

# **Climate Change Response (Auction Price) Amendment Bill**

Government Bill

As reported from the Environment Committee

## **Commentary**

### **Recommendation**

The Environment Committee has examined the Climate Change Response (Auction Price) Amendment Bill and recommends by majority that it be passed with the amendments shown.

### **Introduction**

The bill would build on the reforms put in place by the Climate Change Response (Emissions Trading Reform) Amendment Act 2020. It would enable a confidential reserve price to be set for auctions in the New Zealand Emissions Trading Scheme, to ensure that units cannot be sold at prices significantly below secondary market prices.

Part 1 of the bill would amend the Climate Change Response Act 2002 to provide for regulations to be made. Part 2 would make those regulations by amending the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020. The bill would:

- enable the Minister for Climate Change to set a methodology that would be used to calculate a confidential reserve price (CRP)
- require an auction operator to use the methodology to calculate a CRP for an auction
- require that the methodology and the CRP be kept confidential
- disallow the sale of units if an auction's final clearing price was less than its CRP.

## **Legislative scrutiny**

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

## **Proposed amendments**

This commentary covers the main amendments we recommend to the bill as introduced. A number of our proposed amendments are in response to recommendations we received from the Regulations Review Committee. We do not discuss minor or technical amendments.

## **Matters to be considered before making regulations**

Sections 30GC(5) and 30GC(6) of the Act set out the matters the Minister must consider when making regulations relating to limits and price control settings for units. For example, one main matter that the Minister must consider is the projected trends for New Zealand's greenhouse gas emissions.

The bill as introduced (clause 9, inserting regulation 15A(2)) would require the Minister to consider the matters in sections 30GC(5) and 30GC(6) when setting the methodology to be used in calculating the CRP.

We think it would also be appropriate to require the Minister to consider these matters before recommending regulations that provide for setting the methodology. We recommend amending clause 4, new section 30GA(2A)(a), to this effect.

## **Requirements of the Minister when making regulations**

Clause 4 would insert new section 30GA(2A)(b) to set out what the Minister for Climate Change must specify when recommending that regulations be made under the Act. New section 30GA(2A)(b)(i) would require the Minister to recommend that the regulations specify criteria that must be considered when setting the methodology that would be used to calculate the CRP.

We are concerned that this provision may lack adequate safeguards to ensure that the Minister would be accountable for their decision-making. Accordingly, we recommend amending clause 4, new section 30GA(2A)(b)(i), to require the Minister to recommend that the regulations specify "criteria or requirements" for the Minister when setting the methodology that would be used to calculate the CRP. This would better reflect the purpose of the proposed regulations.

## **Purpose of the confidential reserve price**

The purpose of the proposed CRP is to ensure that New Zealand units sold at auction cannot be sold significantly below the secondary market price.

Proposed new section 30GA(2A)(b)(i) would require the Minister to recommend that the purpose of the CRP must be considered when setting the methodology. To strengthen the Minister's accountability, we recommend amending this provision to

require the Minister to ensure that the methodology promotes the purpose of the CRP, rather than only requiring the Minister to consider its purpose.

We recommend an equivalent amendment in clause 9, proposed new regulations 15A(2)(b) and 15A(2)(c), in respect of the requirements the Minister would need to meet when setting the methodology.

One of us has concerns that where part of the volume bid for by the lowest conforming bid is below the CRP, that the entire auction would fail to clear. Therefore, the volume of units available to bidders from the primary market is constrained. The member is concerned that this could lead to a significant increase in demand in the secondary market, leading to potential uncertainty in the market.

### **Requirement for consultation when setting the methodology**

The bill as introduced would require the Minister for Climate Change to consult the Minister of Finance when setting the methodology.

We are aware that the decision to set a methodology to calculate a CRP could have a significant effect on the secondary market, and believe that the decision should be subject to greater independence.

We recommend amending clause 9, new regulation 15A(3), to require the Minister for Climate Change to consult both the Minister of Finance and any auction monitor when setting the methodology.

