Trading Scheme, and that the RIS (Regulatory Impact Statement) does not provide an adequate basis for informed decision-making.”

The fundamental questions for the Committee are:

- ▶ What should we be trying to achieve with our ETS; and
- ▶ Is this Bill the best way to achieve it?

The Business Council has consistently stated that New Zealand policy objectives should be to<sup>1</sup>:

- ▶ Provide effective incentives to reduce emissions;
- ▶ Minimise the cost to New Zealand of meeting our Kyoto or subsequent commitments;
- ▶ Help encourage significant other emitters to take a commitment to reduce emissions and cut the cost of our adjustment;
- ▶ Assist the transition to less emissions-intensive production, so we are competitive in a world where greenhouse gas emissions are priced;
- ▶ Provide transitional assistance to emitters with “competitiveness at risk” (CAR) issues whose competitors are yet to face a price on greenhouse gas emissions;
- ▶ Build cross-party support so that policy stability can underpin investment in long-life assets where a price on greenhouse gas emissions is a significant influence on investment profitability.

While late in the day, we would urge the Committee to use its powers to require the Government and its advisers to present, in a clear, consistent and coherent manner, a reasoned case for the amendments proposed. That case should be prepared in accordance with relevant Treasury guidance and at a very minimum:

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<sup>1</sup> Business Council member Fonterra has a different position from the Business Council on intensity allocation without a cap, the realities of leakage, including agriculture the ETS before 2015 and whether the purpose of the scheme is to seek an absolute reduction in emissions or a reduction below business as usual levels.

- ▶ Define the problem;
- ▶ State the public policy objectives;
- ▶ Identify the feasible options;
- ▶ Analyse the options, including a transparent (i.e. replicable) statement of the fiscal costs of the proposed changes, compared to the status quo;
- ▶ Assess how the preferred option will be implemented;
- ▶ Describe the consultation undertaken; and
- ▶ Present an overall assessment.

The analysis should also address the three key issues identified by the Treasury that have not been adequately addressed:

- ▶ There is no clear analytical basis for the proposal to align some key design elements of the New Zealand ETS with those in the currently proposed Australian Carbon Pollution Reduction Scheme (CPRS);
- ▶ There is no discussion of the risks of harmonising with an overseas scheme that has not yet been finalised or agreed and may yet be subject to significant revision; and
- ▶ There is no information on the implied transition path for firms over the medium-to-long term, particularly given that the proposal is for a temporary period of greater assistance coupled with an ambitious long-term emissions reduction target.

These are not just matters of seeking tidiness. The ETS is a major economic instrument. The public of New Zealand deserve to know that it is well designed and based on clear principles. We need not just good policy, but good policy for the right reasons.

### **2.3 Detailed improvements to the Bill**

The Government did not issue a discussion document on its proposed changes, much less an exposure draft of the legislation. The public is being given a limited opportunity to comment on 97 pages of complex drafting.

It is clear on its face that the Bill will need to be improved before it has been enacted. While many of the technical amendments are well drafted, many of the major amendments have clearly been prepared in haste. Some matters that the Government has said that it wishes to change have not been included in the Bill and we presume these will be presented to the Committee.

The Committee has a limited time to improve the Bill, but it must make every endeavour to ensure that what is enacted is effective and efficient.

Our detailed recommendations are attached as Annex 1.

### **2.4 Better policy development architecture**

The history of climate change policy in New Zealand does not make pleasant reading. Ever since we signed the UNFCCC in the early 1990s, attempts to implement domestic policies to

match our international commitments have been characterised by rancour, rush and reversal.

Given that neither Australia nor the United States is yet to enact its emissions trading scheme and that the Copenhagen climate change conference is yet to conclude, it is inevitable that New Zealand will need to consider the details of its ETS again in the near future.

We must learn from the mistakes of policy development in this area if we are not to continue repeating them.

### **3.0 STANDING CLIMATE CHANGE COMMITTEE**

We submit for the committee's consideration a draft Supplementary Order Paper to the Bill (Annex B), which proposes amendments to the Bill to enshrine national emissions targets in law and to establish a climate change committee. These provisions are modelled on the UK Climate Change Act.

Climate-change policy should be developed in a transparent, consultative process, with independent assessment of the costs and benefits of proposals.

Our central proposal is that a Climate Change Committee be established, as an independent standing body charged with providing advice to Ministers and promoting informed public debate on the public policy response to climate change.

The Committee will be required to consult affected parties before giving its advice.

Such a committee is not a guarantee of good, enduring, policy. But we think it is a necessary condition. We envisage that Climate Change Committee should:

- ▶ Provide an independent source of transparent advice to the Minister on climate change matters;
- ▶ Conduct education campaigns on the issues for the public and business;
- ▶ Prepare, on its own initiative, analyses that can be reviewed by any organisation that has an interest;
- ▶ Conduct periodic reviews of policy and of the detailed operation of the ETS, including on the need for ongoing transitional assistance;
- ▶ Review the initial allocation plans before recommendations are submitted to Ministers for a final decision.

### **4.0 SELECTIVE ALIGNMENT WITH AUSTRALIA**

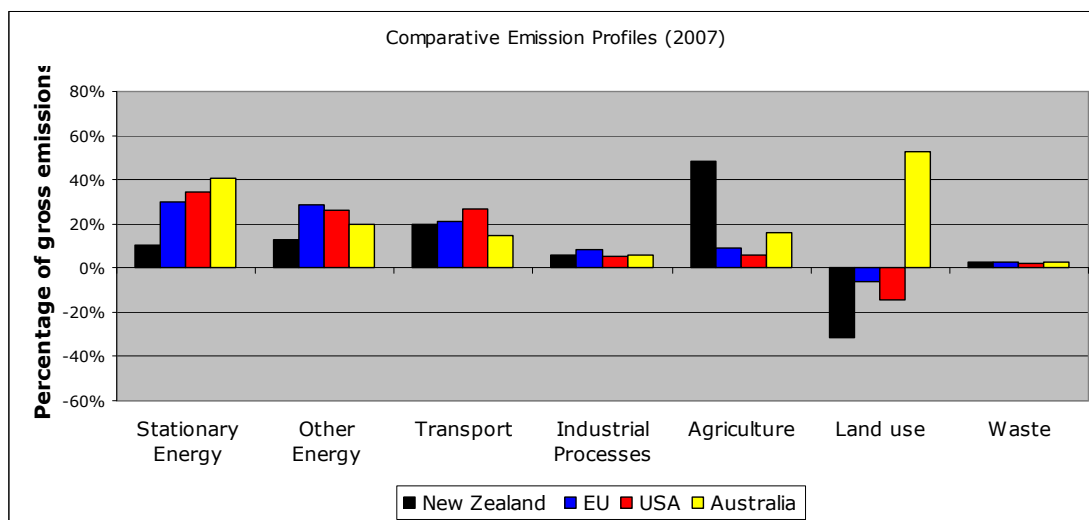
**4.1** 4.1 It is clear that the Government's main policy objective is to align the New Zealand ETS with some parts of the **proposed** Australian Carbon Pollution Reduction Scheme. We stress the proposed. The Australian Senate has voted against the proposed scheme once and it is not at all clear whether, in what form or even when the legislation will pass. The main opposition party is still considering the amendments it will propose when the Bills are considered again. We have no indication what amendments, if any, the Government might be prepared to consider. The Committee is attempting to align policy with a rapidly moving target. It has serious implications

for many sectors and investment. For example, the potential impact on forestry of banning its international trade in NZUs, in favour of a Trans Tasman market only if or when the CPSR is enacted, is noted by Cabinet in the paper considered on September 21, 2009.

- 4.2** While the Business Council agrees that New Zealand needs to look at the policies, and experiences – both positive and negative – of other countries in setting its policies, care is needed to ensure that we do not simply import policies that are directed at solving problems that do not exist here.

The Figure 1 below will be familiar to the Committee; it shows the emissions profile of New Zealand and a number of other OECD countries, including Australia.

**Figure 1**



Source: UNFCCC

What is clear from this data is that in New Zealand, most greenhouse emissions come from the agriculture and transport sectors, and are offset by large removals from the forest sector. In Australia, energy (especially electricity) is the main issue.

It is hardly surprising, therefore, that the proposed Australian Carbon Pollution Reduction Scheme focuses on the energy sector and gives less weight to either forestry or agriculture.

### 4.3 Inconsistencies

Examples of inconsistency include:

- ▶ The initial cap in Australia is at AUD\$10 a tonne, about NZD\$12, and then lifts to \$40 a tonne in the second year, and then increases by 5% real by year. If we are harmonising actions with Australia, why are we not doing it with our cap on the emissions price which stays at \$12.50 a tonne for the first three years? The Government is borrowing a policy idea from Australia, not "harmonising" the two proposed schemes.
- ▶ For Australia, coal is its largest growing sector, and the Australian Government proposes to address that by compensating for the loss of asset values with a grant of

free credits and quick exposure to the full cost of greenhouse gas emissions. For New Zealand's largest, growing, emissions sector, agriculture, we are proposing to legislate to provide support for more than 70 years.

- ▶ The Australian legislation has not yet passed the Senate and is expected to be passed, but with amendments agreed with the Liberal Party which will wish to avoid a double dissolution election of both the Senate and the House of Representatives.
- ▶ The abatement regime being aligned with the Australian 1.3% per year rather than the 8% abatement rate in the current NZETS law, is proposed only for their industrial processing sector. The coal sector, Australia's largest source of emissions, is being compensated by a grant of 5 years' free emission credits. Our major, growing emitting sector is agriculture. Australia has said its relatively small agricultural sector will not enter its ETS before 2015, but it has no proposed abatement regime for that sector.

Australia's agriculture sector is not expected to significantly increase its emissions as production has been constrained by ongoing water access issues that are expected to become more difficult with climate change.

#### **4.4 Differing treatment of surrendered allowances**

The Business Council understands the Australian Government is cancelling surrendered allowances. That means that Australian Government cannot use these allowances as part of its own Kyoto obligations in 2013 when it has to transfer any Assigned Amount Units (AAUs) to the International Transaction Log. When a unit is put into the Australian scheme it is cancelled and never issued again. The Australian Government, should it need to buy units, will have to source them from elsewhere.

