

Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

Introduction

The bill would amend provisions of the Climate Change Response Act 2002 that relate to the Emissions Trading Scheme (ETS). The main amendments that the bill proposes relate to the penalty that would apply to small forestry participants if they failed to pay¹ units by the due date, and the industrial allocation of units.²

The Act was amended in 2020 to introduce a stronger penalty and compliance regime for ETS participants. It increased the penalty for late payment of units from the original “excess emissions” penalty (set at \$30 per unpaid unit) to a “three to one” penalty, of three times the price of carbon per unpaid unit. However, it was determined that this penalty would put too heavy a financial burden on small forestry participants.³ Therefore, a transitional arrangement was made while a new penalty was

¹ In this commentary, to pay units means to surrender or repay units, depending on the context.

² A unit represents one metric tonne of carbon dioxide equivalent. Mandatory participants in the New Zealand Emissions Trading Scheme must surrender one unit for each tonne of emissions they are responsible for. Industrial allocation refers to the provision of free emission units to businesses that undertake emissions-intensive and trade-exposed activities.

³ Small forestry participants are participants in the ETS who would be liable for less than 25,000 units on average per year from forestry activities.

developed for them. The arrangement allowed small forestry participants to continue to pay the excess emissions penalty.

This bill would update the late payment penalty for small forestry participants from that transitional arrangement. They would need to pay 0.5 times the price of carbon per unpaid unit if they were operating on post-1989 land, and 0.25 times the price of carbon per unpaid unit if they were operating on pre-1990 land. This would be a strict liability penalty. That is, it could be waived if it was determined that the participant was not at fault for non-payment of units owed by the due date.

The bill as introduced would also amend the eligibility criteria for industrial allocation by updating the emissions intensity thresholds to reflect the recent carbon price. It would allow the Minister of Climate Change to update allocative baselines, and retest and update eligibility using new data from the 2017 to 2021 financial years. This seeks to address the issue of units being over-allocated.

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. We do not discuss most minor or consequential amendments.

Late payment penalties for small forestry participants

Requiring the regulator to issue an initial notice

Clause 7 would insert new sections 134AA and 134AB into the Act. New section 134AA would introduce the new strict liability late payment penalty for small forestry participants. Subsection (5) would require the Environmental Protection Authority (EPA), as regulator, to issue a penalty notice to a participant when they became liable for a late payment penalty. Under section 134AA(4A), small forestry participants would not be required to pay this penalty if they could satisfy the regulator that they were not at fault for the late payment.

We recommend inserting section 134AA(1A) to require the EPA to issue an initial notice when a small forestry participant failed to pay their units on time. This notice would identify that the participant had failed to pay their units on time, and invite them to supply any information which may prove to the regulator that this had occurred through no fault of their own. After 20 days from this initial notice, the regulator would be able to decide whether the penalty applied. If it did, a penalty notice would then be issued. We consider that an initial notice would make the process more efficient as it would allow the EPA to receive information that relates to making a decision on a penalty in a timely manner.

As a result of this amendment, we also recommend amending clause 9 to insert “or a notice under section 134AA(1A)” into section 159(1)(a). Section 159 of the Act allows the EPA to recover any units that remain unpaid 90 days after a penalty notice has been issued. Our amendment would allow this power to also apply if units were not repaid within 90 days after an initial notice was issued. This would ensure that the EPA could recover unpaid units if an initial notice was issued and a penalty was not.

Eligibility and baselines for industrial allocation

Industrial allocation refers to free units allocated to persons that carry out eligible industrial activities in producing something that is traded internationally. These free units help to offset the costs that firms face as a result of the ETS. Such costs could put them at a competitive disadvantage.⁴

At present, units are being over-allocated to firms as their distribution is based on eligibility criteria and allocative baselines that were calculated using data from 2006 to 2009.⁵ Some persons carrying out eligible industrial activities have been allocated units that exceed the amount they emit. This can happen when a firm’s emissions per unit of production have decreased, but the amount of units that they have been allocated per unit of production has stayed the same.

Testing an activity’s emissions intensity

Clause 15 would amend section 161C of the Act to update the thresholds through which activities may be classified as moderately or highly emissions-intensive,⁶ using a more recent carbon price. Many submitters opposed this update to eligibility thresholds. They expressed concern that updating these thresholds to use the more recent carbon price would risk moderately emissions-intensive activities being reclassified as highly emissions-intensive and increasing their industrial allocation.

We agree that it is best to avoid increasing industrial allocation, especially as units are currently being over-allocated. We recommend removing clause 15(1) and (3) so that the eligibility thresholds set out in the current Act are retained. We also recommend amending the Schedule by inserting new clause 40 of Part 3 of Schedule 1AA of the Act so that the eligibility of an activity would not be retested when allocative baselines are reviewed and updated using data from 2016 to 2021. This amendment would reduce the risk of increasing industrial allocation. If the eligibility thresholds are con-

⁴ A competitive disadvantage could result in a loss of jobs and broader economic activity in New Zealand, and production instead taking place in a country that does not have controls on emissions. This process (known as “emissions leakage”) would not help in reducing global emissions.

⁵ An allocative baseline is a historical measure of a product’s emissions intensity.

⁶ Activities that generate more than 800 and 1,600 tonnes of CO₂ equivalent per \$1 million of revenue are, respectively, considered moderately and highly emissions-intensive.

sidered to be a source of over-allocation in the future, this could be addressed through phasing out the level of assistance provided to eligible industrial activities.

Eligibility for new and existing activities

Matters to be considered when determining if an activity is eligible

Clause 14 proposes to replace sections 161A(2) and (3) of the Act. These sections set out the framework that would be followed when determining if an activity is eligible for industrial allocation. The bill's amendments include setting out an additional test to determine the eligibility of industrial activities. New subsection (2)(a) would require the Minister to consider the matters set out in section 84C(3)—in addition to the activity's trade exposure and emissions intensity—before they determined a new activity to be an eligible industrial activity. The Minister would need to be satisfied that the risk of emissions leakage outweighs international climate change obligations and relevant domestic emissions reduction commitments. We noted concerns from the Regulations Review Committee (RRC) that these requirements would allow the Minister to make regulations that were inconsistent with international treaty obligations.

