

House of Representatives

Supplementary Order Paper

Tuesday, 7 November 2006

Climate Change Response Amendment Bill

Proposed amendments

Hon David Parker, in Committee, to move the following amendments:

Clause 7(2)(a)

To omit “word ‘issued’” and substitute “words ‘issued or acquired’” (line 3 on page 7).

Clause 9: new section 13

To omit this section (lines 19 to 27 on page 7) and substitute the following section:

“13 Registrar may refuse access to, or suspend operation of, Registry

The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),—

- “(a) for maintenance; or
- “(b) in response to technical difficulties; or
- “(c) to ensure the security or integrity of the Registry; or
- “(d) to give effect to New Zealand’s international obligations.”

Clause 15(1): new section 21(1)(b)

To add (line 18 on page 12) “if required by the independent transaction log”.

Clause 30

To insert the following subclause before *subclause (1AA)* (before line 26 on page 20):

(1AAA) Section 2(1) of the Forests Act 1949 is amended by repealing the definition of **landholding** and substituting the following definition:

“**landholding**,—

- “(a) in the case of land subject to a forest sink covenant as defined in **section 67X**, means a registered—
- “(i) freehold estate in that land; or
 - “(ii) leasehold estate in that land; or
 - “(iii) interest in that land that entitles a person to receive units or the value of units based on carbon sequestration by that forest sink; but does not include a registered interest by way of charge or security:
- “(b) in any other case, means an estate, right, title, or interest of any kind in or over an area of land by or under which indigenous timber may be harvested; but does not include an interest by way of charge or security”.

Clause 30: new section 67X

To omit the definitions of **carbon sequestration**, **forest sink**, **forest sink activity**, and **forest sink covenant** (lines 15 to 27 on page 21) and substitute the following definitions:

- “**carbon sequestration** means the removal of greenhouse gases from the atmosphere by a forest sink
- “**forest sink** means a forest prescribed in regulations made under **section 67Y**
- “**forest sink covenant** means any covenant established under regulations made under **section 67Y**, or any variation of that covenant, for the purpose of establishing and maintaining a forest sink; including, but not limited to, controlling the harvesting of timber from the forest sink

To insert the following definition after the definition of **greenhouse gas** (after line 2 on page 22):

- “**landowner** means the owner of a freehold estate

To omit the definition of **removal unit** (lines 5 and 6 on page 22).

Clause 30: new section 67Y

Subsection (1)(a): to insert after “establishment” (line 12 on page 22) “and ongoing administration”.

Subsection (1): to insert the following paragraphs after *paragraph (a)* (after line 15 on page 22):

- “(ab) prescribe and update methodologies or mechanisms for measuring carbon sequestration or emissions of greenhouse gases from a forest sink:
- “(ac) prescribe the manner, quantity, type, and timing of units that may be transferred to or by a landowner:
- “(ad) prescribe requirements that a forest must meet to be a forest sink:
- “(ae) establish a dispute resolution process for disputes arising in relation to a forest sink or a forest sink covenant:

“(af) prescribe reporting and verification requirements in relation to a forest sink or forest sink covenant:

“(ag) prescribe harvesting restrictions in relation to a forest sink:

Subsection (1)(d): to insert after “selection” (line 21 on page 22) “, appointment,”.

Subsection (1)(f): to insert after “requirements” (line 26 on page 22) “, including (but not limited to) ongoing obligations, or criteria”.

To insert the following subsection after *subsection (2)* (after line 34 on page 22):

“(2A) Despite **subsection (1)(b)**, a penalty—

“(a) may only be imposed in respect of the proportion of forest on land subject to a forest sink covenant that is harvested in breach of the covenant; and

“(b) may not exceed the sum of—

“(i) all units received in respect of that proportion of the forest (or their monetary equivalent); and

“(ii) any additional units calculated on the basis of an annual compounding rate of 10% applied to each year’s carbon sequestration from that proportion of the forest for the period beginning on the date that the covenant came into force and ending on the date that the breach occurred (or their monetary equivalent).

Subsection (3): to omit “, or enter into,” and substitute “, enter into, or enforce any provisions of,” (line 36 on page 22).

Clause 30: new section 67Z(a)

Subparagraph (iii): to omit “harvesting of timber for sale” (line 10 on page 23) and substitute “harvesting of timber”.

Subparagraph (vi): to insert after “a requirement” (line 21 on page 23) “, including (but not limited to) an ongoing obligation,”.

Subparagraph (vii): to omit “harvest of timber for sale” (lines 27 and 28 on page 23) and substitute “harvesting of timber”.

