

House of Representatives
Supplementary Order Paper

Tuesday, 24 November 2009

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

Proposed amendments

Hon Nick Smith, in Committee, to move the following amendments:

Clauses 4 and 5

To omit these clauses (line 13 on page 6 to line 26 on page 9) and substitute the following clauses:

4 Application of Schedules 3 and 4

(1) Section 2A is amended by repealing subsection (1) and substituting the following subsection:

“(1) Any provision in this Act that imposes an obligation on, or provides an entitlement to, a person in respect of an activity listed in Schedule 3 or 4—

“(a) does not apply to that person unless—

“(i) the Part or subpart in Schedule 3 or 4 in which the activity is listed applies; and

“(ii) the person, if carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3, falls within a class of persons prescribed in an Order in Council that applies that subpart; and

“(b) applies subject to sections **2C(3)**, 217 to 221, and **222A to 222D.**”

(2) Section 2A(5) is amended by omitting “, unless repealed under subsection (10) before that date”.

(3) Section 2A(6) is amended by omitting “, unless repealed under subsection (11) before that date”.

(4) Section 2A(8) is amended by omitting “1 January 2011 if the Governor-General makes an Order in Council to that effect”

and substituting “a date appointed by the Governor-General by Order in Council”.

- (5) Section 2A(9) is amended by omitting “1 January 2011 if the Governor-General makes an Order in Council to that effect” and substituting “a date appointed by the Governor-General by Order in Council”.
- (6) Section 2A(10) to (13), and (15) to (19), are repealed.

5 New sections 2B and 2C inserted

The following sections are inserted after section 2A:

“2B Orders in Council in relation to Part 5 of Schedule 3

- “(1) An Order in Council made under section 2A(8) or (9) appointing a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 applies must—
- “(a) be made on the recommendation of the Minister responsible for the administration of this Act; and
 - “(b) appoint a date that is 1 January in a year; and
 - “(c) be made at least 1 year before the date appointed in the Order in Council; and
 - “(d) not appoint a date earlier than 1 January 2013.
- “(2) One or more Orders in Council made under section 2A(8) or (9) may provide that subpart 2 or 4 of Part 5 of Schedule 3 applies—
- “(a) specifically to 1 or more classes of persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order; or
 - “(b) generally to all persons who carry out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 on and after a date appointed in the order.
- “(3) Before recommending that an Order in Council be made under section 2A(8) or (9), the Minister must have regard to—
- “(a) the need for the chief executive responsible for the administration of Parts 4 and 5 of this Act to be able to verify information contained in emissions returns of the persons who will become participants in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and
 - “(b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 will reduce their emissions; and
 - “(c) the desirability of minimising—
 - “(i) the compliance and administration costs of persons who will become participants in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3 by operation of the order; and

- “(ii) the administration costs of the Crown in administering the greenhouse gas emissions trading scheme established under this Act.

“2C Effect of Orders in Council in relation to Part 5 of Schedule 3

- “(1) This section applies if an Order in Council made under section 2A(8) or (9) has the effect that subparts 1 and 2 of Part 5 of Schedule 3, or subparts 3 and 4 of Part 5 of Schedule 3, apply at the same time.
- “(2) If this section applies, then regulations made under section 163(1) may require—
 - “(a) a person carrying out an activity listed in subpart 1 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 to—
 - “(i) collect data or other information relating to the same synthetic fertiliser; and
 - “(ii) calculate emissions in respect of emissions relating to the same synthetic fertiliser; or
 - “(b) a person carrying out an activity listed in subpart 3 of Part 5 of Schedule 3 and a person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 to—
 - “(i) collect data or other information relating to the same ruminant animals, pigs, horses, or poultry; and
 - “(ii) calculate emissions relating to the same ruminant animals, pigs, horses, or poultry.
- “(3) However,—
 - “(a) on and after the date from which the person carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the activity listed in subpart 1 of Part 5 of Schedule 3 in relation to the fertiliser; and
 - “(b) on and after the date from which the person carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 is required to surrender units for emissions relating to the ruminant animals, pigs, horses, or poultry, this Act no longer applies to the person carrying out the activity listed in subpart 3 of Part 5 of Schedule 3 in relation to those ruminant animals, pigs, horses, or poultry.
- “(4) If an Order in Council is made under—
 - “(a) section 2A(8) that has the effect of applying subpart 2 of Part 5 of Schedule 3 to all persons who carry out an activity listed in that subpart from a date appointed in that order, then section 2A(5) and subpart 1 of Part

- 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 2 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity:
- “(b) section 2A(9) that has the effect of applying subpart 4 of Part 5 of Schedule 3 to all persons who carry out an activity listed in that subpart from a date appointed in that order, then section 2A(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed on the date from which all persons carrying out an activity listed in subpart 4 of Part 5 of Schedule 3 are liable to surrender units in respect of emissions from the activity.
- “(5) If, by operation of **subsection 3(a) or (b) or (4)(a) or (b)**, this Act no longer applies to a person carrying out an activity in subpart 1 or 3 of Part 5 of Schedule 3, or an activity listed in subpart 1 or 3 of Part 5 of Schedule 3 is repealed, then—
- “(a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of the provision, to be a participant in respect of that activity; and
- “(b) the person is not required to comply with section 59, but the chief executive may, for the purposes of section 59(2), determine that the person has ceased to carry out the activity.”

5A Purpose

- (1) Section 3 is amended by repealing the first subsection (2).
- (2) Section 3 is amended by adding the following subsection:
- “(3) For the purposes of this section, **business-as-usual levels** means the levels of New Zealand’s greenhouse gas emissions, estimated by a Minister or chief executive with powers or functions under this Act at any particular point in time, as if the greenhouse gas emissions trading scheme provided for under this Act had not been implemented.”

Clause 6

Subclause (2): to omit this subclause (line 30 on page 9 to line 4 on page 10) and substitute the following subclauses:

- (2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:
- “**allocate**, in relation to New Zealand units,—
- “(a) means the allocation or provisional allocation of New Zealand units; but
- “(b) does not include the transfer of New Zealand units

“**animal welfare export certificate** means an animal welfare export certificate issued under section 46 of the Animal Welfare Act 1999

“**Australian eligible industrial activity** means an activity that is, or is likely to be, specified as an emissions-intensive trade-exposed activity in respect of which a person may be allocated emissions units under Australian law

“**consolidated group** means a consolidated group formed under section 150

“**Crown holding account**—

“(a) means a holding account that is established and held by the Crown in accordance with a direction of the Minister of Finance under section 6; and

“(b) does not include a holding account opened by any other person on behalf of the Crown under section 18A

“**eligible activity** means—

“(a) an eligible agricultural activity; or

“(b) an eligible industrial activity

“**eligible agricultural activity** means an activity or subclass of an activity listed in Part 5 of Schedule 3 in respect of which a person is required to surrender units for emissions under this Act

“**eligible industrial activity** means an activity that is specified as an eligible industrial activity in regulations made under **section 161A**

“**eligible land** means pre-1990 forest land (other than land that has been declared to be exempt land under section 183 or 184)

“**eligible person** means a person who meets any requirements for receiving an allocation of New Zealand units specified in, as relevant,—

“(a) **section 81(1)**;

“(b) **section 86(1)**;

“(c) any regulations made under this Act;

“(d) an allocation plan

“**financial year** has the same meaning as in section 2(1) of the Public Finance Act 1989

“**fishing allocation plan** means the allocation plan that provides for the matters specified in **section 75**

“**member**, in relation to an unincorporated body, means a partner, joint venturer, trustee, joint owner of land, or other member of the body

“**nominated entity**, in relation to a consolidated group, means an entity appointed under section 150(4)(b) or 152(3)(b) as the nominated entity of a consolidated group

“**pre-1990 forest land allocation plan** means an allocation plan that provides for the matters specified in **section 73**

“**provisional allocation** means a provisional allocation made under **section 82**

“**solid biofuel** means wood, wood waste, sulphate lyes, or charcoal

“**unincorporated body**—

“(a) means an unincorporated body of persons; and

“(b) includes (but is not limited to)—

“(i) a partnership, a joint venture, or the trustees of a trust; and

“(ii) if land, a lease, a forestry right, or a Crown conservation contract is not owned, held, or entered into by a partnership, joint venture, or the trustees of a trust, 3 or more joint—

“(A) landowners; or

“(B) leaseholders; or

“(C) holders of a registered forestry right; or

“(D) parties to a Crown conservation contract; but

“(c) does not, unless they are partners, joint venturers, or trustees of a trust, include 2 joint—

“(i) landowners; or

“(ii) leaseholders; or

“(iii) holders of a registered forestry right; or

“(iv) parties to a Crown conservation contract”.

(2A) The definition of **carbon accounting area** is amended by adding “; or” and also by adding the following paragraph:

“(c) is constituted as a carbon accounting area by operation of section 188(7)(b) or **192(3)(b)**”.

To insert the following subclause after *subclause (8)* (after line 25 on page 10):

(8A) The definition of **forest species** in section 4(1) is amended by omitting “located” and substituting “located, but does not include tree species grown or managed primarily for the production of fruit or nut crops”.

Subclause (11): to omit this subclause (lines 5 to 8 on page 11) and substitute the following subclause:

(11) The definition of **waste** in section 4(1) is repealed and the following definition substituted:

“**waste** means any thing that has been disposed of or discarded—

“(a) including (but not limited to) any disposed of or discarded thing that is defined by its composition or source (for example, organic waste, electronic waste, or construction and demolition waste); but

- “(b) excluding any solid biofuel combusted for the purposes of generating electricity or industrial heat”.

Subclause (12): new section 4(5)(b): to omit this paragraph (lines 19 to 22 on page 11) and substitute the following paragraph:

- “(b) 4 years after the date on which the land met the conditions in **paragraph (a)**, it is not forest land and no allocation has been made in respect of the land under the pre-1990 forest land allocation plan.”

New clause 7A

To insert the following clause after *clause 7* (after line 28 on page 11):

7A New section 14 inserted

The following section is inserted after section 13:

“14 Registrar must give effect to directions

The Registrar must give effect to any direction relating to the transfer of units from a Crown holding account (or in the case of reimbursement, from a surrender account) to the holding account of an eligible person or a participant (or, if required, in the prescribed circumstances to another holding account notified by one of those persons) that is given by a Minister or chief executive authorised to give such direction in accordance with a provision in Part 4 or 5 of this Act.”

Clause 8: new section 17A

Subsection (1): to omit “under the State Sector Act 1988 or Crown Entities Act 2004” (lines 33 and 34 on page 11) and substitute “in the State services”.

To add the following subsection (after line 20 on page 12):

- “(7) For the purposes of this section, **State services** has the same meaning as in section 2 of the State Sector Act 1988.”

New clause 9A

To insert the following clause after *clause 9* (after line 26 on page 12):

9A Effect of surrender, retirement, cancellation, and conversion

Section 18CA is amended by repealing subsections (3) and (4) and substituting the following subsections:

- “(3) A Kyoto unit that is transferred to a surrender account may only be further transferred, in accordance with—
- “(a) a direction from the Minister of Finance, to a retirement account or a cancellation account; or
- “(b) a direction of the chief executive of the department responsible for the administration of Part 4 given under section 124, to a participant’s holding account.
- “(4) A New Zealand unit or an approved overseas unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the chief executive of the

department responsible for the administration of Part 4 given under section 124.”

Clause 10

To omit this clause (lines 27 to 33 on page 12) and substitute the following clauses:

10 Trusts, representatives, and assignees of bankrupts

Section 18E is amended by repealing subsection (1) and substituting the following subsections:

“(1) Notice of a trust, whether express, implied, or constructive, may not be entered on the unit register except in accordance with **subsection (1A)**.

“(1A) If the trustees of a trust apply to open a holding account under section 18A, then—

“(a) the trustees may specify the name of the trust as the name of the holding account; and

“(b) the Registrar may enter on the unit register the name of the trust as the name of the holding account.”

10A Registration procedure for Kyoto units

(1) Section 21(1) is amended by omitting “the Minister of Finance” and substituting “a Minister or chief executive authorised to give the direction under a provision of this Act”.

(2) Section 21(1)(a) is amended by omitting “an unique” and substituting “a unique”.

(3) Section 21(1)(c)(ii)(A) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.

(4) Section 21(2)(c)(i) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.

(5) Section 21(3)(d)(i) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.

10B Registration procedure for New Zealand units and approved overseas units

(1) Section 21AA(1) is amended by omitting “the Minister of Finance” and substituting “a Minister or chief executive authorised to give the direction under a provision of this Act”.

(2) Section 21AA(1)(c)(ii)(A) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.

- (3) Section 21AA(2)(c)(i) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.
- (4) Section 21AA(3)(d)(i) is amended by omitting “Minister of Finance” and substituting “Minister or chief executive who gave the direction”.

10C Electronic registration

Section 21A is amended by omitting “by the Minister of Finance” and substituting “to the Registrar by a Minister or chief executive under a provision of this Act”.

10D Priority of registration

Section 24(1) is amended by omitting “by the Minister of Finance” and substituting “to the Registrar by a Minister or chief executive under a provision of this Act”.

10E Correction of unit register

Section 25(1) is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) the Minister or chief executive who gave the direction, if the Registrar registered the transaction following receipt of a direction from a Minister or chief executive authorised to give the direction under a provision of this Act; or”.

Clause 13

Subclause (1): to omit “is” (line 25 on page 13) and substitute “are”.

Subclause (1): to omit “and 213” (line 27 on page 13) and substitute “or 213”.

To insert the following subclause after *subclause (1)* (after line 27 on page 13):

- (1A) Section 54(1)(b)(ii) is amended by omitting “or 193”.

Clause 14

To omit this clause (lines 31 to 34 on page 13) and substitute the following clause:

14 Associated persons

- (1) Section 55(3)(b) is amended by repealing subparagraph (ii) and substituting the following subparagraph:

“(ii) member of an unincorporated body; or”.
- (2) Section 55(3)(b)(iii) is amended by omitting “a member” in the first place where it appears and substituting “member”.

Clause 18

To omit this clause (lines 24 to 26 on page 14) and substitute the following clause:

18 Exemptions in respect of activities listed in Schedule 3

- (1) Section 60(1)(a) is amended by omitting “an” and substituting “the”.
- (2) Section 60(1)(b) is amended by omitting “an” and substituting “the”.
- (3) Section 60(1)(c) is amended by omitting “an” and substituting “the”.
- (4) Section 60 is amended by inserting the following subsection after subsection (1):
“(1A) An Order in Council made under subsection (1) may specify any terms and conditions (including, but not limited to, terms and conditions imposing geographical or operational restrictions) that the Governor-General thinks fit.”
- (5) Section 60(2)(b) is amended by omitting “of not” and substituting “of”.

Clause 19: new section 61

Heading to new section 61: to omit “**accounts**” (line 29 on page 14) and substitute “**account**”.

Subsection (1): to omit “under **subpart 2 of Part 4**” (line 30 on page 14).

Subsection (1)(a): to omit this paragraph (lines 32 and 33 on page 14) and substitute the following paragraph:

- “(a) surrendering units or repaying units as required under this Part or Part 5:

Subsection (1)(b): to omit “becomes” (line 2 on page 15) and substitute “is”.

Subsection (3)(b): to omit this paragraph (lines 15 to 17 on page 15) and substitute the following paragraph:

- “(b) an eligible person.”

New clause 19A

To insert the following clause after *clause 19* (after line 17 on page 15):

19A Monitoring of emissions and removals

Section 62 is amended by repealing paragraph (d) and substituting the following paragraph:

- “(d) keep, in the prescribed format (if any), records of the data or information and calculations.”

Clauses 20 and 21

To omit these clauses (lines 18 to 29 on page 15) and substitute the following clauses:

20 Entitlement to receive New Zealand units for removal activities

Section 64 is amended by repealing subsections (2) to (5) and substituting the following subsections:

- “(2) If a participant submits an emissions return to the chief executive that contains an assessment of the participant’s entitlement to receive New Zealand units, then the chief executive must, within 20 working days of receiving the emissions return, direct the Registrar to transfer the number of New Zealand units contained in the assessment to the participant’s holding account.
- “(3) **Subsection (2)** does not apply if, within 20 working days of the chief executive receiving the emissions return, the chief executive or an enforcement officer serves notice on the participant under section 94 requiring the participant to provide information in respect of any matter contained in the emissions return.”

21 Annual emissions returns

- (1) Section 65(1) is amended by omitting “Between 1 January and 31 March” and substituting “In the period beginning on 1 January and ending on 31 March”.
- (2) Section 65(4) is amended by omitting “30 April” and substituting “31 May”.

Clause 22

Heading to new subpart 2: to omit “Issuance and allocation of” (line 1 on page 16) and substitute “Issuing and allocating”.

Clause 22: new section 68

To omit this section (line 3 on page 16 to line 10 on page 17).

Clause 22: new section 69

Heading to new section 69: to omit “**Issuance**” (line 11 on page 17) and substitute “**Issuing**”.

Subsection (2)(a): to omit “with” (line 15 on page 17).

Subsection (2)(c): to omit “the issuance of New Zealand units into a Crown holding account after 1 January 2013” (lines 30 to 31 on page 17) and substitute “issuing New Zealand units into a Crown holding account on or after 1 January 2013.”.

Subsection (2)(c)(i): to omit “prior to” (line 37 on page 17) and substitute “before”.

Subsection (4)(b): to omit “determination” (line 12 on page 18) and substitute “direction”.

Subsection (5): to omit “The copies” (line 17 on page 18) and substitute “Each copy”.

Subsection (5): to omit “**subsection (2)(b) and (c)**” (lines 19 and 20 on page 18) and substitute “**subsection (2)(b)** and, if relevant, **subsection (2)(c)**”.

Clause 22: new section 70

To omit this section (line 21 on page 18 to line 14 on page 19) and substitute the following section:

“70 Notification of intention regarding New Zealand units

- “(1) The Minister must give notice in the *Gazette* of the Crown’s intentions to issue and allocate or sell New Zealand units at least 9 months before the end of each of the following periods:
- “(a) the first commitment period:
 - “(b) each subsequent commitment period (if any):
 - “(c) if there is no subsequent commitment period, then—
 - “(i) the 5-year period commencing on 1 January 2013:
 - “(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**.
- “(2) The notice must include—
- “(a) the number of New Zealand units that are intended to be issued under **section 69**; and
 - “(b) the time frames for issuing the New Zealand units under **section 69**; and
 - “(c) the intended time frame for any allocation of New Zealand units, or the sale of New Zealand units and the method of sale.
- “(3) The Minister must present a copy of the report under **section 160(7)(b)** to the House of Representatives before notice may be given under this section.
- “(4) The Minister must ensure that a copy of any notice given under **subsection (1)** is accessible via the Internet site of the department of the chief executive responsible for the administration of this Act.
- “(5) The Crown is not bound by any notice given under **subsection (1)** to make any decisions in relation to the issuing, sale, or allocation of New Zealand units.

Clause 22: new section 71(4)

To omit “or amended allocation plan” (line 32 on page 19).

Clause 22: new section 72(1)

To omit “revoke that allocation plan and replace it with an amended” (lines 4 and 5 on page 20) and substitute “amend any”.

Clause 22: new section 73

Subsection (2)(a)(ii): to omit “covered” (line 21 on page 20) and substitute “specified”.

Subsection (2)(b): to omit “free of charge, being” (lines 23 and 24 on page 20) and substitute “of”.

Subsection (2)(b)(ii)(B): to omit this subsubparagraph (lines 4 to 8 on page 21) and substitute the following subsubparagraph:

“(B) before 1 November 2002 if, since that date, ownership (including, if specified in the allocation plan, the beneficial ownership) of any body corporate owning the land or, if specified in the allocation plan, the beneficial ownership of the land owned by a body corporate, has changed in the manner and to the extent specified in the allocation plan:

Subsection (3)(a)(i): to omit “on or before” (lines 17 and 18 on page 21) and substitute “by”.

Subsection (3)(b)(i): to omit “on or before” (lines 24 and 25 on page 21) and substitute “by”.

Subsection (3)(c)(i): to omit “on or before” (lines 31 and 32 on page 21) and substitute “by”.

Subsection (4): to omit this subsection (lines 35 to 38 on page 21 and lines 1 to 21 on page 22) and substitute the following subsection:

- “(4) In addition to the matters provided for in **subsections (2) and (3)**, the pre-1990 forest land allocation plan—
- “(a) must specify—
 - “(i) the landowners, or former landowners, of the eligible land who are eligible persons; and
 - “(ii) the manner in which, and the extent to which, the ownership of eligible land must have changed to constitute a "transfer" for the purposes of **subsection (2)(b)(ii)(A) or (B)**; and
 - “(iii) the circumstances, if any, in which a transfer for the purposes of **subsection(2)(b)(ii)** includes transmission; and
 - “(iv) the manner in which, and the extent to which, the ownership of any body corporate owning eligible land must have changed for the purposes of **subsection (2)(b)(ii)(B)**; and
 - “(v) the data and information, or the kind of data and information, that each eligible person must supply, and the form in which the person must supply the data and information, in order to—

- “(A) receive an allocation of New Zealand units under the plan; and
- “(B) enable the Minister to determine the person’s correct allocation of New Zealand units under the allocation plan; and
- “(vi) in relation to an eligible person who receives an allocation of New Zealand units,—
 - “(A) the records, or the kinds of records, that the person must retain; and
 - “(B) the form in which the person must retain the records; and
 - “(C) the period for which the person must retain the records; and
- “(b) may specify—
 - “(i) the manner in which, and the extent to which, the beneficial ownership of eligible land must have changed to constitute a "transfer" for the purposes of **section 73(2)(b)(ii)(A) or (B)**; and
 - “(ii) the manner in which, and the extent to which, the beneficial ownership of any body corporate owning eligible land, or, if relevant, the beneficial ownership of the land owned by a body corporate, must have changed for the purposes of **subsection (2)(b)(ii)(B)**; and
- “(c) may provide for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

Subsection (6)(a)(i): to insert after “unless the” (line 29 on page 22) “pre-1990 forest land”.

Subsection (6)(b): to omit this paragraph (lines 35 to 37 on page 22) and substitute the following paragraph:

- “(b) **subsection (2)(b)(ii)**,—
 - “(i) **transfer** means a transfer specified in the pre-1990 forest land allocation plan, but does not include transmission unless the allocation plan specifies otherwise (for example, in relation to any land vested under an Act); and
 - “(ii) **body corporate** means a company whether incorporated in New Zealand or elsewhere and any other body corporate specified in the pre-1990 forest land allocation plan.

Clause 22: new section 74

Subsection (1): to omit “prior to making a determination in respect of eligible land covered by” (lines 3 and 4 on page 23) and substitute “before making a determination in respect of the eligible land specified in”.

Subsection (2): to omit “prior to” (line 18 on page 23) and substitute “before”.