Many submitters thought that new activities should not be eligible for industrial allocation as it could encourage firms to create new, greenhouse-gas-emitting activities. We were advised that if current eligibility thresholds were retained—as we recommend in our proposed amendment to clause 15—there would be a high bar for new activities to be eligible for industrial allocation. Some of us consider that removing the ability for new activities to receive industrial allocation would strengthen New Zealand's commitment to reducing emissions. However, other members of our committee believe it could negatively affect businesses' investment decisions and act as a disincentive against firms changing their operations to a more efficient and less emissions-intensive process.

We recommend amending clause 14, section 161A(2), to require the Minister to consider additional matters when granting eligibility for a new activity. The Minister would need to be satisfied that the new eligible industrial activity is likely to contribute to achieving the set emissions budgets and targets, as well as meeting New Zealand's nationally determined contributions under the Paris Agreement. The Minister would also need to be satisfied that the cost of prescribing the new eligible industrial activity is likely to be less than the cost of the current allocation. This would also address the RRC's concerns regarding international treaty obligations, as discussed above.

Future reviews and updates to allocative baselines

The bill also proposes inserting a new framework through which allocative baselines could be updated in the future. This framework would set out that the Minister could only update an activity's allocative baseline 5 years after it was last updated, and must review it at least every 10 years. If a review shows that an activity's allocations are greater than its emissions costs, the Minister would be able to update regulations to create a new baseline using updated data.

We heard concerns from submitters that only updating allocative baselines once the activity's allocations were over 100 percent of their emissions cost would be a step backwards in preventing over-allocation. To address this issue, we recommend that clauses 14 and 16 be amended so allocative baselines could be updated once the allocation that a highly emissions-intensive activity receives is equal to or greater than 90 percent of its direct and indirect emissions, or once the allocation that a moderately emissions-intensive activity receives is equal to or greater than 60 percent of its direct and indirect emissions.

Regulation-making power

Clause 14 would also amend section 161A of the Act to allow the Minister to make a recommendation to rescind the eligibility of an industrial activity. This would occur if the activity was no longer considered to be eligible for industrial allocation. The RRC found the use of the term "eligible industrial activity" in subclause (3) of this new section misleading as the activity would no longer be eligible. We agree that this wording is unclear and recommend that the subclause refer to an "activity" rather than an "eligible industrial activity".

Using projected data for eligibility assessments

Clause 18 as introduced would insert new sections 161F and 161FA. Section 161F would provide that projected data for future years could be used to assess a new activity's eligibility and allocative baselines if there was no information available from previous years. Existing data would be collected in its second year of operation to reassess its eligibility and baselines, if the new activity was eligible for industrial allocation. If the activity had greater emissions-intensity and higher baselines than projected, the firm would be required to repay the additional units it received to the Crown. However, if the measures were less than what had been projected, the Crown would be required to pay the units to the firm.

Section 161F as introduced would not allow projected data to be used in this context for new or amended products that fall within the definition of an existing eligible industrial activity. If a firm with an existing eligible industrial activity were pursuing a decarbonisation project that would amend its products, it would not be able to receive industrial allocation for those new products. The firm would only be able to receive industrial allocation for new products when there is actual emissions data available on which regulations could be made. We were concerned that this would encourage a firm to continue its existing operations, rather than decarbonise its activities. We recommend amending clause 18 so that new products which fall within the definition of an existing prescribed eligible activity could use projected data to assess whether it was eligible for industrial allocation, or to update its allocative baselines. This would encourage firms to pursue decarbonisation measures.

Updating the process for determining electricity allocation factors

New section 161FA would require the Electricity Authority to recommend an electricity allocation factor to the Minister each year. An electricity allocation factor would

reflect the cost impact of the ETS on the price of electricity. The current electricity allocation factor was set in 2013 and is no longer accurate as the electricity market has developed differently than what was modelled. The proposed changes to the Act would allow the electricity allocation factor to be revised annually, and allocative baselines to be adjusted accordingly. Section 161FA(6) would create a regulation-making power that allowed the Minister to recommend regulations that prescribe the modelling assumptions to be used when using the market model. The market model is used to determine the impact of the ETS on the price of electricity.

The Regulations Review Committee noted that the Legislation Act 2019 requires any regulation-making powers that create secondary legislation to be clearly identified. It was concerned that new section 161FA(6) did not expressly identify that regulations created under this subsection would be secondary legislation. We recommend inserting new section 161FA(8) to make this clear.

Section 161FA(2) would require the authority to notify the Minister of the electricity allocation factor on or before 31 July of the relevant year. The authority noted that if the bill had passed before 31 July 2023, it would be required to set an electricity allocation factor by that date. However, it would not have been able to meet this requirement due to the complex modelling involved in calculating the factor. We recommend amending clause 2 of the bill to delay the commencement of this requirement and associated provisions until 1 January 2024. This means that the first date by which the authority must recommend the electricity allocation factor to the Minister would be changed from 31 July 2023 to 31 July 2024. This would remove the risk of the authority failing to recommend an electricity allocation factor to the Minister within the prescribed timeframe. We also recommend removing section 161FA from clause 18 and inserting it into new clause 18A of the bill. This would allow new section 161FA to have a different commencement date to new section 161F.

Sources of emissions considered for eligible industrial activities

Section 161E(2)(a) of the Act prescribes the sources of emissions that are relevant when considering eligibility and allocative baselines for industrial allocation. We were advised that the section omits emissions produced from the combustion of tyres for energy and the use of carbon dioxide (CO₂) as a feedstock.⁷ Because a firm that combusts tyres for energy would be considered a mandatory participant in the ETS, we think it is inconsistent that this activity is not included as a source of emissions.

We heard from submitters that using CO₂ as a feedstock in the urea manufacturing process helps to decarbonise by transitioning away from using natural gas. We recommend amending clause 17 by inserting paragraphs 161E(2)(a)(i) (F) and (G). These paragraphs would include the combustion of tyres, and the consumption of CO₂ as a feedstock, as sources of emissions to be considered for the purpose of determining the eligibility and allocative baselines of an activity.

⁷ A feedstock is a raw material that is used to supply or fuel a machine or industrial process.

Extending legislative clarifications

The Climate Change Response (Extension of Penalty Transition for Forestry Activities with Low Volume Emissions Liabilities) Amendment Act 2022 established a transitional arrangement for small forestry participants. This arrangement avoided small-forestry participants being subject to the three-to-one penalty that applied to other participants due to the risk of financial hardship.

