

Climate Change Response (Emissions Trading Reform) Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Climate Change Response (Emissions Trading Reform) Amendment Bill and Supplementary Order Paper No 413. The committee recommends (by majority) that the bill be passed with the amendments shown.

Introduction

The New Zealand Emissions Trading Scheme (NZ ETS) was established in 2008, through amendments to the Climate Change Response Act 2002. This bill and supplementary order paper (SOP) would reform the NZ ETS by further amending the Climate Change Response Act.

The bill and SOP would:

- update the purpose of the Climate Change Response Act to include the Paris Agreement, and remove redundant references to the Kyoto Protocol
- enable a cap to be placed on emissions covered by the NZ ETS
- provide for a cost containment reserve, rather than a fixed price option, to allow the Government to manage the supply of units in the NZ ETS
- improve the process for the auctioning of units in the NZ ETS
- allow for the phase-down of industrial allocation from 2021, with greater reductions from 2030
- strengthen the compliance regime by introducing new infringement offences for low-level offending, restructuring the excess emissions penalty system, and making information about significant non-compliance publicly available

- make more data publicly available about the emissions and removals of individual businesses
- make a number of operational and technical improvements to the NZ ETS, particularly in the way it relates to forests
- introduce averaging accounting to the NZ ETS for post-1989 forests
- introduce a new “permanent forestry” activity into the NZ ETS, and disestablish the existing Permanent Forest Sink Initiative (PFSI) from the Forests Act 1949
- give effect to decisions to price agricultural livestock emissions at farm level, and fertiliser emissions at processor level, from 2025, and provide a fall-back option if there is insufficient progress on an alternative pricing mechanism by 2022.

Proposed amendments

This commentary covers the main amendments we recommend (by majority) to the bill as introduced. They include:

- introducing activity-specific reduction of the general phase-out rate
- enabling more data collection
- improving options for the backing of units
- taking into consideration future emissions budgets and targets
- clarifying the membership of the Climate Change Commission, and its reporting on industrial allocation
- introducing advance notice of publication of emissions data
- providing the possibility of voluntary reporting for agriculture before reporting became mandatory
- providing the possibility of voluntary participation for farm-level agriculture
- changing the commencement of many of the forestry-related policy changes
- extending the timeframe for participants to opt in to averaging accounting, before averaging becomes mandatory for post-1989 forests
- clarifying the penalties for permanent forestry non-compliance
- improving the design of the pre-1990 offsetting regime
- clarifying the rules and liabilities for transmissions of interest.

We do not discuss all minor, technical, or consequential amendments that are proposed.

Updating the purpose of the Act to include domestic emissions targets and budgets

Clause 7 of the bill would amend section 3 of the Act. It would update the Act's purpose to include supporting New Zealand's international obligations under the Paris Agreement. The Paris Agreement would be included in Schedule 2A of the Act.

We recommend amending clause 7 so that the purpose of the Act in section 3 includes assisting New Zealand to meet its 2050 target and emissions budgets, as set pursuant to the Act.

This would involve consequentially repealing existing parts of the purpose statement in section 3 that refer to reducing New Zealand's net emissions of greenhouse gases to below business-as-usual levels.

Clarifying some matters following the Climate Change Response (Zero Carbon) Amendment Act 2019

This bill was introduced to the House before the passing of the Climate Change Response (Zero Carbon) Amendment Act 2019 (Zero Carbon Act). As a consequence of that Act, we propose some changes to this bill.

First, we recommend amending section 5D to provide that the membership of the Climate Change Commission would comprise a chairperson, deputy chairperson, and between three and seven other members (new clause 10A).

Sections 5ZG and 5ZI of the Act set out the process for the Minister to prepare and make emissions reduction plans publicly available. The Minister must make a plan publicly available 12 months before a period commences. We recommend amending section 5ZI to allow, for the first emissions budget period, the first emissions reduction plan to be published at any time before the first period commences. We recommend inserting clause 10E accordingly.

We recommend inserting clause 10F to require the Climate Change Commission's report at the end of an emissions budget period to relate to the emissions budget period just completed. Our change would amend section 5ZL of the Act.

Under the bill's proposed new section 84D (inserted by clause 77), the Climate Change Commission would be required to provide reports on the phase-out of industrial allocation. Those reports would need to be tabled in the House within 16 weeks after the end of an emissions budget period. We recommend amending the bill to instead provide that the general process for tabling and publishing the Commission's reports would apply to its advice on regulations setting the phase-out rates for industrial allocation. The general process, as amended by the Zero Carbon Act, would require the reports to be tabled and published within 10 working days after being provided to the Minister. This process is set out in section 5L of the Act. We recommend inserting clause 10G, new section 5ZOB, to reflect this change.

To clarify, if a Minister were to make decisions that deviate from the recommendations in the Commission's report, the bill would require the Minister to present a

report to the House (within 16 weeks of receiving the Commission's report) setting out the reasons for the deviation. We propose that these provisions be moved to new clause 77 of the bill, new sections 84C(4) and (5).

Treaty of Waitangi

Section 3A of the Act sets out the Crown's responsibilities to give effect to the principles of the Treaty of Waitangi.

As mentioned, this bill was introduced to the House before the passing of the Zero Carbon Act. The Zero Carbon Act inserted paragraphs (ab), (ac), (ad), and (ae) into section 3A of the Act.

As introduced, clause 8 of the bill would amend section 3A of the Act, and the paragraphs referred to above would be repealed. This was unintentional.

We recommend amending clause 8 of the bill so that these provisions are not repealed from the Act.

Managing unit supply and price controls

The bill would introduce a limit on the supply of New Zealand units (NZUs) in the NZ ETS. This would enable a cap to be placed on total emissions allowed within the NZ ETS. NZUs could be sold through auctions, which would result in a dynamic emissions price. Unit supply would be announced on a rolling five-year basis.

There would also be price controls within the NZ ETS. The Government would have mechanisms to manage unacceptably low or high prices. For maximum prices, there is currently a \$25 fixed price option for NZUs. The bill would replace this with a cost containment reserve, which would provide the Government with reserve units it could auction if the trigger price was reached.

Regulations for auctions to sell NZUs

Clause 41 would insert new section 30GA to update the provisions that allow for regulations to enable the sale of NZUs by auction. Regulations made under the new section would need to prescribe relevant matters, such as the timing, schedule, format, and rules for running auctions.

Clause 12 of the bill would amend section 6A of the Act to clarify the powers for the Minister for Climate Change to sell NZUs by auction under new section 30GA.

Clause 13 would amend section 7 of the Act to allow the Minister of Finance to direct the Registrar to transfer NZUs between holding accounts in certain circumstances (including for auctioning).

The majority of us think that also allowing the Minister for Climate Change to direct the transfer of units to holding accounts for auctioning purposes would improve the workability of the new auction system.

Therefore, we recommend amending clause 12 to enable the Minister for Climate Change to direct the Registrar to transfer any units to any holding account in the registry for the purpose of selling any units by auction.

Enabling a cap on emissions covered by the scheme

The bill would introduce a decision-making framework to enable the supply of units to be restricted, thus capping allowable emissions under the NZ ETS.

As mentioned above, new section 30GA would enable the Minister to make regulations for the auction of units.

Clause 41 of the bill would also insert new section 30GB into the Act. This would require the Minister, if making such regulations, to also make regulations prescribing an overall limit on the supply of units. This limit would have the effect of setting the cap on emissions under the scheme.

Under new section 30GB(2)(b)(ii), quantities of units that are allocated for free cannot be restricted.

In the bill as introduced, any units sold through the cost containment reserve would need to be backed by matching emission reductions, whereas industrial allocation units exceeding the cap would not.

The majority of us think that the obligation under section 30IA to obtain equivalent emission reductions to back cost containment reserve units should also apply to any free allocation that exceeds the cap in an emissions budget. We recommend amending new sections 30IA and 30GB accordingly.

Requirements for decisions on annual unit supply and price controls

The Minister would be required to consider a range of matters when making decisions each year on settings for unit supply and the price controls.

Considering the effects on future budgets and the 2050 target

New section 30GC(2) would require the Minister to be satisfied that their decisions accord with the relevant emissions budget and with New Zealand's commitment under the Paris Agreement, although there is some discretion.

New section 30GC(2) is not intended to limit the Minister's consideration to only the current emissions budget and the nationally determined contribution under the Paris Agreement. If it were, this could lead to short-term decision-making that slows down long-term emissions reductions.

We recommend that new section 30GC(2) be amended to specifically include the consideration of future emissions budgets set under the Act, as well as the 2050 target set under the Act.

Changing "carbon price path" to "emissions price path"

New section 30GC(5) would set out the "main matters" the Minister must consider when making certain decisions under new section 30GB.

As introduced, new section 30GC(5)(e) refers to “carbon price path”. We recommend changing this term to refer to “emissions price path” to ensure that the Climate Change Commission’s advice is not constrained in respect of the other greenhouse gases. We recommend that the wording throughout the bill be amended accordingly. For example, this is relevant to our proposed new section 5ZOA.

Backing auction reserve amounts with emissions reductions or removals

Under clause 44, new section 30IA, if the cost containment reserve were triggered, the Minister would be required to obtain emissions reductions to match any reserve units sold at auction. New section 30IA would require the Minister to ensure that greenhouse gas emissions are reduced, or removals are increased, by 1 tonne for each NZU sold as a reserve unit. The Minister would be required to “back” the units in such a way as soon as reasonably practicable after the end of the emissions budget period.

We recommend the following amendments:

- As we discussed earlier, we recommend requiring any units allocated for free that result in the cap being exceeded to also be backed by equivalent emissions reductions or removals, in the same manner as reserve units. We recommend amending new subsection (1) accordingly.
- The majority of us think that the Minister should be allowed to “back” reserve units sold through the cost containment reserve before the end of the budget period if desired, not just after the end of the emissions budget period. This would increase flexibility and allow better access to overseas carbon markets. We recommend amending new subsection (3) accordingly.
- The majority of us think that reserve units auctioned through the cost containment reserve or units freely allocated should be “backed” only where they exceed the emissions budget. This would help preserve the net emissions budget while avoiding unnecessary cost for the Crown. We recommend amending subsection (1) accordingly.
- We recommend making it clear that the emissions reductions or removals required to back the reserve can be obtained from outside the NZ ETS. We recommend amending subsection (2) accordingly.

Phase-out of industrial allocation

The bill would provide for the phasing out of industrial allocation. Industrial allocation was intended as a transitional measure in the NZ ETS, as the risk of “emissions leakage” was expected to reduce over time. There are provisions in the Act that would enable industrial allocation to start to be phased out, but they have not been used.

The current levels of allocation for emissions-intensive, trade-exposed activities have not changed since they were established in 2009. The current rates in the Act are set at 0.9 for highly emissions-intensive activities, and 0.6 for moderately emissions-intensive activities. The bill would amend sections 81 and 83 of the Act to implement

a general phase-out of industrial allocation for all activities by reducing the levels each year from 2021. As introduced, the minimum phase-out rate would be: 0.01 per year from 2021 to 2030; 0.02 per year from 2031 to 2040; and 0.03 per year from 2041 to 2050. Rather than needing to be initiated by regulation, the reduction would happen automatically under the Act, unless the Minister regulates for a lower phase-down rate on the recommendation of the Climate Change Commission.

Regulations that may reduce the general phase-out rate after 2030

Clause 77 of the bill would insert new section 84A into the Act. This would allow the Minister to make regulations to reduce the rate of the phase-out that is set in the Act after 2030 across all activities to certain specified levels. As mentioned above, the Minister could only do this if the Climate Change Commission advised that there was an ongoing and substantial risk of emissions leakage. The emissions leakage could be in just one of the eligible activities, but any regulation made to reduce the general phase-out rate would have to apply to all eligible activities.

The majority of us think there should be greater flexibility, and that the Minister should instead be able to reduce the phase-out rate for a specific eligible industrial activity that was deemed at risk of emissions leakage, while maintaining or increasing the set phase-out rates for other eligible industrial activities.

This would mean industrial activities at less risk of emissions leakage would be phased out more quickly, and better consideration could be given to the risks as they relate to each industrial activity.

We recommend amending new section 84A accordingly.

Reviewing or changing allocative baselines

Each industrial activity that is emissions-intensive and trade-exposed has one or more allocative baselines prescribed in regulations. As introduced, the bill does not propose to review or change the allocative baselines; rather, the bill would change the rate of assistance provided to those industrial activities. We do not recommend any changes to the bill relating to allocative baselines. However, we recognise that in the future a review of allocative baselines could be desired, and better data would be required to carry out any review.

The regulations for allocative baselines are currently based on data from 2006 to 2009. There is a risk that the current baselines no longer reflect actual emissions intensities from the industrial activities.

Under section 161D of the Act, the Minister has powers to require firms to provide data for the purposes of determining the need for industrial allocation. Section 161E of the Act limits the data that can be sought to that from the financial years between 2006 and 2009.

We therefore recommend amending section 161E (clause 139 of the bill) so that the Minister could collect data from other years to assist in carrying out reviews of the NZ ETS under section 160.

ETS-wide operational improvements

The bill would make several changes to the compliance regime and operational aspects of the NZ ETS. This would include the replacement of the excess emissions penalty system with new penalties, provision for new infringement offences, and publication requirements. We discuss some of these below.

New infringement regime for low-level offending

Strict liability offences

Clause 46 of the bill would insert new sections 30L to 30V into the Act, to introduce a regime for the creation of new infringement offences for low-level offending. Infringement offences (with strict liability) could be created by the Minister through regulation.

We recommend the bill be amended to ensure that the strict liability infringement offences made by regulations under the Act do not include reference to mental culpability (such as “without reasonable care”), as such wording would not be consistent with strict liability. Accordingly, we recommend amending clause 46, new section 30M. We note that strict liability offences do allow for instances where there is an absolute lack of fault.

Procedure for regulations about infringement offences

The Regulations Review Committee wrote to us about new section 30N(4) which sets out the procedure for making regulations about infringement offences. New section 30N(4) provides that failure by the Minister to consult with certain persons would not affect the validity of the regulations about infringement offences.

The ministries advised us that the wording is copied from existing sections of the Act, and is designed to prevent an attack on the validity of the regulations due to a minor or technical error in consultation. We were told that such a provision does not generally protect against a deliberate decision not to consult in accordance with a statutory obligation. As the provision in the bill does not involve a change in intent, and for consistency throughout the Act, we do not recommend changing the wording.