Subsection (2): to omit “under an allocation plan providing for the matters in **section 73**” (lines 20 and 21 on page 23) and substitute “under the pre-1990 forest land allocation plan”.

Subsection (2): to omit “covered by” (line 23 on page 23) and substitute “specified in”.

Clause 22: new section 75

Subsection (2)(c): to omit this paragraph (lines 1 to 29 on page 24) and substitute the following paragraph:

- “(c) an allocation of New Zealand units to each eligible person calculated in accordance with the following formula:

$$P = A \times (B + C) / (D + E)$$

where—

- P is the eligible person’s allocation entitlement under the fishing allocation plan
- A is 700 000 New Zealand units
- B is the total quota weight equivalent (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters, owned by the eligible person on the close of 24 September 2009
- C is the total quota weight equivalent (expressed as a number of oysters) of Foveaux Strait dredge oyster stock owned by the eligible person on the close of 24 September 2009 divided by 9.8
- D is the sum of the total allowable commercial catch (expressed in kilograms) of stocks, other than Foveaux Strait dredge oysters (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown), on the close of 24 September 2009
- E is the sum of the total allowable commercial catch (expressed as a number of oysters) of the Foveaux Strait dredge oyster stock divided by 9.8 (excluding any quota shown in the quota register kept under Part 8 of the Fisheries Act 1996 as being owned by the Crown) on the close of 24 September 2009; and

Subsection (2)(d)(i): to insert after “New Zealand units” (line 34 on page 24) “under the allocation plan”.

Subsection (2)(d)(ii): to omit this subparagraph (lines 35 to 38 on page 24) and substitute the following subparagraph:

- “(ii) enable the Minister to determine the person’s correct allocation of New Zealand units under the allocation plan; and

Subsection (2)(e)(i): to omit “kind” and substitute “kinds” (line 3 on page 25).

Subsection (2)(f): to omit this paragraph (lines 9 and 10 on page 25) and substitute the following paragraph:

- “(f) any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.

Clause 22: new section 77(5)

Subsection (5): to insert after “draft” (line 12 on page 26) “fishing”.

Subsection (5): to omit “responsible for the administration of this Act” (lines 13 and 14 on page 26).

Clause 22: new sections 78 to 80

To omit these sections (line 17 on page 26 to line 2 on page 32) and substitute the following sections:

“**78 Determinations made in accordance with allocation plan**

“(1) As soon as practicable after an allocation plan comes into force, the Minister must give public notice inviting any person who may be eligible for an allocation of New Zealand units under the allocation plan to apply for an allocation.

“(2) The notice under **subsection (1)** must specify—

- “(a) the form in which an application must be made; and
“(b) the final date by which applications for an allocation of New Zealand units under the allocation plan must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 40 working days after the date on which the notice is given and, in the case of a fishing allocation plan, be no earlier than 20 working days after the date on which the notice is given); and
“(c) the data and other information, or the kind of data and other information, that must accompany the application in order for the person’s application to be considered (which must be the data and other information specified in the allocation plan); and
“(d) how the data and other information are to be supplied.

“(3) To avoid doubt, data and information supplied under **subsection (2)** are subject to the Official Information Act 1982.

“(4) Despite anything in this subpart or in any allocation plan,—

- “(a) a person is not entitled to receive an allocation of New Zealand units under an allocation plan unless the person applies to the Minister for an allocation under the allocation plan and supplies the required data and other information in the required format; and
 - “(b) the Minister is not required to make a determination in respect of an application for an allocation if the application is received after the date specified in the notice under **subsection (2)(b)**.
- “(5) The Minister must, in relation to each application received by the date specified in the notice given under **subsection (1)**, make a preliminary determination in accordance with the allocation plan as to—
- “(a) whether the person is eligible to receive an allocation of New Zealand units under the plan; and
 - “(b) the total number of New Zealand units the person is entitled to receive under the plan (which may be expressed by reference to a formula); and
 - “(c) the year or years in which the New Zealand units will be transferred to the person.
- “(6) After making a preliminary determination, the Minister must notify the applicant of the following:
- “(a) whether, in the Minister’s opinion, the person is an eligible person under the allocation plan, and—
 - “(i) if so, the total number of New Zealand units the Minister has determined the person is entitled to receive under the plan (which may be expressed by reference to a formula) and the year or years in which those units will be transferred; and
 - “(ii) if not, the reasons for that opinion; and
 - “(b) that, if the applicant believes there are any errors or miscalculations in the Minister’s preliminary determination of eligibility or entitlement, the person may provide further information to the Minister supporting a different determination; and
 - “(c) the final date by which any further information must be received by the Minister (which must, in the case of a pre-1990 forest land allocation plan, be no earlier than 20 working days after the date on which the notice is given, and in the case of a fishing allocation plan, be no earlier than 10 working days after the date on which the notice is given).
- “(7) Following the expiry of the date referred to in **subsection (6)(c)**, the Minister must, taking into account any information received by the due date in response to the no-

tice, make a final determination of the matters specified in **subsection (5)**.

- “(8) As soon as practicable after making a final determination under **subsection (7)**, the Minister must—
- “(a) notify the applicant of the determination; and
 - “(b) publish the determination in the *Gazette*; and
 - “(c) ensure that the determination is accessible via the Internet site of the department of the chief executive responsible for the administration of this Act; and
 - “(d) if New Zealand units are allocated to an applicant, direct the Registrar to transfer the allocated New Zealand units to the applicant’s holding account in the amounts and on the date or dates specified in the determination.
- “(9) For the purposes of making a preliminary determination under **subsection (5)** or a final determination under **subsection (7)** in respect of a fishing allocation plan, the Minister may access, and rely on, the information set out in the quota register kept under Part 8 of the Fisheries Act 1996.
- “(10) To avoid doubt, and without limiting the powers conferred under section 94 to 106, the chief executive or any other person with powers under sections 94 to 106 may exercise those powers for the purposes of ascertaining whether a person who applies for an allocation of New Zealand units or is allocated New Zealand units under an allocation plan is complying with, or has complied with,—
- “(a) any requirement in this section or **section 79 or 80**; or
 - “(b) any requirement in the relevant allocation plan (for example, a requirement to keep records).

“**79 Power to revoke and replace determinations**

- “(1) Despite anything in **section 78(7) or (8)**, the Minister may (but is not required to) reconsider, revoke, and replace a determination made under **section 78(7)** with a new determination if—
- “(a) the allocation plan under which the determination was made is amended; or
 - “(b) in the Minister’s opinion, the determination has resulted, or would otherwise result, in a person receiving an incorrect allocation because—
 - “(i) of an error in the application of the criteria specified in the applicable allocation plan; or
 - “(ii) a person has provided altered, false, incomplete, or misleading information in response to a notice given under **section 78(1) or (6) or 86DB**.

- “(2) Before revoking and replacing a determination that would affect the number of units allocated to a person, the Minister must—
- “(a) make a preliminary determination of the matters specified in **section 78(5)**; and
 - “(b) give notice to the person of—
 - “(i) the ground specified in **subsection (1)** and any information that led the Minister to reconsider the person’s allocation under the relevant allocation plan; and
 - “(ii) the Minister’s preliminary determination made under **paragraph (a)**; and
 - “(c) follow the procedure in **section 78(6) to (8)**, which apply, with any necessary modifications, to the new determination.
- “(3) The Minister may not revoke or replace a determination under this section after the expiry of 4 years from the date of notification of the Minister’s first determination under **section 78(7)** if the new determination would decrease the number of units allocated to a person.
- “(4) Despite **subsection (3)**, if the Minister is satisfied that an application for an allocation under an allocation plan, or any other document submitted in respect of the application, was submitted with the intention to deceive, then the Minister may revoke and replace any determination that resulted from the application at any time so as to decrease the number of units allocated to the applicant (including decreasing that number to zero).
- “(5) **Subsections (6) and (7)** apply if—
- “(a) the Minister has made a determination under **section 78** that Te Ohu Kai Moana Trustee Limited is entitled to receive New Zealand units under a fishing allocation plan; and
 - “(b) New Zealand units have been transferred to Te Ohu Kai Moana Trustee Limited under the determination in respect of unallocated quota; and
 - “(c) Te Ohu Kai Moana Trustee Limited has allocated and transferred unallocated quota together with New Zealand units associated with that quota to any iwi or mandated iwi organisation in accordance with section 138A(2) of the Maori Fisheries Act 2004; and
 - “(d) the Minister reconsiders the determination.
- “(6) In reconsidering the determination of Te Ohu Kai Moana Trustee Limited’s entitlement, the Minister must treat an iwi or a mandated iwi organisation which has received unallo-

cated quota from Te Ohu Kai Moana Trustee Limited as if it owned that quota on 24 September 2009.

“(7) If the Minister decides that the determination of Te Ohu Kai Moana Trustee Limited’s entitlement to New Zealand units should be revoked, the Minister must make a new determination of —

“(a) Te Ohu Kai Moana Trustee Limited’s entitlement to be allocated New Zealand units under the fishing allocation plan as if the unallocated quota that Te Ohu Kai Moana Trustee Limited owns on the date of the new determination were all the unallocated quota it owned on 24 September 2009; and

“(b) the entitlement of an iwi or a mandated iwi organisation that has received unallocated quota to be allocated New Zealand units under the fishing allocation plan as if that iwi or mandated iwi organisation owned the unallocated quota it received on 24 September 2009.

“(8) In **subsections (5) to (7) and section 80(4)**,—

“**iwi** has the same meaning as in section 5 of the Maori Fisheries Act 2004

“**mandated iwi organisation** has the same meaning as in section 5 of the Maori Fisheries Act 2004

“**unallocated quota** means quota held by Te Ohu Kai Moana Trustee Limited on 24 September 2009 and that had not been allocated under section 130(1), 135, or 151 of the Maori Fisheries Act 2004 at that date.

“**80 Effect of new determination**

“(1) If the Minister makes a new determination in accordance with **section 79**, then—

“(a) the new determination applies and replaces the earlier determination from the date the new determination is made; and

“(b) the Minister—

“(i) may, if practicable, amend or revoke any direction given under **section 78(8)(d)**; or

“(ii) must otherwise give any new direction necessary under **section 78(8)(d)** in order to give effect to the new determination.

“(2) Subject to **subsection (3)**, a new determination does not change or otherwise affect any transfer of New Zealand units made to a person in accordance with a revoked determination before the date the new determination came into effect.

“(3) If New Zealand units have been transferred to a person under an earlier determination and the person would not be entitled

under the new determination to those New Zealand units (including where the result of the new determination is that the person would not be entitled to any New Zealand units under the allocation plan), then—

- “(a) the notice of the new determination given to the person under **section 78(8)** must specify—
 - “(i) the number of units required to be repaid; and
 - “(ii) the Crown holding account into which they must be transferred; and
- “(b) the person must, within 60 working days after the date of the notice, repay those units by transferring the specified number of units to a Crown holding account in accordance with the notice, and sections 134 and 135 apply, with any necessary modifications, as if—
 - “(i) the units the person is required to repay were units transferred to the person in error; and
 - “(ii) the requirement to repay the units arose under section 125.

“(4) This section applies to any new determination made in accordance with **section 79(7)** as if—

- “(a) only the New Zealand units associated with the unallocated quota held by Te Ohu Kai Moana Trustee Limited at the date of the new determination had been transferred to it under the earlier determination; and
- “(b) the New Zealand units associated with the unallocated quota transferred to an iwi or a mandated iwi organisation by Te Ohu Kai Moana Trustee Limited had been transferred to the iwi or mandated iwi organisation under the earlier determination.

Clause 22: new section 81

Subsection (1): to omit “a specified year” (line 7 on page 32) and substitute “a year”.

Subsection (1): to omit “the specified year” (lines 8 and 9 on page 32) and substitute “a year”.

Subsection (2): to omit “**section 161B(7)**” and substitute “**sections 86DB and 161D(7)**”.

Clause 22: new sections 82 to 85

To omit these sections (line 11 on page 32 to line 4 on page 37) and substitute the following sections:

“82 Entitlement to provisional allocation for eligible industrial activities

Subject to **section 83**, an eligible person is entitled to a provisional allocation of New Zealand units for an eligible indus-

trial activity in respect of a year calculated in accordance with the following formula:

$$PA = LA \times \sum(PDCT \times AB)$$

where—

PA is the person’s provisional allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the eligible industrial activity for the year, being,—

(a) for a moderately emissions-intensive eligible industrial activity,—

(i) 0.6 in 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a moderately emissions-intensive eligible industrial activity) (expressed to 2 decimal places):

(b) for a highly emissions-intensive eligible industrial activity,—

(i) 0.9 in 2010, 2011, and 2012; and

(ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a highly emissions-intensive eligible industrial activity) (expressed to 2 decimal places)

\sum is the symbol for summation (of each PDCT \times AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year immediately preceding the year to which the provisional allocation relates, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

“83 Entitlement to allocation for eligible industrial activities where provisional allocation not received

“(1) An eligible person who carries out an eligible industrial activity at any time in a year, but did not carry out that activity during the immediately preceding year (a **new entrant**) is not

entitled to a provisional allocation calculated under **section 82**, but is entitled to an allocation under **subsection (2)**.

- “(2) A new entrant or other eligible person who did not receive a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year is entitled to an allocation of New Zealand units for the eligible industrial activity for the year calculated in accordance with the formula in **section 84(2)**.

“**84 Annual allocation adjustment**

- “(1) A person who has received a provisional allocation of New Zealand units for an eligible industrial activity in respect of a year must, subject to **section 85**, calculate the person’s annual allocation adjustment for the activity for the year by—
- “(a) determining the person’s final allocation entitlement for the eligible industrial activity in respect of the year in accordance with the formula in **subsection (2)**; and
- “(b) then determining the annual allocation adjustment in accordance with the formula in **subsection (3)**.
- “(2) The formula for the calculation of a person’s final allocation entitlement is as follows:

$$FA = LA \times \sum(PDCT \times AB)$$

where—

FA is the person’s final allocation entitlement for the eligible industrial activity for the year

LA is the level of assistance for the activity for the year, being,—

- (a) for a moderately emissions-intensive eligible industrial activity,—
- (i) 0.6 in 2010, 2011, and 2012; and
- (ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a moderately emissions-intensive eligible industrial activity) (expressed to 2 decimal places):
- (b) for a highly emissions-intensive eligible industrial activity,—
- (i) 0.9 in 2010, 2011, and 2012; and
- (ii) in each year after 2012, the level of assistance from the previous year less 1.3% (the phase-out rate for a highly emissions-intensive eligible industrial activity) (expressed to 2 decimal places)

\sum is the symbol for summation (of each PDCT \times AB calculation)

PDCT is the amount of each prescribed product from the eligible industrial activity produced by the person in the year, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product that is required to be used by the eligible person by regulations made under this Act.

“(3) The formula for the calculation of a person’s annual allocation adjustment is as follows:

$$AA = PA - FA$$

where—

AA is the person’s annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person’s provisional allocation for the eligible industrial activity notified by the chief executive under **section 86C**

FA is the person’s final allocation entitlement for the eligible industrial activity for the year calculated under **subsection (2)**.

“(4) If the figure for AA calculated under the formula in **subsection (3)**—

“(a) is a negative number, then the person is entitled to be allocated the number of units in the annual allocation adjustment:

“(b) is a positive number, then the person is liable to repay the number of units in the annual allocation adjustment.

“(5) If an eligible person is entitled to be allocated the number of units in an annual allocation adjustment and the person—

“(a) makes an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must record the adjustment in the person’s application for a provisional allocation for the following year:

“(b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, the person may make a separate application under **section 86A** for an allocation of the number of units in the annual allocation adjustment.

“(6) If an eligible person is liable to repay the number of units in an annual allocation adjustment and the person—

“(a) makes an application for a provisional allocation for the same eligible industrial activity in the year following

the year to which the annual allocation adjustment relates, then—

- “(i) the person must record the adjustment for the year in the person’s application for a provisional allocation for the following year; and
 - “(ii) subject to **section 86C**, the chief executive must deduct the number of units in the adjustment from the provisional allocation for the following year, unless the number of units in the provisional allocation is less than the adjustment, in which case the person must, within 20 working days of being notified of the shortfall in the number of units by the chief executive, repay the shortfall by transferring the relevant number of units to a Crown holding account designated by the chief executive; or
- “(b) does not make an application for a provisional allocation for the same eligible industrial activity in the year following the year to which the annual allocation adjustment relates, then the person must—
- “(i) by 30 April in the year following the year to which the annual allocation adjustment relates, notify the chief executive of the person’s annual allocation adjustment; and
 - “(ii) by 31 May in the year following the year to which the annual allocation adjustment relates, repay the number of units in the annual allocation adjustment by transferring the units to a Crown holding account designated by the chief executive.
- “(7) If a person is required to repay units under this section, then—
- “(a) the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid; and
 - “(b) sections 134 and 135 apply, with any necessary modifications, as if—
 - “(i) the units the person is required to repay were units transferred to the person in error; and
 - “(ii) the requirement to repay the units arose under section 125.

“85 Closing allocation adjustment

- “(1) An eligible person who has received a provisional allocation for an eligible industrial activity in respect of a year and who ceases during the year to carry out that activity must, within 20 working days of ceasing to carry out the activity,—

- “(a) calculate the person’s final allocation entitlement for the activity for the year in accordance with the formula in **section 84(2)**; and
 - “(b) using the formula in **section 84(3)**, calculate the person’s closing allocation adjustment, and, for this purpose, **section 84(3)** applies, with any necessary modifications, as if the closing allocation adjustment were an annual allocation adjustment; and
 - “(c) if the closing allocation adjustment is—
 - “(i) a negative number, apply to the chief executive under **section 86A** for an allocation of the number of units in the closing allocation adjustment:
 - “(ii) a positive number, notify the chief executive of the person’s closing allocation adjustment and repay the number of units in the closing allocation adjustment by transferring the units to a Crown holding account designated by the chief executive.
- “(2) For the purposes of **subsection (1)**, a person who has received a provisional allocation for an eligible industrial activity in respect of a year and who temporarily does not carry out the activity—
- “(a) is not immediately to be treated as having ceased to carry out the activity; but
 - “(b) must, if the person does not carry out the activity for a period of 3 months in the year, notify the chief executive as soon as practicable after the expiry of that 3-month period of that fact; and
 - “(c) must, if given notice by the chief executive (following receipt of the person’s notice under **paragraph (b)**) that the chief executive is satisfied that the person has ceased to carry out the activity for the year and that the person is required to comply with **subsection (1)**, within 20 working days of the date of the chief executive’s notice, comply with **subsection (1)**.
- “(3) Subject to **subsection (4)**, an eligible person who has complied with **subsection (1)** during the year in which the person ceased to carry out the eligible industrial activity—
- “(a) is not required to comply with **section 84** in respect of that activity; and
 - “(b) may not calculate an annual allocation adjustment under **section 84** in respect of that year.
- “(4) A person who has applied for or notified a closing allocation adjustment in accordance with **subsection (1)** during a year, but who then recommences carrying out the activity in the year,—

- “(a) may calculate an annual allocation adjustment for the year in accordance with the following formula:

$$AA = PA - FA - CAA$$

where—

AA is the person’s annual allocation adjustment of units for the eligible industrial activity for the year

PA is the person’s provisional allocation for the eligible industrial activity for the year notified by the chief executive under **section 86C**

FA is the person’s final allocation entitlement for the eligible industrial activity for the year (which must be calculated in accordance with **section 84(2)**).

CAA is the amount of the person’s closing allocation adjustment for the eligible industrial activity; and

- “(b) is entitled to be allocated the number of units in the person’s annual allocation adjustment (as calculated under **paragraph (a)**) in accordance with **section 84(5)**.

- “(5) **Section 84(7)** applies to the repayment of units under this section as if the units were required to be repaid under **section 84**.

Clause 22: new section 85A

To omit this section (line 5 on page 37 to line 37 on page 38).

Clause 22: new sections 86 to 86D

To omit these sections (line 8 on page 38 to line 3 on page 45) and substitute the following sections:

“**86 Allocation of New Zealand units in relation to agriculture**

- “(1) A person is eligible for an allocation of New Zealand units for an eligible agricultural activity in respect of a year if the person carries out the activity at any time in the year.

- “(2) An eligible person is entitled to an allocation for the eligible agricultural activity in respect of the year calculated in accordance with the following formula:

$$A = LA \times \sum(PDCT \times AB)$$

where—

A is the person’s allocation entitlement for the eligible agricultural activity for the year

LA is the level of assistance for the eligible agricultural activity for the year, being—

- (a) 0.9 for 2015; and
(b) for each year after 2015, the level of assistance from the previous year less 1.3% (the phase-

out rate for an eligible agricultural activity) (expressed to 2 decimal places)

Σ is the symbol for summation (of each PDCT \times AB calculation)

PDCT is the total amount of each product from the eligible agricultural activity produced by the person in the year, as determined, if relevant, in accordance with regulations made under this Act

AB is the prescribed allocative baseline for the applicable product.

“(3) Despite **section 86A(1)(c)**, a person who ceases to carry out an eligible agricultural activity in a year may, within 20 working days of ceasing to carry out the activity, apply under **section 86A** for an allocation for that year calculated in accordance with the formula in **subsection (2)**.

“(4) A person—

“(a) is not to be treated as having ceased to carry out an eligible agricultural activity for the purposes of **subsection (3)** and section 59, if the person does not continuously carry out the activity during a year; but

“(b) must, if the person does not carry out the eligible agricultural activity for a period of 3 months in a year, be treated as having ceased to carry out the activity in the year.

“(5) Subject to **subsection (6)**, an eligible person who has applied for an allocation for a year (the **closing year**) in accordance with **subsection (3)** may not apply under **section 86A** for a further allocation in respect of the closing year.

“(6) An eligible person who has applied in accordance with **subsection (3)** for an allocation in respect of a closing year, but who then recommences carrying out the activity in the closing year may apply under **section 86A** for an allocation in respect of the part of the year after the date the person recommenced carrying out the activity (and which was not covered by the application made in accordance with **subsection (3)**) and, for that purpose, **subsection (2)** applies as if the year were the part of the year from the date the person recommenced carrying out the activity.