The provisions in this Act did not specify how the existing excess emissions penalty would apply to small forestry participants if their emissions return only provided data from part of a year, or was subsequently amended by the EPA. This made it unclear whether a forestry participant would be subject to the three-to-one penalty or the excess emissions penalty in these scenarios.

We recommend amending clause 21 and the Schedule of the bill to insert new clauses 17(2A), 17(3A), and 37 into Schedule 1AA of the Act. These changes would create provisions that support the transitional arrangement for forestry activities that occur before 1 January 2025. Clause 17(2A) would make clear that while the current transitional penalty for small forestry participants is in place, emissions returns that only cover part of a calendar year must be treated as though they are for a full calendar year. This would determine whether their liability would be less than 25,000 units a year, for the purpose of deciding whether they would be subject to the three-to-one penalty, or the excess emissions penalty as a small forestry participant.

New clause 17(3A) of Schedule 1AA notes that new clauses 37 and 38 of that Schedule would also apply to small forestry participants that fail to pay their overdue units. Clause 37 is a transitional provision that would explain how a penalty would apply to a small forestry participant that fails to pay its units by the due date, following an amendment to a return.

Additional comments

We note that urgent work is still needed to improve the design of climate change policy in relation to industrial emitters. This would encourage the move from a system that locks in highly emissions-intensive activities, to one that incentivises decarbonisation. We consider that the second emissions reduction plan which will be developed in 2024 is an opportunity to set a new direction for industrial policy that could be implemented over the second emissions budget period, from 2026 to 2030.

We heard from some submitters that it would be valuable if there were more transparency in the allocations provided for electricity use, either by reporting allocations for indirect and direct emissions, or prescribing the revised baselines as separate indirect and direct components. We consider that this would be helpful when developing a new framework for industrial climate change policy.

ACT New Zealand differing view

ACT does not support this bill proceeding in its current form. While changes to the late payment penalties regime will be welcome to small forestry participants in the

ETS, there are significant risks with the changes to industrial allocations for Emissions Intensive Trade Exposed Industries.

The bill fails to provide adequate recognition for industries which are at risk of losing economic activity overseas for no environmental benefit due to emissions pricing (emissions leakage).

This bill fails to provide any confidence that industrial allocations under the proposed formula will be sufficient for New Zealand businesses to remain competitive with goods manufactured overseas.

The bill allows the Ministers to re-evaluate the allocative baselines for industries as often as every five years, which submitters pointed out will undermine the incentives to invest in emissions reductions which have a longer payback period.

ACT proposes instead a realistic, no-nonsense climate change policy that matches our efforts with our trading partners' with minimal bureaucracy. We should set a cap on total emissions in line with the actual reductions of our trading partners. That would meet our climate commitments and allow consumers to choose how they limit their emissions. If you emit less, you keep more of your own money.

Appendix

Committee process

The Climate Change (Late Payment Penalties and Industrial Allocation) Amendment Bill was referred to the committee on 21 February 2023.

We called for submissions on the bill with a closing date of 6 April 2023. We received and considered submissions from 107 interested groups and individuals. We heard oral evidence from 27 submitters in Wellington and via videoconference.

We received advice on the bill from the Ministry for the Environment and the Ministry for Primary Industries. 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 clauses 14 and 18.

Committee membership

Hon Eugenie Sage (Chairperson)

Hon Rachel Brooking (until 3 May 2023)

Tāmami Coffey

Simon Court

Barbara Kuriger

Hon Stuart Nash (from 3 May 2023)

Hon Scott Simpson

Hon Aupito William Sio (until 3 May 2023)

Lemauga Lydia Sosene

Hon Phil Twyford (from 3 May 2023)

Angie Warren-Clark

**Climate Change Response (Late Payment Penalties and
Industrial Allocation) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon James Shaw

Climate Change Response (Late Payment Penalties and Industrial Allocation) 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 (Late Payment Penalties and Industrial Allocation) Amendment Act **2022**.

2 Commencement

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(1) ~~The following provisions of this Act come into force on the day after the date of Royal assent:~~

(a) **Part 1:**

- (b) **section 21**, in respect of **clause 18** of Schedule 1AA only.
- (21) ~~The rest of this~~ This Act comes into force on **1 July 2023** the day after the date of Royal assent.
- (2) However, the following provisions of this Act come into force on 1 January 2024: 5
 - (a) **section 18A:**
 - (b) **section 20:**
 - (c) **section 21(3)**, in respect of **clause 41** of Schedule 1AA only.
- 3 **Principal Act**
 - This Act amends the Climate Change Response Act 2002. 10

Part 1

Amendments relating to late payment penalties for low-volume forestry activities

- 4 **Section 89 amended (EPA to publish certain information)**
 - (1) In section 89(1B)(e), after “section 134”, insert “or **134AA**”. 15
 - (2) In section 89(1C)(a), after “section 134”, insert “or **134AA**”.
- 5 **Section 120A amended (Liabilities, penalties, and interest when emissions returns amended)**
 - (1) In section 120A(3)(c), after “section 134”, insert “or (if applicable) **section 134AA**”. 20
 - (2) In section 120A(5)(a), after “section 134”, insert “or (if applicable) **section 134AA**”.
 - (3) In section 120A(5)(a)(i), after “section 134(3)(d)”, insert “or (if applicable) **section 134AA(5)(d)**”.
 - (4) In section 120A(5)(a)(ii), after “section 134(3)(f)”, insert “or (if applicable) **section 134AA(5)(f)**”. 25
 - (5) In section 120A(7)(b), after “section 134”, insert “or (if applicable) **section 134AA**”.
 - (6) In section 120A(8), replace the definition of **penalty notice** with:
 - penalty notice**— 30
 - (a) means a notice given to a person under section 134(3) or (if applicable) **section 134AA(5)** (because of the person’s failure to surrender or repay units by the due date); but
 - (b) does not include a notice given to a person under **section 134AA(5)** if the penalty imposed by the notice has been set aside (for example, as a result of a review carried out under section 144) 35

6 Section 134 amended (Penalty for failing to surrender or repay units by due date)

- (1) In the heading to section 134, after “**by due date**”, insert “**(general rule)**”.
- (2) Replace section 134(1) with:

- (1) This section applies if— 5
- (a) a person fails, by the due date,—
- (i) to surrender units that the person is required to surrender; or
- (ii) to repay units that the person is required to repay; and
- (b) **section 134AA** does not apply to the person.