We recommend inserting clause 8A, new section 3B to consolidate in one place the procedures for consultation when making various regulations.

Replacing the excess emissions penalty system

The excess emissions penalty system is the current penalty system that applies when a person fails to surrender or repay units. New sections 134 to 134D would restructure this penalty into two new types of penalties: the surrender/repayment penalty (new section 134), and the reporting penalties (new sections 134A to 134D). A surrender/repayment penalty would apply if a person failed to pay units by a due date. Reporting penalties would cover situations where there is non-reporting or an error in a report, and would be determined based on the Environmental Protection Authority (EPA) assessing the person’s culpability.

Comment on penalty design

We were advised that the Ministry of Justice was consulted in the development of proposals to replace the excess emissions penalty system. Penalty regimes in which determinations of guilt are made by non-judicial bodies are highly irregular and should be strongly discouraged. An exception to this is the taxation model.

The Ministry for the Environment advised us that the taxation model is what the reporting penalty regime is modelled on. It also advised that, on balance, it recommends this approach, as proposed in the bill. It said that the NZ ETS penalty regime should be aligned with the tax system because of the scale, complexity, and self-reporting nature of the NZ ETS, and the high public interest in accuracy.

Additional information on the culpability factors in the proposed new reporting penalties would be beneficial for participants. We understand work on this can be progressed outside the legislation.

We were advised that the Government is considering the impact of the surrender/repayment penalty on smaller forestry participants.

Clarifying the \$1,000 penalty in certain circumstances

New sections 134A to 134D would impose a \$1,000 reporting penalty for inaccurate reporting that results in an under-claim of an allocation or entitlement, or an over-statement of emissions. This is to encourage accurate reporting. In those situations, we consider that the penalty should instead be calculated using the formula as proposed in the bill, and only then have a \$1,000 maximum applied.

We recommend amending new sections 134A to 134D accordingly.

We note that if reporting were to result in an over-claim of an allocation or entitlement, no maximum amount would apply to the penalty. If there were no change in the person's liability or entitlement, then no penalty should apply.

Time bar for amendment of returns

Late emissions returns would be allowed under new section 134. New section 127 would impose a time bar for the EPA to correct emissions returns. The time bar would prevent the EPA from correcting a return that covered an obligation to surrender or receive units for a period earlier than certain dates set out in the section.

However, as introduced, the EPA would be prevented from correcting historic non-compliance if the participant had submitted a late return. This is because the time bar for correcting returns is based on the time period that the obligation relates to, not the date the return was submitted.

We recommend clarifying that the time bar for amending emissions returns under new section 127 would not prevent the EPA from amending a late return submitted under new section 134A. The time bar would apply from when the return was actually submitted rather than when it was due.

We recommend that this change be extended to new section 91A, so that the EPA could also correct approvals of unique emissions factors. Otherwise, it is possible that

the EPA would be prevented from correcting returns that were based on incorrect unique emissions factors.

Enactment date for penalties

We recommend that the new penalties regime should apply from 1 January 2021, rather than the enactment date of the bill. This would ensure that the regime aligns with the reporting years and allow sufficient time for preparation. We recommend amending clause 2 of the bill accordingly.

Transitional provisions for farm-level participants' surrender obligations

SOP No 413 provides that farm-level participants would not face penalties for failure to comply with surrender obligations in the first year the obligations are due.

The majority of us note that the policy intent is for no financial enforcement mechanisms to apply in the first year of surrender obligations for farm-level participants. The majority of us therefore think it should be made clear that the new infringement offences and reporting penalties would also not apply in the first year for farm-level participants. We recommend reflecting this in our proposed new clause 223N, by amending section 217 of the Act.

Notices given to participants and compliance due dates

As discussed earlier, the bill would introduce a new infringement and compliance regime. As part of this, it would set various timeframes and deadlines for notices and payments.

One of these timeframes is for the period from when the Environmental Protection Authority notifies a person of their failure to submit an emissions return (or an annual or closing allocation adjustment) by the due date, and the time that subsequent penalties would apply. Under proposed new sections 134A and 134B, the notice period for this would be 10 working days. We think this should be extended to 20 working days, to give people more time to provide accurate information.

We recommend that this change be reflected in our proposed new clause 223E.

Publication of participants' non-compliance

As introduced in clause 86(3) (which we propose to move to new clause 223), amendments to section 89 of the Act would require the EPA to publish serious cases of individual non-compliance. Publication would include relevant details relating to the non-compliance, including the account holder's name, penalty type, penalty amount, due date, and payment date.

What types of non-compliance would be published

We consider that there would be benefit in clarifying what constitutes significant non-compliance that would be subject to publication under the amendments to section 89. As introduced, the bill would require penalties at culpability levels of "grossly careless" and "knowing" to be published. Simply not taking "reasonable care" would not result in publication. However, we understand that more information could be provi-

ded to participants outside the legislation so that there is a better understanding of the culpability bands.

New permanent forestry penalties

The bill would enable permanent forests (that are post-1989 forests) to be registered as a permanent forest under the NZ ETS, where the participant commits to remain in the NZ ETS for 50 years.

Under new sections 194EF and 194EI, the bill would also establish two new penalties for non-compliance with the requirements for permanent forests (relating to clear-felling and deforestation). The maximum penalties and defences would be set out in the Act and regulations. However, the amount of any penalty applied would be determined by the court.

Under the bill as introduced, the EPA would not report details about individual penalties for non-compliance with permanent forestry requirements. That is, those penalties would not be covered by the new section 89 provisions for publication.

We think that, for consistency, new permanent forestry penalties should be covered by the section 89 publication provisions. We recommend inserting clause 223ZF into the bill to reflect this.

Consolidated groups

We recommend that members of a consolidated group should also be liable for penalties and interest imposed on the group. We recommend amending clause 126 by inserting new section 153(5B) accordingly.

Publication of participant-level emissions and removals data

Under current law, the EPA publishes emissions and removals data at an aggregated level by sector and activity. It does not publish emissions and removals data at the participant level, for confidentiality reasons. However, participants' names and addresses are publicly available on the New Zealand Emissions Trading Register.

Under clause 87 of the bill, new section 89A would require the EPA to publish participant-level emissions and removals data each year.

We think participants should get advance notice of publication. We propose that the EPA should be required to publish (on its website) the intended publication date of emissions and removals data no less than 10 working days before publication. We recommend inserting section 89A(4) accordingly.

Additionally, we recommend some minor changes to clarify the provisions:

- The EPA should still publish emissions returns in cases where it creates a default assessment or amended return. In the bill as introduced, the EPA would simply have to “receive” a return.
- The reporting should be able to be broken down by participant and by activity if the return relates to more than one participant or activity.

- The EPA should be able to report NZ ETS participants' emissions and removals in tonnes of carbon dioxide equivalent, and forestry participants' net emissions and net removals in tonnes of carbon dioxide equivalent.

We recommend amending new section 89A accordingly.

Consequential changes to the Income Tax Act 2007

The bill would introduce a new permanent forestry category to replace the Permanent Forest Sink Initiative. It has been identified that these proposed changes in the bill as introduced would require some consequential amendments to the Income Tax Act 2007. We recommend amending Schedules 3 and 4 of the bill accordingly.

Animal and fertiliser emissions

Animal emissions—reporting and surrender obligations

Under the bill and SOP 413 as introduced, sections 2A and 2C of the Act would be amended to introduce mandatory reporting and unit surrender obligations under the NZ ETS for agricultural farmers undertaking activities outlined in subpart 4 of Part 5 of Schedule 3 of the Act (being persons who farm, raise, grow, or keep ruminant animals, pigs, horses, or poultry).

Under the SOP, the first year for farm-level mandatory reporting would commence from 1 January 2024, with returns due to the EPA by 31 March 2025. The first year for farm-level unit surrender obligations would commence from 1 January 2025, with returns due to the EPA by 31 March 2026. However, both of those dates could be deferred by Order in Council.

Since 2011, mandatory reporting obligations exist for agricultural animal processors, including dairy factories, abattoirs, and live animal exporters. Agricultural animal processors would cease reporting in the NZ ETS when farm-level participants face unit surrender obligations from 2025 (unless deferred by Order in Council). The bill would continue to allow the introduction of surrender obligations for agricultural animal processors. Under the Act, agricultural animal processors could be subject to surrender obligations if an Order in Council was made requiring this.

Interim measure for voluntary reporting and participation

We think it could be beneficial to encourage voluntary farm-level reporting and participation prior to mandatory reporting and participation.

We propose allowing regulations to be set to enable voluntary farm-level reporting for animal or fertiliser emissions. We also propose allowing for regulations to be made to enable voluntary farm-level participation (such as reporting allocations and surrender obligations) for animal or fertiliser activities.

We recommend inserting clause 186B, new section 216 accordingly.

Allocation applications for eligible agricultural activities—netting off

The SOP would insert new sections 86BAA and 86BB into the Act. The intention is for agricultural allocations to be calculated at the same time as unit surrenders, so that a net surrender return is determined. However, as introduced, there would be no specific requirement for the applications for allocations and emissions returns to be calculated at the same time. It is considered unlikely that there would be an overall net positive allocation in these circumstances. We recommend amending new section 86BAA to make it clear that the EPA could not make decisions on allocation applications (for eligible agricultural activities) until an emissions return was also submitted.

We also recommend amending new section 86BB to make it clear that an application for allocation could not satisfy the entire surrender obligation.

We recommend amending new clause 81 new sections 86BAA and 86BB, accordingly.

Review of progress on the Primary Sector Climate Change Commitments by the Climate Change Commission

The SOP would set out the primary sector climate change commitments as new Schedule 5 to the Act. It would also introduce a requirement for the Climate Change Commission to report on the progress toward the primary sector climate change commitments (set out in new Schedule 5) by June 2022.

If the Government considered that insufficient progress (through the Joint Action Plan on Primary Sector Emissions, known as He Waka Eke Noa) was made towards animals-farmer participants being ready to start complying with reporting and surrender obligations under the Act, the Minister for Climate Change, in consultation with the Minister of Agriculture, could choose to make an order under new section 219 to start processor-level pricing by recommending surrender obligations for agriculture in the NZ ETS earlier than 2025.

The current wording in new Schedule 5 would require the He Waka Eke Noa Steering Group to “approve” farm-level emissions reporting methods and definitions. We recommend changing “approved” to “accepted”, as it is not intended that an extensive approval process would be undertaken. Rather, it is expected that known and reliable methods and definitions for New Zealand farms would be published.

The He Waka Eke Noa progress report by the Climate Change Commission would cover both animal emissions and fertiliser emissions. The rationale for including fertiliser emissions is to keep animal and fertiliser emissions pricing in step, to send a consistent price signal. Therefore, we consider that the order-making power that would be created under new section 219 should include fertiliser emissions, as well as animal emissions. We recommend amending new sections 219(1) and 2A(5) accordingly.

Forestry

Extending the implementation date for 14 policy changes

The bill as introduced provides that averaging accounting for newly registered post-1989 forests would become mandatory from 1 January 2021. The bill would also introduce a new permanent forestry category within the NZ ETS to replace the Permanent Forest Sink Initiative (PFSI).

The above changes would require significant amendments to the Climate Change (Forestry Sector) Regulations 2008 to provide operational details.

Many of the new regimes in the bill as introduced would commence from 1 January 2021. We have been advised that more time is needed to develop these regulations. We recommend deferring the implementation dates for 14 forestry policy changes to 1 January 2022. Those 14 policy changes are:

- introducing mandatory averaging accounting for newly registered standard post-1989 forests
- introducing a new permanent forestry category within the NZ ETS
- specifying that participants with standard post-1989 forests subject to averaging and permanent forestry will not be required to surrender units for emissions liabilities from temporary adverse events, as long as the forest is replanted
- allowing post-1989 standard forestry participants using averaging accounting to offset their deforestation liability by planting an equivalent forest elsewhere
- improving the design of offsetting for pre-1990 forests to allow greater flexibility of land use
- simplifying and standardising the types of emissions returns participants need to submit for post-1989 forests
- simplifying the process to access exemptions from deforestation liabilities for areas of tree weeds, and excluding post-1989 land predominantly containing tree weeds, from the ETS
- allowing deregistration of persistently non-compliant post-1989 standard forestry participants
- improving and enabling enforcement of the transmission of interest process for transferring registered post-1989 land between parties (for example, when buying and selling land)
- allowing participants to reconfigure carbon accounting areas without having to surrender their full unit balance at the time of reconfiguration
- clarifying how emissions or removals from all forest land (including forest land with mixed ages) in a carbon accounting area are to be included in an emissions return
- clarifying what happens if a transmission of interest has occurred but the transmission process is not completed before a mandatory emissions return is due

- requiring that all post-1989 forestry participants' emissions returns must be net of any unit repayments/surrender obligations they may have for the activity being reported on the relevant land (that is, either standard post-1989 forestry or permanent forestry, which are reported separately)
- clarifying obligations around the deregistration of post-1989 forest boundaries.

We recommend amending the bill accordingly.

Amendments resulting from the change of implementation date for averaging accounting and related provisions

Extending the option to use either averaging accounting or stock change accounting to forests that apply to register in 2021

As introduced, the bill would require mandatory averaging accounting for post-1989 forests registering in the NZ ETS from 2021. As a transitional measure, the bill would enable participants for post-1989 forests who are registered in the NZ ETS in 2019 and 2020 to choose whether to move to averaging accounting, or continue with stock change accounting. As introduced, this was provided for in new clauses 23 to 26 of Schedule 1AA (clause 202 of the bill). We note we have proposed moving these provisions to new clauses 31 to 35 of Schedule 1AA (clause 223ZZ of the bill).

We recommend extending the option for NZ ETS post-1989 standard forestry participants to use either averaging accounting or stock change accounting if they apply to register by 31 December 2021 (and have been registered by 30 June 2022), in addition to those registered in 2019 and 2020.

We recommend inserting new clauses 31 and 32 into Schedule 1AA of the Act accordingly.

Changing the Permanent Forest Sink Initiative notification period

Under proposed new clauses 20 and 21 of Schedule 1AA of the Act (which we propose moving to new clause 29 of Schedule 1AA), PFSI participants would be required to inform the EPA in 2021 of their decision whether to move into the NZ ETS or leave carbon forestry. Without any notification, there would be a mandatory transfer into the permanent forestry category in the NZ ETS on 1 January 2022. We recommend amending the bill to:

- require participants to inform the EPA of their decision to move into the NZ ETS or leave carbon farming, by the end of 2022
- require a mandatory transfer of any remaining PFSI forests to permanent forestry on 1 January 2023, under new clause 29 of Schedule 1AA of the Act.
- make consequential amendments so the repeal of the PFSI under the Forests Act 1949 would take effect on 1 January 2023 (as set out in Schedule 6 of the bill).