“86A Applications for allocation of New Zealand units for industry and agriculture

“(1) An eligible person who wishes to be allocated New Zealand units for an eligible industrial activity or eligible agricultural activity under this subpart must, unless this subpart otherwise provides, apply to the chief executive for an allocation—

- “(a) no later than 30 April in the year to which it relates, if the application is for a provisional allocation for an eligible industrial activity in respect of a year; and
 - “(b) no later than 30 April in the year following the year to which it relates, if the application is for an allocation (other than a provisional allocation for an industrial activity) in respect of a year (including for an allocation of an annual allocation adjustment); and
 - “(c) on or after 1 January and before 31 December in the year following the year to which it relates, if the application is for an allocation for an eligible agricultural activity in respect of a year.
- “(2) An application under **subsection (1)** must—
- “(a) be in the prescribed form; and
 - “(b) contain, as relevant, the applicant’s assessment of,—
 - “(i) in the case of an eligible industrial activity, the person’s—
 - “(A) provisional allocation entitlement in respect of the year calculated in accordance with **section 82**;
 - “(B) final allocation entitlement in respect of the previous year calculated in accordance with **section 84(2)**;
 - “(C) annual allocation adjustment relating to the previous year calculated in accordance with **section 84(3) or 85(4)**;
 - “(D) closing allocation adjustment for the year calculated as required under **section 85(1)(a)**;
 - “(ii) in the case of an eligible agricultural activity, the person’s—
 - “(A) allocation entitlement in respect of the previous year calculated in accordance with **section 86(2)**; or
 - “(B) if **section 86(3)** applies, allocation entitlement in respect of the year in which the person ceased to carry out the eligible agricultural activity; and
 - “(c) be accompanied by—
 - “(i) any other information that the chief executive may require; and
 - “(ii) the prescribed fee (if any); and
 - “(d) contain the account number of the eligible person’s holding account, required by **section 61**.

“86B Provisional allocation to industry in and after 2013

Despite **section 86A(1)(a)**, if an eligible industrial activity is prescribed under **section 161A(1)(a)** in the year 1 January 2013 to 31 December 2013 or in any subsequent year (the **prescribing year**), an eligible person who carried out the activity in the year preceding the prescribing year may apply for a provisional allocation for the eligible industrial activity in respect of the prescribing year in the period—

- “(a) commencing on the date the regulation prescribing the activity as an eligible industrial activity comes into force; and
- “(b) ending on the date 3 months after the date in **paragraph (a)**.

“86C Decisions on applications for allocations of New Zealand units to industry and agriculture

“(1) On receipt of an application under **section 86A**, the chief executive must decide—

- “(a) whether the applicant is eligible to receive an allocation in respect of the application;
- “(b) if in the chief executive’s opinion the applicant is eligible for an allocation in respect of the application, the number of units the applicant is entitled to be allocated in respect of the application that, if the application relates to a provisional allocation for an eligible industrial activity, must—
 - “(i) include any units to which the person is entitled in respect of an annual allocation adjustment for the previous year; or
 - “(ii) be net of any units required to be deducted from the person’s provisional allocation entitlement in accordance with **section 84(6)(a)**.

“(2) If the chief executive decides under **subsection (1)** that an applicant is entitled to receive an allocation in respect of the application, then the chief executive must—

- “(a) notify the applicant of—
 - “(i) the number of units the applicant has been allocated in respect of the application and, in the case of an eligible industrial activity, any adjustment to that allocation that the chief executive has made under **subsection (1)**; and
 - “(ii) the person’s right under section 144 to seek a review of the allocation decision; and
- “(b) direct the Registrar to transfer to the holding account notified in the person’s application the number of units notified under **paragraph (a)** (as adjusted, in the case

of an eligible industrial activity, under **subsection (1)**).

- “(3) If the chief executive decides under **subsection (1)** that an applicant is not eligible to receive an allocation in respect of the application, or that the allocation to which the person is entitled in respect of the application is the same as or less than the number of units that the person is liable to repay in respect of an annual allocation adjustment recorded in the application in accordance with **section 84(6)(a)**, then the chief executive must notify the applicant of—
- “(a) the chief executive’s decision; and
 - “(b) the reasons for the decision; and
 - “(c) if the result of the decision is that the person is liable to repay more units than the number of units to which the person would have been entitled in respect of the application, the number of units in the shortfall; and
 - “(d) the person’s right under section 144 to seek a review of the allocation decision.
- “(4) If a person has failed to notify the chief executive of an annual allocation adjustment or a closing allocation adjustment when required by **section 84(6)(b) or 85(1)(c)(ii)**, or if the chief executive is satisfied that an annual allocation adjustment or closing allocation adjustment notified by a person to the chief executive under **section 84(6)(b) or 85(1)(c)(ii)** is incorrect, then the chief executive may make a decision as to the person’s annual allocation adjustment, or closing allocation adjustment or correct annual allocation adjustment or closing allocation adjustment.
- “(5) The chief executive must, as soon as practicable, after deciding an eligible person’s final allocation for an eligible activity in respect of a year,—
- “(a) publish the decision in the *Gazette*; and
 - “(b) ensure it is accessible via the Internet site of the department of the chief executive responsible for the administration of this Act.
- “(6) For the purposes of **subsection (5)**,—
- “(a) the final allocation of a person who received a provisional allocation for an eligible industrial activity is the person’s provisional allocation for the activity in respect of the year adjusted by the annual allocation adjustment for the activity for the year (or closing allocation adjustment, as the case may be); and
 - “(b) the chief executive is not required to publish the final allocation of an eligible person for an eligible activity in respect of a year, or ensure it is accessible via the Internet, if the chief executive considers that publishing that

information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation.

“86D Reconsideration of allocation decisions

- “(1) Without limiting section 144, the chief executive may reconsider, vary or revoke any decision made under **section 86C** if in the chief executive’s opinion the decision has resulted, or would otherwise result, in a person receiving an incorrect allocation because—
- “(a) of an error in the calculation of the person’s entitlement to an allocation or liability to repay units under this subpart; or
 - “(b) the person has provided altered, false, incomplete, or misleading information in or with an application.
- “(2) The chief executive may not make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under **section 86C(4)** or vary or revoke a decision under **subsection (1)** after the expiration of 4 years from the end of the year or other period to which the decision relates if the decision, or variation or revocation of the decision, would decrease the number of units allocated to a person.
- “(3) However, if the chief executive is satisfied that a notice under **section 84(6)(b) or 85(1)(c)(ii)** or application for an allocation, or any other document submitted under **section 86A, 86DB, or 144**, was submitted with intent to deceive, the chief executive may make a decision in relation to an annual allocation adjustment or a closing allocation adjustment under **section 86C(4)** or vary or revoke a decision under **subsection (1)** at any time so as to decrease the number of units allocated to the person to whom the notice or application related (including decreasing that number to zero).
- “(4) If the chief executive makes a decision in relation to an annual allocation adjustment or a closing allocation adjustment under **section 86C(4)** or varies or revokes a decision under **subsection (1)**, the chief executive must, as soon as practicable after doing so, notify the person who gave, or should have given, the notice under **section 84(6)(b) or 85(1)(c)(ii)** or the applicant, as the case may be, of—
- “(a) the particulars of the decision, or variation or revocation of the decision; and
 - “(b) any grounds or information upon which the decision or variation or revocation of the decision was based; and
 - “(c) the person’s right under section 144 to seek a review of the allocation decision.

- “(5) If the result of a decision in relation to an annual allocation adjustment or a closing allocation adjustment under **section 86C(4)**, variation or revocation of an allocation decision under **subsection (1)**, or review under section 144 is that a person allocated units is found to have been allocated and transferred—
- “(a) units to which the person was not entitled, or to have repaid too few units, the person must within 90 working days after the date of the notice under **subsection (4)** repay the number of units notified to the person by transferring the units to a Crown holding account designated by the chief executive; or
 - “(b) fewer units than the person was entitled to, or to have repaid too many units, the chief executive must, as soon as practicable after the date of the notice under **subsection (4)**, direct the Registrar to transfer to the holding account notified in the person’s application (or any other holding account notified by the person) the number of New Zealand units recorded in the notice.
- “(6) **Section 84(7)** applies to repayment of units under **subsection (5)** as if it were repayment under **section 84**.

“**86DA Retention of records and materials in relation to allocation**

- “(1) A person who has been allocated New Zealand units for an eligible activity must keep sufficient records to enable the chief executive to verify, for any year in respect of which the person received an allocation,—
- “(a) that the person was an eligible person; and
 - “(b) the person’s calculations of the person’s entitlement to be allocated New Zealand units or liability to repay units under the relevant sections in **sections 82 to 86**; and
 - “(c) the total amount of each product produced by the person from the eligible activity in the year, as determined, if relevant, in accordance with regulations made under this Act; and
 - “(d) any other prescribed information.
- “(2) The records specified in **subsection (1)**—
- “(a) must include—
 - “(i) a copy of any application made to the chief executive under **section 86A** or notice given to the chief executive under **section 84(6)(b) or 85(1)(c)(ii)**; and
 - “(ii) any information used to prepare the application or notice; and

“(b) must be retained for a period of at least 7 years after the end of the year to which the application or notice relates.

“86DB Minister or chief executive may require further information for purpose of carrying out functions under subpart

- “(1) For the purposes of making a determination under **section 78 or 79** or a decision under **section 86C**, the Minister or chief executive, as appropriate, may give to any of the following persons a notice requiring the person to supply information or further information to the Minister or chief executive:
- “(a) a person who has made an application for an allocation of New Zealand units or notified an annual allocation adjustment or closing allocation adjustment;
 - “(b) a person who has failed to notify an annual allocation adjustment or closing allocation adjustment as required by **section 84(6)(b) or 85(1)(c)(ii)**;
 - “(c) a person who may be affected by a reconsideration of a determination or decision.
- “(2) A notice under **subsection (1)** must be given before the determination or decision is made.
- “(3) A notice under **subsection (1)** may require the information to be provided that is necessary to determine whether a person is or was—
- “(a) eligible for an allocation of New Zealand units; or
 - “(b) entitled to the allocation that the person has applied for or received (in relation to an annual allocation adjustment or a closing allocation adjustment).
- “(4) The Minister or chief executive may, as appropriate, for the purpose of verifying whether a determination made under **section 78 or 79** or a decision made under **section 86C** was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under one of those sections, requiring the person to supply to the Minister or chief executive any records, data, or other information that the person is required to keep in relation to the allocation.
- “(5) A person who has received a notice under this section must supply the information requested within the period specified in the notice.
- “(6) A person who fails to comply with a notice under this section within the period specified in the notice, or any further period agreed with the Minister or the chief executive as appropriate, and who—

- “(a) has applied for an allocation under an allocation plan or **under section 86A** is not entitled to receive an allocation under that plan or in respect of that application; or
- “(b) has been allocated but not yet received some or all units allocated to the person under an allocation plan is not entitled to be transferred any units or any further units allocated to the person under the plan.

New clause 22A

To insert the following clause after clause 22 (after line 16 on page 46):

22A Functions of chief executive

- (1) Section 87(1) is amended by inserting the following paragraph after paragraph (b):
 - “(ba) administer allocations relating to industry and agriculture in accordance with **sections 81 to 86DB**; and”.
- (2) Section 87(1) is amended by repealing paragraph (d) and substituting the following paragraph:
 - “(d) direct the Registrar to transfer New Zealand units to which participants are entitled for removal activities to participants’ holding accounts; and”.

Clause 23

To insert the following subsections after *subsection (1)* (after line 19 on page 46):

- (1A) Section 89(1) is amended by repealing paragraph (i) and substituting the following paragraph:
 - “(i) the total number of New Zealand units allocated under subpart 2 less any units repaid.”
- (1B) Section 89(3) is amended by inserting “or the information required under subsection (1)(i)” after “in respect of an activity”.
- (1C) Section 89(3) is amended by inserting “or an eligible person’s own allocation” after “emissions”.
- (1D) Section 89(3)(a) is amended by omitting “participant” and substituting “participant or eligible person”.

Clause 23(2): new section 89(4)

To omit “report” (line 21 on page 46) and substitute “publish”.

New clause 23A

To insert the following clause after clause 23 (after line 23 on page 46):

23A Power of entry for investigation

Section 100(1) is amended by omitting “and Part 5” and substituting “or Part 5”.

Clause 24: new section 108(1)(b)

To omit “contains” (line 1 on page 47) and substitute “raises”.

Clause 25

To omit this clause (lines 4 to 10 on page 47) and substitute the following clause:

25 Submission of final emissions returns

- (1) Section 118(3) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) a person who has—
 “(i) ceased to carry out an activity listed in Schedule 3 or 4 in relation to which the person was a participant; and
 “(ii) left, or is about to leave, New Zealand.”.

- (2) Section 118(4) is amended by repealing paragraph (a) and substituting the following paragraph:

“(a) contain all of the information required in an annual emissions return under section 65(2), but only in respect of the following periods, as relevant:
 “(i) if the return is submitted in response to a requirement of the chief executive under subsection (2), the period specified by the chief executive:
 “(ii) if the return is made under **subsection (3)(a)** or (b), the period—
 “(A) beginning on the later of 1 January in the year in which the return is submitted, or the day after the end of the period covered by the last emissions return submitted by the person for the activity; and
 “(B) ending on the day the person ceased to carry out the specified activity, or the last of the specified activities covered by the return:
 “(iii) if the return is made under subsection (3)(c) or (d), the period determined by the submitter; and”.

- (3) Section 118 is amended by adding the following subsections:

“(6) Despite anything in subsection (3),—
 “(a) a person who meets the conditions in that subsection, and who is (at the time of meeting those conditions) a member of a consolidated group, may not submit a final emissions return; and
 “(b) the nominated entity of the consolidated group of which the person is a member may not submit a final emissions return in respect of the person.

- “(7) To avoid doubt, a person who submits a final emissions return in respect of a specified activity under this section—

“(a) is not required to submit an annual emissions return under section 65 that covers the activity for any period covered by the return submitted under this section; but

- “(b) must, if the final emissions return does not cover the full period in which the activity was carried out by the participant in a year, submit an annual emissions return under section 65 in respect of the activity that covers any part of the year in which the activity was carried out by the participant that is not covered by the return submitted under this section.”

New clauses 26A and 26B

To insert the following clauses after clause 26 (after line 13 on page 47):

26A Effect of amendment or assessment

Section 123 is amended by omitting subsection (5) and substituting the following subsection:

- “(5) If the amendment or assessment results in an entitlement for a participant to receive New Zealand units for the participant’s removal activities, the chief executive must direct the Registrar to transfer the number of New Zealand units to which the participant is entitled to the participant’s holding account.”

26B Reimbursement of units by chief executive

Section 124 is repealed and the following section substituted:

“124 Reimbursement of units by chief executive

- “(1) If the chief executive is required to arrange for the reimbursement of units to a person under section 123(4), 126(2), 138(2), or 189(7), the chief executive must direct the Registrar to transfer units to the person in accordance with **subsection (2)**.
- “(2) If the reimbursement is of—
- “(a) New Zealand units or approved overseas units, the chief executive must direct the Registrar to transfer the applicable number of New Zealand units or approved overseas units from the appropriate surrender account or Crown holding account to the person’s holding account; or
- “(b) Kyoto units, the chief executive must direct the Registrar to transfer the applicable number and type of Kyoto units from the appropriate surrender account or Crown holding account to the person’s holding account.
- “(3) The chief executive must take into account the views of the person to whom units will be reimbursed about the type of units to be reimbursed when determining what units to reimburse.”

Clauses 28 to 37

To omit these clauses (line 17 on page 47 to line 27 on page 53) and substitute the following clauses:

28 Strict liability offences

- (1) Section 129(1)(b) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:

“(ia) fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or closing allocation adjustment under **section 84 or 85**, including where required to comply with **section 85(1)(a) to (c)** by the chief executive under **section 85(2)(c)**; or

“(iii) fails to keep records as required—

“(A) under section 67 **or 86DA**; or

“(B) by a fishing allocation plan; or

“(C) by a pre-1990 forest land allocation plan; or”.

- (2) Section 129(1)(b) is amended by repealing subparagraph (v) and substituting the following subparagraph:

“(v) fails to notify the chief executive, within the time required, of a matter required to be notified under **section 85(2)(b) or 192(3)**.”

29 Other offences

- (1) Section 132(1) is amended by repealing paragraph (e) and substituting the following paragraphs:

“(da) knowingly fails to comply with the requirements relating to the calculation of, application for, or notification of an annual allocation adjustment or a closing allocation adjustment under **section 84 or 85**, including when required to comply with section **85(1)(a) to (c)** by the chief executive under **section 85(2)(c)**; or

“(e) knowingly fails to keep records as required—

“(i) under section 67 **or 86DA**; or

“(ii) by a fishing allocation plan; or

“(iii) by a pre-1990 forest land allocation plan; or”.

- (2) Section 132(1)(f) is amended by inserting “the Minister or” after “emissions returns) to”.

30 Evasion or similar offences

- (1) Section 133(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

- “(ba) fails to comply with the requirements relating to calculation and application for or notification of an annual allocation adjustment or a closing allocation adjustment under **section 84 or 85** (including where required to comply with **section 85(1)(a) to (c)** by the chief executive under **section 85(2)(c)**); or
- “(c) fails to keep records as required—
 - “(i) under section 67 **or 86DA**; or
 - “(ii) by a fishing allocation plan; or
 - “(iii) by a pre-1990 forest land allocation plan; or”.
- (2) Section 133(1)(e) is amended by inserting “the Minister or” after “emissions returns) to”.

30A New section 136 substituted

Sections 136 is repealed and the following section substituted:

“136 Additional penalty for knowing failure to comply

- “(1) This section applies to a person who—
 - “(a) is or was liable following—
 - “(i) a new determination under **section 79** or a variation or revocation of a decision under **section 86D** to repay units allocated and transferred to the person; or
 - “(ii) an amendment under section 120 or an assessment under section 121 to surrender units (or additional units) or to repay units, in respect of any period covered by, or that should have been covered by, an emissions return; and
 - “(b) is convicted of an offence under section 132(1)(c) to (f) or 133 that relates to—
 - “(i) the units allocated and transferred to the person (including, but not limited to, the provision of information); or
 - “(ii) an emissions return that was—
 - “(A) amended under section 120; or
 - “(B) assessed under section 121.
- “(2) If this section applies, the person is liable, in addition to any penalty imposed in respect of the offence, to—
 - “(a) as the case may require,—
 - “(i) transfer to the Crown holding account designated by the Minister or chief executive in the notice referred to in **section 80(3) or 86D(4)** a number of units equivalent to the number of units specified as being repayable in that notice under **section 80(3)(a) or 86D(4)**, or in any review or appeal proceedings relating to that determination or decision; or

- “(ii) surrender a number of units equivalent to the number of units determined by the chief executive in the amendment under section 120 or the assessment under section 121, or in any review or appeal proceedings relating to that determination; and
- “(b) pay an excess emissions penalty of \$30 for each unit the person is liable to transfer or surrender under **paragraph (a)**.
- “(3) If this section applies, the chief executive must give a notice to the person that—
 - “(a) sets out the—
 - “(i) number of additional units that the person is required to transfer to a Crown holding account or surrender under **subsection (2)**; and
 - “(ii) amount of the excess emissions penalty to which the person is liable under **subsection (2)**; and
 - “(b) requires the person to transfer to the designated Crown holding account or surrender the additional units, and pay the penalty within 90 days after the date of the notice; and
 - “(c) advises that, unless both the units are transferred to the designated Crown holding account or surrendered (as the case may require) and the penalty paid in full by the due date, interest on the amount of the penalty will accrue in accordance with section 137.
- “(4) To avoid doubt, any liability to transfer units to a Crown holding account or surrender units and pay a penalty under **subsection (2)** is additional to, and does not affect, the liability of a person to surrender or repay units under any other section of this Act or to pay a penalty under a penalty notice given by the chief executive under section 134.
- “(5) The amount of the excess emissions penalty, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the chief executive in a court of competent jurisdiction.”

30B Interest for late payment

- (1) Section 137 is amended by repealing subsection (1) and substituting the following subsection:
 - “(1) This section applies if—
 - “(a) a person—
 - “(i) has failed to surrender or repay units when required to do so and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(i) or (iii); or

- “(ii) is required to surrender or repay units under section 123 and is liable to pay an excess emissions penalty in relation to those units under section 134(2)(b)(ii); or
- “(iii) is required to transfer units to a Crown holding account or surrender units and pay an excess emissions penalty under **section 136**; and
- “(b) the person does not comply, or comply in full, with the requirement to surrender or repay units and to pay the penalty by the relevant date.”
- (2) Section 137(2) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) for the period from the date by which the penalty was due to be paid until the associated liability to surrender or repay units or to transfer units to a Crown holding account under **section 136** (or to pay any associated debt under section 159) has been met, and until the penalty and any interest due have been paid in full.”
- (3) Section 137 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) To avoid doubt, interest accrues under subsection (2) even if the amount of the excess emissions penalty in a penalty notice has been paid in full if the associated requirement to surrender or repay units or to transfer units to a Crown holding account under **section 136** (or to pay any associated debt under section 159) has not been met in full.”
- (4) Section 137(4) is amended by repealing paragraph (a) and substituting the following subsection:
- “(a) the failure of the person to comply with the requirement to surrender or repay units or to transfer units to a Crown holding account under **section 136** and pay the penalty in full arises as a result of an event or circumstance beyond the control of that person; and”.

30C Obligation to pay penalty not suspended by appeal

- (1) Section 138 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The obligation to pay and the right to receive and recover any excess emissions penalty or interest imposed under section 134, **136**, or 137, and the obligation to transfer to a Crown holding account or surrender any additional units under **section 136**, are not suspended by any review or appeal.”

- (2) Section 138 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) If the applicant or appellant is successful in the review or appeal, the amount of any excess emissions penalty or interest paid by the applicant must be refunded to the applicant or appellant by the chief executive, and any units not required to be transferred to a Crown holding account or surrendered must be reimbursed in accordance with the procedure specified in **section 124**.”

31 Formation of consolidated group

- (1) Section 150(6)(a) is amended by inserting “consolidated” after “formation of the”.
- (2) Section 150(6)(a) is amended by omitting “the following” and substituting “that”.
- (3) Section 150(6)(b) is amended by inserting “consolidated” after “formation of the”.
- (4) Section 150(6)(b) is amended by omitting “year following the next year” and substituting “following year”.
- (5) Section 150 is amended by inserting the following subsections after subsection (6):
- “(6A) Despite subsection (1), 2 or more members of a group may, if they elect to form a consolidated group in respect of an activity, give notice to the chief executive under subsection (3)—
- “(a) at the same time they all give notice to the chief executive under section 56 in respect of that activity; or
- “(b) at the same time they all submit an application under section 57 in respect of that activity.
- “(6B) Despite sections 56(1), 57(3), and **61**, an entity that gives notice to the chief executive in accordance with **subsection (6A)** is not required to have its own holding account under **section 61** to comply with its obligations as a participant in respect of an activity specified in the notice given under subsection (3) and is not required to open a holding account when giving notice under section 56 or making an application under section 57 in respect of an activity, if—
- “(a) the notice given in accordance with **subsection (6A)** is received by the chief executive by 30 September in the year in which that notice is given; and
- “(b) the nominated entity specified in the notice given in accordance with **subsection (6A)** has, or has applied for, a holding account in the name of the consolidated group.”