The previous New Zealand Government took the position that compliance units should be retired but the Government could then use them as a contribution to the national obligation. If this is also the position of the current Government, then there will be a significant difference between the two emission trading schemes. If New Zealand takes the Australian approach it would increase the national cost here. Australia plans to split its international and domestic markets. New Zealand currently has access to the international market. The Australian approach sends a clear signal to focus on and develop an independent and domestic market for Australian units.

#### **4.5 Bilateral linking issues**

The amending legislation has no discussion about bilateral linking issues, though a 21 September 2009 Cabinet paper notes forestry's right to sell its NZUs internationally will end if the NZETS and CPRS are linked in a Trans Tasman market only. The paper also notes there will be implications for forestry investment and again this uncertainty needs to be removed.

Under the current CPRS bill five years notice must be given on an intention to link the Australian scheme with another. This would put a link with Australia more than five years away, unless its bill is changed.

## 4.6 Carbon neutrality claims

At various stages, both the Australian and New Zealand Governments have indicated that participation in the emission trading schemes somehow confers carbon neutrality. The Australian Government has now moved away from this view and in fact the ACCC regulations imply that no one can claim carbon neutrality. The New Zealand Government needs to make it clear what status if any, compliance confers on participating organisations. There are many confused messages coming from government and from carbon-trading experts. Our view would be that carbon neutrality is a voluntary action and must include elements of additionality. Compliance is not additional. If allowances are surrendered, then that is all that has happened - no offset of any sort has taken place. Surrendered allowances could be used for the national Kyoto obligations or they could be reallocated e.g. to agriculture.

## 5.0 DEALING WITH CAR EMISSION-INTENSIVE INDUSTRY FREE ALLOCATIONS WITH OR WITHOUT A CAP?

The Government needs to clarify its objectives in changing the ETS.

- ▶ If the purpose of the ETS is to incentivise a move to less emissions and less emissions-intensive production of goods and services, then we need to have a cap on total emissions.
- ▶ Emission intensity without a cap is likely to induce a growth in total emissions and the creation of stranded assets in emissions-intensive sectors.
- ▶ Policy on climate change will remain confused until we can decide whether we are seeking to compensate for losses from moving to a world with a price on greenhouse gas emissions, or attempting to avoid leakage.<sup>2</sup>
- ▶ Compensation for lost asset value is best handled by making a grant of several years' free credits and leaving it up to the investors to stay or leave the industry, as was done for some foresters in New Zealand and is proposed for the coal industry in Australia.
- ▶ Ongoing support to protect emissions-intensive, trade-exposed sectors from competitors may prove expensive and undermine the overall strategy of trying to reduce emissions at least cost and make the transition to a lower emission-intensity economy. The analysis of this is so far not available. September Cabinet papers released on 10 October 2009 confirm the cost of assistance after 2012 has not been calculated. However, the official estimate of the fiscal implications of the proposed changes will increase Government debt as a percentage of GDP by 6 to 8 per cent by 2050. Eight per cent of GDP in 2009 would be the equivalent of an additional \$3.5 billion in debt in 2009 GDP terms. This is a significant sum.

Emissions intensity benchmarks for sectors based on average Australasian data could be very misleading unless the differences in emissions factors due to electricity mix are taken into account.

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<sup>2</sup> MfE Ref No 09-B-00391, 13 February, 2009 Emissions Trading Scheme Legislative Review Allocation to Industry contains a succinct analysis of these issues.

## 5.1 50/50 target

The Committee needs to satisfy itself that the bill's proposed provisions to achieve a 50% reduction in 1990 emissions by 2050 align with its price cap and subsidy regimes.

Treasury's RIS says: *"No information on implied transition path for firms over the medium to long term, given the proposal is for a temporary period of greater assistance coupled with an ambitious long term emissions reduction target. Without this it is hard to assess if the design changes will allow a smoother transition process for business."*

If we start out a little off course in our 41 year journey to 2050 we could find ourselves way off course in the out years with no prospect of meeting the 2050 target.

### Recommendations

We recommend the Committee clarify the Crown's objectives:

- ▶ Is the purpose to lower emissions, or simply to legislate for an emissions intensity approach without a cap? That would mean growing emissions without a limit, with associated subsidies to emitters with the possibility that our overall emissions will increase rather than contract.
- ▶ How do the proposed assistance regimes align with and ensure New Zealand will achieve the 50% by 2050 emissions to be legislated for by the Government?

## 6.0 LEAKAGE

The idea that the uneven application of emissions trading schemes between countries can cause shifts in the location of production features prominently in the literature of scheme design and is normally termed "leakage".

The idea runs like this: if Country A puts a price on greenhouse gas emissions, but Country B does not, firms in Country A will have an incentive to shift production to Country B. If this happens Country A will have lost employment and GDP and firms will incur relocation costs, but there will be no impact on climate change, since global emissions will stay the same and, as noted about, the location of emissions does not affect their impact on climate change. Even if firms do not relocate plant, because to do so would involve scrapping otherwise economic assets, the argument is that firms will not seek to increase investment in a country with stringent emissions regulations.

The empirical evidence to support the idea that leakage is a real problem is weak.<sup>3</sup> Indeed, it is often pointed out that the European Union, despite having stringent general environment regulations, is the location of significant industrial production, suggesting that firm location is driven by other considerations. New Zealand should have an ETS based on New Zealand's conditions, not European theory.

The Regulatory Impact Statement on the proposed changes, released with other papers on 10 October, 2009, quotes an Australian Treasury paper saying: "There is little evidence of carbon leakage". (Page 23 RIS).

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<sup>3</sup> The Stern Review noted that "The empirical evidence on trade and location decisions, however, suggests that only a small number of the worst affected sectors have internationally mobile plant and processes (*The Stern Review of Climate Change*, p 253).

It is hard to see that leakage, if it is a problem, is one that can be addressed by trans-Tasman harmonisation. Even if Australia and New Zealand agreed to have identical and stringent emissions trading schemes, thus removing it from firm location decisions, the rest of the world is still available as an investment location. Indeed, it is hard to see why a New Zealand firm that was able to relocate production to Australia couldn't equally relocate to a developing country: Mobile capital is after all mobile.

If we have decided that we should subsidise producers to protect jobs, we need to know what the cost will be for each job "saved".

The argument that moving manufacturing to another country does not change the emissions to the atmosphere is seriously flawed. Moving manufacturing to Australia or China would result in higher or lower emissions for the same activity.

## **Recommendation**

We recommend the Committee:

- ▶ Clarify the value of subsidy support proposed per job "saved" in subsidised sectors;
- ▶ Ask those proposing the support for evidence of what leakage will occur;
- ▶ Ask those proposing the support how, if leakage is an issue, harmonising with Australia will prevent capital moving to locations other than Australia.

## **7.0 PRIMARY LEGISLATION, NOT REGULATION, TO ENACT TREATY**

The Bill proposes to amend the principle Act to allow the Governor-General to make regulations altering the text of the UNFCCC and the Kyoto Protocol (clause 6, definitions of "Convention" and "Protocol" and clause 12).

These amendments appear to be quite novel, in that the usual practice is that if treaties are to enter into New Zealand law, this is done by way of primary legislation, not by way of regulation.

We are uncertain, and the Government has not presented any explanatory argument on this matter, how this provisions sits with the clear requirements of the Cabinet Manual that all multilateral treaty are to be subject to parliamentary examination.

### **7.1 Recommendation**

We recommend that:

- ▶ The proposed changes to the definitions of "Convention" and "Protocol" and clause 12 be omitted;
- ▶ The Committee should seek the views of the Regulations Review Committee and the Foreign Affairs Select Committee on proposals to ratify a multi-lateral treaty before Parliament has had the opportunity to review it.

## **8.0 REVIEW PROCESS**

The transitional assistance being proposed to prevent leakage can only be justified if a New Zealand emissions-intensive trade-exposed producer faces competition from producers who do not face a price on greenhouse gas emissions.

The proposed five yearly reviews, with provision that assistance cannot be changed for a further five years after the review, seems to ignore the possibility that competitors will be, or might be, exposed to a price on greenhouse gas emissions within the five years before the next review.

To avoid unnecessary cost to taxpayers and windfall gains such assistance should stop once the commodity produced and internationally traded reflects a cost for greenhouse gas emissions. If support is extended to protect against leakage it should phase out within a year once 50% of international production of a product faces a price on greenhouse gas emissions. *Under the current proposal unjustified subsidy support will continue for a further five years after the first proposed review in 2011 – even if there is no continued justification for it.*

### **8.1 Recommendation**

- ▶ The first review should occur once the replacement for the Kyoto agreement has been agreed. Only at that point will it be known how much international trade is likely to include a price for greenhouse gas emissions in the emissions-intensive trade-exposed sectors' products.
- ▶ Reductions in assistance should be made possible within a year following a review finding competitiveness-at-risk issues no longer apply in a sector.

## **9.0 TRANSPARENCY OF THE ANALYSIS AND TRANSFERS**

The Select Committee should seek information on the assumptions used to produce the analysis, and ask Treasury and emissions-intensive trade-exposed firms (EITE) it is proposed to support, if they agree with the assumptions used. Areas of particular concern would include:

- ▶ The likely GDP growth track that has been assumed, particularly over the period up to 2020;
- ▶ Which EITE firms will no longer be eligible for support, compared with the current legislation, and the impact this has on the cost of providing support;
- ▶ The production levels expected from the supported heavy emitters;
- ▶ The average production emissions intensity that has been assumed for each sector;
- ▶ The impact of the greenhouse gas emissions market price being higher or lower than the levels assumed;
- ▶ The share of the costs being met by emitters and taxpayers.

The Committee should establish the value of lost opportunities that would result of adopting the proposed assistance regime.

The value of potential revenue from emission unit sales to those making excess emissions under the current scheme should be established.