Clause 30: new section 67ZA

To omit “an interest” (line 6 on page 24) and substitute “a registered interest”.

Clause 30: new section 67ZB

To omit the words “unless the Crown agrees otherwise in that forest sink covenant” (lines 12 and 13 on page 24).

To add the following subclause as *subclause (2)* (after line 13 on page 24):

“(2) However, the Crown and the other party (or parties) to a forest sink covenant may agree to a different liability regime in that forest sink covenant.

Clause 30: new section 67ZD

To insert the following subsections after *subsection (1)* (after line 24 on page 24):

- “(1A) If a forest sink covenant relates to land for which no computer freehold register has been created, the Registrar-General of Land must create a computer interest register for the covenant if—
- “(a) there is endorsed on the register a certificate by a licensed cadastral surveyor to the effect that the land to which the covenant relates is within the boundaries of an identified parcel of land; and
 - “(b) the Registrar-General of Land is satisfied that the certificate is correct.
- “(1B) If a forest sink covenant relates to Maori land (within the meaning of section 4 of Te Ture Whenua Maori Act 1993) for which no computer freehold register or provisional register has been created, the Registrar of the Maori Land Court must enter on the memorial schedule of the Title Binder relating to the Maori land a notification of the forest sink covenant.

To omit *subsection (7)(a)* (lines 30 and 31 on page 25).

Clause 30: new sections 67ZDA and 67ZDB

To insert the following sections after *new section 67ZD* (after line 36 on page 25):

- “**67ZDA The Crown may register charges with respect to land subject to forest sink covenants in certain circumstances**
- “(1) The Minister may register a charge under the Statutory Land Charges Registration Act 1928 against land subject to a forest sink covenant if—
- “(a) liabilities are owed to the Crown by an owner of a landholding arising from the emission of greenhouse gases in relation to the forest sink on that land:
 - “(b) penalties are imposed for breaches by an owner of a landholding of the harvesting restrictions in relation to the forest sink on that land:
 - “(c) costs are incurred by the Crown in—
 - “(i) remedying a breach of the covenant; or
 - “(ii) enforcing its right to payment in relation to the covenant:
 - “(d) the covenant is breached.
- “(2) If the owner of a landholding fails or refuses, within the time provided for payment in the forest sink covenant or otherwise, to make any payment for which a charge may be registered under **subsection (1)**, the failed or refused payment is an unpaid statutory debt owed to the Crown, and the amount by which it, or any unpaid part of it, is deemed to have been increased is the sum of—
- “(a) 10% of the debt (or that part of the debt that remained unpaid after the expiry of the time provided for the debt’s payment); and

- “(b) for every complete period of 12 months after that expiry during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10% of the debt or that part of the debt.
- “(3) If the owner of a landholding pays the statutory debt (including any deemed increase) or the Crown releases the owner of the landholding from the obligation to pay the debt, the Minister must release the relevant charge on the land (if any).
- “(4) For the purposes of this section, a charge that is registered by the Minister under the Statutory Land Charges Registration Act 1928 against land subject to a forest sink covenant—
 - “(a) has priority over any subsequently registered mortgages, charges, and encumbrances with respect to that land; but
 - “(b) does not have priority over any prior registered mortgages, charges, and encumbrances with respect to that land.

“67ZDB Liability to the Crown of persons who have or had landholding subject to registered forest sink covenants

- “(1) If a person has a landholding in land that is subject to a registered forest sink covenant,—
 - “(a) the person is, unless a contrary intention appears in the covenant, personally liable to the Crown for the observance of all the obligations in the covenant:
 - “(b) the Crown may, in the event of a breach of an obligation in the covenant, seek any appropriate remedy directly against the person as if the person were a party to the covenant.
- “(2) If a person acquires a landholding in land that is subject to a registered forest sink covenant,—
 - “(a) the person is, unless a contrary intention appears in the covenant, personally liable to the Crown for—
 - “(i) the observance of all the obligations in the covenant:
 - “(ii) any liabilities arising from the emission of greenhouse gases from that forest sink that are owed to the Crown by any person who was an owner of a landholding in that land before the acquisition:
 - “(iii) any penalties imposed for breaches of the harvesting restrictions in relation to the forest sink on that land by any person who was an owner of a landholding in that land before the acquisition:
 - “(iv) any costs incurred by the Crown in—
 - “(A) remedying a breach of the covenant by any person who was an owner of a landholding in that land before the acquisition; or

- “(B) enforcing its right to payment in respect of any person who was an owner before the acquisition:
- “(b) the Crown may, in relation to any matter specified in **paragraph (a)**, seek any appropriate remedy directly against the person.
- “(3) If a person ceases to have a landholding subject to a registered forest sink covenant, the person is no longer personally liable to the Crown for a breach of, or liabilities that arise under, the covenant unless the breach occurred or the liabilities arose while the person had the landholding.
- “(4) If 2 or more persons have a landholding subject to a registered forest sink covenant, the covenant is deemed to bind each person jointly and severally.