32 Changes to consolidated groups

- (1) Section 151 is amended by repealing subsection (4) and substituting the following subsection:
- “(4) Subject to **subsection (6)**, if a participant elects under subsection (1) to join a consolidated group, that participant must be treated for the purposes of this Part and Part 5 as being a member of that consolidated group on and after 1 January of the year in which the participant gives notice to the chief executive under subsection (1).”
- (2) Section 151 is amended by adding the following subsections:
- “(6) An entity may, if the entity elects to be treated as a member of a consolidated group on and after the date the entity is registered as a participant in respect of an activity, give notice to the chief executive under subsection (1)—
- “(a) at the same time as giving notice to the chief executive under section 56 in respect of that activity; or
 - “(b) when submitting an application under section 57 in respect of that activity.
- “(7) Despite sections 56(1), 57(3), and **61**, an entity that gives notice to the chief executive in accordance with **subsection (6)** is not required have its own holding account under **section 61** to comply with its obligations as a participant in respect of an activity specified in the notice given under subsection (1) and is not required to apply for a holding account, when—
- “(a) giving notice to the chief executive under section 56 in respect of that activity; or
 - “(b) submitting an application under section 57 in respect of that activity.”

33 New section 151A inserted

The following section is inserted after section 151:

“151A Addition of activities to consolidated groups

- “(1) A member of a consolidated group may elect to add to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the chief executive in the prescribed form.
- “(2) A notice given under **subsection (1)** must—
- “(a) include the name of the member and the activity or activities the member is electing to add to the activities in respect of which the member is treated as a member of the consolidated group; and
 - “(b) contain the agreement of every existing member of the consolidated group—
 - “(i) to be jointly and severally liable with the other members of the group for any obligations under this Part or Part 5 in respect of emissions and

- removals resulting from the member's activity or activities specified in the notice; and
- “(ii) to the transfer to the consolidated group's holding account, on behalf of the group, of any units to which the adding member may become entitled in respect of the activity or activities specified in the notice.
- “(3) The chief executive must acknowledge that the member has added the activity or activities specified in the notice under **subsection (1)** to the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the chief executive's receipt of the notice.
- “(4) If a member has elected under **subsection (1)** to add to the activities in respect of which the member is treated as a member of the consolidated group, the activity or activities specified in the notice are added,—
- “(a) if the notice of the election is received by the chief executive by 30 September in a year, on and after 1 January of that year:
- “(b) if the notice of the election is received by the chief executive after 30 September in a year, on and after 1 January of the next year.”

34 Effect of being member of consolidated group

- (1) Section 153(6)(a)(ii) is amended by omitting “section 118 in respect of a participant” and substituting “section 187 in respect of an entity”.
- (3) Section 153 is amended by adding the following subsection:
- “(7) To avoid doubt, an emissions return for a consolidated group or any member of a consolidated group may be submitted only by the nominated entity of the consolidated group.”

35 Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4

- (1) Section 154(1)(a) is amended by omitting “an activity” and substituting “1 or more of the activities”.
- (2) Section 154(1) is amended by inserting the following paragraph after paragraph (a):
- “(ab) may, if **section 189(2)(d)** applies to a member, submit an emissions return in accordance with **section 189(4A)** on behalf of the member; and”.
- (3) Section 154(2) is amended by inserting “or, if the return does not relate to a period covered by the emissions return, as if section 153(2) to (5) referred to the liability to surrender units or

entitlement to be transferred units in relation to the emissions return” after “covered by the emissions return”.

- (4) Section 154 is amended by adding the following subsection:
“(3) To avoid doubt, only the nominated entity may submit an emissions return for a consolidated group that has been formed in respect of 1 or more of the activities listed in Part 1 of Schedule 4.”

36 Ceasing to be member of consolidated group

- (1) Section 155(2) is amended by repealing paragraph (a) and substituting the following paragraph:
“(a) if subsection (1)(a) applies and the notice of election to cease to be a member of the consolidated group is received by the chief executive—
“(i) by 30 September in any year, on and after 1 January of that year; or
“(ii) after 30 September in any year, on and after 1 January of the following year; and”.
- (2) Section 155(2)(d) is amended by inserting “consolidated” after “nominated entity for the”.
- (3) Section 155 is amended by adding the following subsections:
“(6) **Subsection (7)** applies to an entity that—
“(a) ceases to be a member of a consolidated group but remains a participant; and
“(b) does not have its own holding account.
- “(7) An entity to which this subsection applies must,—
“(a) immediately upon ceasing to be a member of the consolidated group, apply to open a holding account under section 18A; and
“(b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the chief executive within 10 working days of receiving the account number from the Registrar.”

37 New section 156A inserted

The following section is inserted after section 156:

“156A Removal of activities from consolidated groups

- “(1) A member of a consolidated group may elect to remove 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to the chief executive in the prescribed form.
- “(2) The activity or activities specified in the notice under **subsection (1)** are removed from the activities in respect of which the member is treated as a member of the consolidated group,—

- “(a) if the notice of the election is received by the chief executive by 30 September in a year, on and after 1 January of that year:
- “(b) if the notice of the election is received by the chief executive after 30 September in a year, on and after 1 January of the next year.
- “(3) The chief executive must acknowledge that the activity or activities specified in the notice under **subsection (1)** are removed from the activities in respect of which the member is treated as a member of the consolidated group by giving notice to all members of the group within 1 month of the chief executive’s receipt of the notice.
- “(4) If a member has removed an activity from the activities in respect of which the member is treated as a member of a consolidated group, that member continues to be jointly and severally liable with the other members of the consolidated group for any obligations under this Part or Part 5 in respect of emissions and removals related to the activity, and jointly entitled to any units transferred for the activity (if it is a removal activity), in respect of the period in which the activity was an activity in respect of which the member was treated as a member of the consolidated group.
- “(5) **Subsection (6)** applies to a member of a consolidated group that—
 - “(a) removes 1 or more activities from the activities in respect of which the member is treated as a member of the consolidated group; and
 - “(b) remains a participant in respect of 1 or more of those activities; but
 - “(c) does not have its own holding account.
- “(6) A member of a consolidated group to which this subsection applies must—
 - “(a) apply to open a holding account under section 18A immediately upon removal of the activity or activities from the activities in respect of which the member is treated as a member of the consolidated group; and
 - “(b) supply the account number of the holding account, or ensure the account number of the holding account is supplied, to the chief executive within 10 working days of receiving the account number from the Registrar.”

37A New sections 157 and 157A substituted

Section 157 is repealed and the following sections are substituted:

“157 Unincorporated bodies

- “(1) This section applies if the members of an unincorporated body—
- “(a) jointly carry out an eligible activity; or
 - “(b) are required under section 180, 204, or **213** to be treated as jointly carrying out an activity listed in Schedule 3; or
 - “(c) if **paragraph (b)** does not apply, jointly carry out an activity listed in Schedule 3 or 4.
- “(2) If this section applies,—
- “(a) the members of the unincorporated body are not individually to be treated as persons carrying out the activity; and
 - “(b) if the activity is an eligible activity,—
 - “(i) the members of the unincorporated body may not apply individually for an allocation of New Zealand units for the eligible activity under **section 86A**; but
 - “(ii) the unincorporated body may, as the eligible person, make such an application under **section 86A**; and
 - “(c) if the activity is an activity listed in Schedule 3 or 4,—
 - “(i) the members of the unincorporated body—
 - “(A) are not liable to, and may not, be registered as a participant under section 56 in respect of the activity; and
 - “(B) may not be registered as a participant under section 57 in respect of the activity; and
 - “(ii) the unincorporated body—
 - “(A) must notify the chief executive that it is the participant under section 56 in respect of the activity (if the activity is an activity listed in Schedule 3):
 - “(B) may apply to be registered as the participant under section 57 in respect of the activity (if the activity is an activity listed in Schedule 4):
 - “(C) when notifying under section 56 or applying to be registered under section 57, as the case may be, advise the chief executive of the name of the unincorporated body that should be entered on the register of participants kept for the purposes of section 56 or 57; and

- “(iii) the chief executive must, for the purpose of section 56(3) or 57(5) (as applicable), enter the name of the unincorporated body on the register kept for the purpose of section 56 or 57; and
- “(d) the unincorporated body must, when applying for an allocation, or notifying the chief executive under section 56, or applying to the chief executive to be registered as a participant under section 57, as the case may be, provide the chief executive with—
 - “(i) the names and contact details of the members of the unincorporated body; and
 - “(ii) the name and contact details of the person to whom notices are to be given under this Act on behalf of the unincorporated body; and
- “(e) subject to **subsections (3) to (5)**, any change of members of the unincorporated body has no effect for the purposes of this Act.
- “(3) Each person who is or has ceased to be a member of an unincorporated body is, in respect of the period during which the person is or was a member of the unincorporated body,—
 - “(a) jointly and severally liable for the obligations of the unincorporated body as an eligible person (or a person to whom units have been allocated) or as a participant in respect of the activity; and
 - “(b) jointly entitled to the benefits of the unincorporated body as an eligible person or as a participant in respect of the activity.
- “(4) If this Act requires any thing to be done by or on behalf of an eligible person (or a person to whom units have been allocated) or a participant that is an unincorporated body,—
 - “(a) it is the joint and several liability of all the members of the unincorporated body to do the thing; and
 - “(b) any such thing done by 1 member of the unincorporated body is sufficient compliance with the requirement.
- “(5) A notice that is addressed to an unincorporated body and given in accordance with this Act to the person nominated by the unincorporated body under **subsection (2)(d)(ii)** or (if relevant) notified under **section 157A(2)(a)** is to be treated as notice given to the unincorporated body and all members of the unincorporated body.
- “(6) To avoid doubt, if this Act requires a landowner, registered leaseholder, holder of a registered forestry right, or party to a Crown conservation contract to be treated as the person carrying out an eligible activity or an activity listed in Schedule 3 or 4, and the land, registered lease, registered forestry right, or Crown conservation contract is owned, held, or has been

entered into, as the case may be, jointly by 2 persons, those persons—

- “(a) must together be treated as the person carrying out the activity for the purposes of this Act; and
- “(b) are, as relevant, together the eligible person in respect of the eligible activity, or the participant in respect of any activity listed in Schedule 3, or may together be registered as the participant in respect of an activity listed in Schedule 4; and
- “(c) are jointly and severally liable for the obligations, or entitled to the benefits, of an eligible person (or a person to whom units have been allocated) or a participant in respect of the activity.

“157A Changes to unincorporated bodies that are participants

“(1) This section applies if—

- “(a) a member of an unincorporated body joins or leaves an unincorporated body that is registered as a participant; or
- “(b) the name or contact details of the person to whom notices are to be given changes; or
- “(c) an unincorporated body wishes to change the name under which the body is registered as a participant.

“(2) If this section applies,—

- “(a) the unincorporated body must, as relevant,—
 - “(i) within 20 working days of a person joining or leaving the unincorporated body, give the chief executive notice of—
 - “(A) the name and contact details of the person joining or leaving; and
 - “(B) the date on which the person joined or left the unincorporated body; or
 - “(ii) within 20 working days of a change in the name or contact details of the person to whom notices are to be given, give the chief executive notice of that matter; or
 - “(iii) give the chief executive notice if the unincorporated body wishes to change the name under which the body is recorded as a participant on the register kept for the purposes of section 56 or 57; and
- “(b) the chief executive must, as soon as practicable after receiving the notice,—
 - “(i) amend—
 - “(A) the chief executive’s records to reflect the change in membership of the unincorporated

- ated body or the change in the name or contact details of the person to whom notices are to be given; or
- “(B) the register kept under section 56 or 57, as the case may be, to record the change in the name of the unincorporated body; and
- “(ii) notify the Registrar of the change in membership of the unincorporated body, the change in the name or contact details of the person to whom notices are to be given, or the change in the unincorporated body’s name; and
- “(iii) notify the unincorporated body of the amendment to the chief executive’s records or the participant register and the notification to the Registrar.
- “(3) A notice given under **subsection (2)** must—
- “(a) be in the prescribed form; and
- “(b) contain any other information the chief executive may require; and
- “(c) be accompanied by the prescribed fee (if any).
- “(4) For the purposes of **subsection (1)**, the following transfers must be treated as changes in the membership of an unincorporated body and not as the transfer of an interest for the purposes of **section 192(1)(a)**:
- “(a) the transfer of land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer; and
- “(b) the transfer of a registered lease, registered forestry right, or Crown conservation contract relating to post-1989 forest land from members of an unincorporated body to members of an unincorporated body if at least 60% of the members of an unincorporated body are the same following the transfer.”

Heading to clause 38

To omit “**161C**” (line 28 on page 53) and substitute “**161H**.”

Clause 38: new section 160

Subsection (3): to omit this subsection (lines 8 to 30 on page 54) and substitute the following subsection:

- “(3) Despite anything in **subsections (1) and (2)**,—
- “(a) the Minister responsible for the administration of this Act must ensure that a review of the matters listed in **subsection (5)(j)** (an **allocation review**) is initiated and completed at least once in each of the following periods:

- “(i) the 5-year period commencing on 1 January 2011; and
- “(ii) each subsequent 5-year period after the period specified in **subparagraph (i)**; and
- “(b) **subsections (6) to (8)** apply to each allocation review with all necessary modifications as if the allocation review were initiated under **subsection (1)**; and
- “(c) the person conducting each allocation review may consider any other matter, including (but not limited to) the matters listed in subsection (5); and
- “(d) if the person conducting an allocation review considers the matters specified in subsection (5) in the relevant period, that consideration satisfies the obligation of the Minister responsible for the administration of this Act under **subsection (1)**.

Subsection (4): to omit this subsection (lines 31 to 36 on page 54) and substitute the following subsection:

- “(4) For the avoidance of doubt, if a review initiated under **subsection (1)** results in the matters listed in **subsection (5)(j)** being reviewed in a period listed in **subsection (3)(a)**, then the Minister responsible for the administration of this Act is not obliged under **subsection (3)** to ensure any further review of those matters is initiated in that period.

Subsection (5)(j): to omit this paragraph (line 34 on page 55 to line 4 on page 56) and substitute the following paragraph:

- “(j) whether changes to the provision of any allocation to industry or agriculture under **subpart 2** are necessary or desirable, having regard to—
 - “(i) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from, or additional to, any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
 - “(ii) the stringency of any of the international obligations specified in **subparagraph (i)**; and
 - “(iii) any change proposed to the activities listed in Schedule 3 or 4 following consideration of the matters specified in **paragraph (i)**; and
 - “(iv) the relative climate change obligations and emissions policies of New Zealand’s trade competitors and trading partners; and
 - “(v) any significant changes in emissions mitigation technology; and

“(vi) the cost to the taxpayer and the economy of providing free allocation under **subpart 2**; and

Subsection (5)(n): to omit “part of the allocation process, contained in subpart 2 of Part 4 of this Act” (lines 18 and 19 on page 56) and substitute “any part of the allocation process, contained in **subpart 2**”.

Subsection (5)(o): to omit “**to (l)**” (line 22 on page 56) and substitute “**to (n)**”.

Subsection (6): to omit “terms” (line 28 on page 56) and substitute “the terms”.

Subsection (6): to omit “Minister and” (line 29 on page 56) and substitute “Minister on”.

Subsection (8): to omit this subsection (line 36 on page 56 to line 4 on page 57) and substitute the following subsection:

- “(8) If the panel recommends any change in relation to allocation to industry or agriculture that involves amending any Act or making or amending regulations under this Act, the Minister responsible for the administration of this Act must—
- “(a) prepare a report that contains a response to the panel’s recommendations for legislative change; and
 - “(b) present a copy of his or her report to the House of Representatives.

Subsection (9): to omit “The Minister responsible for the administration of this Act may initiate” (lines 5 and 6 on page 57) and substitute “To avoid doubt, this section does not limit the ability of the Minister responsible for the administration of this Act to initiate”.

Clause 38: new section 161

Subsection (1): to omit “the Act” (line 13 on page 57) and substitute “this Act”.

Subsection (1)(b): to insert after “majority of” (line 16 on page 57) “the”.

Subsection (3): to omit “prior to completion of the final report” (lines 34 and 35 on page 57) and substitute “before the date on which the review is required to be completed under **section 160**”.

Subsection (4)(b): to omit “within the time allowed by **subsection (3)**” (line 6 on page 58) and substitute “by the date on which the review is required to be completed under **section 160**”.

Subsection (5): to omit “panel” (line 7 on page 58) and substitute “review panel”.

Clause 38: new sections 161A to 161C

To omit these sections (line 12 on page 58 to line 2 on page 64) and substitute the following sections:

“161A Regulations in relation to eligible industrial activities

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- “(a) prescribing, for the purposes of **subpart 2**, the activities that are eligible industrial activities:

- “(b) prescribing in respect of each eligible industrial activity, as appropriate,—
 - “(i) a description of the activity, including (but not limited to)—
 - “(A) the input or inputs:
 - “(B) the output or outputs:
 - “(C) the physical, chemical, or biological transformation that takes place to transform the inputs into the outputs:
 - “(ii) whether the activity is—
 - “(A) highly emissions-intensive; or
 - “(B) moderately emissions-intensive:
 - “(iii) the products to be used as the basis for an allocation of New Zealand units in respect of the activity:
 - “(iv) a methodology or methodologies for calculating the amount of each prescribed product for the purposes of **section 82 to 85**:
 - “(c) prescribing, for each prescribed product,—
 - “(i) 1 or more allocative baselines; and
 - “(ii) for the purpose of sections **82 to 85**, which allocative baseline any person carrying out the activity must use when calculating an allocation entitlement under those sections (which may include an allocative baseline that a particular person must use):
 - “(d) prescribing—
 - “(i) an allocation factor or factors for—
 - “(A) electricity:
 - “(B) natural gas feedstock:
 - “(ii) how each allocation factor must be used for the purpose of calculating allocative baselines in accordance with **section 161B(3)**:
 - “(e) prescribing information that must be kept for the purposes of **section 86DA**.
- “(2) A regulation made under **subsection (1)** may permit persons to apply for and receive an allocation in respect of a period beginning on—
- “(a) 1 January of the year in which the regulation is made even if the regulation comes into force on a later date in that year:
 - “(b) 1 January or 1 July in a year before the year in which the regulation is made provided the regulation comes into force on or before 31 December 2012.

- “(3) Before recommending that a regulation be made under **subsection (1)(a)**, the Minister must be satisfied either that the activity to be prescribed as an eligible industrial activity—
- “(a) is—
 - “(i) moderately emissions-intensive or highly emissions-intensive; and
 - “(ii) trade-exposed; or
 - “(b) may be treated as meeting the criteria in **paragraph (a)** under **section 161B(1)**.
- “(4) Despite anything in this section or **section 161B or 161C**, a regulation may not be made under **subsection (1)** that prescribes electricity generation as an eligible industrial activity.
- “(5) The following regulations made under **subsection (1)** come into force on the day 5 years after the date of their notification in the *Gazette* or any later date that may be set by the regulations:
- “(a) a regulation that revokes a regulation prescribing an activity as an eligible industrial activity;
 - “(b) a regulation that amends a regulation providing that an eligible industrial activity is highly emissions-intensive to provide that the eligible industrial activity is moderately emissions-intensive.

“**161B Australian eligible industrial activities**

- “(1) An activity may be treated as meeting the criteria specified in **section 161A(3)(a)** if the activity is an Australian eligible industrial activity.
- “(2) If an activity is treated as meeting the criteria specified in **section 161A(3)(a)** because it is an Australian eligible industrial activity, any regulations that prescribe that activity as an eligible industrial activity must prescribe—
- “(a) the same activity description for the activity, including (but not limited to) the matters listed in **section 161A(1)(b)(i)**, as the activity description for the Australian eligible industrial activity; and
 - “(b) the same products to be used as a basis for an allocation of New Zealand units in respect of the activity as the products that are, or are likely to be, used as a basis for the allocation of emissions units in respect of the Australian eligible industrial activity; and
 - “(c) the same emissions-intensity level of the activity as the emissions-intensity level, or the likely emissions-intensity level, of the Australian eligible industrial activity; and
 - “(d) for each prescribed product of the activity an allocative baseline or baselines that is or are the same as the alloca-

tive baseline or baselines that is or are, or is likely to be or are likely to be, specified as the allocative baseline or baselines of the equivalent product of the Australian eligible industrial activity.

- “(3) Despite **subsection (2)(d)**, if an Australian electricity allocation factor or Australian natural gas feedstock allocation factor was used in the calculation of an allocative baseline (or likely allocative baseline) of a product of the Australian eligible industrial activity, then the allocative baseline or baselines prescribed under **section 161A(1)(c)** for the equivalent product must be the allocative baseline or baselines that is or are, or is likely or are likely, to be specified as the allocative baseline or baselines of the product of the Australian eligible industrial activity adjusted by substituting an electricity allocation factor or natural gas feedstock allocation factor (as the case may be) prescribed under **section 161A(1)(d)**.

“**161C Other eligible industrial activities**

- “(1) For the purposes of **section 161A(3)(a)**, an activity is—
- “(a) moderately emissions-intensive if the specified emissions from the activity are equal to or greater than 800 whole tonnes per \$1 million of specified revenue from the activity, but less than 1 600 whole tonnes per \$1 million of specified revenue from the activity:
 - “(b) highly emissions-intensive if the specified emissions from the activity are equal to or greater than 1 600 whole tonnes per \$1 million of specified revenue from the activity:
 - “(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.
- “(2) If an activity meets the criteria in **section 161A(3)(a)** in accordance with **subsection (1)**, any regulations that prescribe the activity as an eligible industrial activity and the products to be used as the basis for an allocation of New Zealand units in respect of the activity must prescribe the allocative baseline or baselines of each product, calculated in accordance with the following formula:

$$AB = SE/STA$$

where—

AB is the allocative baseline of the product

SE is the specified emissions from the activity

STA is the specified total amount of the product from the activity.

- “(3) For the purposes of this section,—
- “(a) the specified revenue from an activity is the amount of revenue obtained by adding together the revenue from the activity of persons who provided the information referred to in **section 161D(1)(e)(i)(A)** to the Minister in accordance with a notice under **section 161D(1)** that contained a description of the activity:
 - “(b) the specified emissions, in respect of the emissions intensity of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in **section 161D(1)(e)(i)(B)** to the Minister in accordance with a notice under **section 161D(1)** that contained a description of the activity:
 - “(c) the specified emissions, in respect of the allocative baselines of an activity, is the number of whole tonnes of included emissions obtained by adding together the included emissions from the activity of persons who provided the information referred to in **section 161D(1)(e)(i)(C)** to the Minister in accordance with a notice under **section 161D(1)** that contained a description of the activity:
 - “(d) the specified total amount of product from the activity is the amount of the product obtained by adding together the amount of the product produced by each of person who provided the information referred to in **section 161D(1)(e)(i)(D)** to the Minister in accordance with a notice under **section 161D(1)** that contained a description of the activity.
- “(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)** after taking into account any electricity-related contract that was in force on the date of the notice that 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, or any information relating to any such contracts.
- “(5) If the Minister has adjusted the tonnes of emissions of 1 or more persons under **subsection (4)**, the Minister may use both the information as originally submitted and as adjusted

to calculate different allocative baselines for the relevant product.