An Emissions Trading Group report by officials to the Finance and Expenditure Select Committee on 8 April 2008 provided advice on the flow of revenue to the Government under the ETS (as free allocation is phased out. It estimated the Crown had retained responsibility of a total of 54 million units per year in 2013, and assumed \$25/\$50 per tonne prices to report auction revenues would range from -\$100 to -\$200m in 2013 then grow to \$1.25 billion to \$2.2 billion by 2025.

Work is needed to determine how these significant revenues from the Crown's sales of NZUs are affected by the proposed changes, and to assess the opportunity cost of failing to recycle revenues into incentives to lower emissions. Such revenues would fund a wide range of complementary measures and help New Zealand achieve a much faster and greater reduction in emissions.

The Business Council supports recycling revenues from sale of emission credits to make innovation grants and fund significant complementary emissions reduction initiatives.

*Considerable public support:* Extensive research provided to all Members of Parliament by the Business Council in June 2009 shows there is considerable public support for a range of complementary measures which would:

- ▶ Reduce emissions;
- ▶ Create jobs; and
- ▶ Grow export revenue.

These could be funded by revenues recycled from the sale of NZUs.

These include:

Policy option	Support %	Oppose %
More incentives for households to improve energy efficiency	87	2
Incentives for businesses developing renewable energy projects (like wind, solar, wave, geothermal, hydro power)	82	2
Lower vehicle registration fees for fuel efficient and low-emission vehicles	80	6
A cash incentive to encourage you to replace your energy inefficient home appliances with energy efficient ones	78	8
Financial incentives to purchase fuel efficient, low emission vehicles	75	8
Incentives for landowners to plant more carbon sink forests	74	4
New Government investment funds to help quickly commercialise new lower-emission technology invented in New Zealand ( e.g. biofuel made from industrial process emissions, biofuel made from algae; bio fuel made from wood waste and woody residues)	74	3
Lower road user charges for diesel vehicles using lower-emission bio fuels	73	8
A Government information programme to advise businesses and households about climate change policies and ways to help manage it	71	7
Increase goods transportation by rail and coastal shipping	71	4
Increase spending on research to produce technology to help reduce emissions	70	5
Subsidies for farmers to use fertilisers which inhibit the release of nitrogen, lowering emissions and improving water quality	67	8
Assistance to sell New Zealand emissions reduction technology to other countries	66	5
Replacing road user tax with a lower vehicle licensing levy for light diesel vehicles, including cars	65	7
Allow forest owners to cut their trees and replant substitute carbon-sink forests on other marginal land without incurring any emissions penalty	63	6
Higher road user charges for vehicles which are not fuel and emissions efficient	54	18
Higher road user charges for diesel vehicles which do not use lower-emission bio fuels	53	19
Mandatory phase out of inefficient light bulbs	45	27
Mandatory phase out of all high emission heavy vehicles 10 years or older	44	21

Source: Business Council ShapeNZ survey, 2,851 respondents between February 9 and 11, 2009. Weighted. Maximum margin of error +/- 1.8%.<sup>4</sup>

<sup>4</sup> New Zealanders' Attitudes to Climate Change. Full report at <http://www.nzbcscd.org.nz/story.asp?StoryID=987>

## **Recommendation**

The Committee should require an opportunity cost analysis which establishes:

- ▶ The value of potential revenue from emission unit sales to those making excess emissions under the current scheme;
- ▶ The loss of revenue from emission unit sales under the proposed changes;
- ▶ The value of lost opportunities that would result from adopting the proposed assistance regime.

## **10.0 ADVERSE IMPACTS FOR LOWERING AGRICULTURAL EMISSIONS**

By keeping point of obligation at the processor level, the Bill effectively removes incentives and rewards for on-farm innovation to mitigate GHGs. This will likely cause investors in mitigation technologies to withdraw or slow down their investment (e.g. the Pastoral GHG Consortium really has no market signal now. A Business Council member is aware of at least one investor who is now asking "why should we continue because there is no mechanism to capture a return on their investment?"). Given many in the primary sector supported a change to farm-level point of obligation what options are there now to achieve this? The Business Council believes existing provisions requiring agriculture to enter the scheme on 1 January 2013 should be retained. These actions would prioritise investment into R&D to develop low compliance, and result in effective tools being at farm-level.

The Business Council refers the Committee to a submission from Fonterra in which Fonterra outlines its proposed solution to ease administration of an on-farm point of obligation – a hybrid concept where Fonterra would act as administrative agent for farmers, with the point of obligation remaining on-farm. This will deliver but retain administrative benefits for the Government by interacting with a smaller number of participants, but farmers will still receive fully transparent price signals and retain legal liability for compliance with the Act. Fonterra is offering to work with officials to develop the details of its point of administration model. It also proposes a single point of administration for all on-farm emissions (animal-related and fertiliser).

New Zealand can't wait another five years before its major emitting sector, agriculture, is incentivised to reduce its emissions.

### **10.1 Recommendations**

- ▶ Retain the January 1, 2013, entry date for agriculture;
- ▶ Ask from whom the advice came to suggest amendments removing the hybrid system;
- ▶ Retain the hybrid system, under which farmers can opt-into the scheme or alternatively;
- ▶ Adopt the Fonterra proposals under which there is a single point for administrative efficiency, while the obligation remains at the on-farm level where emissions performance is transparent and can result in change to lower emissions and avoid the greenhouse gas emissions price;
- ▶ Examine the merits of allowing individual farmers who wish to reduce emissions to opt into the scheme before the sector enters the scheme and incentivise this with free

credits for emissions reduced. An incentive like this is proposed in the United States ETS legislation. Producers should be able to voluntarily take responsibility for managing their emissions prior to a sector being required to join the ETS and be rewarded with free credits until sector entry date for emissions reductions.

## **11.0 FORESTRY**

Bill allows emissions liabilities from pre-1990 and post-1989 forestry sectors to be covered by \$25 fixed price option until 1 January 2013.

Bill notes *"there is potential that a short term reduction in price could drive short term deforestation as foresters seek to convert land while prices are relatively low"*.

A September 21, 2009, paper from (publicly released on 10 October, 2009) says *"it is likely to be necessary to ban the export of units from the forestry sector in the event that the schemes are linked. Counterbalancing this, foresters would then be able to sell units in an Australasian market."* Cabinet agreed *"that it be clearly communicated to the forestry sector that exporting of units may not be permitted if a future link with the Australian Carbon Pollution Reduction Scheme occurs, although units would be able to be sold to Australia."*

- ▶ The Committee needs to ensure early tree harvest to take advantage of lower-than-market unit prices is not encouraged;
- ▶ In the treatment of iwi owned forestry, it also needs to like treatment for all like-assets, not assets owned by any one group;
- ▶ It also needs to provide policy certainty regarding links with other schemes and especially in relating to the Australian scheme, by ruling out a future ban on exports of forestry NZUs to all markets other than to Australia.

### **Recommendations**

- ▶ Ensure early tree harvest to take advantage of lower-than-market unit prices is not encouraged.
- ▶ Ensure like treatment for all like-assets, not assets owned by any group.
- ▶ Provide policy certainty regarding links with other schemes and especially in relating to the Australian scheme by ruling out a future ban on exports of forestry NZUs to all markets other than to Australia.

## **12.0 AWARENESS CAMPAIGNS**

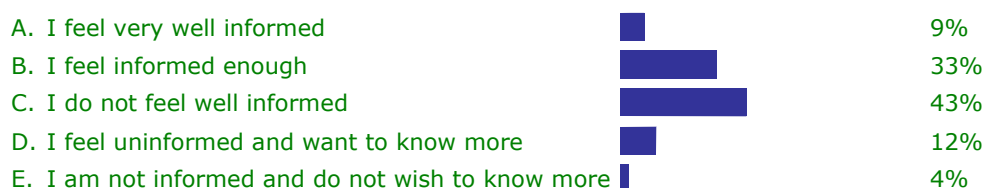
We note and support Ministerial statements that a communications campaign will be undertaken in relation to the ETS.

National online research undertaken by ShapeNZ for the Business Council, using weighted respondent samples to represent the New Zealand population at the 2006 census and general elections, suggest educational campaigns are needed.

The Business Council is commissioning updated research on this issue and hopes to make the findings available to the Committee during its consideration of the bill.

However, for example, earlier research indicates a majority of New Zealanders do not feel well informed on emissions trading.

How would you rate your knowledge of emissions trading?



Source: ShapeNZ September 2007. n= 975. Weighted. Maximum margin of error +/- 3.1%

Proposed campaigns are also needed to ensure action is taken to measure and reduce emissions.

The September 2009 Fairfax Media/ ShapeNZ survey of 2397 New Zealanders, including a sub-set of 616 business and senior decision makers, found:

- ▶ Only 12% of the organisations which respondents own or work with have measured carbon emissions (16% of decision makers' organisations); and
- ▶ 32% had no plan to measure; while
- ▶ 46% did not know.

In the major GHG influencing sectors, 52% in transport and 27% in agriculture, forestry or fishing did not know if their organisations had measured emissions. 40% in agriculture, forestry or fishing and 22% in transport are not planning to measure.

**Has the organisation you work for or with measured its carbon emissions (i.e. completed a carbon footprint)?**

	Yes	No but plan to	No	No plan to	DK
Agriculture, Forestry or Fishing	4%	21%	13%	40%	27%
Transport or Storage	4%	19%	7%	22%	52%

Source: Fairfax/ShapeNZ survey September 2009 n= 2,397. Weighted. Maximum margin of error +/-2%.

Other research indicates strong support for acting on climate change and reducing emissions. A national effort is needed to inspire emissions reduction action. This action would be well supported by New Zealanders.

## 13.0 CONCLUSION

The Business Council does not think that the case for the major amendments made by this Bill has been made out.

The proposals outlined are likely to increase our overall emissions and move the cost from emitters to taxpayers. They will also reduce the incentives for businesses and households to reduce emissions compared with the existing legislation.

The Government has released very little by way of detailed analysis to support its proposals. We hope the committee will take the opportunity to fill this gap and prepare a report that contains a robust, clear and transparent case for the final form of the legislation. An annex to this submission canvasses the questions and issues we believe the committee should consider.