Clarifying the start of the deforestation stand-down period

The bill would introduce an empowering provision for a stand-down period during which land previously forested must have remained deforested to qualify as a first rotation forest. As introduced, new section 194FD provides that the stand-down period could not take into account any deforestation that took place prior to Royal assent.

We recommend amending new section 194FD to specify that the stand-down period would not consider deforestation that occurs prior to 1 January 2021. On balance, we believe this would provide greater operational clarity.

Three forestry provisions that should be implemented on 1 January 2021

As introduced, the following three provisions would come into effect on the commencement date. We recommend that the bill be amended to provide for these provisions to commence on 1 January 2021:

- proposed amendments to section 181—which would clarify when pre-1990 forest land is considered to be deforested
- proposed amendments to section 192—which would make the transfer of NZ ETS participation over post-1989 forest land (when a forestry right or lease is granted) optional
- proposed amendments to section 179—which would clarify that cleared land re-established in forest by a combination of planting and natural regeneration is not considered deforesting.

Permanent forestry

New permanent forestry activity in the NZ ETS

To lower the risk of over- or under-crediting a participant, we recommend that:

- PFSI covenant holders who wish to transition some of their forest into post-1989 forestry and some into permanent forestry should be able to subdivide it into a number of carbon accounting areas after calculating the unit balance for the forest, but before completing the registration into the ETS forestry activities.
- Forests moving from the PFSI into post-1989 forestry under averaging would surrender units for the difference between a higher current carbon stock and the average for that forest type.

Compliance for clear-fell harvest and deforestation

In the bill as introduced, forests registered as permanent forestry would not be permitted to be clear-fell harvested or deforested for 50 years. Any excess clear-fell would be subject to penalties based on the timber value.

We think it needs to be clearer how the penalties would be calculated. Therefore, we recommend proceeding with new sections 194EE to 194EI, but specifying in section

194EF(4) that the maximum penalty for non-compliant harvesting of permanent forestry would be equal to the value of 30% of the timber found in a fully stocked hectare.

Supporting provisions for forests using averaging and permanent forestry

Carbon equivalent forest land swaps for post-1989 forests using averaging

We recommend that, throughout the bill, post-1989 Carbon Equivalent Forest Land Swaps (CEFLS) be renamed as “P89 offsetting”, with consequential changes. We consider that “offsetting” is the more widely used terminology for this process, is more clearly identifiable, and also reflects the number of conceptual similarities to pre-1990 offsetting.

Supporting forestry operational improvements

Improving the process for offsetting pre-1990 forests

The bill would make changes to the offsetting process for pre-1990 forests, and provide more flexibility for forest owners.

We recommend amending the bill to:

- align the eligibility criteria for non-forest land to be included in the offset application between post-1989 and pre-1990 offsetting
- allow established eligible forest land to be added to an existing application
- redraft the new sections of the bill relating to pre-1990 offsetting to correct process issues.

We recommend sections 186A to 186J of the Act be replaced by new sections 186AA to 186FC accordingly.

Ability to deregister a participant for persistent non-compliance

The bill would enable the EPA to deregister standard post-1989 forestry participants who are persistently non-compliant in meeting their obligations. New section 57(4)(bb) would allow the EPA to consider any previous non-compliance with outstanding obligations, and to not be required to register the applicant as a participant.

As introduced, the new section could be construed as incorporating any persistent non-compliance in the ETS, in areas other than post-1989 forest land.

We propose amending the bill to ensure that a person who has been deregistered for persistent non-compliance would not be registered as a participant in respect of either standard post-1989 or permanent forestry, if they have not met outstanding obligations from a previous registration in post-1989 forestry.

We recommend inserting new clause 223W to amend new section 57(4)(bb) accordingly.

Transmission of interest

Clauses 175, 176, and 178 would amend the Act to set out processes for the transmission of interests in post-1989 forest land. The provisions in the bill would address single non-compliant transmissions of interest. However, where there are multiple non-compliant transmissions of interest, there could be significant costs for the Crown.

We recommend amending the bill to require the EPA to impose any stock change liability or entitlements on the most recent transferee, where there have been multiple non-compliant transmissions of interest. We were advised that information contained in the notice of each title is going to be improved, so that participants will have better information when conducting due diligence prior to purchase.

We recommend inserting new sections 194AA to 194AC accordingly.

We also recommend ensuring that estate administrators can act on behalf of each deceased participant separately. We recommend amending new section 192 accordingly.

Powers to make forestry regulations—best practice forest management

Under new section 168(1)(nc), inserted by clause 144, a new regulation-making power would be created to determine the meaning of “best practice forest management” in the context of section 179A of the Act. Currently, the definition is determined by administrative policy, whereas the bill would require it to be provided for in regulations.

The Regulations Review Committee queried whether the definition should instead be stipulated in the Act. We were advised that the definition would need to apply to a broad set of circumstances that are expected to undergo continual change due to the changing nature of forest management.

We propose that the regulations about best practice forest management (in the context of section 179A) be added to the regulations that must be consulted on. To do this, we recommend amending clause 144 to insert new section 168(3). We note we have also recommended that consultation requirements are consolidated into new section 3B, which we discussed earlier.

Powers to make forestry regulations—retrospective regulations for averaging

As introduced, new section 194LA would allow regulations to be made about averaging methodology. We note that we propose separating that proposed section into new sections 194LA and 194FE. Subsection (3) of each new section would allow these regulations to have limited retrospective effect:

- A regulation could apply from the commencement of the mandatory emissions return period (MERP) in which the regulation is made or from a later date in that period.
- A regulation made under subsection 194FE(1)(d)(i), which is about prescribing the stand-down period after deforestation before a new forest may be consid-

ered a first rotation forest, may prescribe a stand-down period that begins before the regulation is made.

The Regulations Review Committee queried this retrospectivity.

It is not intended that the retrospectivity could apply to participants that have already registered into the NZ ETS. Therefore, we recommend clarifying that a change in the stand-down period made under new section 194FE(3)(b) would not extend to forests already registered in the NZ ETS as a first rotation forest. We recommend inserting new section 194FE(4) so that any changes to regulations to increase the stand-down period would not apply retrospectively to change the stand-down period for land already registered.

New Zealand National Party minority view

This bill was introduced to the House in October 2019 at a time when the COVID-19 crisis confronting the world could not have been contemplated.

At first reading the bill had significant and important policy details yet to be included. Those policy gaps were filled by way of the Minister's SOP 413 during the select committee's process, but many of the specific policy aspects were not finalised until very late in the committee's work on the bill.

This is a long, complex, multifaceted, administratively complicated bill that upon enactment will have widespread and costly implications for every sector of the New Zealand economy.

Much of the Environment Committee's work on the bill has been conducted in the shadow of COVID-19 but without consideration of or reference to it.

National members objected to the bill being advanced during the COVID-19 adjournment of Parliament. We do not believe the committee has had an adequate or sufficiently robust opportunity to conduct a full and detailed analysis of the bill's impacts let alone upon a post-COVID-19 domestic and global economic environment.

National members are concerned that this bill will add further cost, uncertainty and inhibitors to economic recovery at a time when we are facing the greatest economic challenge of our lifetime.

The National Party believes that progressing a bill that significantly increases the cost of living at a time when we are unable to even begin to quantify the negative impact of COVID-19 on the New Zealand economy is irresponsible.

National opposes this bill proceeding at present. Instead, we propose that the passage of this bill be postponed for 12 months when we will have more certainty around the economic position New Zealand will be in post-COVID-19. Consideration in terms of the impacts of the bill's enactment in light of COVID-19 could take place while at the same time providing an opportunity for a more detailed and robust analysis of the climate change policy tools the bill seeks to implement.

Appendix

Committee process

The Climate Change Response (Emissions Trading Reform) Amendment Bill was referred to the committee on 5 November 2019. The closing date for submissions was 17 January 2020. We received and considered 171 submissions from interested groups and individuals. We heard oral evidence from 62 submitters at hearings in Auckland and Wellington.

We received advice from the Ministry for the Environment, the Ministry for Primary Industries, and Te Uru Rākau (Forestry New Zealand).

The Regulations Review Committee reported to the committee on the powers contained in the bill and Supplementary Order Paper No 413.

Committee membership

Dr Duncan Webb (Chairperson)

Dr Liz Craig

Hon Jacqui Dean (from 19 February 2020)

Sarah Dowie (until 19 February 2020)

Hon Nathan Guy

Jenny Marcroft

Hon Scott Simpson

Erica Stanford

Chlöe Swarbrick

Angie Warren-Clark

**Climate Change Response (Emissions Trading Reform)
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Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon James Shaw

Climate Change Response (Emissions Trading Reform) Amendment Bill

Government Bill

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| 149 | Section 174 amended (Public access to material incorporated by reference) | 121 |
| 150 | Section 175 amended (Application of Legislation Act 2012 to material incorporated by reference) | 121 |
| 151 | Section 178A amended (Option to pay money instead of surrendering units to cover emissions) | 121 |
| 152 | Section 178B amended (Issuing New Zealand units to meet surrender obligations) | 121 |
| 153 | Section 178C repealed (Prohibition on ability to export New Zealand units) | 121 |
| 154 | Part 5 divided into Parts 5 to 5D and new Part 5 divided into subparts | 122 |
| 155 | Section 179 amended (Forest land to be treated as deforested in certain cases) | 123 |

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| 156 | Section 179A amended (Forest land may not be treated as deforested in certain cases) | 123 |
| 157 | Section 181 amended (When deforestation to be treated as occurring in respect of pre-1990 forest land) | 124 |
| 158 | Section 183 amended (Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land) | 124 |
| 159 | Section 183A amended (Certain applications not otherwise permitted by section 183) | 124 |
| 160 | New section 183B inserted (Applications for exemption for some Maori land or land with 10 or more owners) | 125 |
| | 183B Applications for exemption for some Maori land or land with 10 or more owners | 125 |
| 161 | Section 184 amended (Exemptions for deforestation of land with tree weeds) | 126 |
| 162 | New section 185A inserted (Regulations about exemptions for deforestation of land with tree weeds) | 127 |
| | 185A Regulations about exemptions for deforestation of land with tree weeds | 127 |
| 163 | Section 186 amended (Methodology for pre-1990 forest land cleared in 8 years or less) | 128 |
| 164 | Section 186B amended (Criteria for approving offsetting forest land applications) | 128 |
| 165 | Section 186C amended (Conditions applicable to offsetting forest land) | 129 |
| 166 | New section 186CA inserted (Variation to approved offsetting forest land application) | 129 |
| | 186CA Variation to approved offsetting forest land application | 129 |
| 167 | Section 186D amended (Requirements relating to offsetting forest land) | 130 |
| 168 | Section 186F amended (Regulations relating to offsetting) | 130 |
| <u>168</u> | <u>Section 186F amended (Regulations relating to offsetting)</u> | <u>130</u> |
| 169 | Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset) | 130 |
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| 172 | Section 187 amended (Conditions on registration as participant in respect of certain activities relating to post-1989 forest land) | 131 |
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| 173 | <u>Section 188 amended (Registration as participant in respect of post-1989 forest land)</u> | 133 |
| 174 | <u>Sections 188A to 191 replaced</u> <u>New sections 188AC and 188AD inserted</u> | 133 |
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| 188AC | Notice to forestry participant if their registration added or removed | 135 |
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| 189DA | Total liability or entitlement has effect, and unit balance updated, when emissions return submitted | 140 |
| | <i>New unit balance report for certain applications or notices</i> | |
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| | <i>Maximum liability is unit balance of carbon accounting area</i> | |
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| | <i>Ceasing participation in standard or permanent forestry</i> | |
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| 191BB | Effect of ceasing participation for part carbon accounting areas | 144 |
| 191CA | If participant has never carried out activity in carbon accounting area | 145 |
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| <u>174B</u> | <u>Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)</u> | <u>145</u> |
| <u>174C</u> | <u>New section 191CA inserted (If participant has never carried out activity in carbon accounting area)</u> | <u>146</u> |
| | <u>191CA</u> <u>If participant has never carried out activity in carbon accounting area</u> | <u>146</u> |
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| 176 | Section 193 replaced (Effect of transmission of interest in post-1989 forest land) | 148 |
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| <u>176</u> | <u>Section 193 amended (Emissions returns in relation to transmitted interests)</u> | <u>148</u> |
| 177 | New cross-heading above section 194 inserted | 148 |
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| 178 | New sections 194AA to 194EL and cross headings inserted | 149 |
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| 194DC | Approval of application to change activity on post-1989 forest land | 154 |
| 194DD | Emissions return for application to change from PFSI activity | 155 |
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| 194DF | Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging) | 156 |
| 194DG | Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry | 157 |
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| 194EJ | Due dates for payment of penalties and recovery of EPA's costs | 164 |
| 194EK | Option must be chosen at end of permanent forestry period | 164 |
| 194EL | Removal of carbon accounting area from permanent forestry | 165 |
| 179 | New subparts 5 and 6 of Part 5 inserted | 165 |
| | Subpart 5—Averaging accounting methodology | |
| | <i>General provisions</i> | |
| 194FA | Interpretation for subpart 5 | 166 |
| 194FB | Averaging accounting methodology | 167 |
| 194FC | Averaging accounting applies to carbon accounting areas (averaging) | 167 |
| 194FD | First rotation forest and subsequent rotation forest | 168 |

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| <i>Carbon equivalent forest land swaps: applications</i> | | |
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| 194GB | Criteria for carbon equivalent forest land swap | 170 |
| 194GC | Effect of approval of application to swap land | 171 |
| <i>Carbon equivalent forest land swaps: approved swap land</i> | | |
| 194HA | Duration of approved swap land status | 172 |
| 194HB | Effect of being approved swap land | 173 |
| 194HC | Subsequent rotation forest | 173 |
| 194HD | Reconfiguration restrictions | 173 |
| 194HE | No transfers to permanent forestry | 173 |
| <i>Carbon equivalent forest land swaps: release of approved swap land</i> | | |
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| 194JB | Notice of compliance with release criteria | 175 |
| 194JC | Liability to surrender units if release criteria not met | 176 |
| 194JD | Maximum liability and apportionment | 177 |
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| <i>Carbon equivalent forest land swaps: action if original criteria not met</i> | | |
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| <i>Regulations</i> | | |
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| 194NC | Approval of temporary adverse event suspension | 187 |
| <i>Temporary adverse event land</i> | | |
| 194PA | Duration of temporary adverse event land status | 188 |
| 194PB | Effect of being temporary adverse event land | 189 |
| 194PC | No liability or entitlement | 189 |
| 194PD | First rotation forest | 189 |
| 194PE | Reconfiguration restrictions | 189 |