7 New sections 134AA and 134AB inserted 10

After section 134, insert:

134AA Penalty for failing to surrender or repay units by due date (where liability is for lower amount)

- (1) This section applies if— 15
- (a) a person fails, by the due date,—
- (i) to surrender units that the person is required to surrender; or
- (ii) to repay units that the person is required to repay; and
- (b) that liability to surrender or repay the units resulted from—
- (i) a forestry activity carried out on or after 1 January 2025; and
- (ii) 1 or more of the following things in relation to the forestry activity: 20
- (A) an emissions return with an emissions return period and under which the average liability per year of that period is less than 25,000 units:
- (B) an emissions return without an emissions return period and under which the liability is less than 25,000 units: 25
- (C) any other requirement in this Act or secondary legislation made under this Act (for example, the requirement to repay units under section 125 or any requirement to surrender units equal to a unit balance) and under which the liability is less than 25,000 units. 30

Initial notice

- (1A) The EPA must give a notice to the person that—
- (a) refers to the person’s failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and 35

(b) advises that the person may submit to the EPA a document containing information for the purpose of satisfying the EPA that the failure occurred through no fault of the person; and

(c) advises that, no earlier than 20 working days after issuing the notice, the EPA will make a decision under **subsection (4B)** on the person's liability to pay a penalty under this section and will then give a further notice advising whether the penalty applies.

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Liability for penalty

(2) ~~However, a person is not liable to pay a penalty under this section if the EPA is satisfied that the failure to surrender or repay units occurred through no fault of the person.~~

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(3) The person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:

$$a \times b \times c$$

where—

15

a is the multiplier determined under **subsection (4)**

b is the number of units that the person failed to surrender or repay by the due date

c is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W.

20

(4) The multiplier for a person liable to pay a penalty under this section is—

(a) 0.5, if—

(i) the activity in respect of which the person is liable for a penalty is an activity listed in Part 1 or 1A of Schedule 4; or

(ii) the person's liability to surrender or repay units resulted only from a requirement of the type referred to in **subsection (1)(b)(ii)(C)** and the requirement does not relate to a specific forestry activity carried out by the person; or

25

(b) 0.25, if the activity in respect of which the person is liable for a penalty is an activity listed in Part 1 or 1A of Schedule 3.

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(4A) However, a person is not liable to pay a penalty under this section if the EPA is satisfied that the failure to surrender or repay units occurred through no fault of the person.

(4B) The EPA must decide, no earlier than 20 working days after issuing the notice under **subsection (1A)**, if it is satisfied that the person's failure to surrender or repay units occurred through no fault of the person.

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Notice of penalty

- (5) ~~If the person must pay a penalty, the~~ The EPA must, as soon as practicable after making the decision under **subsection (4B)**, give a further notice to the person that—
- (a) refers to the person's failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and 5
 - (ab) refers to the initial notice that the EPA has given to the person under **subsection (1A)**; and
 - (b) refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and 10
 - (c) specifies the number of units that the person must surrender or repay; and
 - (ca) sets out the following in relation to the EPA's decision under **subsection (4B)**: 15
 - (i) the particulars of the decision;
 - (ii) any grounds and information on which the decision was based;
 - (iii) the advice that the person may seek a review of the decision under section 144: 20
 - (d) specifies the amount of the penalty that the person must pay under this section; and
 - (e) ~~advises that the person may request to enter into a deferred payment arrangement under section 135A; and~~
 - (f) ~~advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~ 25
 - (g) if a penalty is payable,—
 - (i) specifies the amount of the penalty that the person must pay under this section; and 30
 - (ii) advises that the person may request to enter into a deferred payment arrangement under section 135A; and
 - (iii) advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137. 35

Part year treated as full year

- (6) For the purposes of **subsection (1)(b)(ii)(A)**, any part of a calendar year in an emissions return period must be treated as a full calendar year.

(7) In ~~subsection (4)~~, references to Schedules 3 and 4 are references to those schedules as amended by the Climate Change Response (Emissions Trading Reform) Amendment Act 2020.

Meaning of due date

(8) In this section, **due date** means the final date by which the person was required to surrender or repay the units. 5

134AB Determining the penalty for failing to surrender or repay additional units by due date

(1) This section applies if— 10

- (a) the EPA amends an emissions return in relation to which it has already given a penalty notice; and
- (b) the amendment results in a liability for the person to whom the notice was given to surrender or repay additional units; and
- (c) the person fails to surrender or repay the additional units by the due date.

(2) If, at the time of the failure to surrender or repay the additional units, the most recently issued penalty notice specified a penalty calculated under section 134, a penalty for failing to surrender or repay the additional units must also be calculated under section 134. 15

(3) If, at the time of the failure to surrender or repay the additional units, the most recently issued penalty notice specified a penalty calculated under **section 134AA**, the EPA, in determining a penalty in relation to the person's failure to surrender or repay the additional units, must disregard the base units for the purposes of the liability thresholds in **section 134AA(1)(b)(ii)**. 20

(4) In this section,— 25

additional units has the same meaning as in section 120A(3)(b)

base units has the same meaning as in section 120A(3)(b)

due date means the final date by which the person was required to surrender or repay the units

penalty notice has the same meaning as in section 120A(8).

8 Section 137 amended (Interest for late payment) 30

- (1) In section 137(1)(c), after “section 134”, insert “or **134AA**”.
- (2) In section 137(2)(b), after “section 134”, insert “or **134AA**”.