We also recommend a related amendment to clause 7 to provide that the term “auction monitor” be defined as having the meaning in section 30GD(3) of the Climate Change Response Act.

### **Methodology must remain set**

Under clause 9, new regulation 15A(4)(a), the Minister would be required to ensure that the methodology is set at the time of the regulation’s commencement.

We recommend amending this provision to require that the methodology is not only set, but remains set. This would ensure that the methodology was kept in place, and the Minister could only subsequently remove the CRP through the legislative process, and subject to parliamentary scrutiny.

### **Conducting a review of the methodology**

If the final clearing price at an auction was lower than the CRP, no bids would be successful, and the auction would fail to clear.

To further ensure that the methodology is fit for purpose, we recommend inserting regulation 15AA to require the Minister to review the methodology if any auction failed to clear. They would review the methodology in the same manner as they would set it, in accordance with regulation 15A.

One of us has concerns that the confidential reserve price would not be necessary to provide an indication of the Ministers’ range of price expectations, and would already be provided for by the boundaries of a lower price and upper price limit.

## Appendix

### Committee process

The Climate Change Response (Auction Price) Amendment Bill was referred to the committee on 10 February 2021. We invited the Minister for Climate Change to provide an initial briefing on the bill. They did so on 18 February 2021.

The closing date for submissions on the bill was 21 February 2021. We received and considered 21 submissions from interested groups and individuals. We heard oral evidence from 4 submitters.

We received advice on the bill from the Ministry for the Environment. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting. The Regulations Review Committee reported to us on the powers contained in clause 4.

### Committee membership

Hon Eugenie Sage (Chairperson)

Rachel Brooking

Tamati Coffey

Simon Court

Anahila Kanongata'a-Suisuiki

Debbie Ngarewa-Packer

Dr Deborah Russell

Hon Scott Simpson

Stuart Smith

Tangi Utikere

Angie Warren-Clark

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**Key to symbols used in reprinted bill**

**As reported from a select committee**

text inserted by a majority

~~text deleted by a majority~~



*Hon James Shaw*

# **Climate Change Response (Auction Price) Amendment Bill**

Government Bill

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**The Parliament of New Zealand enacts as follows:**

- 1 Title**  
This Act is the Climate Change Response (Auction Price) Amendment Act **2021**.
- 2 Commencement** 5  
This Act comes into force on **15 March 2021**.

**Part 1**  
**Amendments to principal Act**

- 3 Principal Act** 10  
This Part amends the Climate Change Response Act 2002 (the **principal Act**).
- 4 Section 30GA amended (Regulations for auctions to sell New Zealand units)**  
After section 30GA(2), insert:
- (2A) If regulations are to be made under this section,—
- (a) the Minister may, after considering the main matters and additional matters in section 30GC(5) and (6) of the Act, recommend the making of regulations that provide for the Minister to set a methodology that the 15



person who conducts an auction must use to calculate a minimum price that,—

- (i) if the price is greater than the lowest trigger price prescribed under section 30GB(2)(e)(ii), must be recalculated as that trigger price (despite the initial calculation); and 5
- (ii) if the price (as recalculated or, if not, as initially calculated) is greater than the minimum price prescribed under section 30GB(2)(e)(iii), becomes the **confidential reserve price** below which New Zealand units must not be sold at the auction; and
- (b) the Minister must, if recommending the making of regulations under **paragraph (a)**, also recommend that the regulations— 10
  - (i) specify criteria or requirements for the Minister’s decision to set the methodology, including a requirement to ~~consider~~ ensure that the methodology promotes the purpose of confidential reserve prices; and 15
  - (ii) specify that the purpose of confidential reserve prices is to prevent sales by auction under section 6A at prices significantly below the prices of New Zealand units sold at the time in other ways (on **secondary markets**) so that the sales by auction do not unduly affect secondary markets; and 20
  - (iii) require the methodology and any calculated prices to be kept confidential so that they are not disclosed to any potential buyer who participates in an auction; and
  - (iv) require the auction operator to provide the following information to the chief executive at a specified time after 1 or more auctions: 25
    - (A) details of the calculation of the price or prices using the methodology; and
    - (B) details of the auction bids in a form that does not identify any bidder, so that the chief executive can assess how any confidential reserve prices are working; ~~and~~ 30
  - (v) ~~include any appropriate transitional provisions.~~