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| 194PF | Damage to land turns out to be permanent | 190 |
| | <i>Re-establishment</i> | |
| 194QA | Re-establishment criteria | 190 |
| 194QB | Notice of achievement of re-establishment | 190 |
| 194QC | Effect on re-establishment date | 192 |
| | <i>Carbon recovery</i> | |
| 194RA | Carbon recovery criteria | 193 |
| 194RB | Notice when land achieves carbon recovery | 193 |
| | <i>Ceasing to be temporary adverse event land before recovery</i> | |
| 194SA | Cancellation for breach of conditions | 193 |
| 194SB | Other circumstances causing land to cease to be temporary adverse event land | 194 |
| 194SC | Consequences if land ceases to be temporary adverse event land | 194 |
| | <i>Regulations</i> | |
| 194TA | Regulations for temporary adverse events | 195 |
| 180 | New sections 194UA to 194UC and cross-headings inserted | 196 |
| | <i>Input returns <u>may be submitted</u> before actual emissions returns</i> | |
| 194UA | Input returns may be submitted for certain emissions returns for forestry activities | 197 |
| 194UB | EPA may do calculations based on input return | 197 |
| 194UC | Regulations for input returns | 197 |
| | <i>Notification of status of forest land</i> | |
| 181 | Section 195 amended (Notification of status of forest land) | 199 |
| 182 | Sections 196 and 197 and cross-heading replaced | 199 |
| | <i>Forestry classifications of land</i> | |
| 196A | Meaning of forestry classification | 199 |
| 196B | EPA may give forestry classifications to areas of land | 200 |
| 196C | Effect of forestry classifications | 200 |
| 196D | Change of forestry classification to correct error | 201 |
| 196E | Change of forestry classification to update for changes | 201 |
| 196F | Forestry classification with effect before date classification given | 201 |
| 196G | Regulations for forestry classifications | 202 |
| | <i>Grant-funded forests</i> | |
| 197 | Entitlement to units for removals from grant-funded forests | 203 |
| 197A | Regulations for grant-funded forests | 203 |

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| 183 | Section 198 amended (Registration as participant by purchasers of obligation fuel) | 204 |
| 184 | Section 202 amended (Activities added to Part 2 of Schedule 3) | 204 |
| 185 | Section 209 amended (Registration as participant by purchasers of coal or natural gas) | 204 |
| 186 | New section 211A inserted (Effect of stockpiling coal by coal importer or miner) | 205 |
| | 211A Effect of stockpiling coal by coal importer or miner | 205 |
| <u>186A</u> | <u>Section 213 amended (Participant in respect of subpart 4 of Part 5 of Schedule 3)</u> | <u>205</u> |
| <u>186B</u> | <u>New sections 215 and 216 inserted</u> | <u>206</u> |
| | <u>215 Ministers to report on alternative pricing system for farm-level agriculture emissions</u> | <u>206</u> |
| | <u>216 Regulations for voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity</u> | <u>206</u> |
| 187 | Section 217 amended (Transitional provision for penalties) | 207 |
| <u>187</u> | <u>Section 217 amended (Transitional provision for penalties)</u> | <u>207</u> |
| 188 | Section 218 amended (Transitional provision for voluntary reporting) | 208 |
| 189 | Section 219 amended (Transitional provision for mandatory reporting by certain participants) | 208 |
| 190 | Sections 220 to 222 repealed | 209 |
| <u>190</u> | <u>Sections 219 to 222 replaced</u> | <u>209</u> |
| | <u>219 Transitional provision for surrender obligations of certain participants</u> | <u>209</u> |
| | <u>220 Commission to report on progress towards meeting farm-level obligations</u> | <u>210</u> |
| 191 | Section 222H amended (Transitional provision for unincorporated bodies) | 210 |
| 192 | Section 233 amended (Rate of synthetic greenhouse gas levy) | 210 |
| <u>192</u> | <u>Section 233 amended (Rate of synthetic greenhouse gas levy)</u> | <u>210</u> |
| 193 | Sections 234 and 236 repealed | 210 |
| <u>193</u> | <u>Section 234 repealed (Transitional provision for synthetic greenhouse gas levy)</u> | <u>211</u> |
| <u>193A</u> | <u>Section 236 amended (Maximum price of carbon for purpose of levy calculation)</u> | <u>211</u> |
| 194 | Section 243 amended (Circumstances where levy may be refunded) | 211 |
| <u>194A</u> | <u>Section 244 amended (Exemptions from payment of synthetic greenhouse gas levy)</u> | <u>211</u> |
| <u>194B</u> | <u>Section 245 amended (Regulations specifying levy rates)</u> | <u>211</u> |
| 195 | Section 246 amended (Regulations relating to synthetic greenhouse gas levy) | 211 |

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| <u>195</u> | <u>Section 246 amended (Regulations relating to synthetic greenhouse gas levy)</u> | <u>211</u> |
| 196 | Section 247 amended (Process for making orders and regulations) | 212 |
| <u>196</u> | <u>Section 247 repealed (Process for making orders and regulations)</u> | <u>212</u> |
| 197 | Section 249 amended (Application of section 88 (Directions to EPA)) | 212 |
| 198 | Section 252 amended (Enforcement officers) | 212 |
| 199 | Section 257 amended (Power of entry for investigation, warrants, etc) | 212 |
| 200 | Section 258 amended (Regulations relating to verifiers) | 212 |
| <u>200</u> | <u>Section 258 amended (Regulations relating to verifiers)</u> | <u>212</u> |
| <u>200A</u> | <u>Section 269 amended (Review of operation and effectiveness of levy)</u> | <u>212</u> |
| 201 | Section 270 amended (Appointment and conduct of independent panel) | 212 |
| 202 | New Schedule 1AA inserted | 212 |
| <u>202</u> | <u>Schedule 1AA amended</u> | <u>213</u> |
| 203 | New Schedule 2A inserted | 215 |
| 204 | Schedule 3 amended | 215 |
| 205 | Schedule 4 amended | 216 |
| <u>205A</u> | <u>New Schedule 5 inserted</u> | <u>217</u> |
| | Subpart 2—Amendments that commence on 30 November 2020 | |
| 206 | Section 30G amended (Regulations relating to Part 2) | 217 |
| 207 | Section 183A amended (Certain applications not otherwise permitted by section 183) | 218 |
| 208 | Section 186B amended (Criteria for approving offsetting forest land applications) | 218 |
| 209 | Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset) | 218 |
| <u>209A</u> | <u>Section 189 amended (Emissions returns for post-1989 forest land activities)</u> | <u>218</u> |
| <u>209B</u> | <u>Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)</u> | <u>218</u> |
| 210 | Section 189DA amended (Total liability or entitlement has effect, and unit balance updated, when emissions return submitted) | 218 |
| 211 | Section 191AB amended (Effect of ceasing participation for whole carbon accounting areas) | 218 |
| 212 | Section 191BB amended (Effect of ceasing participation for part carbon accounting areas) | 218 |
| 213 | Section 194AA amended (EPA may act if persons fail to give notice of transmitted interest) | 219 |
| 214 | Section 194DF amended (Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging)) | 219 |

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| 215 | Section 194DG amended (Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry) | 219 |
| 216 | Section 194EL amended (Removal of carbon accounting area from permanent forestry) | 219 |
| 217 | Section 194FC amended (Averaging accounting applies to carbon accounting areas (averaging)) | 219 |
| 218 | Section 194GC amended (Effect of approval of application to swap land) | 219 |
| 219 | Section 194JC amended (Liability to surrender units if release criteria not met) | 219 |
| 220 | Section 194KB amended (Effect of declaration after release date) | 219 |
| 221 | Section 194KE amended (Effect of land substitution) | 219 |
| 222 | Schedule 1AA amended | 219 |
| 222 | Schedule 1AA amended | 220 |
| | Subpart 3—Amendment that commences on 31 December 2020 | |
| 223 | Section 89 amended (EPA to publish certain information) | 220 |
| | <u>Subpart 3—Amendments that commence on 1 January 2021</u> | |
| 222A | Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi)) | 221 |
| 222B | Section 3B amended (Consultation about certain regulations, orders, and notices) | 221 |
| 222C | Section 4 amended (Interpretation) | 221 |
| 222D | New subpart 4 of Part 2 inserted | 221 |
| | <u>Subpart 4—Regulations setting price of carbon</u> | |
| | <u>30W Regulations setting price of carbon</u> | <u>221</u> |
| 223 | Section 89 amended (EPA to publish certain information) | 222 |
| 223A | Section 120 amended (Amendment to emissions returns by EPA) | 222 |
| 223B | Section 123 amended (Effect of amendment or assessment) | 223 |
| 223C | Section 129 amended (Offences in relation to failure to comply with various provisions) | 223 |
| 223D | Section 132 amended (Other offences) | 223 |
| 223E | Sections 134 to 136 replaced | 223 |
| | <u>134 Penalty for failing to surrender or repay units by due date</u> | <u>223</u> |
| | <u>134A Penalty for failing to submit emissions return by due date</u> | <u>224</u> |
| | <u>134B Penalty for failing to submit annual or closing allocation adjustment by due date</u> | <u>226</u> |
| | <u>134C Penalty for submitting incorrect emissions return</u> | <u>227</u> |
| | <u>134D Penalty for providing incorrect information in allocation application or adjustment</u> | <u>230</u> |
| | <u>135 Date for payment of penalty</u> | <u>232</u> |
| | <u>135A Deferred payment arrangements for payments of penalties</u> | <u>232</u> |
| | <u>136 Penalties are debt due to Crown</u> | <u>233</u> |

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| <u>223F</u> | <u>Section 137 amended (Interest for late payment)</u> | <u>233</u> |
| <u>223G</u> | <u>Section 138 amended (Obligation to pay penalty not suspended by appeal)</u> | <u>233</u> |
| <u>223H</u> | <u>Section 138A replaced (Penalties to be paid into Crown account)</u> | <u>234</u> |
| | <u>138A Penalties to be paid into Crown account</u> | <u>234</u> |
| <u>223I</u> | <u>Section 159 amended (Recovery of costs)</u> | <u>234</u> |
| <u>223J</u> | <u>Section 179 amended (Forest land to be treated as deforested in certain cases)</u> | <u>234</u> |
| <u>223K</u> | <u>Section 181 amended (When deforestation to be treated as occurring in respect of pre-1990 forest land)</u> | <u>235</u> |
| <u>223L</u> | <u>Section 189 amended (Emissions returns for post-1989 forest land activities)</u> | <u>235</u> |
| <u>223M</u> | <u>Section 192 amended (Effect of transmission of interest in post-1989 forest land)</u> | <u>235</u> |
| <u>223N</u> | <u>Section 217 amended (Transitional provision for penalties)</u> | <u>236</u> |
| <u>223O</u> | <u>Section 233 amended (Rate of synthetic greenhouse gas levy)</u> | <u>236</u> |
| <u>223P</u> | <u>Section 236 repealed (Maximum price of carbon for purpose of levy calculation)</u> | <u>236</u> |
| <u>223Q</u> | <u>Schedule 1AA amended</u> | <u>236</u> |
| | <u>Subpart 3A—Amendments that commence on 1 January 2022</u> | |
| <u>223R</u> | <u>Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))</u> | <u>237</u> |
| <u>223S</u> | <u>Section 3B amended (Consultation about certain regulations, orders, and notices)</u> | <u>237</u> |
| <u>223T</u> | <u>Section 4 amended (Interpretation)</u> | <u>238</u> |
| <u>223U</u> | <u>Section 54 amended (Participants)</u> | <u>240</u> |
| <u>223V</u> | <u>Section 56 amended (Registration as participant in respect of activities listed in Schedule 3)</u> | <u>240</u> |
| <u>223W</u> | <u>Section 57 amended (Applicant to be registered as participant in respect of activities listed in Schedule 4)</u> | <u>241</u> |
| <u>223X</u> | <u>Section 58 amended (Removal from register of participants in respect of activities listed in Schedule 4)</u> | <u>241</u> |
| <u>223Y</u> | <u>New section 59A inserted (Removal from register for persistent non-compliance (standard forestry participants only))</u> | <u>241</u> |
| | <u>59A Removal from register for persistent non-compliance (standard forestry participants only)</u> | <u>241</u> |
| <u>223Z</u> | <u>Section 60A amended (Exemption for participants in activity listed in Part 1 of Schedule 4)</u> | <u>242</u> |
| <u>223ZA</u> | <u>Section 62 amended (Monitoring of emissions and removals)</u> | <u>242</u> |
| <u>223ZB</u> | <u>Section 63 amended (Liability to surrender units to cover emissions)</u> | <u>242</u> |
| <u>223ZC</u> | <u>Section 64 amended (Entitlement to receive New Zealand units for removal activities)</u> | <u>243</u> |
| <u>223ZD</u> | <u>Section 65 amended (Annual emissions returns)</u> | <u>243</u> |
| <u>223ZE</u> | <u>Section 67 amended (Retention of emissions records)</u> | <u>243</u> |

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| <u>223ZF</u> | <u>Section 89 amended (EPA to publish certain information)</u> | <u>244</u> |
| <u>223ZG</u> | <u>Section 91 amended (Approval of unique emissions factors)</u> | <u>244</u> |
| <u>223ZH</u> | <u>Section 92 amended (Recognition of verifiers)</u> | <u>244</u> |
| <u>223ZI</u> | <u>Section 107 amended (Applications for emissions rulings)</u> | <u>244</u> |
| <u>223ZJ</u> | <u>Section 109 amended (Making of emissions rulings)</u> | <u>244</u> |
| <u>223ZK</u> | <u>Section 118 amended (Submission of final emissions returns)</u> | <u>244</u> |
| <u>223ZL</u> | <u>Section 127 amended (Time bar for amendment of emissions returns)</u> | <u>244</u> |
| <u>223ZM</u> | <u>New section 128A and cross-heading inserted</u> | <u>244</u> |
| <i>Notices required from participants</i> | | |
| | <u>128A EPA may act if participant fails to give notice</u> | <u>244</u> |
| <u>223ZN</u> | <u>Section 134A amended (Penalty for failing to submit emissions return by due date)</u> | <u>245</u> |
| <u>223ZO</u> | <u>Section 134C amended (Penalty for submitting incorrect emissions return)</u> | <u>245</u> |
| <u>223ZP</u> | <u>Section 135A amended (Deferred payment arrangements for payments of penalties)</u> | <u>246</u> |
| <u>223ZQ</u> | <u>Section 136 amended (Penalties are debt due to Crown)</u> | <u>246</u> |
| <u>223ZR</u> | <u>Section 137 amended (Interest for late payment)</u> | <u>246</u> |
| <u>223ZS</u> | <u>Section 138 amended (Obligation to pay penalty not suspended by appeal)</u> | <u>246</u> |
| <u>223ZT</u> | <u>Section 138A amended (Penalties to be paid into Crown account)</u> | <u>246</u> |
| <u>223ZU</u> | <u>Section 159 amended (Recovery of costs)</u> | <u>246</u> |
| <u>223ZV</u> | <u>Section 163 amended (Regulations relating to methodologies and verifiers)</u> | <u>246</u> |
| <u>223ZW</u> | <u>Section 168 amended (Other regulations)</u> | <u>246</u> |
| <u>223ZX</u> | <u>Section 169 amended (Incorporation by reference in certain regulations)</u> | <u>247</u> |
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Climate Change Response (Emissions Trading Reform) Amendment Act **2019**.