“161D Power to require information for purposes of allocation to industry

“(1) The Minister may, for any of the purposes in **subsection (3)**, by notice in the *Gazette*—

“(a) specify a description of an activity, including the matters listed in **section 161A(1)(b)(i)** in respect of the activity:

“(b) specify in respect of the activity each product that may be used, if the activity is prescribed in regulations as an eligible industrial activity, as the basis for an allocation of New Zealand units in respect of the activity (a **specified product**):

“(c) specify in respect of the activity—

“(i) the emissions that must be included in any information provided under **paragraph (e)** (the **included emissions**); and

“(ii) the emissions that may not be included in any information provided under **paragraph (e)** (the **excluded emissions**):

“(d) specify the financial years for which information must be provided under **paragraph (e)**:

“(e) require any person carrying out the activity specified under **paragraph (a)** on the date of the notice to provide to the Minister—

“(i) any or all of the following information for the financial years specified in the notice:

“(A) financial statements that show the total revenue of the person from the activity in those years, calculated in accordance with any methodology specified under **paragraph (g)(i)**:

“(B) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under **paragraph (g)(ii)** (emissions-intensity):

“(C) information showing the number of whole tonnes of included emissions from the activity carried out by the person in those years, calculated in accordance with any methodology specified under **paragraph (g)(iii)** (allocative baselines):

- “(D) information showing the amount of each specified product produced by the person in those years calculated in accordance with any methodology specified under **paragraph (g)(iv)**:
- “(ii) copies of any electricity-related contracts in force on the date of the notice that affect the electricity cost increase that the persons carrying out the activity will face owing to the obligation imposed by this Act on participants to surrender units, or any information in relation to such contracts; or
- “(iii) any other information that would, in the Minister’s opinion, assist the Minister to determine any of the matters listed in **subsection (3)**:
- “(f) specify the date by which the information required to be provided under **paragraph (e)** must be provided to the Minister, which date must be no earlier than 30 working days from the date of the notice:
- “(g) specify a methodology or methodologies for calculating—
 - “(i) revenue from the activity for the purpose of **paragraph (e)(i)(A)**:
 - “(ii) emissions from the activity (emissions-intensity) for the purpose of **paragraph (e)(i)(B)**:
 - “(iii) emissions from the activity (allocative baselines) for the purpose of **paragraph (e)(i)(C)**:
 - “(iv) the amount of any specified product from the activity for the purpose of **paragraph (e)(i)(D)**.
- “(2) A methodology specified in a notice in accordance with **subsection (1)(g)** may incorporate by reference any material referred to in section 169(1), and if material is incorporated by reference, sections 169(2) and (3) and 170 and 177 apply with any necessary modifications.
- “(3) The purpose for which a notice may be issued under **subsection (1)** is to provide the Minister with the information necessary to determine any 1 or more of the following matters:
 - “(a) whether an activity meets the criteria listed in **section 161A(3)(a)** and, if so, determine—
 - “(i) whether the activity is highly emissions-intensive or moderately emissions-intensive; and
 - “(ii) the appropriate allocative baseline or baselines for each product of the activity:
 - “(b) whether it is necessary to adjust any person’s number of whole tonnes of included emissions provided under

subsection (1)(e)(i)(C) in accordance with **section 161C(4)**:

- “(c) any other matter listed in **section 161A(1)** in respect of an activity:
 - “(d) whether any matter should be considered by a review under **section 160**.
- “(4) A *Gazette* notice under **subsection (1)** is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.
- “(5) Following the provision of information by any person in accordance with **subsection (1)(e)**, the Minister may give notice to the person—
- “(a) requiring the person to provide any further information that the Minister considers is necessary to enable the verification of the accuracy of the information; and
 - “(b) specifying the date by which the further information specified in the notice must be provided to the Minister.
- “(6) If a person who is required to comply with a notice under **subsection (1) or (5)** fails to provide the required information by the date specified in the notice, the Minister may give a notice to the person that requires the information to be provided within 10 working days and advises the person that a failure to provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity specified in the notice if it is prescribed as an eligible industrial activity.
- “(7) Despite anything in this Act, if an activity specified in a notice made under **subsection (1)(a)** is subsequently prescribed as an eligible industrial activity, the following persons are not eligible to be allocated New Zealand units under subpart 2 in respect of the eligible industrial activity:
- “(a) any person who carried out the activity at the date of the notice and who without reasonable excuse failed to supply the data and information required by the date specified in a notice given under **subsection (6)**; and
 - “(b) any associated person of a person referred to in **paragraph (a)**.

“**161E Requirements in respect of notice given under section 161D**

- “(1) Before giving notice of an activity under **section 161D(1)**, the Minister must have regard to the following matters:

- “(a) the requirement to define each activity by reference to a physical, chemical, or biological transformation of inputs into outputs; and
 - “(b) the undesirability of activities being defined by reference to the technology employed, the fuel used, the age of the plant, or the quality of the types of feedstock used when the activity is carried out; and
 - “(c) the desirability of defining activities—
 - “(i) consistently and equitably across industries; and
 - “(ii) in a way that takes into account the impact that definitions may have on business investment, geographical location, and the structure of activities; and
 - “(iii) in a way that takes into account the potential for intermediate inputs produced when the activity is carried out to be substituted for bought-in inputs; and
 - “(d) the desirability of there being no overlap between activity definitions; and
 - “(e) the desirability of activity definitions reflecting activity definitions used in Australia; and
 - “(f) any other matters the Minister considers relevant.
- “(2) For the purposes of **section 161D(1)(c)**,—
- “(a) the emissions that must be included in any information provided under **section 161D(1)(e)(ii) and (iii)** may only include—
 - “(i) emissions of greenhouse gases resulting from—
 - “(A) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil as part of the activity; and
 - “(B) the direct use of any coal, natural gas, geothermal fluid, used oil, or waste oil to generate steam that is used as part of the activity; and
 - “(C) any of the activities listed in Part 4 of Schedule 3 carried out as part of the activity; and
 - “(ii) a number of whole tonnes of emissions, which must be treated for the purpose of this section and **section 161C and 161D** as emissions from the activity, calculated in accordance with the following formula:

$$E = MWh \times pEAF$$
 where—
 - E is the number of whole tonnes of emissions from the activity that may be in-

cluded in any information submitted under
section 161D(1)(e)(ii) and (iii)

MWh is the number of megawatt hours of elec-
tricity used when the activity is carried out

pEAF is a prescribed electricity allocation fac-
tor; and

- “(b) the emissions that may not be included in any informa-
tion provided under **section 161D(1)(e)(ii) and (iii)**
must include (but are not limited to) emissions result-
ing from—
 - “(i) the use of machinery and equipment, and other
processes, that are not integral to, nor essential
to, the physical, chemical, biological, or other
transformation taking place when the activity is
carried out; and
 - “(ii) any extraction or production of raw materials that
are subsequently used when the activity is carried
out; and
 - “(iii) the transportation of inputs used in the activity
to storage at the location where the activity is
carried out; and
 - “(iv) the transportation of outputs of the activity from
storage at the location where the activity is car-
ried out to another location; and
 - “(v) the transportation of intermediate products be-
tween different locations where the activity is
carried out; and
 - “(vi) operations that are complementary to the activ-
ity, including (but not limited to) packaging, head
office operations, and administration and mar-
keting (whether carried out at the same location
where the activity is carried out or at another lo-
cation); and
 - “(vii) the generation of electricity at the location where
the activity is carried out; and
- “(c) before giving notice of the emissions that must be in-
cluded in, or excluded from, any information provided
in accordance with a notice issued under **section**
161D, the Minister must have regard to the following
matters:
 - “(i) the matters listed in **subsection (1)**; and
 - “(ii) the desirability of all notices given under **sec-**
tion 161D being consistent with respect to the
classes of included and excluded emissions that
are specified in the notices.

“(3) If an activity specified in a notice under **section 161D** was carried out by any person in each of the financial years 2006/07, 2007/08, and 2008/09, then the notice must specify those financial years as the financial years for which information must be provided in accordance with the notice.

“**161F Consultation on activities that may be prescribed as eligible industrial activities**

- “(1) If an activity is treated as meeting the criteria specified in **section 161A(3)(a)** because it is an Australian eligible industrial activity, then before recommending the making of a regulation under **section 161A** prescribing the activity as an eligible industrial activity, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulation made in accordance with the recommendation.
- “(2) Before notifying an activity in the *Gazette* under **section 161D**, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or the representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by the description of the activity to be notified.
- “(3) The processes for consultation under **subsections (1) and (2)** must include—
- “(a) giving adequate and appropriate notice of the proposed terms and conditions of the recommendation or the notice and the reasons for them; and
 - “(b) the provision of a reasonable opportunity for interested persons to consider the proposed terms and conditions of the recommendation or the notice and make submissions; and
 - “(c) adequate and appropriate consideration of submissions.
- “(4) A failure to comply with this section does not affect the validity of—
- “(a) any regulations made under **section 161A**; or
 - “(b) any *Gazette* notices issued under **section 161D**.
- “(5) The Minister is not required to consult under **subsection (2)** if the Minister issues a notice under **section 161D** for the sole purpose of requiring persons to provide electricity-related contracts or any information related to those contracts.

“161G Regulations in relation to eligible agricultural activities

- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- “(a) prescribing in respect of each eligible agricultural activity, as appropriate,—
 - “(i) the product or products of the activity:
 - “(ii) an allocative baseline for each product:
 - “(b) prescribing, for the purpose of **subsection (2)**,—
 - “(i) a methodology or methodologies for calculating—
 - “(A) the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the prescribed product or products in the prescribed years; and
 - “(B) the total amount of each prescribed product produced from the eligible agricultural activity in the prescribed years; and
 - “(ii) the year or years for the purposes of **subparagraph (i)**:
 - “(c) prescribing a methodology or methodologies for calculating the amount of any prescribed product of an eligible agricultural activity for the purposes of **sections 86 and 161H**:
 - “(d) prescribing information that must be kept for the purposes of **section 86DA**.
- “(2) For the purposes of **subsection (1)(a)(ii)**, the allocative baseline for each prescribed product of an eligible agricultural activity must be calculated using the following formula:

$$AB = \sum(E) / \sum(PDCT)$$

where—

AB is the allocative baseline for the product

E is the total number of tonnes of methane and nitrous oxide emissions that resulted from the eligible agricultural activity carried out to produce the product in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

PDCT is the total amount of the product produced from the eligible agricultural activity in the prescribed year or years, calculated in accordance with methodologies prescribed in regulations made under this Act

Σ is the symbol for the summation of E for the year or years for which E must be calculated (as prescribed by

regulations made under this Act) and of PDCT for the year or years for which PDCT must be calculated (as prescribed in regulations made under this Act)).

- “(3) Before recommending the making of a regulation under **subsection (1)** prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of the persons) that appear to the Minister or the chief executive likely to be substantially affected by any regulation made in accordance with the recommendation.
- “(4) The process for consultation under **subsection (3)** must include—
- “(a) giving adequate and appropriate notice of the proposed allocative baseline or baselines and the reasons for them; and
 - “(b) the provision of a reasonable opportunity for interested persons to consider the proposed allocative baseline or baselines and make submissions; and
 - “(c) adequate and appropriate consideration of submissions.
- “(5) A failure to comply with **subsections (3) and (4)** does not affect the validity of any regulations made under **subsection (1)**.
- “(6) Despite **section 4**, in this section and **section 161H**, **eligible agricultural activity**—
- “(a) means any activity or subclass of any activity listed in Part 5 of Schedule 3; but
 - “(b) excludes any activity or subclass of any activity listed in subpart 2 or 4 of Part 5 of Schedule 3, unless an Order in Council has been made under section 2A(8) or (9) in respect of any such activity or subclass of activity.

“161H Power to request information showing output from eligible agricultural activities

- “(1) The Minister may, after 1 January 2011, by notice in the *Gazette*,—
- “(a) specify an eligible agricultural activity in respect of which information must be provided under **paragraph (d)**:
 - “(b) specify, in respect of the eligible agricultural activity specified under **paragraph (a)**, the product or products of the eligible agricultural activity in respect of which the information must be provided under **paragraph (d)**:
 - “(c) specify the year or years for which information must be provided under **paragraph (d)**:

- “(d) require any person carrying out the eligible agricultural activity on the date of the notice to provide to the Minister information that shows the amount of each specified product from the activity specified by the person in the year or years specified in the notice, determined (if relevant) in accordance with any prescribed methodologies:
 - “(e) specify the date by which the information specified in the notice must be provided to the Minister, which must be no earlier than 30 working days from the date of the notice.
- “(2) If a person who is required to comply with a notice given under **subsection (1)** fails to provide the required information by the date specified in the notice, the Minister may give written notice to the person that requires the information to be provided within 10 working days advises the person that a failure to provide the information within that time period will render the person ineligible for an allocation of New Zealand units in respect of the activity.
- “(3) Despite anything in this Act, if notice is given under **subsection (1)** requiring a person to provide information with respect to an eligible agricultural activity, the following persons are not eligible to be allocated New Zealand units under **subpart 2** in respect of the eligible agricultural activity:
- “(a) any person who—
 - “(i) carried out the activity at the date of the notice given under **subsection (1)**; and
 - “(ii) failed, without reasonable excuse, to supply the data and information required by the date specified in the notice given under **subsection (2)**; and
 - “(b) any associated person of a person referred to in **paragraph (a)**.
- “(4) A *Gazette* notice under **subsection (1)** is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.”

Clause 41(2)

To omit this subclause (lines 24 to 26 on page 65) and substitute the following subclause:

- (2) Section 168(1)(ca) is amended by omitting “, which must be no later than 1 July 2010”.

Clauses 43 to 49

To omit these clauses (line 1 on page 66 to line 7 on page 83) and substitute the following clauses:

- 43 Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land**
- (1) Section 183(1)(a) and (b) and (2)(c) are amended by omitting “section 71” and substituting in each case “**section 73**”.
 - (2) Section 183(3)(a)(ii) is amended by omitting “, which must be no later than 1 July 2010”.
- 44 Exemptions for deforestation of land with tree weeds**
- (1) Section 184(1) is amended by repealing paragraph (a) and substituting the following paragraph:
 - “(a) a forest species growing on the land, or that was cleared from the land as part of the deforestation process on or after 1 January 2008, is or was a specified type of tree weed; and”.
 - (2) Section 184(1) is amended by repealing paragraph (b) and substituting the following paragraph:
 - “(b) no allocation of units to a landowner has been made in respect of the land under the pre-1990 forest land allocation plan.”
 - (3) Section 184(2)(b) is amended by omitting “priorities” and substituting “criteria and priorities”.
 - (4) Section 184(2) is amended by adding “; and” and also by adding the following paragraph:
 - “(d) the number of whole tonnes of emissions from the deforestation of the specified types of tree weed that will be covered by exemptions granted in relation to the notice.”
 - (5) Section 184(3) is amended by inserting “or was” after “there is”.
 - (6) Section 184(4)(d) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
 - “(ii) a forest species growing on the land, or that grew on the land before it was cleared as part of the deforestation process, is or was a specified type of tree weed; and”.
 - (7) Section 184(5) is amended by omitting “priorities in” and substituting “criteria, and priorities in, and the number of whole tonnes of emissions that are to be covered by exemptions granted in respect of,”.
 - (8) Section 184(5)(b) is amended by omitting “the land” and substituting “any land”.

- (9) Section 184 is amended by repealing subsection (6) and substituting the following subsection:
- “(6) The clearing of tree weeds on exempt land that has not been cleared before the land was declared exempt land must be—
- “(a) commenced within 24 months of the date of notification of the exemption; and
- “(b) completed by the end of—
- “(i) the first commitment period, if the exemption is granted in that commitment period; or
- “(ii) any subsequent commitment period in which the exemption is granted; or
- “(iii) if there is no subsequent commitment period,—
- “(A) the 5-year period commencing on 1 January 2013, if the exemption is granted in that 5-year period; or
- “(B) any subsequent 5-year period, after the period in **subsubparagraph (A)**, in which the exemption is granted.”
- (10) Section 184 is amended by repealing subsection (9) and substituting the following subsection:
- “(9) For the purposes of this section, **tree weed** means a tree that is defined or designated as—
- “(a) a pest in a pest management strategy under the Biosecurity Act 1993; or
- “(b) a tree weed in regulations made under this Act.”

45 Conditions on registration as participant in respect of certain activities relating to post-1989 forest land

- (1) Section 187(3) is amended by omitting “and subject to sections 191 and 193,”.
- (2) Section 187 is amended by adding the following subsection:
- “(4) A person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land unless—
- “(a) any action taken by the person in respect of the post-1989 forest land since 1 January 2008 (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949 that was in force at the time the action was taken; and
- “(b) if the post-1989 forest land is subject to a pest management strategy under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the person—
- “(i) has complied with the requirements; or

“(ii) verified that any other person required to comply with the requirements has done so.”

46 Registration as participant in respect of post-1989 forest land

(1) Section 188(1) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) must be accompanied by a declaration, in the prescribed form, that—

“(i) any action taken by the applicant since 1 January 2008 in relation to the post-1989 forest land in respect of which the application is submitted (including, but not limited to, removal of any existing vegetation before planting of a forest species on the land) complied with the Resource Management Act 1991, including any plan under that Act, or the Forests Act 1949, that was in force at the time the action was taken; and

“(ii) if the post-1989 forest land is subject to a pest management strategy under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the applicant has—

“(A) complied with the requirements; or

“(B) verified that any other person required to comply with the requirements has done so; and”.

(2) Section 188 is amended by repealing subsection (2) and substituting the following subsection:

“(2) The chief executive must, for every person who is a participant in respect of an activity listed in Part 1 of Schedule 4, keep a record of—

“(a) the carbon accounting area or areas in respect of which the person is a participant; and

“(b) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated in accordance with **section 190(2)**.”

(3) Section 188(3)(a)(i) is amended by inserting “or areas” after “area”.

(4) Section 188(3)(a)(ii) is amended by omitting “a carbon accounting area” and substituting “any carbon accounting area or areas”.

(5) Section 188(3)(b) is amended by inserting “, as soon as practicable,” after “must”.

(6) Section 188(6)(b) is amended by repealing subparagraph (ii) and substituting the following subparagraphs:

- “(ii) update the participant’s record to reflect the addition of the carbon accounting area; and
“(iii) notify the participant accordingly.”
- (7) Section 188(7)(b) is amended by repealing subparagraph (ii) and substituting the following subparagraphs:
“(ii) update the participant’s record to reflect,—
“(A) if a carbon accounting area is removed or the person has ceased to carry out the activity in respect of all of the carbon accounting area, the removal of the carbon accounting area from the post-1989 forest land in respect of which the person is recorded as a participant; or
“(B) if land has been removed from a carbon accounting area or the person has ceased to carry out the activity in respect of part of a carbon accounting area, a new carbon accounting area constituted from the remaining land and the unit balance of the new carbon accounting area determined in accordance with **section 190(3)(b)**; and
“(iii) notify the participant accordingly.”
- (8) Section 188 is amended by repealing subsection (8) and substituting the following subsection:
“(8) A change made to the participant’s record under **subsection (6)(b)(ii), or (7)(b)(ii)** has effect on and after the date of the relevant notice given under **subsection (6)(b)(iii), or (7)(b)(iii)**, as the case may be.”
- (9) Section 188 is amended by repealing subsection (9) and substituting the following subsections:
“(9) **Subsection (10)** applies if a person terminates a forest sink covenant registered under section 67ZD of the Forests Act 1949 and then registers as a participant in respect of the post-1989 forest land that was covered by the covenant.
- “(10) If this subsection applies,—
“(a) despite section 57(8), the person registering as a participant is to be treated as being a participant in respect of the land formerly the subject of the covenant on and after the date the covenant was registered on the land under section 67ZD of the Forests Act 1949; and
“(b) for the purposes of sections 189 to **194**, any units transferred by or to the Crown in respect of the post-1989 forest land while it was the subject of the forest sink covenant must be treated as New Zealand units transferred for removals or surrendered for emissions from the land under this Act; and

“(c) the post-1989 forest land formerly the subject of the covenant constitutes a single carbon accounting area in respect of which the person is registered as a participant for the purposes of **subsection (2)**.”

47 Emissions returns for post-1989 forest land activities

(1) Section 189(2) is amended by adding “; and” and also by adding the following paragraph:

“(d) may submit an emissions return in accordance with subsection (4A), if—

“(i) the person is considering entering into a transaction described in **section 192(1)(a) or (b)**; or

“(ii) the expiry of an interest referred to in **section 192(1)(c)** is imminent; or

“(iii) within 20 working days after applying under section 188(3)(a)(i) to remove a carbon accounting area from the land in respect of which the person is recorded as carrying out an activity listed in Part 1 of Schedule 4 or being removed from the register as a participant in respect of all the land in respect of an activity listed in Part 1 of Schedule 4, the person applies to—

“(A) add a carbon accounting area or areas consisting of all the post-1989 forest land that was the subject of the application under section 188(3)(a)(i); or

“(B) register as a participant under section 57 in relation to all the post-1989 forest land in respect of which the person had ceased to be registered as a participant.”

(2) Section 189(3) is amended by—

(a) inserting “on 1 occasion,” after “applies may,”;

(b) omitting “before” and substituting “on or before”.

(3) Section 189(3)(c)(i) is amended by inserting the following subsubparagraph after subsubparagraph (B):

“(BA) the date of constitution of the carbon accounting area (as specified in **section 190(5)**), if the carbon accounting area was constituted following removal of land from a carbon accounting area under **section 188(7)(b)(ii)(B)** or transmission of an interest under **section 192(3)(b)**; or”.