**5 Section 30GB amended (Regulations about limits and price control settings for units)**

Replace section 30GB(2)(e)(iii) with:

- (iii) the minimum price below which units must not be sold by auction, which may be zero. 35

**Part 2**  
**Amendments to Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020**

**6 Principal regulations**

This Part amends the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 (the **principal regulations**). 5

**7 Regulation 3 amended (Interpretation)**

In regulation 3(1), insert in ~~its~~ their appropriate alphabetical order:

**auction monitor** has the meaning given in section 30GD(3) of the Act  
**confidential reserve price**, in relation to an auction, has the meaning given in **regulation 15A(1)(b)** 10

**8 Regulation 15 amended (Price control settings for units)**

In regulation 15, insert as subclause (2):

(2) To avoid doubt, if there is a confidential reserve price at an auction, that price (rather than the prescribed minimum price) is the lowest price at which New Zealand units may be sold at that auction. 15

**9 New regulations 15A to 15C and cross-heading inserted**

After regulation 15, insert:

*Methodology and calculation of confidential reserve prices for auctions*

**15A Minister must set methodology for calculating confidential reserve price** 20

(1) The Minister must set a methodology that an auction operator must use to calculate a price that,—

- (a) if the price is greater than the lowest trigger price for the auction, must be recalculated as that trigger price (despite the initial calculation); and
- (b) if the price (as recalculated or, if not, as initially calculated) is greater than the prescribed minimum price for the auction, becomes the **confidential reserve price** below which New Zealand units must not be sold at the auction. 25

(2) In setting the methodology, the Minister must ~~consider~~—

- (a) consider the main matters and additional matters in section 30GC(5) and (6) of the Act; and 30
- (b) ensure that the methodology promotes the purpose of confidential reserve prices, which is to prevent sales by auction under section 6A of the Act at prices significantly below the prices of New Zealand units sold at the time in other ways (on **secondary markets**) so that the sales by auction do not unduly affect secondary markets; and 35

- (c) ~~the need for the methodology to include~~ ensure that the methodology includes—
- (i) a way to determine a representative price for New Zealand units sold on secondary markets recently before the auction, taking into account any volatility in prices; and 5
  - (ii) a way to determine a price below the representative price that will achieve the purpose of confidential reserve prices.
- ~~(3) In setting the methodology, the Minister must consult the Minister of Finance.~~
- (3) In setting the methodology, the Minister must consult—
- (a) the Minister of Finance; and 10
  - (b) the 1 or more auction monitors, if any.
- (4) The Minister—
- (a) must ensure that the methodology is set, and remains set, from the commencement of this regulation; but
  - (b) may change the methodology by setting it differently at any time. 15
- 15AA Minister must review methodology after certain auctions**
- (1) This regulation applies if, at any auction, no bids are successful because the final clearing price is less than the confidential reserve price.
- (2) The Minister must—
- (a) review the methodology by complying with **regulation 15A** as if setting the methodology; and 20
  - (b) if required, change the methodology by setting it under that regulation.
- 15B Auction operator must calculate confidential reserve price**
- (1) The chief executive must provide the methodology to an auction operator as soon as is reasonably practicable after it is set under **regulation 15A.** 25
  - (2) The auction operator must use the methodology to calculate a price that, if greater than the prescribed minimum price for the auction, is the confidential reserve price.
  - (3) The methodology that must be used is the one that, 2 working days before the start of the day of the auction, had been most recently provided by the chief executive. 30
- 15C Methodology and calculated prices are confidential**
- (1) The auction operator, ~~or~~ and any other person, must keep confidential the methodology and the calculated price so that they are not disclosed to any potential buyer who participates in an auction. 35
  - (2) To avoid doubt, as long as that information is not disclosed to any potential buyer who participates in an auction, this regulation does not prevent informa-