The Annex also includes a draft SOP to guide the Committee to establishing a robust, transparent, long-term policy development process, using a standing Climate Change Committee, modelled on UK law.

We do not think that this Bill will be the end of this Parliament's consideration of climate change and emissions trading. The world is moving rapidly to address this issue. Neither Australia nor the United States have finished detailed ETS design work. Japan has recently announced bold emissions reduction targets. The UNFCCC conference in Copenhagen, which will set New Zealand's international obligations, has not convened and the shape of any final "deal" is yet to materialise.

All this points to the Government having to come back with further proposals. Given this, we need to move quickly to establish a better way of developing climate change policy.

## **14.0 SUMMARY OF PRINCIPLE RECOMMENDATIONS**

The Business Council asks the Committee to adopt the following recommendations.

**14.1 Regulatory Impact Statement:** An analysis commensurate with the significance of the proposals must be conducted and provided to the Committee to inform its decision making.

### **14.2 Purpose of the changes:**

14.2.1 Consider if the purpose of the changes is to lower emissions, or simply to legislate for an emissions intensity approach without a cap? That would mean growing emissions without a limit, with associated subsidies to emitters with the possibility that our overall emissions will increase rather than contract.

14.2.2 Seek advice on how the proposals align with the bill's proposal to seek a 50% reduction in emissions by 2050

14.2.3 A Standing Committee on Climate Change policy is needed to provide long-term balanced advice on policy development, including advice for ETS reviews. This should become part of the legislation and a draft SOP is annexed to assist the Committee.

### **14.3 Agriculture:**

14.3.1 Retain the hybrid model for agriculture, allowing opt-in by individual emitters.

14.3.2 Consider Fonterra's proposal for a single administrative structure, with points of obligation to reduce emissions remaining on-farm, in the case of agriculture.

14.3.3 Put a farm-level obligation date in the primary legislation, not by Order in Council.

- 14.3.4 Require information justifying the two year delay in agriculture's entry to the scheme.
- 14.3.5 Retain the 1 January 2013 entry date for agriculture to avoid blunting the price signal and incentive to lower emissions.
- 14.3.6 If the date is to become 1 January 2015, consider providing free credits for farmers voluntarily reducing emissions prior to that entry date.

**14.4 Transparency of analysis and transfers:** The Committee should require an opportunity cost analysis which establishes:

- 14.4.1 The value of potential revenue from emission unit sales to those making excess emissions under the current scheme.
- 14.4.2 The implications of the loss of revenue from Crown emission unit sales under the proposed changes for: Windfall gains from banking for sale after 1 January 2013; domestic market trade and forestry and forestry investment.
- 14.4.3 The value of lost opportunities that would result from adopting the proposed assistance regime.

**14.5 Leakage:** We recommend the Committee:

- 14.5.1 Clarify the value of subsidy support proposed per job "saved" in subsidised sectors.
- 14.5.2 Ask those proposing the support for evidence of what leakage will occur.
- 14.5.3 Ask those proposing the support how, if leakage is an issue, harmonising with Australia will prevent capital moving to locations other than Australia.

**14.6 Forestry:**

- 14.6.1 Ensure early tree harvest to take advantage of lower-than-market unit prices is not encouraged.
- 14.6.2 Ensure like treatment for all like-assets, not assets owned by any one group.
- 14.6.3 Provide policy certainty regarding links with other schemes and especially in relating to the Australian scheme by ruling out a future ban on exports of forestry NZUs to all markets other than to Australia.

**14.7 Communications:** Support proposals for communications campaigns on the need to reduce emissions, manage climate change and to increase understanding of the ETS.

**14.8 Enacting the International Treaty:** The Committee should seek the views of the Regulations Review Committee and the Foreign Affairs Select Committee on proposals to ratify a multi-lateral treaty before Parliament has had the opportunity to review it. The proposed changes to the definitions of "Convention" and "Protocol" and clause 12 be omitted. Ensure current intensity and other support post-2013 is not locked in for 10 years.

**14.9 Transitional assistance:** Transitional assistance should be removed when no longer required. Reductions in assistance should be made possible within a year following a review finding competitiveness-at-risk issues no longer apply in a sector. Credit allocations by participant should be published annually, ensuring full transparency.

**14.10 Policy principles:** The Committee should help ensure the Parliament delivers a politically and fiscally sustainable policy which will not be repealed at the next change of Government, and will mostly last through the first two five yearly reviews. It should take into account the likely higher emissions targets which will result of the Copenhagen negotiations; encourage emissions reductions, rather than business-as-usual, and seek as wide a consensus as possible on our long term climate policy.

Further detail, questions and comment on these recommendations is attached in Annex 1. The SOP, with proposals for managing climate change policy in the future, is attached as Annex 2.

## ANNEXES

### ANNEX 1: ISSUES FOR THE COMMITTEE

The Committee is respectfully asked to consider the following questions and issues raised by the Bill and its explanatory notes and the Business Council's recommended responses:

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
Treasury's Regulatory Impact Statement (RIS)	Treasury says the level of quality of analysis presented in the RIS is " <i>not commensurate with the significance of the proposals</i> ", and does not provide an adequate basis for informed decision-making.		An analysis commensurate with the significance of the proposals must be conducted and provided to the Committee to inform its decision making.
	Treasury – no clear analytical basis to align some key design elements of the proposed NZETS with the CPRS (no discussion on overall suitability of applying CPRS elements to New Zealand's unique emissions profile and industrial structures).	Require full analysis.	If the Committee decides there is a need to "align" with parts of the CPRS it needs to remove inconsistencies (detailed in this submission). Parts of the CPRS have been copied, but harmonisation of the schemes through this bill is not achieved.