2 Commencement

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(1) This Act comes into force as follows:

(a) **subpart 1 of Part 1** and **subpart 1 of Part 2** come into force on the day after Royal assent:

(b) **subpart 2 of Part 1** and **subpart 2 of Part 2** come into force on 30 November 2020:

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~~(c) **subpart 3 of Part 1** comes into force on 31 December 2020:~~

~~(d) **subpart 3 of Part 2** comes into force on 1 January 2021:~~

(c) **subpart 3 of Part 1** comes into force on 1 January 2021:

(d) **subpart 3A of Part 1** and **subpart 3 of Part 2** come into force on 1 January 2022:

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~~(e) **subpart 4 of Part 2** comes into force on 1 January 2022:~~

(f) **subpart 4 of Part 1** comes into force—

(i) on a single date set by Order in Council; or

~~(ii) otherwise, on 1 January 2023.~~

(ii) on 1 January 2023, if an earlier date has not been set:

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(g) **subpart 5 of Part 1** and **subpart 4 of Part 2** come into force on 1 January 2023.

- (2) If an auction is to be conducted under section 6A of the principal Act in the period starting on the day after Royal assent and ending on 31 December 2022, the Minister must recommend the making of an Order in Council that sets the single date on which **subpart 4 of Part 1** comes into force as the date of that first auction. 5

3 Principal Act

This Act amends the Climate Change Response Act 2002 (the **principal Act**).

Part 1 Amendments to principal Act

Subpart 1—Amendments that commence on day after Royal assent 10

4 Section 2A amended (Application of Schedules 3 and 4)

(1AA) In section 2A(1)(a)(ii), after “Schedule 3”, insert “(for fertiliser–farmer or animals–farmer activities)”.

- (1) In section 2A(1)(b), replace “221” with “**219**”.
(2) In section 2A(3), delete “Subpart 1 of”. 15
(3) In section 2A(4), before “Part 3”, insert “Subpart 1 of”.

~~(4) Replace section 2A(5) with:~~

~~(5) Subpart 1 of Part 5 of Schedule 3 applies —~~

~~(a) on and after 1 January 2011, except in relation to surrender obligations; and~~ 20

~~(b) on and after 1 January 2025 in relation to surrender obligations.~~

(4) Replace section 2A(5) and (6) with:

(5A) Subpart 1 of Part 5 of Schedule 3 (for fertiliser–processor activities)—

(a) applies on and after 1 January 2011; but

(b) is affected by **section 219**, which provides that emissions released during the following excluded period do not require units to be surrendered: the period— 25

(i) starting on 1 January 2011; and

(ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022). 30

(5B) Subpart 2 of Part 5 of Schedule 3 (for fertiliser–farmer activities)—

(a) applies on and after a date appointed by the Governor-General by Order in Council (see **section 2B**); but

(b) is affected by **section 219**, which provides that emissions released during the following excluded period do not require units to be surrendered: 35

- the first year in which that subpart applies to the persons, or class of persons, carrying out that activity.
- (5C) Subpart 3 of Part 5 of Schedule 3 (for animals–processor activities)—
- (a) applies on and after 1 January 2011; but
- (b) is affected by **section 219**, which provides that emissions released during the following excluded period do not require units to be surrendered: the period—
- (i) starting on 1 January 2011; and
- (ii) ending on a date determined by that section (which may be 31 December 2024 or another date as early as 1 July 2022).
- (5D) Subpart 4 of Part 5 of Schedule 3 (for animals–farmer activities)—
- (a) applies on and after 1 January 2024 or a later date appointed by the Governor-General by Order in Council (see **section 2B**); but
- (b) is affected by **section 219**, which provides that emissions released during the following excluded period do not require units to be surrendered: the first year in which that subpart applies to the persons, or class of persons, carrying out that activity.
- ~~(5) Replace section 2A(9) with:~~
- ~~(9) Subpart 4 of Part 5 of Schedule 3 applies —~~
- ~~(a) on and after 1 January 2024, except in relation to surrender obligations; and~~
- ~~(b) on and after 1 January 2025 in relation to surrender obligations.~~
- (5) Replace section 2A(8) and (9) with:
- (8) **Part 1A** of Schedule 4 applies on and after 1 January 2022.
- 5 ~~Section 2B amended (Orders in Council in relation to Part 5 of Schedule 3)~~**
- ~~In section 2B(3)(c)(ii), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”.~~
- 6 ~~Section 2C amended (Effect of Orders in Council in relation to Part 5 of Schedule 3)~~**
- ~~(1) Replace section 2C(1) with:~~
- ~~(1) This section applies —~~
- ~~(a) to subparts 1 and 2 of Part 5 of Schedule 3 at any time that those subparts apply at the same time (because of an Order in Council made under section 2A(8)); and~~
- ~~(b) to subparts 3 and 4 of Part 5 of Schedule 3 on and from 1 January 2024.~~
- ~~(2) Replace section 2C(4) with:~~

~~(4) If an Order in Council is made under 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.~~

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~~(4A) Section 2A(6) and subpart 3 of Part 5 of Schedule 3 expire and are repealed on 1 January 2025.~~

~~(3) In section 2C(5), replace “or (4)(a) or (b)” with “, **(4), or (4A)**”.~~

5 Sections 2B and 2C replaced

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Replace sections 2B and 2C with:

2B Orders in Council in relation to subparts 2 and 4 of Part 5 of Schedule 3 (Agriculture)

(1) This section relates to an Order in Council made under **section 2A(5B) or (5D)**, which appoints a date on and after which subpart 2 or 4 of Part 5 of Schedule 3 (the **subpart**) applies (for fertiliser–farmer or animals–farmer activities).

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(2) The order must—

(a) be made on the recommendation of the Minister; and

(b) appoint a date that is 1 January in a year; and

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(c) be made at least 1 year before the date appointed by the order.

(3) The order may provide that the subpart applies, on and after the date appointed by the order,—

(a) specifically to 1 or more classes of person who carry out an activity listed in the subpart; or

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(b) generally to all persons who carry out an activity listed in the subpart.

(4) Before recommending the making of the order, the Minister must comply with **subsections (5) and (6)**.

(5) The Minister must have regard to—

(a) the need for the EPA to be able to verify information contained in emissions returns of the persons who will become participants in an activity listed in the subpart by operation of the order; and

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(b) the likelihood that, as a result of becoming participants by operation of the order, persons carrying out an activity listed in the subpart will reduce their emissions; and

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(c) the desirability of minimising—

- (i) the compliance and administration costs of persons who will become participants in an activity listed in the subpart by operation of the order; and
- (ii) the administration costs of the Crown in administering the emissions trading scheme. 5
- (6) The Minister must consult, or be satisfied that the chief executive has consulted, the persons (or representatives of those persons) that appear to the consultant likely to have an interest in the order.
- 2C Effect of overlapping application of subparts of Part 5 of Schedule 3 (Agriculture)** 10
- (1) This section applies—
- (a) to the fertiliser–processor and fertiliser–farmer subparts (of Part 5 of Schedule 3) at any time that those subparts apply at the same time (because of an Order in Council made under **section 2A(5B)**); and
- (b) to the animals–processor and animals–farmer subparts (of Part 5 of Schedule 3) on and after— 15
- (i) 1 January 2024; or
- (ii) if an Order in Council is made under **section 2A(5D)**, the date appointed in that order.
- (2) If this section applies, then regulations made under section 163(1) may require— 20
- (a) a person carrying out a fertiliser–processor activity and a person carrying out a fertiliser–farmer activity to—
- (i) collect data or other information relating to the same synthetic fertiliser; and 25
- (ii) calculate emissions relating to the same synthetic fertiliser; or
- (b) a person carrying out an animals–processor activity and a person carrying out an animals–farmer activity to—
- (i) collect data or other information relating to the same ruminant animals, pigs, horses, or poultry; and 30
- (ii) calculate emissions relating to the same ruminant animals, pigs, horses, or poultry.
- (3) However,—
- (a) on and after the first day in respect of which the person carrying out a fertiliser–farmer activity is required to surrender units for emissions relating to the fertiliser, this Act no longer applies to the person carrying out the fertiliser–processor activity in relation to that fertiliser; and 35
- (b) on and after the first day in respect of which the person carrying out an animals–farmer activity is required to surrender units for emissions relat-

- ing to the ruminant animals, pigs, horses, or poultry, this Act no longer applies to the person carrying out the animals–processor activity in relation to those ruminant animals, pigs, horses, or poultry.
- (4) If an Order in Council is made under **section 2A(5B)** that has the effect of applying the fertiliser–farmer subpart to all persons who carry out a fertiliser–farmer activity, then **section 2A(5A)** and the fertiliser–processor subpart expire and are repealed on the first day in respect of which emissions from all persons carrying out a fertiliser–farmer activity may result in liability to surrender units. 5
- (5) On the first day on which, under **section 2A(5D)**, the animals–farmer subpart applies to all persons who carry out an animals–farmer activity, and emissions from all persons carrying out the activity may result in liability to surrender units, **section 2A(5C)** and the animals–processor subpart expire and are repealed. 10
- (6) If, by operation of **subsection (3), (4), or (5)**, this Act no longer applies to a person carrying out a fertiliser–processor or animals–processor activity, then— 15
- (a) section 54(4) applies, with any necessary modifications, to any person who has ceased, by operation of that subsection, to be a participant in respect of that activity; and
- (b) the person is not required to comply with section 59, but the EPA may, for the purposes of section 59(2), determine that the person has ceased to carry out the activity. 20
- (7) In this section and sections 2A, **2B, 216, and 219**,—
- animals–farmer subpart** means subpart 4 of Part 5 of Schedule 3, and **animals–farmer activity** means an activity listed in that subpart 25
- animals–processor subpart** means subpart 3 of Part 5 of Schedule 3, and **animals–processor activity** means an activity listed in that subpart
- fertiliser–farmer subpart** means subpart 2 of Part 5 of Schedule 3, and **fertiliser–farmer activity** means an activity listed in that subpart
- fertiliser–processor subpart** means subpart 1 of Part 5 of Schedule 3, and **fertiliser–processor activity** means an activity listed in that subpart. 30

7 **Section 3 amended (Purpose)**

- (1) In section 3(1)(a), replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (2) In section 3(1)(a)(i), after “period”, insert “starting on 1 January 2008 and ending on 31 December 2012”. 35
- (3) In section 3(1)(a)(ii), replace “Article 7 of the Protocol and Article 12 of the Convention” with “Article 12 of the Convention, Article 7 of the Protocol, and Article 13.7 of the Paris Agreement”.

- (4) In section 3(1)(b)(i) ~~and (c)(i)~~, replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (5) Replace section 3(1)(b)(ii) with:
 (ii) assisting New Zealand to meet its 2050 target and emissions budgets; and 5
- (6) In section 3(1)(c)(i), replace “and the Protocol” with “, the Protocol, and the Paris Agreement”.
- (7) Replace section 3(1)(c)(ii) with:
 (ii) assisting New Zealand to meet its 2050 target and emissions budgets. 10
- (8) Repeal section 3(3).
- 8 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))**
- (1) Replace section 3A(a) to (e) with:
- (a) ~~with respect to the following sections (which relate to powers to make regulations or Orders in Council), before recommending the making of a regulation or an order under those sections, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulation or order:~~ 15
- (i) ~~section 2B (Part 5 of Schedule 3):~~ 20
- (ii) ~~section 30G(1)(b)(i), (c), (j), and (k) (Part 2 institutional arrangements):~~
- (iii) ~~**section 30GA** (auctions to sell New Zealand units):~~
- (iv) ~~**section 30GB** (overall limits and price controls for units):~~
- (v) ~~**section 30GD** (auction monitor):~~ 25
- (vi) ~~**section 30M** (infringement notices):~~
- (vii) ~~**section 30W(1)(a)** (price of carbon):~~
- (viii) ~~section 50(2) and (3) (Part 3 inventory agency):~~
- (ix) ~~**section 60** (exemptions in respect of activities listed in Schedule 3):~~ 30
- (x) ~~**section 60A** (exemptions for participants in standard forestry or permanent forestry):~~
- (xi) ~~**section 84A** (phase out rates):~~
- (xii) ~~**section 161A** (eligible industrial activities):~~
- (xiii) ~~section 161G (eligible agricultural activities):~~ 35
- (xiv) ~~section 162 (adding further activity to Part 2 of Schedule 4):~~
- (xv) ~~section 163 (methodologies and verifiers):~~