(4) Section 189(4)(b)(i)(B) is amended by omitting “; and” and substituting “; or” and also by adding the following subsubparagraphs:

- “(C) the date of constitution of the carbon accounting area (as specified in **section 190(5)**), if the carbon accounting area was constituted following removal of land from a carbon accounting area under **section 188(7)(b)(ii)(B)** or transmission of an interest under **section 192(3)(b)**; or
- “(D) the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under **subsection (4A)**, if an emissions return has been submitted under that subsection in relation to the carbon accounting area during the mandatory emissions return period; and”.
- (5) Section 189 is amended by inserting the following subsection after subsection (4):
- “(4A) A person to whom this section applies may, in the circumstances in **subsection (2)(d)**, submit an emissions return in respect of any carbon accounting area to which a proposed transaction, or expiry of an interest, or an application under section 58, 59, or 188(3)(a)(i) relates that is in respect of the period—
- “(a) commencing on the latest of—
- “(i) the first day of the mandatory emissions return period in which the return is submitted; or
- “(ii) the date on which the land in the carbon accounting area became post-1989 forest land; or
- “(iii) the date of constitution of the carbon accounting area (as specified in **section 190(5)**), if the carbon accounting area was constituted following removal of land from a carbon accounting area under **section 188(7)(b)(ii)(B)** or transmission of an interest under **section 192(3)(b)**; or
- “(iv) if an emissions return has already been submitted under this subsection in relation to the carbon accounting area during the mandatory emissions return period, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under this subsection; and
- “(b) ending on the date of submission of the emissions return.”
- (6) Section 189 is amended by repealing subsection (5) and substituting the following subsection:
- “(5) An emissions return submitted under subsection (3), (4), or **(4A)**—

- “(a) must, in respect of each carbon accounting area covered by the return,—
 - “(i) record the activity in respect of which the person is recorded as a participant for the carbon accounting area; and
 - “(ii) record the emissions and removals from the carbon accounting area during the emissions return period as calculated under section 62(b) and, if required, as verified under section 62(c); and
 - “(iii) contain an assessment of the participant’s gross liability to surrender units for emissions or entitlement to receive New Zealand units for removals from the carbon accounting area that takes into account **sections 188(10) and 190(1)**, but does not take into account any returns under subsection (3) that cover part of the same period as the emissions return; and
 - “(iv) contain the information required by subsection (6), if relevant; and
 - “(v) contain an assessment of the participant’s net liability to surrender units in respect of emissions or entitlement to receive New Zealand units for removals from the carbon accounting area during the emissions return period, taking into account **sections 188(10) and 190(1)** and subsections (6) and (7); and
 - “(b) may contain an assessment of the participant’s net liability to surrender or repay units or net entitlement to receive New Zealand units in respect of all carbon accounting areas covered by the return, as referred to in subsection (8); and
 - “(c) must be—
 - “(i) accompanied by—
 - “(A) the prescribed fee (if any); and
 - “(B) any prescribed information; and
 - “(ii) signed by the participant; and
 - “(iii) submitted in the prescribed manner and format.”
- (7) Section 189(6)(b)(ii) is amended by omitting “net” and substituting “gross”.
- (8) Section 189(6)(b)(ii) is amended by adding “as recorded under **subsection (5)(a)(iii)**”.
- (9) Section 189 is amended by inserting the following subsection after subsection (7):
- “(7A) Subsections (6) and (7) apply to a return submitted under **subsection (4A)** as if it were a return submitted under subsection (4).”

48 New sections 190 to 193 substituted

Sections 190 to 193 are repealed and the following sections substituted:

“190 Special rules regarding surrender of units in relation to post-1989 forest land

“(1) Despite section 63, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4 is not liable to surrender more units in relation to any carbon accounting area or part of a carbon accounting area than the unit balance of that carbon accounting area or part of a carbon accounting area.

“(2) The unit balance of a carbon accounting area must be calculated in accordance with the following formula:

$$UB = (A - B) + OUB$$

where—

UB is the unit balance of the carbon accounting area

A is the net number of New Zealand units transferred for removals from the carbon accounting area since the date it was constituted (that is, the number of units transferred for removals less any units repaid under section 123(6) or 189(8))

B is the net number of New Zealand units surrendered for emissions from the carbon accounting area since the date it was constituted (that is, the number of units surrendered, less any units reimbursed under section 124 or 189(7))

OUB is,—

(a) if the carbon accounting area is constituted from land from another carbon accounting area (following the removal of land from a carbon accounting area, or transmission of an interest as defined in **section 192**), the opening unit balance of the carbon accounting area, as determined in accordance with **subsection (3)**; or

(b) if the carbon accounting area is not constituted as described in **paragraph (a)**, but is constituted from land that was subject to a forest sink covenant under section 67ZD of the Forests Act 1949, the net number of units transferred in respect of the land in the carbon accounting area while it was the subject of the forest sink covenant; or

(c) if the carbon accounting area is not constituted from land from another carbon accounting area

or land that was subject to a forest sink covenant,
zero.

- “(3) The following provisions apply if a person is required by this subpart to calculate the unit balance of a newly constituted carbon accounting area:
- “(a) if a carbon accounting area (CAA2) has been constituted under **section 192(3)(b)(iii)** from the land remaining in an affected carbon accounting area (CAA1) following transmission of an interest in part of the CAA1, the person must calculate the opening unit balance of CAA2 in accordance with **subsection (4)**, and for the purposes of that calculation—
- “(i) H is the number of hectares of post-1989 forest land in CAA1; and
- “(ii) H_p is the number of hectares of post-1989 forest land in CAA2; and
- “(iii) UB is the unit balance of CAA1 calculated in accordance with **subsection (2)** (and includes any units transferred or surrendered in respect of the removals or emissions reported in the emissions return submitted under **section 193(1)**); and
- “(iv) UB_p is the opening unit balance for CAA2 for the purposes of **subsection (2)**:
- “(b) if a carbon accounting area (CAA2) has been constituted under **section 188(7)(b)(ii)(B)** from the land remaining in a carbon accounting area (CAA1) because the person has removed land from CAA1 or ceased carrying out an activity listed in Part 1 of Schedule 4 in respect of part of CAA1, the opening unit balance of CAA2 is the figure calculated under **section 191(4)** for UB_r for the purposes of the person’s emissions return under **section 191(3)**:
- “(c) if a carbon accounting area (CAA2) has been constituted by operation of **section 192(3)(b)(ii)**, the person must calculate the opening unit balance of CAA2 by—
- “(i) calculating the unit balance of any whole carbon accounting areas that form part of CAA2 in accordance with **subsection (2)**, including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under **section 193(1)**; and
- “(ii) calculating the unit balance of any part carbon accounting area that forms part of CAA2 in accordance with **subsection (4)**, and for the purposes of that calculation—

- “(A) H is the number of hectares of post-1989 forest land in the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest; and
- “(B) Hp is the number of hectares of post-1989 forest land in the part carbon accounting area; and
- “(C) UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part before the transmission of the interest, including (but not limited to) any units transferred or surrendered in respect of the removals or emissions reported in the emissions return under **section 193(1)**; and
- “(iii) adding together the unit balances obtained under **subparagraphs (i) and (ii)**.
- “(4) The unit balance of part of a carbon accounting area must be calculated in accordance with the following formula:
- $$UBp = UB/H \times Hp$$
- where—
- UBp is the unit balance of the part of the carbon accounting area
- UB is the unit balance of the carbon accounting area of which the part carbon accounting area formed a part, calculated in accordance with **subsection (2)**
- H is the number of hectares in the carbon accounting area of which the part carbon accounting area formed a part
- Hp is the number of hectares in the part of the carbon accounting area for which a unit balance is calculated.
- “(5) For the purposes of this section,—
- “(a) units transferred for removals, surrendered, repaid, or reimbursed in respect of a carbon accounting area include units that a person would have been entitled to receive, or would have been required to surrender or repay, in respect of a carbon accounting area, but which were not actually transferred, surrendered, repaid, or reimbursed because of an election under section 189(8); and
- “(b) the date that a carbon accounting area is constituted is—
- “(i) the date the person’s registration as a participant in respect of the activity in the application took effect in accordance with section 57(8) for a car-

- bon accounting area defined in an application referred to in section 188(1); and
- “(ii) the date the participant’s record is updated under **section 188(6) or (7)** for a carbon accounting area where land has been removed from a carbon accounting area, a person has ceased to carry out the activity on part of a carbon accounting area, or a person has applied to add a carbon accounting area under **section 188(3)(a)(i)**; and
- “(iii) the date the carbon accounting area was constituted under that section for a carbon accounting area constituted by operation of **section 192(3)(b)**; and
- “(c) **hectare** includes any fraction of a hectare.

“191 Ceasing to be registered as participant in respect of post-1989 forest land

- “(1) Subject to **section 193**, a person who is or was a participant in respect of an activity listed in Part 1 of Schedule 4—
- “(a) must submit an emissions return to the chief executive within 20 working days of—
- “(i) being removed from the register in respect of that activity; or
- “(ii) removing a carbon accounting area or ceasing to be a participant in respect of a carbon accounting area in respect of which the person is recorded as a participant under section 188; or
- “(iii) removing land from a carbon accounting area or ceasing to carry out the activity in respect of part of a carbon accounting area in respect of which the person is recorded as a participant under section 188; and
- “(b) is, in respect of any carbon accounting area,—
- “(i) required to be covered by the return under **subsection (2)**, liable to surrender the unit balance of the carbon accounting area; and
- “(ii) required to be covered by the return under **subsection (3)**,—
- “(A) liable to surrender the unit balance relating to any land removed from the carbon accounting area or on which the person has ceased to carry out the activity, plus or minus any units that the person is required to surrender for emissions or entitled to receive for removals in respect of the land

- remaining in the carbon accounting area, as calculated under **subsection (4)**; or
- “(B) entitled to receive the number of units assessed as the participant’s entitlement for removals from the land remaining in the carbon accounting area, less the unit balance relating to any land removed from the carbon accounting area or upon which the person has ceased to carry out the activity, calculated under **subsection (4)**.
- “(2) An emissions return submitted under this section—
- “(a) must,—
- “(i) if **subsection (1)(a)(i)** applies, be in respect of all the carbon accounting areas in respect of which the person is or was recorded as a participant in relation to that activity; or
- “(ii) if **subsection (1)(a)(ii)** applies, be in respect of the carbon accounting area or areas being removed in respect of which the person is ceasing to be a participant; and
- “(b) must record the unit balance of each carbon accounting area required to be covered by the return under **paragraph (a)**, calculated in accordance with **section 190(2)**.
- “(3) An emissions return submitted under this section because **subsection (1)(a)(iii)** applies must—
- “(a) be in respect of each carbon accounting area from which land is removed or in respect of which the person is ceasing to carry out the activity on part of the land in the carbon accounting area; and
- “(b) for each carbon accounting area required to be covered by the return under **paragraph (a)**, be for the period,—
- “(i) commencing on the latest of—
- “(A) the first day of the mandatory emissions return period (as defined in section 189(9)) in which the land was removed from the carbon accounting area (or the person ceased to carry out the activity on part of the land in the carbon accounting area); or
- “(B) the date on which the land in the carbon accounting area became post-1989 forest land; or
- “(C) the date of constitution of the carbon accounting area (as specified in **section 190(5)**), if the carbon accounting area was constituted following removal of land

- from a carbon accounting area under **section 188(7)(b)(ii)(B)** or transmission of an interest under **section 192(3)(b)**; or
- “(D) if an emissions return has been submitted under **section 189(4A)** in relation to the carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and
- “(ii) ending on the date the land is removed from the carbon accounting area or the person ceases to carry out the activity on part of the land in the carbon accounting area; and
- “(c) in respect of each carbon accounting area required to be covered by the return under **paragraph (a)**,—
- “(i) comply with **section 189(5)(a)** and (6), as if any references in section 189(6) to subsection (4) of that section were references to this section; and
- “(ii) record the notional unit balance of the carbon accounting area, calculated by taking the unit balance of the carbon accounting area (as calculated under **section 190(2)**) before submission of the return under this section and, if the assessment recorded in the return under **section 189(5)(a)(v)** shows the person would be—
- “(A) entitled to receive units in respect of removals from the carbon accounting area during the emissions return period, adding that number of units to the unit balance; or
- “(B) liable to surrender units in respect of emissions from the carbon accounting area during the emissions return period, subtracting that number of units from the unit balance; and
- “(iii) record the person’s assessment of the person’s net liability to surrender units or entitlement to receive units in respect of the post-1989 forest land being removed from and the land remaining in the carbon accounting area calculated in accordance with **subsection (4)**.
- “(4) Net liability to surrender units or entitlement to receive units in respect of a carbon accounting area required to be covered by the return under **subsection (3)(a)** must be calculated in accordance with the following formula:

$$X = UB_{CAA} - UB_r$$

where—

- X is,—
- (a) if positive, the number of units the person must surrender in respect of the land being removed from the carbon accounting area or upon which the person has ceased to carry out the activity (as adjusted by any units required to be surrendered for emissions, or units to which the person is entitled for removals, from the land remaining in the carbon accounting area); or
 - (b) if negative, the number of units to which the person is entitled in respect of removals from the land remaining in the carbon accounting area (as adjusted by any units required to be surrendered for the land being removed from the carbon accounting area or in respect of which the person has ceased to carry out the activity)

UB_{CAA} is the unit balance of the carbon accounting area before the removal of the land and submission of the return under this section, calculated in accordance with **section 190(2)**

UB_r is the unit balance of the land remaining in the carbon accounting area calculated as follows:

$$UB_r = (NUB_{CAA}/H_{CAA}) \times H_r$$

where—

NUB_{CAA} is the notional unit balance of the carbon accounting area calculated under **subsection (3)(c)(ii)**

H_{CAA} is the number of hectares in the carbon accounting area before removal of the land or before the person ceased to carry out the activity in respect of part of the land

H_r is the number of hectares in the carbon accounting area, less the number of hectares being removed or in respect of which the person has ceased to carry out the activity.

- “(5) If a person submits an emissions return under **subsection (3)**, section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section.
- “(6) Section 189(8) applies to a person who submits an emissions return under this section with any necessary modifications.
- “(7) An emissions return submitted under this section must be—
 - “(a) submitted in the prescribed manner and format; and
 - “(b) accompanied by any prescribed fee and any other prescribed information.

“192 Effect of transmission of interest in post-1989 forest land

“(1) This section applies—

- “(a) if, subject to **section 157A(4)**, a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part A of the following table transfers, including by way of sale, assignment, or by operation of law, all or any of the interest described in the second column of Part A of the table to a person described in the third column of Part A of the table:
- “(b) if a person registered as a participant in respect of an activity listed in Part 1 of Schedule 4 and who is described in the first column of Part B of the following table grants an interest or enters into a contract described in the second column of Part B of the table:
- “(c) if an interest described in the second column of Part C of the following table expires or is terminated, and the person described in the first column of Part C of the table is, in relation to that interest, registered as a participant in respect of an activity listed in Part 1 of Schedule 4:

Part A

Existing participant	Interest transferred	New participant	New activity in Part 1 of Schedule 4
Landowner of post-1989 forest land	Post-1989 forest land in respect of which the person is recorded as a participant	New land owner	Owning post-1989 forest land
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	New forestry right holder	Holding a registered forestry right over post-1989 forest land

Part A

Existing participant	Interest transferred	New participant	New activity in Part 1 of Schedule 4
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	New lessee	Being the leaseholder under a registered lease of post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	New party to the Crown conservation contract	Being a party to a Crown conservation contract

Part B

Existing participant	Interest entered into	New participant	New activity in Part 1 of Schedule 4
Land owner of post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Holder of a registered forestry right over post-1989 forest land	Being the holder of a registered forestry right over post-1989 forest land

Part B

Existing participant	Interest entered into	New participant	New activity in Part 1 of Schedule 4
Landowner of post-1989 forest land	Registered lease of post-1989 forest land in respect of which the person is recorded as a participant	Lessee under a registered lease of post-1989 forest land	Being a lessee under a registered lease of post-1989 forest land
Landowner of Crown land that is post-1989 forest land	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Party to the Crown conservation contract	Being a party to a Crown conservation contract

Part C

Existing participant	Interest expired or terminated	New participant	New activity in Part 1 of Schedule 4
Holder of a registered forestry right over post-1989 forest land	Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land

Part C

Existing participant	Interest expired or terminated	New participant	New activity in Part 1 of Schedule 4
Leaseholder under a registered lease of post-1989 forest land	Registered lease over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land
Party to a Crown conservation contract	Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant	Landowner of the post-1989 forest land	Owning post-1989 forest land.

- “(2) In **subsections (1) and (3) to (7) and section 193**,—
- “(a) **affected carbon accounting area**—
- “(i) means a carbon accounting area that contains post-1989 forest land to which a transmitted interest relates; and
- “(ii) includes, where a transmitted interest relates to post-1989 forest land in part of a carbon accounting area, that carbon accounting area:
- “(b) each of the persons described in the first column of the table in **subsection (1)** is a **transferor**:
- “(c) each of the persons described in the third column of the table in **subsection (1)** is a **transferee**:
- “(d) **transmitted interest** means,—
- “(i) in the circumstances described in **subsection (1)(a)**, the post-1989 forest land, registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is transferred:
- “(ii) in the circumstances described in **subsection (1)(b)**, the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that is granted or entered into:

- “(iii) in the circumstances described in **subsection (1)(c)**, the interest in the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract that has expired or been terminated:
- “(e) **date of transmission** means,—
 - “(i) in the circumstances described in **subsection (1)(a)**, the date of transfer of—
 - “(A) the post-1989 forest land:
 - “(B) the registered forestry right over post-1989 forest land:
 - “(C) the registered lease of post-1989 forest land:
 - “(D) the Crown conservation contract:
 - “(ii) in the circumstances described in **subsection (1)(b)**, the date of registration of the registered forestry right over post-1989 forest land, the date of registration of the registered lease of post-1989 forest land, or the date the Crown conservation contract is entered into:
 - “(iii) in the circumstances described in **subsection (1)(c)**, the date that the registered forestry right over post-1989 forest land, registered lease of post-1989 forest land, or Crown conservation contract expires or is terminated.
- “(3) If this section applies, then,—
 - “(a) within 20 working days of the date of transmission of the transmitted interest,—
 - “(i) the transferor and transferee must notify the chief executive of the transmission; and
 - “(ii) the transferor must submit an emissions return as required by **section 193** in relation to any affected carbon accounting areas; and
 - “(b) from the date of transmission,—
 - “(i) the transferor ceases to be a participant under this Act in relation to the post-1989 forest land to which the transmitted interest relates and the transferee becomes a participant in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in **subsection (1)** in relation to the post-1989 forest land to which the transmitted interest relates; and
 - “(ii) the area of post-1989 forest land to which the transmitted interest relates constitutes a new carbon accounting area in respect of which the transferee is the participant; and

- “(iii) any post-1989 forest land remaining in an affected carbon accounting area and to which the transmitted interest does not relate constitutes a new carbon accounting area in respect of which the transferor is the participant.
- “(4) If this section applies because a transmitted interest has been transmitted by operation of law, then—
- “(a) the notice given under **subsection (3)(a)(i)** must be given as soon as practicable after the date of transmission; and
- “(b) the emissions return required under **section 193** must be submitted as soon as possible after the date of the transmission.
- “(5) A notice given under **subsection (3)(a)(i)** must be—
- “(a) in the prescribed form; and
- “(b) accompanied by any prescribed fees or charges and any prescribed information; and
- “(c) signed by both the transferor and the transferee.
- “(6) Following receipt of a notice complying with **subsection (5)** and the emissions return required under **section 193**, the chief executive must take such of the following actions as are relevant:
- “(a) if the transferee is not already registered under section 57, enter the transferee’s name on the register kept under section 57 as a participant in respect of an activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in **subsection (1)**:
- “(b) if the transferee is already registered under section 57, but not in respect of the activity listed in Part 1 of Schedule 4 that is referred to in the fourth column of the table in **subsection (1)**, amend that registration to show that the transferee is now a participant in respect of that activity:
- “(c) if the transferor is registered under section 57 only in respect of carrying out the activity listed in Part 1 of Schedule 4 in respect of post-1989 forest land to which the transmitted interest relates, remove the transferor’s name from the register in respect of that activity:
- “(d) update the chief executive’s records under **section 188(2)** by—
- “(i) removing the affected carbon accounting areas from the transferor’s record (if the transferor remains a participant only in respect of an activity listed in Part 1 of Schedule 4); and

- “(ii) recording any new carbon accounting areas constituted by operation of **subsection (3)(b)(ii) or (iii)** on the transferor’s or transferee’s record; and
 - “(iii) recording the opening unit balance of any carbon accounting area referred to in **subparagraph (ii)**, calculated in accordance with **section 190(3)(a) or (c)**:
 - “(e) as applicable, give notice to the transferor and transferee of the action taken by the chief executive under **paragraphs (a) to (d)**.
- “(7) To avoid doubt,—
- “(a) for the purposes of section 54(4), a transferor continues to be liable in respect of any obligations that arose in relation to the carbon accounting area or part of the carbon accounting area while the transferor was a participant in respect of the post-1989 forest land to which the transmitted interest relates (for example, in respect of the submitting of returns and surrendering of units required under section 189); and
 - “(b) a transferor is not required to notify the chief executive separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity; and
 - “(c) the chief executive is not required to notify any person under section 188(6)(a) of the registration of the transferee under section 57 if that registration is in accordance with this section.

“193 Emissions returns in relation to transmitted interests

- “(1) If **section 192** applies, the transferor is not required to submit an emissions return under **section 191** in respect of any post-1989 forest land to which the transmitted interest relates, but must submit an emissions return under this section by the date specified in **section 192(3)(a) or 192(4)(b)**, as applicable.
- “(2) An emissions return under this section must—
 - “(a) be in respect of all affected carbon accounting areas; and
 - “(b) in respect of each carbon accounting area covered by the return, be for the period—
 - “(i) commencing on the latest of—
 - “(A) the first day of the mandatory emissions return period (as specified in section 189(9)) in which the interest was transmitted; or

- “(B) the date on which the land in the affected carbon accounting area became post-1989 forest land; or
- “(C) the date of constitution of the carbon accounting area (as specified in **section 190(5)**), if the carbon accounting area was constituted following removal of land from a carbon accounting area under **section 188(7)(b)(ii)(B)** or transmission of an interest under **section 192(3)(b)**; or
- “(D) if an emissions return has been submitted under **section 189(4A)** in relation to the affected carbon accounting area, the day after the end of the period covered by the last emissions return submitted for the carbon accounting area under that section; and
- “(ii) ending on the date of transmission; and
- “(c) comply with **section 189(5)** and (6), as if the references in those provisions to subsection (4) were references to this section.
- “(3) If a person submits an emissions return under this section,—
 - “(a) section 189(7) applies to the person as if the references in that provision to subsection (4) were references to this section; and
 - “(b) section 189(8) applies to the person as if the reference in that provision to ‘this section’ was a reference to **section 193**.”

49 Information about status of forest land

- (1) Section 194(2)(a) is amended by inserting “since the carbon accounting area or areas were constituted” after “request”.
- (2) Section 194(2) is amended by repealing paragraph (b) and substituting the following paragraph:
 - “(b) the unit balance of the carbon accounting area or areas covered by the information request.”
- (3) Section 194(2)(c) and (3) are repealed.

49A First emissions return for pre-1990 forest land activities

Section 196(2A) is amended by omitting “30 April” and substituting “31 May”.