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
	<p>No discussion on risks of harmonising with an overseas scheme that is not yet finalised and may be subject to "<i>significant revision</i>".</p>	<p>CPRS Bill may require amendment to allow New Zealand-Australian trade in credits. Is alignment being sought and when?</p>	<p>Clarification needed.</p>
	<p>No information on implied transition path for firms over the medium to long term, given the proposal is for a temporary period of greater assistance coupled with an ambitious long term emissions reduction target. Without this it is hard to assess if the design changes will allow a smoother transition process for business.</p>		<p>The Committee needs to seek advice on how the proposals align with the Government's commitment to seek a 50% reduction in emissions by 2050.</p> <p>A Standing Committee on Climate Change policy is needed to provide long-term balanced advice on policy development, including advice for ETS reviews. This should become part of the legislation and a draft SOP is annexed to assist the Committee.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<b>Points of Obligation</b>			
<b><i>Agriculture</i></b>	<p>The point of obligation will be set at the processor level.</p> <p>Clause 4 amends Section 2a provides for Governor-General to issue farm-level obligation date by Order in Council.</p>	<p>Will prevent current “hybrid” model allowing opt in by emitters at farm level who wish innovate and lower emissions.</p> <p>Does this mean that a farmer prepared to take responsibility and innovate and reduce emissions can’t do so?</p> <p>Will this discourage the leaders from taking action while rewarding laggards and delaying emissions reductions activity?</p> <p>While on the one hand, you want farmers to begin the process of cutting emissions, if they can sell credits at the same time as they are exempt from the tax, there is a profound inequity.</p> <p>But that need not be the only way that farmers could sell credits, and the basis for how this happens will be important to think about.</p>	<p>Retain the hybrid model, allowing opt-in by individual emitters.</p> <p>Consider Fonterra’s proposal for a single administrative structure, with points of obligation to reduce emissions remaining on-farm, in the case of agriculture.</p> <p>Put a farm-level obligation date in the primary legislation, not by Order in Council.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
	<p><b>Sector entry date</b></p>	<p>The paper presented to Cabinet on 21 September 2009 recommended a 2013 entry date for agriculture, The Cabinet minute notes a decision to move the entry date to 1 January 2015.</p> <p>No evidence or argument has been presented for moving the date from the 2013 one recommended by the Minister for Climate Change (and presumably officials) and the date finally chosen.</p> <p>The country cannot wait 5 years to ensure incentives to lower agriculture's emissions are put in place.</p>	<p>Require information justifying the two year delay in agriculture's entry to the scheme.</p> <p>Retain the 1 January 2013 entry date for agriculture to avoid blunting the price signal and incentive to lower emissions.</p> <p>If the date is to become 1 January 2015, consider providing free credits for farmers voluntarily reducing emissions prior to that entry date.</p>
<p><b>CAR Issues</b></p>	<p><b>Bill notes say changes seek to avoid the loss of key industries.</b></p> <p>Bill commentary notes that <i>"providing a higher rate of assistance for a longer period will benefit eligible firms, but will come at a cost to the economy as a whole, by delaying the transition of the New Zealand economy to a carbon-constrained world"</i>.</p> <p><i>"The consistency with New Zealand's international trade obligations would also need to be taken into account"</i>.</p>	<p>No evidence is presented on this argument. The experience of other nations, like Germany for example, and other EU states, is that emissions pricing does not result in industries relocating. Other factors influence location.</p> <p>Most recent EU research shows little leakage expected from CAR issues.</p>	<p>We recommend the Committee seek evidence for this argument</p> <p>Which industries and firms in particular will relocate?</p> <p>Levels of support proposed for individual firms should be identified.</p> <p>What evidence is there that emissions-intensive industries might move from New Zealand to Australia? Which firms?</p> <p>What are the international trade obligation implications?</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<p><b><i>Industry Average Intensity</i></b></p>	<p><b>Bill proposed Australian intensity standards be applied.</b></p> <p>Bill papers: Under an intensity approach to free allocation of units to trade-exposed industry, key elements include:</p> <ul style="list-style-type: none"> <li>• Activities eligible if they meet trade exposure AND emissions intensity tests, or are eligible under the CPRS.</li> <li>• <i>"More emissions-intensive industries will receive higher rates of assistance than less emissions-intensive activities".</i></li> <li>• <i>"New entrants or firms that are expanding will automatically see their allocation increased".</i></li> <li>• Intensity-based allocation will support growth in CAR industries and prevent leakage, help avoid undue disruption to the economy, maintain ability of businesses in sectors where New Zealand has a competitive advantage to grow: <i>"This change would provide savings over the early years of the scheme's operation, but impose increasingly large fiscal costs over the long term".</i></li> </ul>	<p>Allows for uncapped increases in emissions without attracting an emissions charge. Defeats the purpose of the ETS – to cap and price emissions within a cap to reduce emissions.</p> <p>Detail required on tests. No information is available on final CPRS eligibility requirements. Exposes Crown and New Zealand to unknown liabilities.</p> <p>Rewards more emissions-intensive activities over less emissions-intensive activities, reversing the policy aim of less emissions-intensive production.</p> <p>Rewards expansion of emissions-intensive activities.</p> <p>May require Crown to purchase a greater amount of emissions units from overseas.</p> <p>The extent of <i>"increasingly large fiscal costs over the long term"</i> needs to be disclosed.</p> <p>The extra fiscal costs analysis provided for in the Bill notes to date are inadequate.</p> <p>The underlying analysis needs to be released and available to the Select Committee before the Bill is reported back. When streams of payments are being made over different years, a properly done analysis requires a NPV calculation to bring every thing</p>	<p>Detailed information needs to be provided on the industry-averages proposed.</p> <p>Information on the effect of applying average Australasian standards is also required. Australian industry averages may be below current New Zealand industry best practice, especially in aluminium and agriculture. They may also be influenced by the provision of mainly coal-fired, higher emission, electricity in Australia, compared with New Zealand's cleaner electricity sources.</p> <p>Provision to allow uncapped increases in emissions without attracting an emissions charge should be removed from the bill.</p> <p>Intensity with a cap is possible, but a reserve pool of credits would need to be created for new entrants.</p> <p>Detail required on tests. Obtain information on final CPRS eligibility requirements to avoid exposing the Crown and New Zealand to unknown liabilities.</p> <p>Clarify if this will require the Crown to purchase a greater amount of emissions units from overseas.</p> <p>The extent of <i>"increasingly large fiscal costs over the long term"</i> needs to be disclosed.</p> <p>Identify and quantify the extra fiscal costs or proposed changes.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
	<ul style="list-style-type: none"> <li>Risks to less emissions-intensive industries posed by current proposals.</li> <li>The Bill commentary notes that, under the intensity model, <i>"some firms which would have received assistance under the previous approach will fall below the emissions-intensity thresholds and will be ineligible to receive assistance under the new approach"</i>.</li> <li>An intensity-based allocation plan <i>"will be further developed following passage of the Bill, with a view to providing firms with as much certainty as possible by July 2010"</i>.</li> </ul>	<p>back to a single metric. As what we are looking at is the fiscal costs to taxpayers, not the economic cost, the discount used should be the government bond rate, since any expenditure will require higher borrowing than the counterfactual. The time period should be the length of the programme, which is when assistance goes to zero. This once more reinforces the need to have much better analysis of the issues available to politicians and the public.</p> <p>Overall subsidy levels / credits issued should be disclosed, not just information in relation to fiscal changes.</p> <p>Potential risks to less emissions-intensive sectors should be examined carefully. Between 2010 and 2020, CAR businesses would receive between \$407 and \$749 million less than under current allocation plans.</p> <p>However, the Bill notes and Minister have emphasised this assistance could be removed in five yearly reviews, i.e. removed before they are due to occur, while CAR activities have received less assistance between 2008-12. There is a need to ensure CAR activities receive the appropriate level of assistance for appropriate periods.</p>	<p>Require a properly conducted analysis including a NPV calculation.</p> <p>The time period should be the length of the programme, which is when assistance goes to zero.</p> <p>Obtain estimates of overall subsidy levels / credits likely to be issued as a result of the changes, not just information in relation to fiscal changes.</p> <p>Carefully examine potential risks to less emissions-intensive trade-exposed sectors.</p> <p>Ensure CAR activities receive the appropriate level of assistance for appropriate periods.</p> <p>Identify which emissions-intensive firms would no longer be eligible to receive assistance if the intensity approach is enacted.</p> <p>Require criteria for developing intensity-based allocation plans by 2010 in the primary legislation, not regulation.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
		<p>Which emissions-intensive firms will not longer be eligible to receive assistance if the intensity approach is enacted?</p> <p>Criteria for developing intensity-based allocation plans by 2010 are needed in the primary legislation, not regulation.</p>	
<b><i>Delaying Adjustment</i></b>	<p><b>Bill notes affirm delaying adjustment</b> <i>"could be costly in the future as New Zealand would lock in investment choices that are inefficient in the long run when climate change agreements become more stringent and the world moves towards carbon pricing"</i>.</p>	<p>The Business Council concurs.</p>	
<b><i>Banking Credits</i></b>	<p>Bill allows credits bought at fixed price of \$25 per tonne before 1 January 2013 to be banked.</p>	<p>If the market price for carbon lifts over time as expected if the developed world adopts 25% to 40% reduction responsibility targets, then banking may provide substantial windfall gains after 2013.</p>	<p>The Committee should establish what the implications are for:</p> <ul style="list-style-type: none"> <li>• Windfall gains from banking for sale after 1 January 2013?</li> <li>• domestic market trade?</li> <li>• forestry and forestry investment?</li> </ul>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<p><b>Forestry</b></p>	<p>Bill allows emissions liabilities from pre-1990 and post-1989 forestry sectors to be covered by \$25 fixed price option until 1 January 2013.</p> <p>Bill notes <i>"there is potential that a short term reduction in price could drive short term deforestation as foresters seek to convert land while prices are relatively low"</i>.</p> <p>A 21 September 2009 paper (publicly released on 10 October 2009) says <i>"it is likely to be necessary to ban the export of units from the forestry sector in the event that the schemes are linked. Counterbalancing this, foresters would then be able to sell units in an Australasian market. Cabinet agreed "that it be clearly communicated to the forestry sector that exporting of units may not be permitted if a future link with the Australian Carbon Pollution Reduction Scheme occurs, although units would be able to be sold to Australia."</i></p>	<p>Will this encourage early tree harvest to take advantage of lower-than-market unit prices?</p> <p>Are afforestation incentives required other than just for iwi-owned Treaty settlement lands?</p> <p>Policy certainty is needed regarding links with other schemes and especially in relating to the Australian scheme. Does the Cabinet paper of 21 September 2009, indicate the Government would prefer a domestic Australia-New Zealand scheme only when or if the CPRS bill is passed?</p> <p>The Business Council supports the international trade of NZUs without restriction in New Zealand ETS legislation.</p>	<p>Ensure early tree harvest to take advantage of lower-than-market unit prices is not encouraged.</p> <p>Ensure like treatment for all like-assets, not assets owned by any one group.</p> <p>Provide policy certainty regarding links with other schemes and especially in relating to forestry and the Australian scheme by ruling out a future ban on exports of forestry NZUs to all markets other than to Australia.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<b><i>Fishing</i></b>	Fishing will get the same level of free allocations as other CAR sectors – 90% rather than the 50% provided for in the existing legislation.	<p>The Business Council supports the 90% allocation to the fishing sector.</p> <p>However, there is inconsistent treatment of the fishing sector compared with other CAR sectors in the timeline for phasing out assistance. While the Business Council does not support the extended phase out regime as proposed, if it is to transpire then inconsistent treatment of CAR sectors should be remedied.</p>	If change is to be made, apply the timeline for phasing out assistance to other CAR sectors to the fishing sector.
<b><i>Emissions Reduction</i></b>	<p>Implications for wider economy.</p> <p>Bill notes assert the amended scheme will "<i>achieve its original objective of reduction emissions</i>".</p>	<p>Evidence for an amended ETS' affect on emissions levels is required (especially if emissions may rise under the intensity-without-cap proposal).</p> <p>The aim of the ETS is to reduce emissions. Analysis is lacking on the extent to which the amended scheme will do this.</p>	<p>Acquire evidence for an amended ETS' affect on emissions levels compared with the existing legislation.</p> <p>What reduction is likely in the short term?</p> <p>What reduction is likely post-2030 as a result of the slower phase out of subsidy support and the introduction of unlimited increased emissions within the intensity criteria?</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<p><b><i>Duration of Transition Phase and Investment</i></b></p>	<p>Bill note says the transition phase (\$12.50 carbon price, \$25 domestic cap, 2 tonne for \$25, 3-year phase) is <i>"too short to affect investment decisions"</i>.</p>	<p>Extended support may delay emissions reduction investment decisions by three years or more.</p> <p>Especially when production-intensity is factored in, along with the 70 year phase out of CAR assistance.</p> <p>Bill effectively locks in current intensity and other support post-2013 for 10 years by making any changes recommended by a Review subject to 5 years' notice.</p> <p>Assistance should be removed when no longer required.</p>	<p>Ensure current intensity and other support post-2013 is not locked in for 10 years.</p> <p>Assistance should be removed when no longer required.</p>
<p><b><i>Racially-based Incentives</i></b></p>	<p>Bill notes and Ministerial and Maori Party MP statements discuss ongoing negotiations to incorporate special arrangements taking into account the Treaty of Waitangi, and iwi forests, fisheries and agricultural interests; provide for home insulation for Maori homes, iwi access to the DOC estate (unclear, but possibly in the context of forestry).</p>	<p>Issues are raised about the Treaty of Waitangi clause or clauses.</p> <p>Other Acts and Bills have relied on clauses to recognise or take into account the principles of the Treaty of Waitangi. The Maori Party SOP to include a Treaty clause in the current ETS, moved in September 2008, contained a provision to enact the Treaty. If this occurred in relation to Article 2, Maori could be granted right to <i>"undisturbed possession"</i> of their lands. The implications of this in terms of ETS policy could be significant and need clarification.</p> <p>Support for the ETS will be affected if similar assistance is not provided for firms or households facing the same circumstances.</p>	<p>Clarify the implications of any proposed Treaty clauses.</p> <p>Provide assistance to lower transitional costs on either a personal or household income basis, not a Maori / non-Maori basis.</p> <p>Put transitional measures in place to encourage household emissions reductions, especially in electricity and fuel use.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
		<p>Assistance to lower transitional costs should be provided on either a personal or household income basis, not a Maori non-Maori basis.</p> <p>Transitional measures should be put in place to encourage household emissions reductions, especially in electricity and fuel use.</p>	
<b>Allocation Plan Timing</b>	<p>Bill notes indicate <i>"there is still a risk that the allocation process for the Stationary energy and Industrial Process and Liquid Fossil Fuel sectors"</i> would not be complete by the entry date of 1 July 2010.</p>	<p>Allocations based on intensity measures will invariably be more difficult than ones based on a cap related to past emissions.</p>	<p>Provide sufficient resources to ensure allocation plan work is complete, to provide certainty for business and investment, and manage any adverse fiscal implications.</p>
<b>Recycling Revenues/ Innovation Fund/ Funding Complementary Measures</b>	<p>The Bill would abolish provisions to establish an Innovation Fund. The fund is due to operate from 1 January 2010 to 31 December 2012, with reviews for subsequent commitment periods. Initial provision of 150,000 NZUs and then "any number" after 31 December 2012. Grants to be made by the Minister to firms which meet requirements for assistance but are not receiving an allocation of NZUs in accordance with an allocation plan.</p>	<p>The Business Council supports recycling revenues from sale of emission credits to make Innovation grants and fund significant complementary emissions reduction initiatives.</p> <p>An Emissions Trading Group report by officials to the Finance and Expenditure Select Committee on 8 April 2008 provided advice on the flow of revenue to the Government under the ETS (as free allocation is phased out. It estimated the Crown had retained responsibility of a total</p>	<p>The Select Committee should require an opportunity cost analysis.</p> <p>Ensure, by modifying price cap, assistance phase out rates and ensuring intensity has a cap, that sufficient funds from the sale of emission units are available for effective emissions-reducing complementary measures, including an innovation fund.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
	<p>The current Minister for Climate Change Issues has said Treasury has calculated the current scheme provides the Government with projected revenue of \$23 billion, though the period over which this occurs has not been made clear nor the Treasury document released.</p>	<p>of 54 million units per year in 2013, and assumed \$25/\$50 per tonne prices to report auction revenues would range from -\$100 to -\$200m in 2013 then grow to \$1.25 billion to \$2.2 billion by 2025.</p> <p>Work is needed to determine how these significant revenues from the Crown's sales of NZUs are affected by the proposed changes, and to assess the opportunity cost of failing to recycle revenues into incentives to lower emissions. Such revenues would fund a wide range of complementary measures and help New Zealand achieve a much faster and greater reduction in emissions.</p>	
<p><b><i>Transparency of Assistance</i></b></p>	<p>The Bill proposes to change the Act so free unit entitlements of participants are not published, only aggregate entitlements.</p>	<p>The principle that anything provided at less than value by the Crown needs to be appropriated is already in the Public Finance Act. It is not acceptable to say changes to the scheme will involve the transfer of \$23 billion and not disclose to whom this has been transferred.</p>	<p>Credit allocations by participant should be published annually, ensuring full transparency.</p>