	tion from being provided (for example, under <b>regulation 36A</b> or to an auction monitor <del>as defined by section 30GD of the Act</del> ).	
<b>10</b>	<b>Regulation 16 amended (Auction operator must make auction notices publicly available)</b> After regulation 16(2)(d), insert: (da) a statement that there may also be a confidential reserve price for the auction that is not known to bidders:	5
<b>11</b>	<b>Regulation 30 amended (Process for determining auction results)</b> Replace regulation 30(5)(b) with: (b) sell units at that price if required by regulation 33 (if there are successful bids under that regulation).	10
<b>12</b>	<b>Regulation 33 amended (Requirement to sell at final clearing price)</b> In regulation 33, insert as subclause (2): (2) However, no bids are successful, and no units may be sold to bidders, if— (a) there is a confidential reserve price at the auction; and (b) the final clearing price is less than the confidential reserve price.	15
<b>13</b>	<b>Cross-heading above regulation 36 replaced</b> Replace the cross-heading above regulation 36 with: <i>Publication of auction results and provision of certain information</i>	
<b>14</b>	<b>Regulation 36 amended (Requirement to make auction results publicly available)</b> (1) In regulation 36(2), replace “In this regulation, <b>auction results</b> means” with “The <b>auction results</b> are”. (2) After regulation 36(2), insert: (3) However, if no bids were successful because the final clearing price was less than the confidential reserve price, the <b>auction results</b> are solely a statement to that effect.	20 25
<b>15</b>	<b>New regulation 36A inserted (Requirement to provide information relevant to confidential reserve price)</b> After regulation 36, insert:	30
<b>36A</b>	<b>Requirement to provide information relevant to confidential reserve price</b> The auction operator must, as soon as is reasonably practicable after an auction, provide the following information about the auction to the chief executive:	

- (a) details of the calculation of the price using the methodology set under **regulation 15A**; and
- (b) the bid volume and bid price of each bid in a form that does not identify the bidder.

**16 Schedule 1 amended** 5

In Schedule 1, after Part 1,—

- (a) insert the Part set out in **the Schedule** of this Act as the last Part; and
- (b) make all necessary consequential amendments.

**17 Schedule 3 amended** 10

In Schedule 3, table of price control settings, column 2, replace the heading with “**Minimum price below which units must not be sold by auction (\$)**”.

**Schedule**  
**New Part 2 inserted into Schedule 1 of principal regulations**

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<b>Part 2</b>		
<b>Provisions relating to Climate Change Response (Auction Price) Amendment Act 2021</b>		5
<b>3</b>	<b>Meaning of amendments</b> In this Part, <b>amendments</b> means the amendments made to these regulations by the Climate Change Response (Auction Price) Amendment Act <b>2021</b> .	
<b>4</b>	<b>Setting and providing first methodology</b> Actions done for the following purposes are taken as having been done under the amendments, even if they are done before the amendments commence or are enacted: (a) setting the first methodology under <b>regulation 15A</b> , to ensure that <b>regulation 15A(4)(a)</b> is satisfied; and (b) providing the first methodology to an auction operator under <b>regulation 15B</b> , to ensure that <b>regulation 15B</b> is satisfied.	10     15
<b>5</b>	<b>Auction notice for early auction</b> If an auction is held within 30 days after the amendments commence, the notice under regulation 16 need not include the statement in <b>regulation 16(2)(da)</b> .	20

**Legislative history**

5 February 2021  
10 February 2021

Introduction (Bill 7–1)  
First reading and referral to Environment Committee