9 Section 159 amended (Recovery of costs)

In section 159(1)(a), after “section 134”, insert “or a notice under section 134AA(1A)”. 35

Part 2

Amendments relating to industrial allocations

10 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

After section 3A(b)(x), insert:

- (xa) **section 161FA(6)** (assumptions for the model used to determine the electricity allocation factor): 5

11 Section 3B amended (Consultation about certain regulations, orders, and notices)

After section 3B(1)(i), insert:

- (ia) **section 161FA(6)** (assumptions for the model used to determine the electricity allocation factor): 10

12 New section 84AA inserted (Validated allocation adjustment for new activities projected data)

After section 84, insert:

84AA Validated allocation adjustment for new activities projected data 15

- (1) This section applies if—
- (a) the Minister has issued a notice in respect of an activity in accordance with **section 161F(4)** and then determined any of the matters described in section 161D(3)(a) for the years specified in the notice; and
 - (b) regulations have been made— 20
 - (i) on the Minister's recommendation based on the determination referred to in **paragraph (a)**; and
 - (ii) that affect the entitlement of eligible persons to the allocation of New Zealand units for the activity in any of those years.
- (2) If a new activity (within the meaning of **section 161F(1AAA)**) was prescribed as an eligible industrial activity in reliance on projected information in accordance with **section 161F(2)** and the Minister has determined as a result of the notice referred to in **subsection (1)(a)**— 25
- (a) that the activity was highly emissions-intensive in any year, the regulations must prescribe the activity as highly emissions-intensive for that year: 30
 - (b) that the activity was not moderately emissions-intensive or highly emissions-intensive in any year, the regulations must have the effect of removing the eligible industrial activity for that year.
- (3) Section 161A(5) does not apply to regulations that are made, under section 161A(1), in accordance with **subsection (2)**. 35

- (4) An eligible person who has received an allocation (other than a provisional allocation that is yet to be adjusted under section 83 or 84) for an activity in respect of a year specified in the notice must—
- (a) calculate the person’s final allocation entitlement for the activity for the year in accordance with the formula in section 83(2) (applying any regulations as referred to in **subsection (1)(b)**); and 5
 - (b) using the formula in **subsection (6)**, calculate the person’s validated allocation adjustment; and
 - (c) if the validated allocation adjustment is—
 - (i) a negative number, apply to the EPA under section 86 for an allocation of the number of units in the validated allocation adjustment: 10
 - (ii) a positive number, notify the EPA of the person’s validated allocation adjustment and repay the number of units in the validated allocation adjustment by transferring the units to a Crown holding account designated by the EPA. 15
- (5) If **subsection (4)(c)(i) or (ii)** applies, the eligible person must apply to or notify the EPA in accordance with that subsection—
- (a) at the time that the person next applies to or notifies the EPA under section 83 or 84(1) (in respect of an annual allocation adjustment or a closing allocation adjustment); or 20
 - (b) if the person has already applied to or notified the EPA under section 84(1) in respect of that year, within 20 working days after the regulations described in **subsection (1)(b)** come into force.
- (6) The formula for the calculation of a person’s validated allocation adjustment is as follows: 25
- $$VA = RA - FA$$
- where—
- VA is the person’s validated allocation adjustment of units for the eligible industrial activity for the year 30
 - RA is the allocation that the person has received for the eligible industrial activity for the year (as adjusted under section 83 or 84, if applicable)
 - FA is the person’s final allocation entitlement for the eligible industrial activity for the year calculated under section 83(2) (applying the regulations as amended as referred to in **subsection (1)(b)**). 35

13 Section 149 amended (Sharing information)

- (1) In section 149(1), replace “this section” with “subsection (2)”.
- (2) After section 149(2), insert:

- (3) The purpose of **subsection (4)** is to facilitate the provision of information that is held by the EPA and relevant to the allocation of New Zealand units for an eligible industrial activity (including any application, adjustment, response to a requirement for further information, or review of an allocation decision) to the Climate Change Commission and to the chief executive. 5
- (4) The EPA must provide information described in **subsection (3)**, on request, to—
- (a) the Commission:
 - (b) the chief executive.
- (5) **Subsections (3) and (4)** do not limit subsections (1) and (2). 10
- 14 Section 161A amended (Regulations in relation to eligible industrial activities)**
- (1) Replace section 161A(2) and (3) with:
- (2) Before recommending the making of regulations under subsection (1)(a) that prescribe an activity as an eligible industrial activity, the Minister must be satisfied that,— 15
- (a) ~~having considered the matters set out in section 84C(3)(a) to (i) and (k), the activity is at risk of emissions leakage and that risk outweighs any relevant—~~
 - ~~(i) domestic emissions reductions commitments; and~~ 20
 - ~~(ii) international climate change obligations; and~~
 - (a) the effect of those regulations is—
 - (i) likely to contribute to achieving—
 - (A) any targets or budgets set for reducing emissions of greenhouse gases; and 25
 - (B) New Zealand's nationally determined contributions under the Paris Agreement; and
 - (ii) more likely to contribute to those targets, budgets, and nationally determined contributions than the current allocation that is provided in accordance with regulations made under this section; and 30
 - (iii) that the anticipated cost to the taxpayer of providing the allocation for the activity is likely to be less than the cost to the taxpayer of the current allocation that is provided in accordance with regulations made under this section; and
 - (b) the activity is— 35
 - (i) moderately emissions-intensive or highly emissions-intensive; and
 - (ii) trade-exposed.

- (2A) However, **subsection (2)(a)** does not apply to regulations made under subsection (1)(a) to the extent that they relate to an eligible industrial activity prescribed before 1 July 2023.
- (3) The Minister may recommend the making of regulations under subsection (1) that have the effect of removing an ~~eligible industrial~~ activity from the regulations only if, in relation to the activity, the Minister is no longer satisfied of 1 or both of the matters described in **subsection (2)(b)**. 5
- (3A) Regulations made under subsection (1) must not amend an allocative baseline for a prescribed product of an eligible industrial activity that has been prescribed under subsection (1)(c) unless— 10
- (a) at least 5 years have passed—
- (i) since the baseline was most recently amended after the Minister issued a notice under section 161D(1) in respect of the industrial activity; or
- (ii) if **subparagraph (i)** does not apply, since the baseline for the ~~activity~~ product was first prescribed; and 15
- (b) before recommending the making of the regulations that amend the baseline, the Minister has issued a notice under section 161D(1) for the purpose described in section 161D(3)(a)(ii) in respect of the industrial activity; and 20
- (c) the Minister is satisfied that ~~the effect of the existing baseline is that the activity's allocations are equal to or greater than the activity's emissions costs.~~ current allocation setting for the product, as calculated in accordance with the formula in **subsection (4C)(a)**, is equal to or greater than the prospective allocation setting for the product, as calculated in accordance with the formula in **subsection (4C)(b)**. 25
- (3B) However, **subsection (3A)** does not apply to an amendment of an allocative baseline—
- (a) due to a change to any 1 or more of the following: 30
- (i) an emissions factor:
- (ii) an electricity allocation factor:
- (iii) an exemption set out in an order made under section 60:
- (b) on the basis of information received in response to a notice issued in accordance with **section 161F(4)** (after the first year of an activity ~~having been~~ being prescribed as an eligible industrial activity or after the first year of a new product or new allocative baseline being prescribed as part of an eligible industrial activity). 35
- (2) After section 161A(4), insert:

- (4A) The Minister may recommend the making of regulations under subsection (1)(d)(i) that prescribe an electricity allocation factor only if the allocation factor has been notified to the Minister under **section 161FA**.
- (4B) Regulations made under subsection (1)—
- (a) may permit persons to apply for and receive an allocation in respect of a period beginning on 1 January of the year in which regulations are made even if the regulations come into force on a later date in that year: 5
- (b) may affect the level of allocation a person is entitled to receive for a year in which the person has received a provisional allocation even if the regulations come into force in the year following the year for which the person received the provisional allocation: 10
- (c) may, if they are of a kind described in **section 84AA(1)(b)**, affect the level of allocation a person is entitled to receive for a year to which **section 84AA** applies regardless of when the regulations come into force.
- (4C) For the purposes of **subsection (3A)(c)**,— 15
- (a) the current allocation setting for the product must be calculated in accordance with the following formula:
- $$\text{CAS} = \text{AB} \times \text{LA}$$
- where—
- CAS is the current allocation setting 20
- AB is the allocative baseline for the product prescribed in regulations made under this section as in force immediately before the recommendation is made
- LA is the level of assistance for the eligible industrial activity for the current year, which is the level of assistance described in the description of the variable LA in section 83(2): 25
- (b) the prospective allocation setting for the product must be calculated in accordance with the following formula:
- $$\text{PAS} = \text{PB} \times \text{OLA}$$
- where— 30
- PAS is the prospective allocation setting
- PB is the prospective allocative baseline for the product as calculated in accordance with section 161C(2) to (5) on the basis of information provided to the Minister as a result of the notice referred to in **subsection (3A)(b)** 35
- OLA is the original level of assistance for the activity, which is,—
- (i) for a moderately emissions-intensive eligible industrial activity, 0.6:

(ii) for a highly emissions-intensive eligible industrial activity, 0.9.

(3) In section 161A(5), replace “5 years” with “2 years”.

15 Section 161C amended (Eligible industrial activities)

(1) Replace section 161C(1) with:

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(1) For the purposes of section 161A(1)(b)(ii), ~~(2)(b), and (3)~~, an activity is—

(a) ~~moderately emissions-intensive~~ if the specified emissions from the activity (measured in whole tonnes per \$1 million of specified revenue from the activity) are equal to or greater than the moderately emissions-intensive threshold, but less than the highly emissions-intensive threshold:

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(b) ~~highly emissions-intensive~~ if the specified emissions from the activity (measured in whole tonnes per \$1 million of specified revenue from the activity) are equal to or greater than the highly emissions-intensive threshold:

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(c) ~~trade-exposed~~ unless, in the Minister’s opinion,—

(i) there is no international trade of the output of the activity across oceans; or

(ii) it is not economically viable to import or export the output of the activity.

20

(1A) For the purposes of **subsection (1)**, the moderately emissions-intensive threshold must be calculated in accordance with the following formula:

$$M = 800 \times (25 \div n)$$

where—

M is the moderately emissions-intensive threshold

25

n is the specified price of carbon.

(1B) For the purposes of **subsection (1)**, the highly emissions-intensive threshold must be calculated in accordance with the following formula:

$$H = 1,600 \times (25 \div n)$$

where—

H is the moderately emissions-intensive threshold

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n is the specified price of carbon.

(2) In section 161C(1) and (2), replace “section 161A(3)” with “**section 161A(2)**”.

(3) After section 161C(3)(d), insert:

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(e) the specified price of carbon, in respect of an activity (**activity A**), is the price specified for carbon in regulations made under section 30W at the

time, after 1 July 2023, when the Minister first issues a notice under section 161D(1) in respect of any activity, in respect of the years specified in the notice under section 161D(1) that contained a description of activity A.

- (4) Replace section 161C(4) with: 5
- (4) Despite subsection (3)(c), the Minister may adjust the number of whole tonnes of included emissions shown in the information referred to in section 161D(1)(e)(i)(C) provided by any persons carrying out an activity specified in a notice given under section 161D(1)—
- (a) after taking into account— 10
- (i) any electricity-related contract that—
- (A) affects the electricity cost increase that any of the persons will face due to the obligation imposed by this Act on participants to surrender units; and
- (B) was in force on the date of the notice; or 15
- (ii) any information relating to any such contracts:
- (b) as a consequence of any change that occurred on or after the date of the notice to any 1 or more of the following:
- (i) an emissions factor:
- (ii) an electricity allocation factor: 20
- (iii) an exemption set out in an order made under section 60.

16 Section 161D amended (Power to require information for purposes of allocation to industry)

(1AAA) In section 161D(3)(a), replace “section 161A(3)” with “**section 161A(2)**”.

- (1) After section 161D(3)(d), insert: 25
- (e) ~~whether the effect of the allocative baseline or baselines is that the activity’s allocations are equal to or greater than the activity’s emissions costs~~ current allocation setting for the product is equal to or greater than the prospective allocation setting for the product (as described in **section 161A(3A)(c)** and calculated in accordance with the formulas in **section 161A(4C)**). 30
- (2) After section 161D(3), insert:
- (3A) The Minister must, for the purpose described in **subsection (3)(e)**, issue a notice under this section in respect of an eligible industrial activity at least once in every 10-year period. 35

17 Section 161E amended (Requirements in respect of notice given under section 161D)

(1) After section 161E(2)(a)(i)(E), insert:

- (F) the combustion of used tyres for the purpose of generating electricity or industrial heat; and
- (G) the consumption of carbon dioxide as a feedstock if that carbon dioxide is derived from an activity in Schedule 3 or 4 and a participant is required to surrender units under this Act for that activity; and

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(2) Repeal section 161E(3) and (4).