Policy Management	Issue	Questions/Comment	NZBCSD recommendations
<p><b><i>Principles for an ETS with broadly based support</i></b></p>	<p>The current legislation passed with a small majority. The proposed legislation was introduced with a small majority only.</p> <p>Climate change policy particularly affects businesses with long life assets.</p>	<p>The wider the support in Parliament for the ETS the more likely it is that businesses can invest with confidence of policy stability.</p>	<p>Need for broad based support.</p> <p>Need for politically and fiscally sustainable policy which will not be repealed at the next change of Government, and will mostly last through the first two five yearly reviews.</p> <p>Take into account the likely higher emissions targets which will result of the Copenhagen negotiations.</p> <p>Encourage emissions reductions, rather than business-as-usual.</p> <p>Seek as wide a consensus as possible on our long term climate policy.</p>

## **ANNEX 2: SOP**

### **NATIONAL EMISSIONS TARGETS AND A CLIMATE CHANGE COMMITTEE**

This annex includes a draft Supplementary Order Paper to amend the Bill to:

- set national targets for the reduction of greenhouse gas emissions in both the medium and long-term; and
- establish an independent Advisory Committee on Climate Change, to increase accountability and transparency in the making of the public policy response to climate change.

#### **National targets**

New Zealand is committed to making a nationally appropriate contribution to international efforts to reduce concentrations of greenhouse gases in the atmosphere, as a way of avoiding the worst consequence of human-induced climate change.

In the current round of international climate change negotiations, New Zealand has made a conditional offer of a responsibility target for greenhouse gas emissions reductions of between 10 per cent and 20 per cent below 1990 levels by 2020, if there is a comprehensive global agreement. New Zealand has also made unilateral, unconditional offer of a 50% reduction below 1990 levels by 2050.

The amendments enshrine these offers in law and require the Minister to ensure that they are met.

#### **Advisory Committee on Climate Change**

The development of climate change policy in New Zealand has been controversial, with many stakeholders complaining that there has been insufficient independent analysis of the costs and benefits of the policy initiatives proposed by successive governments.

The amendments contain provisions to establish an Advisory Committee on Climate Change, which will be an independent Crown entity, to provide advice to Ministers and to promote informed public debate on the public policy response to climate change.

The Committee will be required to consult affected parties before giving its advice.

#### **Structure of the SOP**

##### *Administrative matters*

The SOP makes two changes to the existing administrative provisions of the Principal Act to increase transparency of policy making.

First, the Inventory Agency (the chief executive of the Ministry for the Environment) will be required to produce annual long-term (50 year) forecasts of emissions and removals of greenhouses gases. The bill also provides that in preparing such forecast, the Inventory Agency must act independently from the Minister and apply its best professional judgement to the task. To enhance transparency, the Agency will be required to consult with the Advisory Committee on the methodology that it proposes to use and publish the Committee's views.

Secondly, the SOP requires ministers and chief executives to seek and consider the advice of the Advisory Committee before any regulations or orders in Council are made under the Act. The Committee's advice will be presented to the House of Representatives. If regulations or Orders are made that contain provisions that are different from the advice of the Committee, the Minister is required to present a statement to the House setting out the minister's reasons for not agreeing with that advice.

### National targets

The SOP proposes to insert a new Part 6 of the Principal Act, which sets national greenhouse gas emissions reduction targets.

A national target of a 50% reduction in net emissions from 1990 levels by 2050 is set in legislation.

To provide greater certainty of the pathway towards this eventual target, the SOP requires the Governor-General to set a series of intermediate targets, which will apply for five yearly periods, commencing in 2013-2017.

While the SOP allows some flexibility around the intermediate targets, it is proposed that:

- the intermediate target for one period must not be higher than the target in the immediately preceding period;
- net emissions in 2020 must be at least 10% lower than the 1990 baseline;
- net emissions in 2050 must be 50% lower than the 1990 baseline.

To increase the political consensus around national targets, the SOP requires any order setting a target to be confirmed by an Act of Parliament by 1 July in the year after it is made.

The SOP provides for a transparent process of consultation before any intermediate target is set. The Minister must publish a draft target, together with a statement explaining why the Minister has proposed a particular target. Public submissions will be made to the Advisory Committee, which will have to consider the Minister's reasons and any submissions received and report to the Minister before the target is set. The Committee's advice will be presented to the House of Representatives. If the target that is finally set contains provisions that are different from the advice of the Committee, the Minister is required to present a statement to the House setting out the Minister's reasons for not agreeing with that advice.

### Policies to achieve national targets

As well as setting national targets, the SOP requires the Minister to develop proposals and policies that the Minister considers will enable the targets to be met.

Whenever a new intermediate target is set, the Minister is required to present to the House of Representatives a report on the proposals and policies that the Minister has developed to enable the target to be met.

### Advisory Committee on Climate Change

The SOP establishes an Advisory Committee on Climate Change as an independent Crown entity.

The principal objectives of the Committee will be to provide independent advice to the Minister on matters relating to the public policy response to climate change, to increase the effectiveness of public participation in the making of policies and laws and to support informed debate within New Zealand on the public policy response to climate change.

In relation to advice, the Committee will be required to report to the Minister by 1 December 2011 on whether the national emissions reduction target of a 50% reduction in net emissions below 1990 baselines needs to be altered. This report is timed to allow the Committee to have regard to the outcome of the current round of international negotiations on climate change.

The Committee is also required to provide advice to the Minister on the intermediate target to apply in every five year period commencing in 2013.

Before providing advice, the Committee will be required to consult with affected parties in an open and transparent manner.

The Committee will report annually on the progress being made in meeting New Zealand's emission reduction targets.

As currently enacted, the Principal Act requires the Minister to establish a panel to review the emission trading scheme established by the Act every five years. The SOP amends these provisions to require this review to be conducted by the Committee. The Committee is given more independence than the panel in setting the terms of reference of any review, although the Minister is empowered to require that the Committee consider specified matters. The Bill requires the Committee to consult with the public during its review. Once a Review is completed, the Minister is required to present the Committee's report, and the Minister's response, to the House of Representatives.