- (xvi) ~~section 164 (unique emissions factors):~~
- (xvii) ~~**section 185A** (exemptions for deforestation of land with tree weeds):~~
- (xviii) ~~**section 186F** (pre 1990 offsetting forest land):~~
- (xix) ~~**section 194EG** (pecuniary penalty for clear felling):~~ 5
- (xx) ~~**section 194LA** (averaging):~~
- (xxi) ~~**section 194TA** (temporary adverse event suspensions):~~
- (xxii) ~~**section 194UG** (input returns):~~
- (xxiii) ~~**section 196G** (forestry classifications):~~
- (xxiv) ~~section 225 (targets):~~ 10
- (xxv) ~~section 244 (exemptions from payment of synthetic greenhouse gas levy):~~
- (xxvi) ~~section 246(1)(a) to (c) (synthetic greenhouse gas levy):~~
- (xxvii) ~~section 258 (verifiers):~~
- (2) ~~Repeal section 3A(e) to (h) and (j):~~ 15
- 8 Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))**
- (1) Repeal section 3A(a).
- (2) Replace section 3A(b) and (c) with:
- (a) with respect to the following provisions (which relate to powers to make regulations or Orders in Council or to give notice in the *Gazette*), before recommending the making of regulations or an order, or giving notice in the *Gazette*, under those provisions, the Minister must consult, or be satisfied that the chief executive has consulted, representatives of iwi and Māori that appear to the Minister or chief executive likely to have an interest in the regulations, order, or notice: 20
- (i) **section 2A(5B) or (5D)** (Part 5 of Schedule 3): 25
- (ii) section 30G(1)(b)(i), (c), (j), and (k) (Part 2—institutional arrangements):
- (iii) **section 30GA** (auctions to sell New Zealand units):
- (iv) **section 30GB** (limits and price controls for units): 30
- (v) **section 30GD** (auction monitor):
- (vi) **section 30M** (infringement offences):
- (vii) **section 60** (exemptions in respect of activities listed in Schedule 3):
- (viii) **section 60A** (exemptions for participants in activity listed in Part 1 of Schedule 4): 35

- (ix) **section 84A or 84B** (phase-out rates for eligible industrial activities):
 - (x) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is to require persons to provide electricity-related contracts or any information related to those contracts: 5
 - (xi) section 161G (eligible agricultural activities):
 - (xii) section 162 (adding further activity to Part 2 of Schedule 4):
 - (xiii) section 163 (methodologies and verifiers):
 - (xiv) section 164 (unique emissions factors): 10
 - (xv) **section 168(1)(nc)** (New Zealand's best practice forest management):
 - (xvi) section 186F (pre-1990 offsetting forest land):
 - (xvii) **section 194UC** (input returns):
 - (xviii) **section 196G** (forestry classifications): 15
 - (xix) section 244 (exemptions from payment of synthetic greenhouse gas levy):
 - (xx) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
 - (xxi) section 258 (verifiers):
- (3) Repeal section 3A(e) to (j). 20

8A **New section 3B inserted (Consultation about certain regulations, orders, and notices)**

After section 3A, insert:

3B **Consultation about certain regulations, orders, and notices**

- (1) The Minister must comply with this section before recommending the making of regulations or an Order in Council, or giving notice in the *Gazette*, under any of the following: 25
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
 - (b) **section 30GA** (auctions to sell New Zealand units):
 - (c) **section 30GB** (limits and price controls for units): 30
 - (d) **section 30GD** (auction monitor):
 - (e) **section 30M** (infringement offences):
 - (f) section 60 (exemptions in respect of activities listed in Schedule 3), unless the Crown has signed a negotiated greenhouse agreement with the person exempted: 35
 - (g) **section 60A** (exemptions for participants in activity listed in Part 1 of Schedule 4):

- (h) section 84A or 84B (phase-out rates for eligible industrial activities):
- (i) section 161D(1)(a) (notice specifying description of activity in relation to industrial allocations), unless the only purpose of the notice is—
- (i) to require persons to provide electricity-related contracts or any information related to those contracts; or 5
- (ii) to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160:
- (j) section 161G(1)(a)(ii) (allocative baseline of eligible agricultural activity): 10
- (k) section 162 (adding further activity to Part 2 of Schedule 4):
- (l) section 163 (methodologies and verifiers):
- (m) section 164 (unique emissions factors):
- (n) section 168(1)(nc) (New Zealand’s best practice forest management):
- (o) section 186F (pre-1990 offsetting forest land): 15
- (p) section 194UC (input returns):
- (q) section 196G (forestry classifications):
- (r) section 216 (voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity):
- (s) section 233(4)(a) (methodology for specifying price of carbon): 20
- (t) section 244 (exemptions from payment of synthetic greenhouse gas levy):
- (u) section 246(1)(a) to (e) (synthetic greenhouse gas levy):
- (v) section 258 (verifiers).
- (2) The Minister must also comply with this section before recommending the revocation of an Order in Council under section 60, 60A, or 244 (exemptions for various matters). 25
- (3) The Minister must be satisfied that 1 of the following has consulted the persons (or representatives of those persons) that appear to the consulter likely to be substantially affected by any regulations made in accordance with the recommendation, by any order made or revoked in accordance with the recommendation, or by the notice: 30
- (a) the Minister or the chief executive; or
- (b) for regulations made under section 30GB, 84A, or 84B, the Minister, the chief executive, or the Climate Change Commission. 35
- (4) The process for consultation must, to the extent practicable in the circumstances, include—

- (a) adequate and appropriate notice of the proposed terms of the recommendation or notice, and of the reasons for it; and
- (b) a reasonable opportunity for interested persons to consider the recommendation or notice and make submissions; and
- (c) adequate and appropriate consideration of submissions. 5
- (5) This section does not apply to regulations made under the following if the Minister considers it is in the national interest that the regulations be made urgently:
- (a) section 30G(1)(b)(i), (c), (j), or (k) (dealings with units under Part 2):
- (b) **section 30GA** (auctions to sell New Zealand units); 10
- (c) **section 30GB** (limits and price controls for units);
- (d) **section 30GD** (auction monitor).
- (6) A failure to comply with this section does not affect the validity of any regulations, order, or notice to which it applies.
- 9 Section 4 amended (Interpretation)** 15
- (1) In section 4(1), repeal the definitions of **allocation plan**, **approved overseas unit**, **assigned amount unit**, **Australian eligible industrial activity**, ~~carbon accounting area~~, **carbon dioxide equivalent**, **carry-over**, **CDM registry**, **certified emission reduction unit**, **clean development mechanism project**, ~~clear~~, **commitment period reserve**, **conversion account**, **convert**, ~~deforest~~, 20
designated operational entity, **elect**, **eligible land**, **emission reduction unit**, **emissions budget period**, **emissions return**, **executive board**, **expire** or **expiry**, **first commitment period**, **fishing allocation plan**, **greenhouse gas**, **initial assigned amount**, **international transaction log**, **joint implementation project**, **Kyoto units**, **long-term certified emission reduction replacement account**, **long-term certified emission reduction unit**, **New Zealand Greenhouse Gas Inventory**, **non-compliance cancellation account**, **overseas registry**, **Paris Agreement**, **Party**, **post-1989 forest land**, **pre-1990 forest land allocation plan**, **previous commitment period**, **relevant commitment period**, ~~removal activity~~, **removal unit**, **retire**, **retirement account**, **sink cancellation account**, **subsequent commitment period**, **supervisory committee**, **temporary certified emission reduction replacement account**, **temporary certified emission reduction unit**, and **unit**. 30
- (2) In section 4(1), insert in their appropriate alphabetical order:
- approved overseas unit** means a unit, other than a New Zealand unit, that is— 35
- (a) issued (as defined by this section); and
- (b) prescribed as a unit that may be transferred to accounts in the Registry
- auction** means an auction to sell New Zealand units under section 6A

~~carbon accounting area means an area of post-1989 forest land —~~

- ~~(a) that —~~
- ~~(i) is defined by a person who is registered, or has applied to register, as a participant under section 57 in relation to an activity of standard forestry or permanent forestry; and~~
 - ~~(ii) meets any relevant criteria specified in regulations made under this Act; or~~
- ~~(b) that is constituted as a carbon accounting area by a provision of this Act~~

~~carbon accounting area (averaging) has the meaning given by section 494FG(3)~~

~~carbon dioxide equivalent, in relation to a greenhouse gas, means the amount of carbon dioxide (in tonnes) that would produce the same global warming as the amount of that gas, calculated in accordance with international climate change obligations~~

~~clear, —~~

- ~~(a) in relation to a tree, —~~
- ~~(i) includes —~~
 - ~~(A) to fell, harvest, burn, remove by mechanical means, spray with a herbicide intended to kill the tree, or undertake any other form of human activity that kills the tree; and~~
 - ~~(B) to fell, burn, kill, uproot, or destroy by a natural cause or event; but~~
 - ~~(ii) does not include to prune or thin; and~~
- ~~(b) in relation to land, means to clear (as defined in paragraph (a)) the forest species that are on the land~~

~~clear felled, in relation to an area of land, means an area —~~

- ~~(a) of at least 1 hectare; and~~
- ~~(b) on which any trees are cleared or killed by any form of human activity, including by felling, harvesting, burning, removing by mechanical means, or spraying with a herbicide intended to kill the tree; and~~
- ~~(c) that, after that type of clearing or killing, has tree crown cover from forest species of 30% or less in each hectare~~

~~Climate Change Commission means an independent body to be established by the Minister to advise the Minister on matters relating to reducing New Zealand's emissions~~

~~constitution date, in relation to a carbon accounting area, means, —~~

- ~~(a) for a carbon accounting area that is defined in an application referred to in section 188(1), the date the applicant's registration takes effect under section 57(8); or~~

~~(b) for a carbon accounting area that a participant applies to add under **section 188(3)**, the date of the notice given under **section 188(6)(b)(ii)**; or~~

~~(e) for any other carbon accounting area, the date on which a person becomes a participant in an activity on the carbon accounting area under a provision of **Part 5**~~

~~**deforest**, in relation to forest land,—~~

~~(a) means to convert forest land to land that is not forest land (see section 181, for example); and~~

~~(b) includes deforestation after forest land is cleared, where section 179 applies~~

~~**emissions budget** means the quantity of emissions that will be permitted in each emissions budget period as a net amount of carbon dioxide equivalent~~

~~**emissions budget period** means a 5-year period in the years 2022 to 2050 (except that the period 2022 to 2025 is a 4-year period)~~

~~**emissions budget period** means a 5-year period, except for the first 4-year period in the years 2022 to 2025, as specified in section 5X(3)~~

~~**emissions return**—~~

~~(a) means—~~

~~(i) an annual emissions return submitted under section 65; or~~

~~(ii) a quarterly emissions return submitted under section 66; or~~

~~(iii) a final emissions return submitted under section 118; or~~

~~(iv) an emissions return submitted under a provision of **Part 5** or Schedule 1AA; and~~

~~(b) includes the following as if they had been submitted in that form:~~

~~(i) an emissions return as amended by the EPA under section 120; and~~

~~(ii) the EPA's assessment under section 121 of the matters that should have been in an emissions return; and~~

~~(c) includes an emissions return that shows nil liability~~

~~**emissions trading scheme** means (except in section 3) the greenhouse gas emissions trading scheme established under this Act~~

~~**ETS participant provisions** means Parts 4 to **5D** of this Act~~

~~**forest sink covenant** means a forest sink covenant that is or was registered against land under section 67ZD of the Forests Act 1949~~

~~**forestry activity** means—~~

~~(a) an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or pre-1990 offsetting forest land); or~~

~~(b) an activity listed in Part 1 or **1A** of Schedule 4 (standard forestry or permanent forestry on post-1989 forest land)~~

(b) an activity listed in Part 1 of Schedule 4 (forestry on post-1989 forest land)

forestry classification has the meaning given ~~by~~ in **section 196A** 5

greenhouse gas means—

- (a) carbon dioxide (CO₂):
- (b) methane (CH₄):
- (c) nitrous oxide (N₂O):
- (d) any hydrofluorocarbon: 10
- (e) any perfluorocarbon:
- (f) sulphur hexafluoride (SF₆)

international climate change obligations means New Zealand's international obligations under the Convention, the Protocol, or the Paris Agreement

international transaction body means a prescribed body that confirms the validity of transactions relating to accounting of greenhouse gas emissions 15

issued, in relation to an approved overseas unit, means—

- (a) issued by an overseas registry; or
- (b) issued in another way and approved by an international transaction body

mandatory emissions return period means any of the following periods: 20

- (a) the first commitment period starting on 1 January 2008 and ending on 31 December 2012:
- (b) the 5-year period starting on 1 January 2013 and ending on 31 December 2017:
- (c) the 5-year period starting on 1 January 2018 and ending on 31 December 2022: 25
- (d) the 3-year period starting on 1 January 2023 and ending on 31 December 2025:
- (e) the 5-year period starting on 1 January 2026 and ending on 31 December 2030: 30
- (f) each consecutive 5-year period after that

New Zealand Greenhouse Gas Inventory means the reports that are required under Articles 4 and 12 of the Convention, Article 7.1 of the Protocol, and Article 13.7 of the Paris Agreement and that are prepared in accordance with section 32(1) 35

overseas registry means a prescribed overseas registry from which or to which units may be transferred to or from accounts in the Registry

Paris Agreement—

- (a) means the Paris Agreement (under the Convention) done at Paris on 12 December 2015, a copy of the English text of which is set out in **Schedule 2A**; and
- (b) includes any amendments made to the Paris Agreement that are, or will become, binding on New Zealand from time to time

~~permanent forestry has the meaning given by section 186K~~

post-1989 forest land means forest land that—

- (a) is one of the following:
- (i) land that was not forest land on 31 December 1989: 10
 - (ii) land that was forest land on 31 December 1989 but was deforested in the period beginning on 1 January 1990 and ending on 31 December 2007:
 - (iii) land that was pre-1990 forest land, other than exempt land,—
 - (A) that was deforested on or after 1 January 2008; and 15
 - (B) in respect of which any liability to surrender units arising in relation to an activity listed in Part 1 of Schedule 3 has been satisfied:
 - (iv) land that was pre-1990 forest land, other than exempt land, that was deforested on or after 1 January 2013 and offset by pre-1990 offsetting forest land: 20
 - (v) land that was pre-1990 offsetting forest land that was deforested after 1 January 2013 and in respect of which any liability to surrender units arising in relation to an activity listed in Part 1A of Schedule 3 has been satisfied: 25
 - (vi) land that was exempt land—
 - (A) that has been deforested; and
 - (B) in respect of which the number of units that would have been required to be surrendered in relation to an activity listed in Part 1 of Schedule 3, had the land not been exempt land, have been surrendered under section 187(2): 30
 - (vii) land that was exempt land that has been deforested more than 8 years ago; and

- (b) is not offsetting forest land or pre-1990 offsetting forest land

pre-1990 forest land allocation plan means the allocation plan issued under section 70 in respect of pre-1990 forest land 35

~~removal activity means—~~

- (a) ~~an activity of standard forestry or permanent forestry (on post-1989 forest land); or~~