Clause 52

To omit this clause (line 17 on page 83 to line 12 on page 84) and substitute the following clause:

52 Participant with respect to mining coal or natural gas

Section 204 is amended by adding the following subsections:

- “(3) Despite subsection (2)(a), **subsection (4)** applies if—
- “(a) a permit relating to mining coal is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the coal mined under the permit; or
 - “(b) a permit relating to mining natural gas is held by 2 or more persons jointly under terms that entitle the individual holders to a proportion of the gas mined under the permit.
- “(4) If this subsection applies,—
- “(a) **section 157** does not apply; and
 - “(b) each of the individual holders referred to in **subsection (3)**—
 - “(i) is to be treated as the person carrying out the activity referred to in subsection (1) in relation to any natural gas or coal (as applicable) to which the person is entitled under the permit; and
 - “(ii) must comply with the obligations of a participant under this Act in relation to the natural gas or coal (as applicable) to which the person is entitled under the permit.”

Clause 53: new section 205(1A)

To omit “New Zealand, within” (line 19 on page 84) and substitute “New Zealand,”.

To omit “shelf,” (line 20 on page 84) and substitute “shelf”.

Clause 54

To omit this section (lines 24 to 32 on page 84) and substitute the following clause:

54 New section 208 substituted

Section 208 is repealed and the following section substituted:

“208 Purchase of coal or natural gas from certain related companies of Part 3 of Schedule 3 participant

- “(1) For the purposes of the activities listed in Part 4 of Schedule 4, the reference to a participant who mines coal or natural gas includes the following persons:
- “(a) a wholly owned subsidiary of a participant who mines coal or natural gas:
 - “(b) a holding company of which a participant who mines coal or natural gas is a wholly owned subsidiary:

“(c) another wholly owned subsidiary of a holding company of which a participant who mines coal or natural gas is the wholly owned subsidiary.

“(2) In **subsection (1), subsidiary and holding company** have the same meaning as in section 5 of the Companies Act 1993.”

Clause 56: new section 213

New subsection (1): to omit “If the” (line 10 for page 85) and substitute “If an”.

New subsection (1)(b)(i): to omit “landowner” (line 24 for page 85) and substitute “person carrying out the activity”.

New subsection (1)(b)(ii): to omit “landowner” (line 29 for page 85) and substitute “person carrying out the activity”.

Clause 56: new section 214

To omit this section (lines 1 to 10 on page 86) and substitute the following section:

“214 Units not required to be surrendered for fertilisers embedded in products

A participant who carries out the activity listed in subpart 1 of Part 5 of Schedule 3 of importing or manufacturing synthetic fertilisers containing nitrogen is not required to surrender units in respect of any synthetic fertiliser containing nitrogen that—

- “(a) is permanently embedded in a product as part of a manufacturing process; and
- “(b) does not result in any emissions.”

Clause 57: new section 217(1)(b)

To omit “Parts 3 and” (line 19 on page 86) and substitute “Part 3 or”.

Clause 58

Subclause (2): to omit this subclause (line 31 on page 86 to line 3 on page 87) and to substitute the following subclause:

(2) Section 218(1)(a)(iii) is amended by omitting “2011; or” and substituting “2011:” and also by adding the following subparagraph:

“(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year commencing on a date appointed by Order in Council made under section 2A(8) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or”.

Subclause (5): new section 218(2)(ab): to insert after “carries out an activity” (line 9 on page 87) “specified”.

Subclause (6): to omit this subclause (lines 13 to 15 on page 87) and substitute the following subclause:

- (6) Section 218(2) is amended repealing paragraph (d) and substituting the following paragraph:
- “(d) is not required to comply, except as provided in **paragraph (ab)**, with any of the obligations of a participant under this Act in respect of the relevant activity and period in subsection (1).”

Clauses 59 to 61

To omit these clauses (lines 16 on page 87 to line 3 on page 94) and substitute the following clause:

59 Transitional provision for mandatory reporting by certain participants

- (1) Section 219(1)(a) is amended by repealing subparagraph (i) and substituting the following subparagraph:
- “(i) Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 in the period 1 January 2010 to 30 June 2010.”
- (2) Section 219(1)(a) is amended by repealing subparagraph (ii) and substituting the following subparagraph:
- “(ii) subpart 1 or 3 of Part 5 of Schedule 3 in the period 1 January 2012 to 31 December 2014.”
- (3) Section 219(1)(a)(iii) is amended by omitting “Schedule 3 and” and substituting “Schedule 3 or”.
- (4) Section 219(1)(a) is amended by omitting “2012; or” and substituting “2012.” and also by adding the following subparagraph:
- “(iv) subpart 2 or 4 of Part 5 of Schedule 3 in the year following the year commencing on a date appointed by Order in Council made under section 2A(8) or (9) (to the extent the order applies to persons carrying out an activity listed in those subparts) on and after which the relevant subpart applies to the person; or”.
- (5) Section 219(1) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) a person who is a participant in relation to an activity listed in Part 3 or 4 of Schedule 4 in the period 1 January 2010 to 30 June 2010.”
- (6) Section 219 is amended by adding the following subsections:
- “(3) In addition to the requirements specified in section 65, a person to whom **subsection (1)(a)(i) or (b)** applies must record in that person’s annual emissions return for the period 1 January 2010 to 31 December 2010 the emissions from the activity listed in Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 or

Part 3 or 4 of Schedule 4, calculated under section 62(b) and, if required, verified under section 62(c), for the period 1 July 2010 to 31 December 2010.

- “(4) For the purposes of calculating emissions for the period 1 July 2010 to 31 December 2010 under **subsection (3)**—
- “(a) references to a year in the Climate Change (Liquid Fossil Fuels) Regulations 2008 and the Climate Change (Stationary Energy and Industrial Processes) Regulations 2009 must be treated as references to the period 1 July 2010 to 31 December 2010; and
- “(b) the provisions of the regulations specified in **paragraph (a)** apply to emissions described in **subsection (3)** with any necessary modifications.
- “(5) **Subsections (3) and (4)** apply with any necessary modifications to a return that covers any part of the period 1 January 2010 to 31 December 2010 that is submitted under section 118 by a person to whom **subsection (1)(a)(i) or (b)** applies.”

60 New section 220 substituted

Section 220 is repealed and the following section substituted:

“220 Transitional provision relating to unit entitlements for subpart 1 or 3 of Part 2 of Schedule 4 participants

Despite anything in this Act,—

- “(a) a person who is a participant in respect of an activity listed in subpart 1 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2010 to 31 December 2010, or any other emissions return that relates to dates within the period 1 January 2010 to 30 June 2010, is not entitled to be transferred units under section 64 in relation to any removals from the activity reported in any return in respect of the period 1 January 2010 to 30 June 2010; and
- “(b) a person who is a participant in relation to an activity listed in subpart 3 of Part 2 of Schedule 4 and submits an annual emissions return for the period 1 January 2012 to 31 December 2012, or any other emissions return that relates to dates within that period, is not entitled to be transferred units under section 64 in relation to any removals from the activity reported in that return; and
- “(c) in addition to satisfying the requirements in section 65, a person to whom **paragraph (a)** applies must record removals calculated under section 62(b) and, if required, verified under section 62(c), for the period—
- “(i) 1 July 2010 to 31 December 2010, in the person’s annual emissions return for the period 1 January 2010 to 31 December 2010; and

- “(ii) 1 July 2010 to 31 December 2010, in any emissions return submitted under section 66 that covers the dates within that period; and
- “(iii) 1 July 2010 to 30 September 2010, in any emissions return submitted under section 66 that covers dates within that period.”

61 Additional transitional provisions for Part 3 of Schedule 4 participants

Section 221 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Despite section 198(2)(b), the registration of a person who registers as a participant in respect of an activity listed in Part 3 of Schedule 4—
 - “(a) before 1 January 2010, takes effect on 1 July 2010; and
 - “(b) on or after 1 January 2010 and before 1 July 2010, takes effect on the date that is 5 months after the date of entry of the person’s name as a participant in the register under section 57.”

61A New sections 222A to 222H inserted

The following sections are inserted after section 222:

“222A Transitional provision for liability to surrender units to cover emissions from activities relating to liquid fossil fuels, stationary energy, and industrial processes

- “(1) This section applies to a person who—
 - “(a) carries out an activity listed in Part 2, Part 3, or subpart 1 of Part 4 of Schedule 3 in the period 1 July 2010 to 31 December 2012; or
 - “(b) is a participant in relation to an activity listed in Part 3 or 4 of Schedule 4 in the period 1 July 2010 to 31 December 2012.
- “(2) Despite anything in this Act, a person to whom this section applies is only liable to surrender, and may only surrender, 1 unit for each 2 whole tonnes of emissions from the activity in respect of the period referred to in **subsection (1)**.

“222B Transitional provision for entitlement to receive New Zealand units for removal activities

- “(1) This section applies to a person who is—
 - “(a) a participant in respect of an activity listed in Part 2 of Schedule 4 in the period 1 July 2010 to 31 December 2012; and
 - “(b) entitled to receive units under section 64 in respect of that period.

“(2) Despite section 64, a participant to whom this section applies is entitled to receive only 1 New Zealand unit for each 2 whole tonnes of removals from the activity in respect of the period referred to in **subsection (1)**.

“**222C Transitional provision permitting payment of money instead of surrender of units to cover emissions**

“(1) This section applies if—

“(a) a person is required to surrender or repay units—

“(i) under section 65(4), 118(5), 189(8), or **193** for emissions from an activity listed in Part 1 of Schedule 3 or Part 1 of Schedule 4 in respect of any part of the period 1 January 2008 to 31 December 2012; or

“(ii) under section 65(4) or 118(5) for emissions from any other activity in respect of any part of the period 1 July 2010 to 31 December 2012; or

“(iii) under section 187 or **191** during the period 1 January 2008 to 31 January 2013; or

“(b) the chief executive is required under section 123(4) or 189(7)(d) to arrange for the reimbursement of units because a person has surrendered too many units—

“(i) for emissions from an activity listed in Part 1 of Schedule 3 or Part 1 of Schedule 4 in respect of any part of the period 1 January 2008 to 31 December 2012; or

“(ii) for emissions from any other activity in respect of any part of the period 1 July 2010 to 31 December 2012; or

“(iii) under section 187 or **191** during the period 1 January 2008 to 31 January 2013.

“(2) Despite anything in this Act, if this section applies, a person may satisfy the person’s obligation to surrender, repay, or reimburse units by,—

“(a) in the case of a person other than the chief executive,—

“(i) surrendering or repaying the units in accordance with section 65(4), 118(5), 187, 189(8), **191, or 193** as applicable; or

“(ii) paying a sum of \$25 for each unit that the person is liable to surrender or repay, into a Crown bank account, by the date or within the period by which the units are required to be surrendered or repaid; or

“(iii) a combination of—

- “(A) surrendering or repaying units in accordance with section 65(4), 118(5), 187, 189(8), **191, or 193** as applicable; and
 - “(B) paying a sum of \$25 for each unit that the person is liable to surrender or repay, but has not surrendered or repaid or will not surrender or repay in accordance with **subsubparagraph (A)**, into a Crown bank account by the date or within the period by which the units are required to be surrendered or repaid; or
 - “(b) in the case of the chief executive,—
 - “(i) reimbursing a person with units in accordance with the procedure specified in **section 124**; or
 - “(ii) paying a sum of \$25 for each unit into a bank account designated by the person; or
 - “(iii) a combination of—
 - “(A) reimbursing a person with units in accordance with the procedure specified in **section 124**; and
 - “(B) paying the sum of \$25 for each unit not so reimbursed into a bank account designated by the person.
 - “(3) For the purposes of **subsection (2)(a)(ii) and (iii)(B)**, a person’s obligation to surrender units or repay units is only satisfied when the funds paid into a Crown bank account are cleared.
 - “(4) For the purposes of **subsection (3)** and **section 222D(1)**, funds paid into a Crown bank account are to be treated as cleared when it is no longer possible to reverse the payment and the funds are available for use by the Crown.
- “**222D Issuing New Zealand units to meet surrender obligation**
- “(1) If, in accordance with **section 222C(2)(a)(ii) or (iii)(B)**, a person pays a sum of \$25 instead of surrendering a unit that the person is liable to surrender, the Registrar must, when the funds are cleared,—
 - “(a) issue a number of New Zealand units into a Crown holding account equal to the number of units in respect of which the person has paid a sum of \$25; and
 - “(b) transfer the New Zealand units into the person’s holding account held for the purpose of **section 61(1)**; and
 - “(c) immediately following the transfer under **paragraph (b)**, transfer the New Zealand units to a surrender account designated by the chief executive.

- “(2) The Registrar may, for the purposes of **subsection (1)(a)**, issue a number of New Zealand units equal to the number of units in respect of which 1 or more persons have paid a sum of \$25 under **section 222C(2)(a)(ii) or (iii)(B)**.
- “(3) If the chief executive is required to reimburse a person units under section 123(4) or 189(7)(d) and has satisfied his or her obligation to do so by paying to the person a sum of \$25 for the units in accordance with **section 222C(2)(b)(ii) or (iii)(B)**, then the Registrar must—
- “(a) transfer from the appropriate surrender account to the person’s holding account held for the purpose of **section 61(1)** a number of New Zealand units equal to the number of units for which the chief executive paid the person a sum of \$25; and
- “(b) immediately following the transfer under **paragraph (a)**, transfer the New Zealand units from the person’s holding account to a cancellation account.
- “(4) For the avoidance of doubt, **section 69** does not apply in respect of any New Zealand units issued under this section.
- “(5) If **subsection (1)** applies, this Act applies with any necessary modification as if the payment of \$25 for a unit by a person and the transfer of a unit to a surrender account by the Registrar under this section were a surrender of a unit by the person.
- “(6) Despite anything in **section 18CA(4)**, a New Zealand unit that is transferred to a surrender account under **subsection (1)(c)** may be further transferred in accordance with **subsection (3)(a)**.

“**222E Transitional provisions relating to reporting**

- “(1) In the period beginning on the date this section comes into force and ending with the close of 31 January 2014, the information that can be obtained by a search of the unit register in accordance with section 27(2)(c) must include—
- “(a) the total quantity of New Zealand units issued during the relevant year; and
- “(b) the total quantity of New Zealand units issued under **section 69** in that year; and
- “(c) the total quantity of New Zealand units issued under **section 222D** in that year.
- “(2) In the period from the date this section comes into force until 30 June 2013, the chief executive must publish, in accordance with section 89(2),—
- “(a) the total sum of money paid to a Crown bank account in accordance with **section 222C(2)(a)(ii) or (iii)(B)**; and

- “(b) the total sum of money paid by the chief executive in accordance with **section 222C(2)(b)(ii) or (iii)(B)**.

“222F Transitional provision for allocation to industry

- “(1) Despite anything in this Act,—
 - “(a) a person who carries out an eligible industrial activity in the period 1 July 2010 to 31 December 2010 may apply for a provisional allocation or a final allocation in respect of that period under **section 86A** if—
 - “(i) the regulation prescribing the eligible industrial activity is notified in the *Gazette* before 31 December 2012; and
 - “(ii) an application for—
 - “(A) a provisional allocation in respect of the period is made in the period commencing on the date the regulation comes into force and ends on a date that is 3 months later than the date on which the regulation comes into force; or
 - “(B) a final allocation in respect of the period is made by the date that is the later of the final date for such an application under section 86A or the date that is 3 months later than the date on which the regulation comes into force.
 - “(b) **sections 82 and 84** apply to a person’s application for a provisional allocation or a final allocation (as relevant) in respect of the period from 1 July 2010 to 31 December 2010—
 - “(i) as if the variable PDCT in **section 82** was the amount of each prescribed product from the eligible industrial activity produced by the person in the period 1 January 2009 to 31 December 2009, as determined in accordance with regulations (if any) made under this Act, and divided by 4; and
 - “(ii) as if the variable PDCT in **section 84** was the amount of each prescribed product from the eligible industrial activity produced by the person in the period 1 July 2010 to 31 December 2010, as determined in accordance with regulations (if any) made under this Act, and divided by 2; and
 - “(iii) with any other necessary modifications as if the period 1 July 2010 to 31 December 2010 was the year in respect of which the application for

- a provisional allocation or a final allocation (as relevant) is made; and
- “(c) an eligible person who carries out an eligible industrial activity in 2011 or 2012 is entitled to be allocated or provisionally allocated, in respect of any application made under **section 86A** in relation to those years, only 50% of the person’s allocation entitlement calculated under **sections 82 to 85**.
- “(2) Despite anything in this Act, a person who carries out an eligible industrial activity in the period 1 January 2011 to 31 December 2011 or 1 January 2012 to 31 December 2012 may apply for a provisional allocation or a final allocation under **section 86A** in respect of the period if—
- “(a) the regulation prescribing an eligible industrial activity is notified in the *Gazette* before 31 December 2012; and
- “(b) an application for a provisional allocation or a final allocation in respect of the period is made by the date that is the later of—
- “(i) the final date for such an application under **section 86A**; or
- “(ii) the date that is 3 months after the date on which the regulation comes into force.
- “**222G Transitional provision regarding prohibition on ability to export New Zealand units**
- “(1) Despite anything in this Act, during the period 1 July 2010 to 31 May 2013,—
- “(a) an account holder may not apply to the Registrar under section 30E(1)(a) to convert a New Zealand unit held by that person into a designated assigned amount unit for the purposes of transferring that assigned amount unit to an account in an overseas registry; and
- “(b) the Registrar must not transfer to an account in an overseas registry under section 18C—
- “(i) New Zealand units; or
- “(ii) designated assigned amount units that have been converted from New Zealand units under section 30E(3) before the commencement of this section.
- “(2) This section does not apply to New Zealand units—
- “(a) transferred for removals from an activity listed in Part 1 of Schedule 4; or
- “(b) transferred in accordance with a determination of the Minister under **section 78 or 79** relating to an allocation under the pre-1990 forest land allocation plan.

“222H Transitional provision for unincorporated bodies

- “(1) This section applies to 3 or more joint owners of land, leaseholders, forestry right holders, or parties to a Crown conservation contract who registered together as a participant (**joint participants**) in accordance with **section 157** before the commencement of this section.
- “(2) If this section applies, then—
- “(a) the joint participants are, on and after the commencement of this section, to be treated as members of an unincorporated body that is a participant, but the unincorporated body is not required to—
- “(i) notify the chief executive that it is a participant as specified in **section 157(2)(c)(ii)(A)**; or
- “(ii) apply to be registered as a participant as specified in **section 157(2)(c)(ii)(B)**; and
- “(b) the chief executive must notify the joint participants that they are—
- “(i) now members of an unincorporated body for the purposes of this Act;
- “(ii) required to provide the details specified in **section 157(2)(c)(ii)(C) and 157(2)(d)** to the chief executive within 20 working days of receiving the notice, unless the chief executive has these details; and
- “(c) the chief executive must, after receiving the information specified in **subparagraph (b)(ii)**, update any records relating to the joint participants, including (but not limited to) by removing the names of the joint participants from any register kept under this Act and substituting the name of the unincorporated body.
- “(3) Failure to provide the information specified in **section 157(2)(d)(i)** in response to a notice given under **subsection (2)(b)** must be treated as an offence under section 131(1)(a) and that section applies as if the reference to section 94 in that section were a reference to this section.
- “(4) If the joint participants fail to provide the information specified in a notice given under **subsection (2)(b)** within the specified period, the chief executive may, as applicable,—
- “(a) choose a name for the unincorporated body and update any records relating to the joint participants as specified in **subsection (2)(c)**; and
- “(b) nominate 1 of the members of the unincorporated body as the person to whom notices are to be given.
- “(5) If the chief executive updates any records relating to joint participants in accordance with **subsection (2)(c) or (4)**, the chief executive must notify the person authorised or nomin-

ated to receive notices on behalf of the unincorporated body accordingly.

- “(6) Despite **subsection (2)**,—
- “(a) until the chief executive updates any records in relation to any joint participants, the joint participants together remain registered as a participant, and are jointly and severally liable for all obligations, and jointly and severally entitled to all benefits, arising from their status as a participant; and
 - “(b) the joint participants whose names have been removed from a register and the unincorporated body whose name has been substituted on that register are to be treated for the purposes of this Act as the same participant.”

Clause 63: new section 225

Subsection (1): to insert after “Minister responsible for” (line 10 on page 94) “the”.

Subsection (1): to omit “providing for the setting of” (line 11 on page 94) and substituting “setting”.

Subsection (2)(a): to omit “reports” (line 16 on page 94) and substituting “report”.

Subsection (2)(b)(i): to omit “reports” (line 21 on page 94) and substituting “report”.

Clauses 64 and 65

To omit these clauses (line 26 on page 94 to line 19 on page 95) and substitute the following clauses:

64 Schedule 3 amended

- (1) The Schedule 3 shoulder reference is omitted and the following substituted:
“s 2A”.
- (2) Part 4 of Schedule 3 is amended by omitting “Producing cable using a nitrogen cure process.”
- (3) The item relating to purchasing, other than for on-selling, synthetic fertiliser containing nitrogen in subpart 2 of Part 5 of Schedule 3 is amended by adding “for application to land”.
- (4) Subpart 3 of Part 5 of Schedule 3 is amended by adding the following items:
“Exporting from New Zealand live cattle, sheep, or pigs in accordance with an animal welfare export certificate.
“Producing eggs by a person who is the operator of a risk management programme registered under the Animal Products Act 1999.”

65 Schedule 4 amended

- (1) The Schedule 4 shoulder reference is omitted and the following substituted:
“s 2A”.
- (2) Part 5 of Schedule 4 is repealed.

Clause 66

To omit this clause (line 22 on page 95 to line 11 on page 97) and substitute the following clauses:

66 Amendments to Maori Fisheries Act 2004

- (1) This section amends the Maori Fisheries Act 2004.
- (2) Section 5 is amended by repealing the definition of **settlement assets** and substituting the following definition:
“**settlement assets** means—
 - “(a) the assets transferred to Te Ohu Kai Moana Trustee Limited under section 194(1)(c) (including Aotearoa Fisheries Limited and all its assets); and
 - “(b) any further quota shares allocated to Te Ohu Kai Moana Trustee Limited under section 44 of the Fisheries Act 1996; and
 - “(c) any New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002”.
- (3) Section 129(1) is amended by omitting “money and any surplus funds” and substituting “money, any surplus funds, and any New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002”.
- (4) The following section is inserted after section 138:
“**138A Allocation and transfer of New Zealand units**
“(1) In this section—
“**New Zealand units** means New Zealand units allocated to Te Ohu Kai Moana Trustee Limited under the fishing allocation plan issued under the Climate Change Response Act 2002
“**unallocated quota** means quota held by Te Ohu Kai Moana Trustee Limited on 24 September 2009 and that had not been allocated pursuant to section 130(1), 135, or 151 of this Act at that date.
“(2) When Te Ohu Kai Moana Trustee Limited allocates and transfers unallocated quota to an iwi or a mandated iwi organisation in accordance with section 130(1), 135, or 151 of this Act, Te Ohu Kai Moana Trustee Limited must, at the same time, allocate and transfer New Zealand units associated with that quota to that iwi or mandated iwi organisation in accordance with those provisions.