**House of Representatives**  
**Supplementary Order Paper**

**2009**

**Climate Change Response (Moderated Emissions Trading) Amendment Bill**

*Proposed amendments*

*Clause 6*

To insert before the definition of **animal welfare export certificate** (before line 32 on page 9) the following definition:

**“1990 baseline** means the level of New Zealand emissions in 1990”

To insert after the definition of **animal welfare export certificate** (after line 32 on page 9) the following definition:

**“Committee** means the Climate Change Advisory Committee established by Section 245”

To insert after the definition of **Crown holding account** (after line 2 on page 10) the following definitions:

**“emissions for which New Zealand is responsible**, in relation to a period, means net New Zealand emissions reduced by the quantity of Kyoto Units retired during that period

**“intermediate target means** a target set for the level emissions for which New Zealand is responsible for a target period under Section 225

**“New Zealand emissions** means emissions of greenhouse gases from sources in New Zealand

**“New Zealand removals** means removals of greenhouse gases from the atmosphere due to land use, land-use change or forestry activities in the New Zealand

**“net New Zealand emissions** in respect of a period means the amount of New Zealand emissions in the period reduced by the amount of New Zealand removals in the period”

To insert after the definition of **solid biofuel** (after line 4 on page 10) the following definitions:

**“target for 2050** means the target set for the level emissions for which New Zealand is responsible in 2050 in Section 224

**“target period** means each succeeding period of five years beginning with the period 2013-2017”.

*New clauses 11A to 11D*

To insert the following new clauses after *clause 64* (after line 7 on page 13):

**11A Primary functions of inventory agency**

Section 32(1) is amended by inserting the following paragraph after paragraph (a):

“(aa) prepare annually long-term forecasts of the future human-induced emissions by sources and removals by sinks of greenhouse gases in accordance with section 31A; and”

### **11B Forecasts of future emissions**

The following Section is inserted after section 32:

#### **“32A Forecasts of future emissions**

- (1) The forecasts referred to section 31(1)(c) must –
  - (a) relate to a period of at least 50 consecutive years commencing with the year in which the forecast is prepared; and
  - (b) be accompanied by—
    - (i) a statement of responsibility signed by the inventory agency stating that the forecasts have been prepared using the agency’s best professional judgment; and
    - (ii) a statement of the methodology used to prepare the forecasts; and
    - (iii) a statement of all significant assumptions underlying the forecasts.
- (2) Before finalizing the forecasts, the inventory agency shall seek and consider a written report from the Committee on the appropriateness of the forecasts and the methodology used in preparing the forecasts.
- (3) At the same time as the agency publishes the forecasts under section 35, the agency shall also publish the report of the Committee.

### **11C Inventory agency under direction of Minister**

Subsection 33(1) is repealed and the following subsections are inserted:

- (1) Subject to subsection (1A), the inventory agency must comply with any direction from the Minister in relation to the performance of its functions under this Part.
- (1A) The Minister may not direct the inventory agency in relation to the preparation of a forecast of under subsection 31(1)(c).”

### **11D Publication**

Section 35 is amended by repealing “and” and substituting “, the forecast of future emissions and”.

#### *Clause 22*

To omit section 70(3) (lines 4 to 6 on page 19).

#### *Clause 38*

To omit *new sections 160 and 161* (line 31 on page 53 to line 11 on page 58)

#### *New Clause 41A*

To insert, after *clause 41* (after line 27 on page 65), the following:

#### **41A Requirement to consult Committee before recommending the making of Regulations**

The following section is inserted after Section 168:

#### **168A Requirement to consult Committee before recommending the making of Regulations or orders in Council**

- (1) Before regulations under Section 30G, 50, 161A or 162 to 168 are made, the Minister must seek and consider a written report from the Committee.
- (2) Before an Order in Council under Section 70 or 71 is made, the Minister must seek and consider a written report from the Committee.
- (3) At the same time as –
  - (a) a regulation made under Section 30G, 50, 161A or 162 to 168 or an Order in Council made under section 71 is laid before the House of Representatives under section 4 of the Regulations (Disallowance) Act 1989:
  - (b) an Order in Council made under section 70 is made available under section 70(4) –the Minister must present to the House of Representatives –
  - (a) the Committee’s report; and
  - (b) if a regulation or Order in Council contains provision different from those recommended by the Committee, a statement setting out the Minister’s reasons for those differences.

#### *New Clause 41B*

To insert, after *clause 41* (after line 27 on page 65), the following:

#### **41B Requirement to consult**

In section 173(2)(d), “make.” is replaced by “make; and” and the following is added:

“(f) seek and consider a report from the Committee.”

#### *Clauses 62 and 63*

To omit *clauses 62 and 63* (lines 4 to line 25 on page 35) and substitute the following:

#### **62 New Parts inserted**

Part 6 is repealed and the following Parts are substituted:

### **PART 6 EMISSIONS REDUCTION TARGETS**

#### *Targets*

#### **224 The target for 2050**

It is the duty of the Minister to ensure that the level of emissions for which New Zealand is responsible for the year 2050 is at least 50% lower than the 1990 baseline.

## **225 Intermediate targets**

- (2) The Governor-General may from time to time, on the recommendation of the Minister, by Order in Council, set an intermediate target for a target period.
- (3) The intermediate target for a target period may be set at any time after this Part comes into force, and must be set—
  - (a) for the periods 2013-2017, 2018-2022 and 2023-2027, before 1 June 2011;
  - (b) for any later period, not later than 30 June in the 12th year before the beginning of the period in question.
- (4) The intermediate target for any target period commencing after 2017 must be no greater than the intermediate target that applied in the immediately preceding target period.

## **226 Duty of Minister to ensure intermediate targets are met**

If an intermediate target has been set for a period, it is the duty of the Minister to ensure that the level of emissions for which New Zealand is responsible are less than the intermediate target for that period.

## **227 Level of intermediate targets for particular periods**

The intermediate target —

- (a) for the target period including the year 2020, must be such that the annual equivalent of the level of emissions for which New Zealand is responsible is in 2020 at least 10% lower than the 1990 baseline;
- (b) for the target period including the year 2050, must be such that the annual equivalent of the level of emissions for which New Zealand is responsible is in 2050 50% lower than the 1990 baseline.

## **228 Orders to be confirmed**

Where an order has been made under section 224, and—

- (a) has not been revoked with effect on or before 1 July in the next year; and
- (b) has not ceased, and will not cease, to have effect on or before the 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989,—

it shall be deemed to have been revoked with the close of 30 June in that next year unless it has been confirmed by an Act of Parliament passed on or before that day.

## **229 Draft Orders**

- (1) Before recommending that an order be made under Section 225, the Minister must prepare a draft order and a statement setting out the reasons why the Minister proposes to recommend the making of the order in the form proposed.
- (2) The Minister must ensure that—
  - (a) public notice is given of any draft orders; and

- (b) the draft order and the statement are made available in hard copy at the office of, and is accessible via the Internet site of, the Ministry for the Environment and at such other places as the Minister considers appropriate.
- (3) The notice of a draft order given under subsection (2) must specify—
  - (a) how a hard copy of the draft order may be obtained; and
  - (b) that any person may make a submission to the Committee on the draft order, how submissions may be made, and by what date (which must be no earlier than 40 working days after the date on which notice is given).

**230 Consultation with Committee on order**

- (1) Before recommending that an order be made under Section 225, the Minister must obtain, and take into account, the advice of the Committee.
- (2) Before tendering its advice to the Minister, the Committee must have regard to:
  - (a) the statement prepared by the Minister under Section 229(1); and
  - (b) any submissions received.
- (3) At the same time as an order is laid before the House of Representatives under section 4 of the Regulations (Disallowance) Act 1989, the Minister must present to the House of Representatives –
  - (a) the advice received from the Committee; and
  - (b) if the order makes provision different from that recommended by the Committee, a statement setting out the Minister’s reasons for those differences.

**231 Matters to be taken into account in connection with intermediate targets**

- (1) The following matters must be taken into account—
  - (a) by the Minister in coming to any decision relating to intermediate targets, and
  - (b) by the Committee in considering its advice in relation to any such decision.
- (2) The matters to be taken into account are—
  - (a) scientific knowledge about climate change;
  - (b) technology relevant to climate change;
  - (c) economic circumstances, and in particular the likely impact of the decision on the economy and the competitiveness of particular sectors of the economy;
  - (d) fiscal circumstances, and in particular the likely impact of the decision on taxation, public spending and public borrowing;
  - (e) social circumstances;
  - (f) energy policy, and in particular the likely impact of the decision on energy supplies and the carbon and energy intensity of the economy;

- (g) circumstances at an international level.
- (3) Nothing in this section is to be read as restricting the matters that the Minister or the Committee may take into account.

*Proposals and policies for meeting targets*

**232 Duty to prepare proposals and policies for meeting targets**

The Minister must prepare such proposals and policies as the Minister considers will enable the target for 2050 and such intermediate targets as may be set to be met.

**233 Duty to report on proposals and policies for meeting targets**

- (1) At the same time as an order setting an intermediate target for a target period is laid before the House of Representatives under section 4 of the Regulations (Disallowance) Act 1989, the Minister must present to the House of Representatives a report setting out proposals and policies for meeting the target for the current and future periods up to and including that period.
- (2) The report must, in particular, set out—
  - (a) the Minister’s current proposals and policies under section 232; and
  - (b) the time-scales over which those proposals and policies are expected to take effect.
- (3) The report must explain how the proposals and policies set out in the report affect different sectors of the economy and society.

**234 Regard to be had for domestic action on climate change**

In exercising functions under this Part involving consideration of how to meet—

- (a) the target for 2050; or
- (b) an intermediate target; —

the Minister must have regard to the need for reductions in New Zealand emissions or increases in New Zealand removals.

**PART 7 THE ADVISORY COMMITTEE ON CLIMATE CHANGE**

**Subpart 1—Establishment, objective, and functions of Committee**

*Establishment of Committee*

**235 Advisory Committee on Climate Change established**

This section establishes the Advisory Committee on Climate Change.

**236 Committee is Crown entity**

- (1) The Committee is an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (2) The Crown Entities Act 2004 applies to the Committee except to the extent that this Act expressly provides otherwise.

### **237 Board of Committee**

- (1) The Committee consists of no fewer than 5, and no more than 7, members.
- (2) Members of the Committee are the board for the purposes of the Crown Entities Act 2004.

### **238 How members appointed**

- (1) The Minister must comply with this section in appointing or reappointing members.
- (2) The Minister must request nominations for members of the Committee, and allow 1 month to receive nominations, by giving public notice—
  - (a) in the *Gazette*; and
  - (b) in daily newspapers circulating in Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
  - (c) on a website maintained by, or on behalf of, the Ministry for the Environment.
- (3) However, the Minister may appoint a person as a member of the Committee whether or not he or she receives a nomination for the person under subsection (2).
- (4) In appointing members, the Minister must consider the need for the Committee to have available to it, from its members, knowledge, skill, and experience relating to—
  - (a) climate change, including climate change science:
  - (b) the environment:
  - (c) economics:
  - (d) trade, commerce and industry:
  - (e) agriculture and forestry:
  - (f) tikanga Māori:
  - (g) matters that are likely to come before the Committee:
  - (h) New Zealand's international obligations under the Convention and the Protocol and any other relevant international agreement:
  - (i) the operation of the emissions trading scheme established under this Act, including its environmental, social, and economic effects.
- (5) The Minister must notify an appointment in the *Gazette* as soon as practicable after appointing the member to the Board.