- ~~(b) an activity that is listed in Part 2 of Schedule 4 (other removal activities) **standard forestry** has the meaning given by **section 186K** **temporary adverse event land** has the meaning given in **section 194MA(1)** **unit** means a New Zealand unit or an approved overseas unit~~
- (3) In section 4(1), definition of **account number**, replace “section 15(1)(a)” with “**section 15(1)**”. 5
- (4) In section 4(1), definition of **eligible person**, replace paragraph (d) with:
(d) the pre-1990 forest land allocation plan
- ~~(5) In section 4(1), definition of **emissions return**, replace paragraph (a)(iv) with:
(iv) an emissions return submitted under a provision of **Part 5** or **Schedule 1AA**; and~~ 10
- ~~(6) In section 4(1), definition of **emissions return**, replace paragraph (b) with:
(b) includes the following as if they had been submitted in that form:
(i) an emissions return as amended by the EPA under section 120; and
(ii) the EPA’s assessment under section 121 of the matters that should have been in an emissions return; and
(e) includes an emissions return that shows nil liability~~ 15
- (7) In section 4(1), definition of **exempt land**, replace paragraph (a)(i) and (ii) with: 20
(i) under section 183 or **183B**; or
(ii) ~~under section 184, as long as the EPA has not declared otherwise (because a requirement or condition has been breached); but~~
- (8) In section 4(1), definition of **general cancellation account**, delete “other than sink activities being a source of emissions or a determination that New Zealand is not in compliance with Article 3.1 of the Protocol”. 25
- (9) In section 4(1), definition of **holding account**, delete “that have not been retired, surrendered, converted, or cancelled”.
- (10) In section 4(1), definition of **surrender**, replace “section 18CA(3) or (4)” with “**section 18CA(2)**”. 30
- ~~(11) In section 4(1), definition of **tree weed**, replace “a tree” with “a forest species”.~~
- (12) In section 4(2), replace “or Protocol” with “, the Protocol, or the Paris Agreement” in each place.
- (13) In section 4(6), replace “sections 62, 65, 66, 67, 118, 187, 189, 191, 192, and 193, **activity** or **activities**, in relation to a participant who submits an emissions return that shows nil liability,” with “a provision of this Act that relates to a participant who submits an emissions return that shows nil liability, **activity** or **activities**”. 35

10 ~~New sections 4A and 4B inserted~~ section 4AA inserted (Greenhouse gas definition may be amended to add gases)

After section 4, insert:

~~4A~~4AA Greenhouse gas definition may be amended to add gases

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister,— 5
- (a) amend the definition of greenhouse gas in section 4 to add 1 or more other gases; and
 - (b) if necessary, amend Schedule 1AA to set out transitional provisions for the addition. 10
- (2) The Minister must not ~~make a recommendation~~ recommend the making of an order unless the Minister is satisfied that New Zealand has international climate change obligations in relation to the additional gas or gases.

~~4B~~ ~~Transitional, savings, and related provisions~~

~~The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.~~ 15

10A Section 5D amended (Membership of Commission)

Replace section 5D(1)(c) with:

- (c) no fewer than 3, and no more than 7, other members.

10B Section 5J amended (Commission’s functions) 20

(1) After section 5J(f), insert:

- (fa) to make recommendations to the Minister about limits and price control settings for units (see **section 5ZOA**):
- (fb) to make recommendations to the Minister about decreased or increased phase-out rates (see **section 5ZOB**): 25

(2) After section 5J(h), insert:

- (ha) to provide advice to the Minister (as required by **section 220**) on the progress that has been made towards—
 - (i) meeting the primary sector climate change commitments set out in **Schedule 5**; and 30
 - (ii) participants in the activities listed in subpart 4 of Part 5 of Schedule 3 (for animals–farmer participants) being ready to start complying with reporting and surrender obligations under this Act:

10C Section 5N amended (Consultation)

Replace section 5N(2)(a) with: 35

- (a) make publicly available, and invite submissions on, discussion papers and draft reports; and

10D Section 5ZG amended (Requirement for emissions reduction plan)

Replace section 5ZG(2) with:

- (2) The plan must be prepared and made publicly available by the deadlines specified in section 5ZI. 5

10E Section 5ZI amended (Minister to prepare and make emissions reduction plan publicly available)

(1) Replace section 5ZI(2) with:

- (2) The Minister must— 10

(a) prepare the plan after the relevant emissions budget has been notified under section 5ZD; but

(b) do the following at least 12 months before the commencement of the budget period:

(i) publish the plan in the *Gazette*; and 15

(ii) make the plan publicly available; and

(iii) present a copy of the plan to the House of Representatives.

(2A) However, for the plan for the first emissions budget period, the Minister—

(a) may prepare the plan before the relevant emissions budget has been notified under section 5ZD; and 20

(b) must do the following before the commencement of the budget period:

(i) publish the plan in the *Gazette*; and

(ii) make the plan publicly available; and

(iii) present a copy of the plan to the House of Representatives.

- (2) Repeal section 5ZI(4). 25

10F Section 5ZL amended (Commission to report at end of emissions budget period)

(1) In section 5ZL(1), replace “in the next emissions budget” with “for that”.

(2) Replace section 5ZL(1)(c) with:

(c) an assessment of the amount of offshore mitigation required to meet the emissions budget for that period, taking into account the limit proposed by the Commission under section 5ZA(1)(e). 30

10G New subpart 6 of Part 1B inserted

After section 5ZO, insert:

Subpart 6—Recommendations about making regulations

5ZOA Recommendations about limits and price control settings for units

- (1) This section applies after the Minister has set the first emissions budget.
- (2) The Commission must recommend to the Minister limits and price control settings, including any desirable emissions price path, each time the Minister is required to recommend the making of regulations under **section 30GB**. 5
- (3) The Commission’s recommendations must—
- (a) cover the limits and price control settings for each year that the Minister’s recommendation must cover; and
- (b) be made in accordance with— 10
- (i) the same requirements under **sections 30GB and 30GC** (except **section 30GC(5)(e)**) that apply to the making of the Minister’s recommendations; and
- (ii) its other duties (see sections 5M to 5O, for example); and
- (c) be given to the Minister a reasonable time before the Minister is required to recommend the making of the regulations. 15

5ZOB Recommendations about decreased or increased phase-out rates

- (1) The Commission must, on the Minister’s request, consider and recommend whether—
- (a) a decreased phase-out rate should be set for 1 or more eligible industrial activities for a year or years (by the making or amendment of regulations under **section 84A**): 20
- (b) an increased phase-out rate should be set for 1 or more eligible industrial activities for an emissions budget period (by the making or amendment of regulations under **section 84B**). 25
- (2) The Commission must recommend that a decreased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that there is an ongoing and substantial risk that activities will be relocated outside of New Zealand to reduce emissions-related costs.
- (3) The Commission may recommend that an increased phase-out rate should be set for 1 or more eligible industrial activities if the Commission is satisfied that it is appropriate to do so, having regard to the matters listed in **section 84C(3)**. 30

11 Section 6 amended (Minister of Finance may direct Registrar regarding establishment of Crown holding accounts and carry out trading activities with respect to units) 35

- (1) In section 6(b), after “overseas registry”, insert “or international transaction body”.

- (2) In section 6(d), delete “, with any person (including any other Party)”.
- 12 Section 6A amended (Minister’s power to sell by auction)**
- (1) In section 6A, replace “section 30G(1)(p)” with “**section 30GA**”.
- (2) In section 6A(a), after “prescribed”, insert “individual limit and”.
- (3) After section 6A(b), insert: 5
- (c) direct the Registrar to transfer units to any holding account in the Registry for the purposes of selling New Zealand units by auction.
- 13 Section 7 amended (Minister of Finance may give directions to Registrar regarding accounts and units)**
- (1) Repeal section 7(1)(a)(i), (ii), (iv), (v), (vi), and (viii). 10
- (2) Replace section 7(1)(b) to (e) with:
- (b) transfer units between holding accounts, subject to any prescribed restriction or prohibition.
- (3) Replace section 7(2)(b)(i) with:
- (i) the transfer is required to comply with international climate change obligations; or 15
- (4) Repeal section 7(3).
- 14 Section 9 amended (Minister of Finance may obtain information from inventory agency and Registrar)**
- In section 9(b)(ii), replace “retired, replaced, cancelled, and carried-over” with “replaced, and cancelled”. 20
- 15 Section 10 replaced (Purpose of Registry)**
- Replace section 10 with:
- 10 Purpose of Registry**
- The purpose of the Registry is— 25
- (a) to ensure the accurate, transparent, and efficient accounting of—
- (i) the issue, holding, transfer, surrender, and cancellation of New Zealand units and approved overseas units; and
- (ii) the conversion of New Zealand units in accordance with regulations made under this Act; and 30
- (b) to ensure the accurate, transparent, and efficient exchange of information between the Registry, overseas registries, and international transaction bodies; and
- (c) to facilitate the exchange of information between the persons with functions, duties, and powers under this Act to enable all of them to perform their functions and duties and exercise their powers. 35

- 16 Section 13 amended (Registrar may refuse access to, or suspend operation of, Registry)**
- In section 13(4)(d), replace “New Zealand’s international obligations” with “international climate change obligations”.
- 17 Section 14 amended (Registrar must give effect to directions)** 5
- In section 14, replace “a provision in Part 4 or 5 of this Act or” with “any of the ETS participant provisions or by”.
- 18 Section 15 amended (Registrar to allocate unique numbers)**
- (1) Replace section 15(1) with:
- (1) The Registrar must, in accordance with regulations made under this Act, allocate a unique account number to each account when the account is created. 10
- (2) Repeal section 15(2).
- 19 Sections 16 and 17 repealed**
- Repeal sections 16 and 17.
- 20 Section 18 amended (Form and content of unit register)** 15
- (1) Replace section 18(2)(b) with:
- (b) the particulars of transactions, including, but not limited to, the issue, transfer, replacement, surrender, conversion, and cancellation of units; and
- (2) In section 18(3)(a), replace “retirement, replacement, surrender, carry-over,” with “replacement, surrender,”. 20
- (3) In section 18(3)(b)(ii), after “registries”, insert “or international transaction bodies”.
- 21 Section 18B amended (Closing holding accounts)**
- Repeal section 18B(2)(b)(ii)(A). 25
- 22 Section 18C amended (Transfer of units)**
- (1) In section 18C(1)(b), after “registry”, insert “or international transaction body”.
- (2) Repeal section 18C(3).
- ~~**23 Section 18CA amended (Effect of surrender, retirement, cancellation, and conversion)**~~ 30
- ~~(1) In the heading to section 18CA, replace “, retirement, cancellation, and conversion” with “and cancellation”.~~
- ~~(2) In section 18CA(1), replace “retired, surrendered, carried over,” with “surrendered,”.~~
- ~~(3) Replace section 18CA(2) to (5) with:~~ 35

~~(2) A unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the Minister of Finance given under section 6 or 7 or a direction of the EPA given under section 124.~~

23 Section 18CA replaced (Effect of surrender, retirement, cancellation, and conversion)

5

Replace section 18CA with:

18CA Effect of surrender and cancellation

(1) A unit that is transferred to a cancellation account may not be further transferred, surrendered, or cancelled.

(2) A unit that is transferred to a surrender account may only be further transferred in accordance with a direction of the Minister of Finance given under section 6 or 7 or a direction of the EPA given under section 124.

10

24 Sections 18CB, 18CC, and 18CD repealed

Repeal sections 18CB, 18CC, and 18CD.

25 Section 18D amended (Succession)

15

(1) Replace section 18D(2)(b) with:

(b) the Registrar has registered the successor as the account holder.

(2) Replace section 18D(3) with:

(3) The Registrar may register a successor as the account holder—

(a) on application made in the form, and payment of the fee (if any), prescribed in regulations made under this Act; and

20

(b) in accordance with those regulations.

(4) However, if the account holder is a company and any units in its holding account are vested in the Crown under section 324(1) of the Companies Act 1993,—

25

(a) subsections (2) and **(3)** do not apply; and

(b) the EPA must, as soon as practicable after becoming aware of the public notice about the vesting of the units that is given under section 324(3) of that Act, direct the Registrar to transfer the units to a Crown holding account and close the account holder's holding account; and

30

(c) the Registrar must comply with the EPA's direction.

26 Section 19 repealed (Retirement of Kyoto units by the Crown)

Repeal section 19.

27 Section 20 amended (Transactions must be registered)

(1) In section 20(1), delete “retire,”.