18 New sections 161F and ~~161FA~~ inserted (When projected data may be provided)

After section 161E, insert:

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161F New activities When projected data may be provided

(1AAA) **Subsection (1)** applies if actual data is not (or may not be) available in respect of an activity for the years specified in a notice made under section 161D because the activity is—

(a) an activity (a **new activity**) other than an activity that is prescribed as an eligible industrial activity; or

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(b) an eligible industrial activity—

(i) that involves a product (a **new product**) that has not been prescribed in regulations made under section 161A(1) for that activity; or

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(ii) that includes an allocative baseline (a **different allocative baseline**) that may differ from the allocative baseline that has been prescribed in regulations made under section 161A(1) for that activity for a product included in the activity; or

(iii) for which actual data is (or may not be) available for some other reason.

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(1) ~~For an activity (a **new activity**) other than an activity that is prescribed as an eligible industrial activity, a~~ notice made under section 161D may require the information described in section 161D(1)(e) on a projected basis in respect of future years (instead of, or as well as, information on an actual basis for past years) and, for that purpose, sections 161D and 161E must be read accordingly.

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(2) If a new activity is prescribed as an eligible industrial activity in reliance (in whole or part) on projected information provided in accordance with **subsection (1)**, the activity must be prescribed as moderately emissions-intensive (regardless of whether any information indicates that the activity is highly emissions-intensive).

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(3) **Subsection (2)** is subject to **section 84AA(2)**.

(4) The Minister must issue a notice under section 161D for the purpose described in section 161D(3)(a) ~~in respect of the new activity during the activity's second~~

~~financial year of operation, in the second relevant financial year for an activity for which regulations were made under section 161A on the basis of data obtained in accordance with section 161F(1).~~

(5) The notice must require the information described in section 161D(1)(e) in respect of the first financial year of operation. 5

(6) In this section,—

~~**first financial year of operation**, in relation to an activity, means the first financial year that commences after—~~

(a) the activity has been prescribed as an eligible industrial activity; and

(b) 1 or more persons have started to undertake the activity 10

~~**first relevant financial year**, in relation to an activity, means the first full financial year that commences after—~~

(a) ~~regulations have been made under section 161A on the basis of data obtained in accordance with section 161F(1)—~~

(i) ~~prescribing a new activity as an eligible industrial activity; or~~ 15

(ii) ~~including a new product or setting a different allocative baseline in relation to an eligible industrial activity; and~~

(b) ~~a person has applied for industrial allocation under section 86 in relation to the new activity, the new product, or that different allocative baseline~~

~~**second financial year of operation** means the financial year that follows the first financial year of operation.~~ 20

~~**second relevant financial year** means the financial year that follows the first relevant financial year.~~

161FA Determining electricity allocation factors

(1) ~~The Minister may recommend the making of regulations under section 161A(1)(d)(i) that prescribe an allocation factor for electricity for a calendar year only if the Electricity Authority notifies the allocation factor for the year in accordance with this section.~~ 25

(2) The Electricity Authority must notify the Minister of the allocation factor for a year on or before 31 July in that year determined in accordance with the following formula: 30

$$a = (b + c + d) \div 3$$

where—

a is the allocation factor for the relevant year

b is the ETS impact on the price of electricity in the financial year that ends on 30 June in the relevant year 35

e is the ETS impact on the price of electricity in the financial year preceding the financial year described in the definition of variable b

- d is the ETS impact on the price of electricity for the financial year preceding the financial year described in the definition of variable e.
- (3) The Electricity Authority must use a market model to determine the ETS impact on the price of electricity for each of the financial years described in the definitions of variables b, c, and d. 5
- (4) The market model must—
- (a) be consistent with the market clearing algorithm set out in the Electricity Industry Participation Code 2010; and
- (b) use, as the counterfactual input, a reasonable estimate of the offers that would have been made for the electricity actually offered in the financial year if there were no liability to surrender units to cover emissions; and 10
- (c) comply with any regulations made under **subsection (6)**.
- (5) The Electricity Authority must ensure that the market model, and any input data necessary to operate the model, is publicly available.
- (6) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing modelling assumptions for the purpose of the market model. 15
- (7) In this section, **ETS impact**, in relation to the price of electricity, is the modelled impact of the emissions trading scheme on the price of electricity.

18A New section 161FA inserted (Determining electricity allocation factors) 20

After **section 161F** (as inserted by **section 18** of this Act), insert:

161FA Determining electricity allocation factors

- (1) The Minister may recommend the making of regulations under section 161A(1)(d)(i) that prescribe an allocation factor for electricity for a calendar year only if the Electricity Authority notifies the allocation factor for the year in accordance with this section. 25
- (2) The Electricity Authority must notify the Minister of the allocation factor for a year on or before 31 July in that year determined in accordance with the following formula:

$$a = (b + c + d) \div 3 \quad 30$$

where—

- a is the allocation factor for the relevant year
- b is the ETS impact on the price of electricity in the financial year that ends on 30 June in the relevant year
- c is the ETS impact on the price of electricity in the financial year preceding the financial year described in the definition of variable b 35
- d is the ETS impact on the price of electricity for the financial year preceding the financial year described in the definition of variable c.

- (3) The Electricity Authority must use a market model to determine the ETS impact on the price of electricity for each of the financial years described in the definitions of variables b, c, and d.
- (4) The market model must—
- (a) be consistent with the market clearing algorithm set out in the Electricity Industry Participation Code 2010; and 5
- (b) use, as the counterfactual input, a reasonable estimate of the offers that would have been made for the electricity actually offered in the financial year if there were no liability to surrender units to cover emissions; and
- (c) comply with any regulations made under **subsection (6)**. 10
- (5) The Electricity Authority must ensure that the market model, and any input data necessary to operate the model, is publicly available.
- (6) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing modelling assumptions for the purpose of the market model. 15
- (7) In this section, **ETS impact**, in relation to the price of electricity, is the modelled impact of the emissions trading scheme on the price of electricity.
- (8) Regulations made under this section are secondary legislation (see Part 3 of the Legislation Act 2019 for publication requirements).

Amendment to Climate Change (Eligible Industrial Activities) Regulations 2010 20

19 Principal regulations

Section 20 amends the Climate Change (Eligible Industrial Activities) Regulations 2010.