#### *Objectives, functions and duties of Committee*

### **239 Objectives of Committee**

The principle objectives of the Committee are –

- (a) to provide independent advice to the Minister on matters relating to the public policy response to climate change; and
- (b) to enable the more effective participation of the people of New Zealand in the making of laws and policies relating to the public policy response to climate change; and
- (c) to support informed debate within New Zealand on the public policy response to climate change matters.

#### **240 Functions of Committee**

In meeting its objectives under Section 239, the Committee has the following functions:

- (a) to advise the Minister on the public policy response to climate change:
- (b) to obtain, monitor, analyse, collate, and disseminate information relating to the public policy response to climate change, both in New Zealand and elsewhere:
- (c) to develop and promote methods of improving the effectiveness of the public policy response to climate change from time to time implemented by the Government of New Zealand:
- (d) to facilitate the participation of the people of New Zealand in the making of laws and policies relating to the public policy response to climate change, including the promotion of education about climate change issues and the publication of information about those issues:
- (e) to monitor the effects of the public policy response to climate change that are being implemented in New Zealand;
- (f) to conduct periodic reviews of the emissions trading scheme established by this Act, in accordance with Subpart 4:
- (g) to keep under review all the provisions of this Act, and the operation and effect of those provisions in practice:
- (h) to perform such other functions as are conferred on the Committee by this Act or any other enactment.

#### **Subpart 2 — Advice on targets**

##### **241 Advice on level of 2050 target**

- (1) It is the duty of the Committee to advise the Minister on—
  - (a) whether the target for 2050 should be amended, and
  - (b) if so, what the amended target should be.
- (2) The Committee must give its advice under this section not later than 1 December 2011.

##### **242 Advice in connection with intermediate targets**

- (1) It is the duty of the Committee to advise the Minister from time to time, in relation to each target period, on—

- (a) the level of the intermediate target for the period,
- (b) the costs and benefits of setting such a target;
- (c) the extent to which the intermediate target for the period should be met—
  - (i) by reducing the amount of net New Zealand emissions, or
  - (ii) by the retirement of Kyoto units;
- (d) the sectors of the economy in which there are particular opportunities for contributions to be made towards meeting the intermediate target for the period through reductions in emissions of greenhouse gases.

#### **243 Requirement to consult**

- (1) Before giving advice under sections 241 or 242, the Committee must consult the persons (or representatives of those persons) that appear to the Committee likely to be substantially affected by any targets.
- (2) The process for consultation must, to the extent practicable in the circumstances, include—
  - (a) giving adequate and appropriate notice of the proposed terms of the Committee's advice, and of the reasons for it; and
  - (b) the provision of a reasonable opportunity for interested persons to consider the proposed advice and make submissions; and
  - (c) adequate and appropriate consideration of submissions.

#### **244 Procedure once advice completed**

- (1) The Committee must present its advice under sections 241 or 242, and the reasons for that advice, in a written report to the Minister.
- (2) Within 2 months of receiving a report from the Committee, the Minister must—
  - (a) publish the report; and
  - (b) present to the House of Representatives: --
    - (i) a copy of the report; and
    - (ii) the Minister's response to the report.

### **Subpart 3 — Reports and other advice**

#### **245 Reports on progress**

- (1) It is the duty of the Committee to prepare and present to the Ministers each year, beginning with the year 2011, a report setting out the Committee's views on—
  - (a) the progress that has been made towards meeting the target for 2050 and any intermediate targets that have been set;
  - (b) the further progress that is needed to meet those targets;
  - (c) whether those targets are likely to be met.

- (2) The Committee's report in the second year after the end of a target period must also set out the Committee's general views on—
  - (a) the way in which the target for the period was or was not met, and
  - (b) action taken during the period to reduce net New Zealand emissions.
- (3) The first report under this section must be presented to the Minister not later than 1 December 2011.
- (4) Each subsequent report under this section must be presented to the Minister not later than 30 June in the year in which it is made.
- (5) Within 2 months of receiving a report under this section, the Minister must present to the House of Representatives –
  - (a) the report; and
  - (b) the Minister's response to the report.

#### **246 Duty to provide advice or other assistance on request**

The Committee must, at the request of the Minister, provide advice, analysis, information or other assistance to the Minister or such other person as the Minister directs, in connection with—

- (a) the Minister's functions under this Act;
- (b) the progress made towards meeting the objectives set by or under this Act;
- (c) adaptation to climate change; or
- (d) any other matter relating to the public policy response to climate change.

### **Subpart 4 — Review of the Emissions Trading Scheme**

#### **247 Reviews of operation of emissions trading scheme**

The Committee must undertake a review of the operation and effectiveness of the emissions trading scheme established by this Act, to be completed no later than 12 months before the end of—

- (a) the first commitment period; and
- (b) each the subsequent commitment period; and
- (c) if there is no subsequent commitment period,—
  - (i) the 5-year period commencing on 1 January 2013; and
  - (ii) each subsequent 5-year period after the period specified in subparagraph (i).

#### **248 Minister may specify matters to be reviewed**

- (1) For each review to be conducted under section 247, the Minister may, not later than 12 months before the date on which the review is required to be completed, specify, by notice in writing addressed to the Committee,—

- (a) the aspects of scheme the review is required to address; and
  - (b) the topics to be discussed in the Commissioner's report.
- (2) Before giving a notice under subsection (1) the Minister must consult with the Committee about the matters to be included in it.
- (3) The Minister must, as soon as practicable after giving a notice under subsection (1), present a copy of that notice to the House of Representatives.
- (4) Each review conducted under section 247 must address the aspects of scheme required to be addressed by the notice relating to that review and the report must discuss the topics required to be discussed by that notice.
- (5) Nothing in this section is to be read as restricting the matters that the Minister or the Committee may take into account.

## **249 Scope of Reviews**

- (1) Without limiting the scope of the review, a review under section 247 must consider—
- (a) whether an amendment to this Act in relation to the emissions trading scheme is necessary or desirable; and
  - (b) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from or additional to any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
  - (c) the stringency of any of the international obligations specified in paragraph (b); and
  - (d) the contribution of the emissions trading scheme established under this Act to progress toward the target for 2050 and any intermediate targets that are in effect in accordance with section 224 at the time the review is initiated; and
  - (e) the types of Kyoto units and overseas units that may be surrendered for compliance with the emissions trading scheme established by this Act; and
  - (f) the operation of the commitment period reserve (if any); and
  - (g) potential for linkage of the emissions trading scheme established under this Act to other greenhouse gas emissions trading schemes; and
  - (h) the appropriateness of any methodologies that are prescribed for calculating emissions and removals; and
  - (i) whether it is necessary or desirable to—
    - (i) omit any of the activities from Schedule 3 or 4; and
    - (ii) add any additional removal activities to Part 2 of Schedule 4; and
    - (iii) amend the level of participant opt-in thresholds in Schedule 4; and

- (j) what consequential changes to subpart 2 of Part 4 in respect of allocation plans are necessary or desirable having regard to—
  - (i) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from, or additional to, any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
  - (ii) the stringency of any of the international obligations specified in subparagraph (i); and
  - (iii) whether it is necessary or desirable to omit any activities from Schedules 3 and 4; and
  - (iv) the relative climate change obligations and emissions policies of New Zealand's trade competitors and trading partners; and
  - (v) any significant changes in emissions mitigation technology; and
  - (vi) the cost to the tax payer and the economy of providing free allocation under subpart 2 of Part 4; and
- (k) the appropriateness of the penalties in subpart 4 of Part 4; and
- (l) the implications (if any) of the following matters for the notification of intention under section 70:
  - (i) New Zealand's annual emissions for the 5 years before notification; and
  - (ii) the average price of units for the 2 years before notification; and
- (m) the impacts of the forestry sector elements of the emissions trading scheme established under this Act on biodiversity within New Zealand; and
- (n) the costs and benefits of establishing an independent or quasi-independent government body to carry out the allocation process, or part of the allocation process, contained in subpart 2 of Part 4; and
- (o) social, economic, and environmental effects of the emissions trading scheme established by this Act (other than those considered under paragraphs (a) to (l)); and
- (p) any other matter that the Committee considers relevant.

## **250 Conduct of Reviews**

- (1) In conducting a review, the Committee must—
  - (a) set and make public the terms of reference for the review; and
  - (b) establish and make public a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference for the review; and

- (c) consult the persons (or representatives of those persons) that appear to the Committee likely to be substantially affected by the emissions trading scheme.
- (2) The process for consultation must, to the extent practicable in the circumstances, include—
  - (a) the provision of a reasonable opportunity for interested persons to make submissions; and
  - (b) adequate and appropriate consideration of submissions.

#### **251 Procedure once review completed**

- (1) The Committee must present the results of a review under section 247 in a written report to the Minister.
- (2) Within 2 months of receiving a report from the Committee, the Minister must—
  - (a) publish the report; and
  - (b) present to the House of Representatives: --
    - (i) a copy of the report; and
    - (ii) the Minister's response to the report.

#### **252 Other Reviews**

The Minister may initiate reviews of the operation and effectiveness of the emissions trading scheme established by this Act at any time and may use any method of review (including, but not limited to, directing the Committee to undertake the review).

*New Clause 67*

To insert, after *clause 66* (after line 11 on page 97), the following:

#### **67 Consequential amendments to other Acts**

- (1) Part 3 of Schedule 1 of the Crown Entities Act 2004 is amended by inserting “Advisory Committee on Climate Change” in its appropriate alphabetical order.
- (2) Part 2 of Schedule 1 of the Ombudsmen Act 1975 is amended by inserting the “Advisory Committee on Climate Change” in its appropriate alphabetical order.