Clause 30: new section 67ZMA

To insert the following section after *new section 67ZM* (after line 22 on page 31):

“**67ZMA Exemptions, waivers, and refunds**

Regulations made under this subpart may—

- “(a) provide for exemptions from, or waivers or refunds of, any fee, levy, or charge payable under this subpart, in whole or in part, in any class of case:
- “(b) authorise the Secretary to grant an exemption, waiver, or refund in any particular case or class of case.

Compare: 2003 No 114 s 92

Clause 31(1)

To omit the definitions of **carbon sequestration**, **forest sink**, and **forest sink activity** (lines 28 to 31 on page 33 and lines 1 to 4 on page 34) and substitute the following definitions:

“**carbon sequestration** means the removal of greenhouse gases from the atmosphere by a forest sink

“**forest sink** means a forest prescribed in regulations made under **section 67Y** of the Forests Act 1949

“**forest sink covenant** means any covenant established under regulations made under **section 67Y** of the Forest Act 1949, or any variation of that covenant, for the purpose of establishing and maintaining a forest sink; including, but not limited to, controlling the harvesting of timber from the forest sink

To omit the definitions of **Protocol** and **removal unit** (lines 7 to 10 on page 34).

Explanatory note

This Supplementary Order Paper amends the Climate Change Response Amendment Bill.

The amendment to *clause 7(2)(a)* omits “issued” and substitutes “issued or acquired”.

The amendment to *clause 9: new section 13* of the Climate Change Response Act 2002 (the Act) specifies the circumstances in which the Registrar may refuse access to, or suspend the operation of, the Registry established for the purposes set out in section 10 of the Act.

The amendment to *clause 15(1): new section 21(1)(b)* of the Act clarifies that the Registrar must send a record of a proposed transaction to the independent transaction log if required by the independent transaction log.

Clause 30 amends the Forests Act 1949. The amendment to *clause 30* substitutes a new definition of landholding.

The amendment to *clause 30: new section 67X* substitutes new definitions of carbon sequestration, forest sink, forest sink covenant, and landowner. It also removes the definitions of forest sink activity and removal unit.

The amendment to *clause 30: new section 67Y(1)(a)* clarifies that the provision also concerns ongoing administration.

The amendment to *clause 30: new section 67Y(1)* clarifies that the Governor-General may make regulations with respect to various operational matters.

The amendment to *clause 30: new section 67Y(1)(d)* clarifies that the provision also concerns appointments.

The amendment to *clause 30: new section 67Y(1)(f)* clarifies that the Governor-General may, in relation to a guarantor or insurer, make regulations that prescribe requirements, including (but not limited to) ongoing obligations, or criteria that must be met.

The amendment to *clause 30: new section 67Y* also inserts a *new subsection (2A)*, which limits the penalty that may be imposed under *new section 67Y(1)(b)*.

The amendment to *clause 30: new section 67Y(3)* clarifies that the Minister is not obliged to enforce the provisions of a forest sink covenant.

The amendments to *clause 30: new section 67Z(a)* align the provision with the change to the definition of forest sink covenant.

The amendment to *clause 30: new section 67ZA* changes “an interest” to “a registered interest”.

The amendment to *clause 30: new section 67ZB* clarifies the circumstances in which the Crown is not liable for compensation or damages in respect of any matter arising under a forest sink covenant.

The amendments to *clause 30: new section 67ZD* insert *new subsections (1A) and (1B)*, which provide for the registration of forest sink covenants with respect to land for which no computer freehold register has been issued. The amendments also omit *new subsection (7)(a)*.

The amendments to *clause 30* also insert *new section 67ZDA* and *new section 67ZDB*. *New section 67ZDA* provides that the Crown may register charges with respect to land subject to forest sink covenants in certain circumstances. *New section 67ZDB* clarifies the liabilities of the relevant parties with respect to a change of ownership of the land that is subject to a registered forest sink covenant.

The amendments to *clause 30* also insert *new section 67ZMA*, which provides for the exemption, waiver, or refund of certain fees, levies, or charges.

The amendment to *clause 31(1)* substitutes new definitions of carbon sequestration, forest sink, and forest sink covenant. It also removes the definitions of forest sink activity, Protocol, and removal unit.