20 New regulation 6A inserted (Modelling assumptions for market model used to determine allocation factors for electricity) 25

After regulation 6, insert:

6A Modelling assumptions for market model used to determine allocation factors for electricity

- (1) **Subclause (2)** prescribes modelling assumptions for the purpose of the market model that the Electricity Authority uses to determine the ETS impact on the price of electricity in a financial year under **section 161FA(3)** of the Act. 30
- (2) The modelling assumptions are that,—
- (a) in the absence of the emissions trading scheme, thermal electricity generation would be offered at lower prices as generators' marginal costs would be lower: 35

- (b) as a consequence of the modelling assumption in **paragraph (a)**, hydro-electricity generators that have controllable water storage would offer electricity at lower prices, because lower overall prices reduce the opportunity cost of stored water.

Part 3

5

Transitional provisions

21 Schedule 1AA amended

(1) In Schedule 1AA, after clause 17(2), insert:

(2A) To avoid doubt, for the purposes of **subclause (1)(b)(ii)(A)**, any part of a calendar year in an emissions return period must be treated as a full calendar year. 10

(2) In Schedule 1AA, after clause 17(3), insert:

(3A) See **clauses 37 and 38** for further transitional provisions relating to penalties for failure to surrender or repay units that apply if—

(a) a person fails to surrender or repay additional units following an amendment to a return affected by a penalty under this clause; or 15

(b) a person fails to surrender or repay units in relation to an emissions return that covers activities occurring both before and during 2025.

(3) In Schedule 1AA,—

(a) insert the Part set out in the **Schedule** of this Act as the last Part; and

(b) make all necessary consequential amendments. 20

Schedule
New Part 3 inserted into Schedule 1AA

s 21

Part 3		
Provisions relating to Climate Change Response (Late Payment Penalties and Industrial Allocation) Amendment Act 2022		5
<i>Provisions relating to penalty for failing to surrender or repay additional units by due date</i>		
37	<u>Determining penalty for failing to surrender or repay additional units by due date: provision to apply instead of section 134AB if liability resulted from pre-2025 forestry activity</u>	10
(1)	<u>This clause applies if—</u>	
	(a) <u>the EPA first gave a notice (a first notice) to a person specifying a penalty calculated under clause 17(2) or section 134; and</u>	
	(b) <u>the EPA amends an emissions return in relation to which it has already given a first notice; and</u>	15
	(c) <u>the amendment results in a liability for the person to whom the first notice was given to surrender or repay additional units; and</u>	
	(d) <u>the person fails to surrender or repay the additional units by the due date.</u>	
(2)	<u>Section 134AB does not apply in relation to the person unless the liability to surrender or repay the additional units resulted from a forestry activity carried out on or after 1 January 2025.</u>	20
(3)	<u>If, at the time of the failure to surrender or repay the additional units, the first notice specified a penalty calculated under section 134, a penalty for failing to surrender or repay the additional units must also be calculated under section 134.</u>	25
(4)	<u>If, at the time of the failure to surrender or repay the additional units, the first notice specified a penalty calculated under clause 17(2), the EPA, in determining a penalty in relation to the person's failure to surrender or repay the additional units, must disregard the base units for the purposes of the liability thresholds in subclause 17(1)(b)(ii).</u>	30
(5)	<u>In this clause,—</u>	
	additional units has the same meaning as in section 120A(3)(b)	
	base units has the same meaning as in section 120A(3)(b)	
	due date means the final date by which the person was required to surrender or repay the units.	35

1838 Penalty for failing to surrender or repay units by due date (where emissions return covers activities both before and after during 2025)

- (1) This clause applies if—
 - (a) a person fails, by the due date,—
 - (i) to surrender units that the person is required to surrender; or 5
 - (ii) to repay units that the person is required to repay; and
 - (b) that liability to surrender or repay the units resulted from an emissions return of the type referred to in **section 134AA(1)(b)(ii)(A)**; and
 - (c) the relevant emissions return period relates to—
 - (i) forestry activities carried out in either or both of 2023 and 2024; 10
 - and
 - (ii) forestry activities carried out in 2025.
- (2) Clause 17 applies to the person in respect of all the activities to which the emissions return relates as if the activities had all been carried out before 1 January 2025. 15
- (3) In this clause, **due date** means the final date by which the person was required to surrender or repay the units.

Provisions relating to review of existing eligible industrial activities

1939 Review of existing eligible industrial activities: call for data

- (1) This clause applies to an activity that, on 1 July 2023, is an eligible industrial activity. 20
- (2) The Minister must issue a notice under section 161D in respect of the activity for the purpose described in section 161D(3)(a).
- (3) The Minister must issue the notice no later than 31 December 2026.
- (4) The notice must, for the purposes of section 161D(1)(d), specify the financial years 2016/17, 2017/18, 2018/19, 2019/20, and 2020/21 as the financial years for which information must be provided under the notice. 25
- (5) A person who is required to comply with a notice providing information may specify 1 financial year, either 2019/20 or 2020/21, for the purposes of **subclause (6)**. 30
- (6) The Minister must disregard the information from the financial year specified under **subclause (5)** when determining, ~~for an eligible activity, emissions intensity and allocative baselines for an eligible activity.~~

40	<u>Restriction on regulations relating to data collected as result of call for data under clause 39</u>	
(1)	<u>This clause applies in relation to the making of regulations under section 161A arising from information collected as a result of a notice issued under section 161D in accordance with clause 39.</u>	5
(2)	<u>The power to make regulations for the purposes set out in section 161A(1)(a) and (b)(ii) do not apply.</u>	
41	<u>Restriction on application of section 161A(3A)</u>	
	<u>Section 161A(3A)</u> does not apply in relation to the making of regulations under section 161A for the purpose set out in section 161A(1)(c) arising from information collected as a result of a notice issued under section 161D in accordance with clause 39 .	10
	<i><u>Provision relating to electricity allocation factor for 2025 and 2026</u></i>	
2042	<u>Calculating electricity allocation factors for 20245 and 20256</u>	
(1)	This clause modifies section 161FA(2) for the purposes of determining an allocation factor in accordance with the formula in that section for the years commencing 1 January 20245 and 1 January 20256.	15
(2)	In the formula in section 161FA(2) ,—	
	(a) for the year commencing 1 January 20245,—	
	(i) variable c in the formula equals 0.537:	20
	(ii) variable d in the formula equals 0.537:	
	(b) for the year commencing 1 January 20256, variable d in the formula equals 0.537.	

Legislative history

2 December 2022
21 February 2023

Introduction (Bill 207–1)
First reading and referral to Environment Committee