- “(3) Te Ohu Kai Moana Trustee Limited must notify the Minister responsible for the administration of the Climate Change Response Act 2002 of the details of any allocation and transfer of unallocated quota and New Zealand units associated with that quota under **subsection (2)** no later than 10 working days after the date on which the unallocated quota and associated New Zealand units are allocated and transferred.”

67 Consequential amendments

- (1) Section 67Y(3A) of the Forests Act 1949 is amended by omitting “section 80, or in regulations made under section 168(1)(k) of the Climate Change Response Act 2002 or” and substituting “section 90 of the Climate Change Response Act 2002, or in regulations made under section 168(1)(k) of that Act, or”.
- (2) The regulations set out in the Schedule are amended in the manner set out in the Schedule.

New Schedule

To add the following schedule (after line 11 on page 97):

Schedule

s 67(2)

Amendments to regulations

Climate Change (Forestry Sector) Regulations 2008 (SR 2008/355)

Regulation 4: add:

- “(3) In a formula used in these regulations, Σ means the summation of the calculated amounts that follow Σ .”

Regulation 20: revoke and substitute:

“20 Calculation of carbon stock changes by post-1989 forest land participants

- “(1) A post-1989 forest land participant must calculate the emissions or removals from each carbon accounting area covered by an emissions return for an emissions return period by determining the carbon stock change in the carbon accounting area in accordance with the following formula:

$$CS_{\text{change}} = \Sigma(CS_{\text{closing}}) - \Sigma(CS_{\text{opening}})$$

where—

CS_{change} is the carbon stock change for the carbon accounting area in the emissions return period

CS_{closing} is the carbon stock of each sub-area within the carbon accounting area at the end of the emissions return period, calculated in accordance with regulation 21

CS_{opening} is, subject to **regulation 20A**, the carbon stock of each sub-area within the carbon accounting area at the

**Climate Change (Forestry Sector) Regulations 2008 (SR
2008/355)—continued**

beginning of the emissions return period, calculated in accordance with regulation 21.

- “(2) If the carbon stock change for a carbon accounting area in an emissions return period is—
- “(a) positive, the change is a removal; or
- “(b) negative, the change is an emission.
- “(3) This regulation is subject to regulation 20A.

“20A Calculation of carbon stock changes when new carbon accounting area is constituted from post-1989 forest land from another carbon accounting area

- “(1) This regulation applies if a carbon accounting area (CAA2) has been constituted from the whole or part of another carbon accounting area or areas under **section 188(7)(b)(ii)(B) or 192(3)(b)**.

- “(2) For the purposes of calculating carbon stock change in CAA2 under **regulation 20(1)** in an emissions return period that commences on the date of constitution of CAA2, CS_{opening} is the figure determined using the following formula:

$$CS_{\text{opening}} = \sum(CSp_{\text{closing}})$$

where—

CS_{opening} is the carbon stock for CAA2 at the beginning of the emissions return period

CSp_{closing} is the carbon stock at the beginning of the emissions return period for each part of CAA2 formed from another carbon accounting area, as calculated under **subclause (3)**.

- “(3) For the purposes of **subclause (2)**, CSp_{closing} must be calculated using the following formula:

$$CSp_{\text{closing}} = CS_{\text{CAA1}}/H_{\text{CAA1}} \times Hp_{\text{CAA1}}$$

where—

CSp_{closing} is the carbon stock at the beginning of the emissions return period for the part of CAA2 that has been formed from CAA1

CS_{CAA1} is the total carbon stock for CAA1 at the end of the period covered by the return submitted under **section 191 or 193** of the Act for CAA1 (as calculated under regulation 21)

H_{CAA1} is the number of hectares in CAA1 (immediately before constitution of CAA2)

Hp_{CAA1} is the number of hectares of the part of CAA1 that forms part of CAA2.

**Climate Change (Forestry Sector) Regulations 2008 (SR
2008/355)—continued**

“(4) For the purpose of **subclause (3)**, CAA1 means the carbon accounting area from which CAA2 formed part.”

**Climate Change (Stationary Energy and Industrial Processes)
Regulations 2009 (SR 2009/285)**

Definition of **coal miner** in regulation 3(1): revoke and substitute:

“**coal miner** means—

- “(a) a person who is required to comply with regulations 10 and 11; or
- “(b) a person who is—
 - “(i) a wholly owned subsidiary of a person referred to in **paragraph (a)**; or
 - “(ii) a holding company of which a person referred to in **paragraph (a)** is the wholly owned subsidiary; or
 - “(iii) a wholly owned subsidiary of a holding company of which a person referred to in **paragraph (a)** is also a wholly owned subsidiary”.

Definition of **gas miner** in regulation 3(1): revoke and substitute:

“**gas miner** means—

- “(a) a person who is required to comply with regulations 16 and 17; or
- “(b) a person who is—
 - “(i) a wholly owned subsidiary of a person referred to in **paragraph (a)**; or
 - “(ii) a holding company of which a person referred to in **paragraph (a)** is the wholly owned subsidiary; or
 - “(iii) a wholly owned subsidiary of a holding company of which a person referred to in **paragraph (a)** is also a wholly owned subsidiary”.

Regulation 3(1): insert in its appropriate alphabetical order:

“**holding company** has the same meaning as in section 5 of the Companies Act 1993”.

Regulation 10(1)(a): omit “to persons other than opt-in coal participants,”.

Regulation 10(1): insert after paragraph (b):

- “(ba) the total number of tonnes of mined coal of the class sold by the person in the year to each opt-in coal participant, as recorded at the point of sale; and
- “(bb) the calorific value of the coal referred to in **paragraph (ba)**; and”.

**Climate Change (Stationary Energy and Industrial Processes) Regulations
2009 (SR 2009/285)—continued**

Regulation 10: revoke subclause (3) and substitute:

- “(3) For the purposes of **subclause (1)(ba)** and regulation 11, mined coal sold to an opt-in coal participant includes coal that—
- “(a) is sold by the person to any of the following related persons:
 - “(i) a wholly owned subsidiary of the person:
 - “(ii) a holding company of which the person is the wholly owned subsidiary:
 - “(iii) a wholly owned subsidiary of a holding company of which the person is also a wholly owned subsidiary; and
 - “(b) is then on-sold by the related person to the opt-in participant.”

Regulation 11(1): omit the formula and substitute:

$$E = ((A \times CV) + (C \times CV) + (D \times CV) - (B \times CV) - (BA \times CV)) \times EF_1$$

Regulation 11(1): insert after item A:

BA is the total number of tonnes of coal of the class sold by the person in the year to opt-in coal participants, as recorded under **regulation 10(1)(ba)**

Regulation 16: insert “, including (but not limited to) a field” after “each field” in each place where it appears.

Regulation 16(1)(a): omit “to persons (other than opt-in natural gas participants)”.

Regulation 16(1)(b): omit “by the person in the year, as measured at the point of sale” and substitute “by the person or a third party in the year, as recorded at the customs point”.

Regulation 16(1): insert after paragraph (b):

“(ba) the total number of tonnes of mined natural gas of each class sold by the person in the year to each opt-in natural gas participant, as measured at the point of sale; and”.

Regulation 16(3): omit “subclause (1)(a) and (b),” and substitute “subclause (1)(a), (b), and **(ba)**,”.

Regulation 16(5): revoke and substitute:

- “(5) For the purposes of **subclause (1)(ba)** and regulation 17, mined natural gas sold to an opt-in natural gas participant includes natural gas that—
- “(a) is sold by the person to any of the following related persons:
 - “(i) a wholly owned subsidiary of the person:

**Climate Change (Stationary Energy and Industrial Processes) Regulations
2009 (SR 2009/285)—continued**

“(ii) a holding company of which the person is the wholly owned subsidiary:

“(iii) a wholly owned subsidiary of a holding company of which the person is also a wholly owned subsidiary; and

“(b) is then on-sold by the related person to the opt-in participant.”

Regulation 16: add:

“(6) In this regulation,—

“(a) **third party** means a person, other than an opt-in natural gas participant, who purchased the mined natural gas from the person required to comply with this regulation and regulation 17; and

“(b) the information required to be collected under subclause (1)(e) in relation to the quantity of mined natural gas of a class exported by the person or a third party in a year must be collected at the point of sale.”

Regulation 17(1): omit “field listed in Table 10 in Schedule 2” and substitute “field, including (but not limited to) a field listed in Table 10 of Schedule 2,”.

Regulation 17(1)(a): omit “to persons other than opt-in natural gas participants”.

Regulation 17(1)(b): insert “or a third party” after “the person”.

Regulation 17(1): insert after paragraph (b):

“(ba) each class of mined natural gas from the field sold by the person in the year to opt-in natural gas participants, as recorded under **regulation 16(1)(ba)**; and”.

Regulation 17(3): omit “field listed in Table 10 of Schedule 2” and substitute “field, including (but not limited to) a field listed in Table 10 of Schedule 2,”.

Regulation 17(4): omit the formula and substitute:

$$E_{\text{field}} = \sum(\text{ES}) + \text{U} + \text{F} + \text{V} - \sum(\text{EE}) - \sum(\text{EO})$$

Item EE of the formula in regulation 17(4): insert “or a third party” after “the person”.

Formula in regulation 17(4): insert after the entry for the item EE:

EO is the emissions from each class of mined natural gas from the field sold by the person in the year to opt-in natural gas participants, as calculated under subclause (2)

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)

Definition of **Crown holding account** in regulation 3: revoke.

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued

Paragraph (a) of the definition of **qualified person** in regulation 3: revoke and substitute:

- “(a) who is a member of an unincorporated body whose name is entered on a register kept for the purposes of section 56 or 57 of the Act; or
- “(ab) who is a person, other than a person referred to in **paragraph (a)**, whose name is entered on a register; or”.

Paragraph (b) of the definition of **qualified person** in regulation 3: omit “an allocation plan;” and substitute “subpart 2 of Part 4 of the Act”.

Regulation 6: revoke and substitute:

- “6 Holding accounts may be held jointly**
- “(1) Two or more persons may hold a holding account jointly if each person is a qualified person.
 - “(2) Each person who holds or held a holding account jointly is jointly and severally liable, in respect of the period or any part of the period during which the person holds or held the account jointly, for any matter arising with respect to the account.
 - “(3) In the case of a holding account held jointly, any declaration that must be signed by an account holder under these regulations must be signed by each person who holds the holding account jointly.
 - “(4) In the case of a proposed holding account to be held jointly, any declaration that must be signed by the proposed account holder under these regulations must be signed by each person who proposes to hold the holding account jointly.
 - “(5) The Registrar may add or remove a member of an unincorporated body as an account holder of a holding account if—
 - “(a) the holding account is held jointly by the members of the unincorporated body; and
 - “(b) the Registrar receives notification under **section 157A(2)(b)(ii)** of the Act that the member has joined or left the unincorporated body (as applicable).
 - “(6) If a holding account is held jointly other than by members of an unincorporated body, and a person who is an account holder wishes to be removed as an account holder or a person wishes to be added as an account holder, then—
 - “(a) the account holder may submit a request to the Registrar to add or remove the person as an account holder; and
 - “(b) for the purposes of **paragraph (a)**, the account holder must provide—
 - “(i) the name of the holding account; and
 - “(ii) the account number; and

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued

- “(iii) the name and contact details of the person being added or removed; and
 - “(c) the Registrar may not add or remove the person as an account holder unless the Registrar has received a declaration signed by the account holder that contains a statement that the account holder authorises the addition or removal of the person as an account holder.
- “**6A Nominated entities of consolidated groups**
- “(1) This regulation applies if the nominated entity of a consolidated group gives notice to the chief executive under section 152(3) of the Act that—
 - “(a) the nominated entity is to cease to be the agent for the consolidated group; and
 - “(b) another entity that is a member of the consolidated group is to become the agent for the consolidated group.
 - “(2) The nominated entity must give the Registrar—
 - “(a) a copy of the notice; and
 - “(b) the information referred to in regulation 4(2)(b) for the entity that is to become the agent of the consolidated group.
 - “(3) The nominated entity must comply with **subclause (2)** no later than 10 working days after the date on which the entity gave notice to the chief executive.
 - “(4) The Registrar must—
 - “(a) remove the nominated entity as the account holder of the holding account in the name of the consolidated group; and
 - “(b) add the entity that is to become the agent for the consolidated group as the account holder; and
 - “(c) notify the entity that it has been added as the account holder of the holding account in the name of the consolidated group.
 - “(5) The Registrar must comply with **subclause (4)**—
 - “(a) as soon as practicable after the date on which the Registrar received a copy of the notice and the information; or
 - “(b) on a later date specified in the notice as the date on which the nominated entity will cease to be the agent for the consolidated group.”

Regulation 15: omit “3” in each place where it appears and substitute in each case “5”.

Explanatory note

This Supplementary Order Paper amends the Climate Change Response (Moderated Emissions) Amendment Bill. The most substantial amendments are outlined in this note.

Clauses 4 and 5 are replaced, and *new clause 5A* inserted. *Clauses 4 and 5* deal with the application of Schedules 3 and 4, which set out the activities in respect of which persons must or may be participants. *New clause 5A* makes a technical amendment to section 3.

Clause 6 amends section 4, which contains a number of definitions.

Clause 7A is inserted and, in turn, inserts *new section 14* which requires the Registrar to give effect to directions by the Minister.

Clause 8 amends *new section 17A* to clarify that the Registrar may delegate to members of the state services.

Clause 9A is inserted and amends section 18CA which deals with the effect of surrender, retirement, cancellation, and conversion of units.

Clause 10 is replaced by *new clauses 10 to 10E*. *Clause 10* amends section 18E so that notice of a trust may be entered on the register if the trustees apply to open a holding account. *Clauses 10A to 10E* deal with registration of units in the New Zealand Emissions Register.

Clause 13 makes minor changes to cross references in section 54, which deals with who is a participant.

Clause 14 amends section 55, which deals with associated persons.

Clause 18 amends section 60 so that an Order in Council exempting a person or class of persons from carrying out an activity in Schedule 3 from being a participant may specify terms and conditions.

Clause 19 amends *new section 61*. *New section 61* deals with requirements to have holding accounts

New clause 19A amends section 62, which deals with monitoring of emissions and removals.

Clauses 20 and 21 amend sections 64 and 65 respectively. Section 64 deals with the entitlement to receive New Zealand units for removal activities. The amendments have the effect of removing the Minister from the process. Section 65 deals with the annual emissions return. The amendments clarify timing and the extend the time by 1 month that a participant has to surrender units.

Clause 22 is replaced. *New clause 22* replaces subpart 2 of Part 4 of the Act. Subpart 2 of Part 4 deals with the issuing and allocation of New Zealand units. The amendments include—

- allowing a series of individual determinations to be made rather than one single determination:
- limiting the circumstances in which the Minister can replace a determination and limiting the effect of those replacement determinations given the one-off nature of the pre-1990 forest land and fishing allocations:
- allowing a determination to also state the years in which a person will receive units to which they are entitled:

- extending the chief executive's information request powers to enable the chief executive to request information from pre-1990 forest land owners and fishing quota owners in order to verify the accuracy of the information they have previously provided, the level of their entitlement, and their compliance with the requirements of an allocation plan:
- permitting the chief executive to access and rely on the quota register kept under the Fisheries Act in order to make determinations under the fishing allocation plan:
- clarifying when closure provisions apply by providing that they apply after three months:
- removing the requirement for a person to provide notification of any decision to cease carrying out an activity (as part of their application for allocation):
- specifying that allocative baselines for agriculture are to be based on average emissions per unit of output, and on emissions of methane and nitrous oxide.
- providing for the publication of individual allocation decision to industry or agriculture unless it would be commercially prejudicial to do so.

New clause 22A amends section 87 by inserting a new function for the chief executive to administer allocations relation to industry and agriculture, and replacing the function of notifying the Minister of participants' entitlements with the function of directing the Registrar to transfer New Zealand units to participants' holding accounts.

Clause 23 amends section 89, which requires the chief executive to publish certain information. The amendment requires publication of the total number of New Zealand units allocated under subpart 2 less any units repaid.

New clause 23A makes a minor amendment to section 100, which deals with power of entry for investigation.

Clause 24 makes a minor amendment to section 108 which deals with matters in relation to which chief executive may decline to make emissions rulings.

Clause 25 amends section 118 which deals with the submission of final emissions returns, making the periods to which information must relate more specific.

New clauses 26A and 26B amend sections 123 and 124 respectively. They deal with the effect of amendment or assessment or reimbursement of units by the chief executive.

Clauses 28 to 30 amend sections 129, 132, and 133, which deal with offences. The amendments to section 129 and 130 provide for more specific strict liability offences and general offences relating to failure to keep records and a new offence of failing to comply with requirements relating to annual allocation adjustments or closing allocation adjustments. The amendment to section 133 creates a new offence of evasion of the new offences in sections 129 and 130.

New clauses 30A and 30B replace section 136 and amend section 137 respectively. New section 136 imposes a penalty of surrendering units in addition to any other penalty.

New clause 30C amends section 138 which provides that obligations to pay a penalty is not suspended by an appeal.

Clauses 31 to 37 deal with the provisions concerning consolidated groups.

New clause 37A replaces section 157 of the Act, which relates to unincorporated bodies, and inserts new section 157A which deals with changes to unincorporated bodies that are participants.

Clause 38 inserts new sections 161A to 161H, which deal with powers and processes in relation to allocation to industry and agriculture, and in particular provide for—

- regulations in relation to eligible industries:
- Australian eligible industrial activities:
- other eligible industrial activities:
- power to require information for purposes of allocation to industry:
- requirements in respect of notice given under section 161D:
- consultation on activities that may be prescribed as eligible industrial activities:
- regulations in relation to eligible agricultural activities:
- power to request information showing output from eligible agricultural activities.

Clause 41 amends section 168 so that the regulation-making power allowing a date to be prescribed by which the chief executive must submit an application under section 183 no longer requires the date to be no later than 1 July 2020.

Clause 43 amends section 183 which deals with applications for exemption for land holding of less than 50 hectares of pre-1990 forest land.

Clause 44 amends section 184, which allows people carrying out deforestation of “tree weeds” (eg, wilding pines) to apply for and receive an exemption from the deforestation provisions of the principal Act. The SOP amends *clause 44* to extend the tree weed exemption to eligible planted/sown pre-1990 forest land.

Clause 45 specifies those conditions that must be met before a person can be a participant in relation to post-1989 forest land. The SOP replaces *clause 45* so that a person may not be registered as a participant under section 57 in respect of carrying out an activity listed in Part 1 of Schedule 4 if they are not compliant with—

- the provisions of the Resource Management Act 1991, including any plan under that Act, and the Forests Act 1949, as in force at the time that the action was taken by the applicant after 1 January 2008 in relation to that land:
- any pest management strategy under the Biosecurity Act 1993 in relation to that land.

Clause 46 amends section 188 of the principal Act, which provides for the registration of all or part of a participant’s post-1989 forest land. The SOP replaces *clause 46* so that the chief executive need not keep a record of the net emissions and removals for a carbon accounting area:

Clause 47 amends section 189 of the principal Act, which sets out rules for filing emissions returns in relation to post-1989 forest land. The SOP replaces *clause 47* to include the date of constitution of a carbon accounting area as the commencement date for emissions returns where areas are constituted by operation of sections 191 or 193.

Clause 48 of the Bill replaces sections 190 to 193, which are designed to provide the mechanism for tracking carbon stocks in situations when carbon accounting areas are subdivided into parts that become new carbon accounting areas or when subdivided parts are combined into new carbon accounting areas. The SOP replaces new sections 190 to 193 to—

- accommodate the concept of “opening unit balance”;
- clarify how to calculate the Unit Balances when carbon accounting areas are redefined;
- require a mandatory emissions return when post-1989 forest land is withdrawn from the scheme and this results in the carbon accounting areas being split.

Clause 49 amends section 194, which deals with information about the status of forest land.

New clause 49A amends section 196, which deals with first emissions return for pre-1990 forest land activities, by delaying by a month the deadline for surrendering units.

Clause 52 amends section 204, which deals with Participants in relation to mining coal and natural gas.

Clause 53 makes a minor amendment to section 205(1A).

Clause 54 replaces section 208 so that reference to a participant includes related companies.

Clause 56 amends *new sections 213 and 214*, which deal respectively with participants in respect of subpart 4 of Part 5 of Schedule 3 (animal farmers), and certain participants not required to surrender units in respect of synthetic fertiliser containing nitrogen.

Clause 57 makes an adjustment to a cross reference in section 217.

Clause 58 amends section 218 which deals with transitional provisions for voluntary reporting.

Clauses 59 and 60 deal with transitional provisions for reporting, unit entitlement, and certain participants. *Clause 59* amends section 219 which provides transitional provisions for mandatory reporting. *Clause 60* replaces new section 220 which deals with transitional provisions in relation to unit entitlements for certain participants.

Clause 61 amends section 221, which provides for additional transitional arrangement for certain participants.

Clause 61A of the Bill inserts new sections 222A to 222H, which set out transitional provisions which apply in respect of emissions and removals from 1 July

2010 to 31 December 2012. The SOP replaces *clause 61*, inserting new provisions in the Act to—

- ensure that all the participants intended to have access to the \$25 option do have access:
- provide the chief executive with a further option to meet his or her reimbursement obligation by a combination of both reimbursing units and paying \$25 in lieu of reimbursing a unit:
- provide transitional deadlines for application for provisional allocation and allocation adjustment:
- provide for the transition of joint participants into the new (unincorporated body) regime providing for the treatment of persons jointly carrying out an NZ ETS activity:
- allow jet fuel purchasers who apply between January and July 2010 to opt in to have their registration take effect 5 months after date of entry on the register; and to allow jet fuel purchases who apply before January 2010 to have their registration take effect on 1 July 2010:
- provide transitional arrangements in relation to the prohibition on export of New Zealand units:
- provide transitional arrangements for unincorporated bodies.

New clause 63 amends new section 225 which deals with regulations relating to targets.

New clauses 64 and 65 amend Schedules 3 and 4.

New clause 66 amends the Maori Fisheries Act 2004 to provide for Te Ohu Kai Moana Trustee Limited to transfer New Zealand units associated with quota that was unallocated as at 24 September 2009 with that quota when it is allocated.

New clause 67 inserts a Schedule to make consequential amendments to various regulations made under the principal Act.