35

- (2) In section 20(2)(a), replace “the international transaction log” with “an international transaction body”.
- 28 Section 21 repealed (Registration procedure for Kyoto units)**
Repeal section 21.
- 29 Section 21AA amended (Registration procedure for New Zealand units and approved overseas units)** 5
- (1) In section 21AA(1), replace “a Minister authorised to give the direction under a provision of this Act or the EPA” with “the EPA or a Minister authorised to give the direction under this Act”.
- (2) Replace section 21AA(1)(b) with: 10
- (b) if the proposed transaction concerns an overseas registry or international transaction body, send a record of the proposed transaction to the overseas registry or international transaction body if required by it; and
- (3) In section 21AA(1)(c), after “registry”, insert “or international transaction body”. 15
- (4) In section 21AA(1)(c)(ii)(A), replace “the Minister or the EPA” with “the EPA or the Minister”.
- (5) In section 21AA(2), after “an overseas registry”, insert “or international transaction body”.
- (6) In section 21AA(2), replace “the overseas registry” with “it”. 20
- (7) In section 21AA(2)(b), after “registry”, insert “or international transaction body”.
- (8) In section 21AA(2)(c)(i), replace “the Minister or the EPA who gave the direction” with “the EPA or the Minister who gave the direction”.
- (9) In section 21AA(3), after “from the overseas registry”, insert “or international transaction body”. 25
- (10) In section 21AA(3)(c), after “registry”, insert “or international transaction body”.
- 30 Section 21A amended (Electronic registration)**
In section 21A, delete “a provision of”. 30
- 31 Section 21B amended (Defective applications)**
Replace section 21B(1) with:
- (1) If an application is defective, the Registrar may direct the applicant, in writing by electronic notification, ~~the applicant~~ to correct the defect within a specified period of time. 35

- 32 Section 23 repealed (Receiving Kyoto units from overseas registries)**
Repeal section 23.
- 33 Section 23A amended (Receiving New Zealand units and approved overseas units from overseas registries)**
- (1) In the heading to section 23A, after “registries”, insert “or international transaction bodies”. 5
- (2) In section 23A(1), (2), and (3), after “overseas registry”, insert “or international transaction body” in each place.
- 34 Section 24 amended (Priority of registration)**
In section 24(1), delete “a provision of”. 10
- 35 Section 25 amended (Correction of unit register)**
- (1) In section 25(1)(a), replace “the Minister or the EPA who gave the direction” with “the EPA or the Minister who gave the direction”.
- (2) Replace section 25(3)(c)(ii) with:
(ii) an international transaction body (if required to do so); and 15
- 36 Section 27 amended (Information accessible by search)**
- (1) Replace section 27(1)(c) with:
(c) for each account whose purpose is to hold approved overseas units, the commitment period that the Protocol provides for and that is associated with the account; and 20
- (2) Repeal section 27(2)(a) and (b).
- (3) Replace section 27(2)(h) and (i) with:
(h) the total quantity of each type of approved overseas units issued during that year; and
- (4) In section 27(2)(j), replace “to the Registry from overseas registries” with “into the Registry”. 25
- (5) In section 27(2)(j)(iii), replace “overseas registries” with “registry or body”.
- (6) In section 27(2)(j)(iii)(A) and (B), replace “overseas registry” with “registry or body”.
- (7) In section 27(2)(k), replace “from the Registry to overseas registries” with “out of the Registry”. 30
- (8) In section 27(2)(k)(iii), replace “overseas registries” with “registry or body”.
- (9) In section 27(2)(k)(iii)(A) and (B), replace “overseas registry” with “registry or body”.
- (10) Replace section 27(2)(n), (o), and (p) with: 35

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- (o) the total quantity of approved overseas units transferred during that year to any sink cancellation account; and
- (p) the total quantity of approved overseas units transferred during that year to any non-compliance cancellation account; and
- (11) In section 27(2)(q), replace “to the” with “to each”. 5
- (12) Repeal section 27(2)(r).
- (13) Replace section 27(2)(u), (v), and (w) with:
- (u) the total quantity of each type of unit into which New Zealand units are converted in accordance with regulations made under this Act.
- (14) Replace section 27(3)(a) and (b) with: 10
- (a) the total holdings in each holding account in the Registry (including any holding account held by the Crown) of each type of approved overseas unit issued in—
- (i) the first commitment period starting on 1 January 2008 and ending on 31 December 2012; or 15
- (ii) the second commitment period starting on 1 January 2013 and ending on 31 December 2020; and
- (b) the total quantity of each type of approved overseas unit in the Registry.
- 37 Section 30A amended (The Crown or Registrar not liable in relation to searches in certain cases)** 20
- Replace section 30A(b)(i) with:
- (i) an international transaction body; or
- 38 Sections 30B to 30D and cross-heading repealed**
- Repeal sections 30B to 30D and the cross-heading above section 30B.
- 39 Section 30E repealed (Conversion of New Zealand units into designated assigned amount units for sale overseas or cancellation)** 25
- Repeal section 30E.
- 40 Section 30G amended (Regulations relating to Part 2)**
- (1) In section 30G(1)(b)(i)(A) and (C), after “registry”, insert “or international transaction body”. 30
- (2) After section 30G(1)(b)(ii), insert:
- (iii) the registration of a successor as an account holder:
- (3) Repeal section 30G(1)(d).
- (4) In section 30G(1)(e)(vi)(B), replace “the international transaction log” with “an international transaction body”. 35

- (5) In section 30G(1)(f) and (i), after “Part”, insert “or regulations made under this Part”.
- (6) After section 30G(1)(i), insert:
- (ia) prescribing, for the purpose of **the definition of international transaction body** in section 4, bodies that confirm the validity of transactions relating to accounting of greenhouse gas emissions: 5
- (7) In section 30G(1)(j), replace “and to which units may be transferred to and” with “or to which units may be transferred to or”.
- (8) In section 30G(1)(k), after “overseas registry”, insert “or international transaction body”. 10
- (9) In section 30G(1)(n), replace “the terms of the Convention and the Protocol” with “international climate change obligations”.
- (10) In section 30G(1)(n), replace “the Convention or the Protocol” with “international climate change obligations”.
- (11) Repeal section 30G(1)(p) and (q). 15
- (12) In section 30G(4), replace “the Convention and the Protocol” with “international climate change obligations”.

41 Sections 30GA and 30GB to 30H replaced

Replace sections 30GA and 30GB to 30H with:

- 30GA Regulations for auctions to sell New Zealand units** 20
- (1) The Governor-General may, by Order in ~~Council, make regulations recommended by the Minister~~ Council made on the recommendation of the Minister, make regulations under this section that prescribe matters relating to the powers of the Minister under section 6A to sell New Zealand units by auction.
- (2) If regulations are to be made under this section, the Minister must recommend the making of regulations that— 25
- (a) specify the date on which the sale of New Zealand units by auction commences:
- (b) prescribe an indicative schedule for when auctions are planned to be held: 30
- (c) specify circumstances in which an auction will not be held:
- (d) specify the format of an auction (for example, a single-round, sealed bid format):
- (e) specify rules for the format of the auction (for example, rules on how bids are made and how tied bids are resolved): 35
- (f) specify criteria, and requirements for registration, that a person must satisfy to participate in an auction:

- (g) specify financial processes that a person must follow when participating in an auction, including requirements for financial assurance, payment, and delivery:
- (h) provide for the results of each auction to be ~~published~~ made publicly available. 5
- (3) If regulations are to be made under this section, the Minister may recommend the making of regulations for any or all of the following purposes:
- (a) providing for pilot auctions to be conducted, whether before or after the date on which auctions commence:
- (b) prescribing offences and penalties for the breach of regulations made under this section or **section 30GD**: 10
- (ba) prescribing infringement offences for the breach of regulations made under this section or **section 30GD**, and prescribing for those offences—
- (i) maximum fines not exceeding— 15
- (A) \$3,000 for an individual:
- (B) \$6,000 in any other case; and
- (ii) infringement fees not exceeding—
- (A) \$1,000 for an individual:
- (B) \$2,000 in any other case; and 20
- (bb) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
- (c) providing for any other matters for the conduct of an auction that the Minister considers relevant to the effective conduct of the auction.
- 30GB Regulations about ~~overall~~ limits and price control settings for units** 25
- (1) The Governor-General may, by Order in ~~Council~~, ~~make regulations recommended by the Minister~~ Council made on the recommendation of the Minister, make regulations under this section.
- (2) If regulations are to be made under **section 30GA**, the Minister must recommend the making of regulations under this section that— 30
- ~~(a) prescribe an overall limit on the sum of the following for a calendar year:~~
- ~~(i) the number of New Zealand units sold by auction in that year (**New Zealand units available by auction**):~~
- ~~(ii) the number of New Zealand units that are allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in that year (**New Zealand units available by other means**):~~ 35

- ~~(iii) the number of approved overseas units used by participants in that year by, for example, being transferred to holding accounts or being surrendered (**approved overseas units available**); and~~
- (a) prescribe the following limits for a calendar year:
- (i) a limit on the New Zealand units available by auction (an **individual limit**); and 5
- (ii) a limit on the approved overseas units used (another **individual limit**); and
- (iii) a limit on the sum of the following (the **overall limit**): 10
- (A) the New Zealand units available by auction;
- (B) the New Zealand units available by other means;
- (C) the approved overseas units used; and
- ~~(b) provide that the overall limit—~~
- (i) ~~restricts both the New Zealand units available by auction and the approved overseas units available, in that the following are prohibited to the extent that the overall limit would be exceeded:~~ 15
- (A) ~~the sale of New Zealand units by auction;~~
- (B) ~~the use of approved overseas units by participants; but~~
- (ii) ~~does not restrict the New Zealand units available by other means, in that New Zealand units may be allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, even if the overall limit is exceeded; and~~ 20
- (b) provide that—
- (i) the individual limits must not be exceeded; and
- (ii) the overall limit— 25
- (A) restricts both the New Zealand units available by auction and the approved overseas units used, in that neither must cause the overall limit to be exceeded; but
- (B) does not restrict the New Zealand units available by other means, in that they may cause the overall limit to be exceeded; and 30
- (c) provide that any additional units that are allocated under section 86C(5)(b) are not counted as New Zealand units available by other means; and
- (d) provide for how a reserve amount of New Zealand units is to be released for sale at auction if a trigger price is reached or exceeded by bidding at an auction, unless the reserve amount and minimum price are set at zero under **paragraph (e)**; and 35
- (e) prescribe the following **price control settings**:

- (i) the reserve amount of New Zealand units for each trigger price, which may be a single reserve amount of zero:
 - (ii) the 1 or more trigger prices, unless the reserve amount is zero:
 - (iii) the minimum price at which units may be sold by auction, which may be zero. 5
- (3) The Minister must recommend the making of regulations under this section so that,—
 - (a) when the regulations are first made, they prescribe ~~an overall limit~~ limits and price control settings for each of the next 5 or 6 calendar years; and
 - (b) the regulations are amended to ensure that, at all times, they prescribe ~~an overall limit~~ limits and price control settings for each of the next 5 calendar years. 10
- (4) Each time the Minister is to recommend that the regulations be amended to apply to a further calendar year under **subsection (3)(b)**, the Minister—
 - (a) must consider whether to recommend prescribing ~~a new overall limit~~ new limits and new price control settings for each of the 2 calendar years before that further calendar year; and 15
 - (b) may recommend prescribing ~~a new overall limit~~ new limits and new price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made. 20
- (5) However, the Minister may make a recommendation under **subsection (4)(b)** only if,—
 - (a) in the year in which the amendment is made, the price control settings have had effect by—
 - (i) the release of a reserve amount of units; or 25
 - (ii) the sale of units at the minimum price; or
 - (b) the Minister is satisfied that the amendment is justified by the following special circumstances:
 - (i) a change that has significantly affected any matter that the Minister was required to consider under **section 30GC** when recommending the ~~overall limit~~ limits and price control settings that are to be amended; or 30
 - (ii) a change in the budget or contribution described by **section 30GC(2)(a) or (b)** that applies to the year to which the amendment applies; or 35
 - (iii) a *force majeure* event.
- (6) Regulations made under **subsection (2)(a)(ii)** may be made in respect of different units, transactions, persons, classes of units, subclasses of units, classes of transactions, or classes of persons.

| | | |
|-----|--|---------------|
| (7) | <i>See</i> section 30GC for requirements relating to this section. | |
| (8) | <p><u>In this section,—</u></p> <p><u>approved overseas units used</u> means the number of approved overseas units used by participants in a calendar year by, for example, being transferred to holding accounts or being surrendered</p> <p><u>New Zealand units available by auction</u> means the number of New Zealand units sold by auction in a calendar year</p> <p><u>New Zealand units available by other means</u> means the number of New Zealand units that are allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in a calendar year.</p> <p>Example</p> <p>Regulations are first made under this section in December 2019. They must prescribe the overall limits <u>individual limits, overall limits</u>, and price control settings for the 5 (or 6) years from 2020 to 2024 (or 2025). In 2020, the regulations—</p> <ul style="list-style-type: none"> • must be amended to apply (or in how they apply) to 2025; and • may be amended to prescribe new overall limits <u>individual limits, overall limits</u>, and price control settings for 2023 and 2024; and • may be amended to prescribe new price control settings for 2021 or 2022. | 5 10 15 |
| | 30GC Requirements for regulations about overall limits and price control settings for units | 20 |
| (1) | <p>The Minister must comply with this section in—</p> <p>(a) recommending under section 30GB(2), (3), or (4)(b) the making of regulations that prescribe overall limits <u>individual limits, overall limits</u>, or price control settings; and</p> <p>(b) considering under section 30GB(4)(a) whether to recommend prescribing new overall limits <u>individual limits, overall limits</u>, and price control settings for the 2 calendar years before a further calendar year.</p> | 25 |
| (2) | <p>The Minister must be satisfied that the overall limits and price control settings are in accordance with—</p> <p>(a) the relevant emissions budget; and</p> <p>(b) the relevant nationally determined contribution for New Zealand under the Paris Agreement.</p> | 30 |
| (2) | <p><u>The Minister must be satisfied that the limits and price control settings are in accordance with—</u></p> <p>(a) <u>the emissions budget, and the nationally determined contribution for New Zealand under the Paris Agreement, that applies to—</u></p> <p style="padding-left: 20px;">(i) <u>the period for which the limits or price control settings are being prescribed; or</u></p> | 35 |

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- (ii) any period after that, if a budget or contribution exists for that period; and
- (b) the 2050 target.
- (3) However, they need not strictly accord with the ~~budget or contribution~~ budgets or contributions as long as the Minister is satisfied that the discrepancy is justified, after considering the other matters under this section. 5
- (4) The Minister must consider—
- (a) the main matters; and
- ~~(e)~~ (b) the additional matters, but only in relation to the price control settings.
- (5) The **main matters** are as follows: 10
- (a) the projected trends for New Zealand’s greenhouse gas emissions in the 5 years after the current year, including—
- (i) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme applies (meaning emissions for which participants are required to submit returns or surrender units under this Act); and 15
- (ii) the anticipated volumes of greenhouse gas emissions to which the emissions trading scheme does not apply:
- (b) the proper functioning of the emissions trading scheme;
- (c) international climate change obligations and instruments or contracts that New Zealand has with other jurisdictions to access emissions reductions in their carbon markets: 20
- (d) the forecast availability and cost of ways to reduce greenhouse gas emissions that may be needed for New Zealand to meet its targets for the reduction of emissions: 25
- ~~(e) any recommendations of the Climate Change Commission that are made after an emissions budget is first set, including any desirable carbon price path (if available):~~
- (e) the recommendations made by the Climate Change Commission under **section 5ZOA**: 30
- (f) any other matters that the Minister considers relevant.
- (6) The **additional matters** are as follows:
- (a) the impact of emissions prices on households and the economy;
- (b) the level and trajectory of international emissions prices (including price controls in linked markets): 35
- (c) inflation.
- ~~(7) If the Minister makes a recommendation about prescribing overall limits or price control settings that differs from any recommendation of the Climate Change Commission described by **subsection (5)(c)**, the Minister must, as~~

~~soon as is reasonably practicable, prepare a report of the reasons for the difference and—~~

- ~~(a) present a copy of the report to the House of Representatives; and~~
- ~~(b) publish the report.~~

(7) If the Minister makes a recommendation about prescribing limits or price control settings that differs from a recommendation made by the Commission under **section 5ZOA**, the Minister must, as soon as is reasonably practicable, prepare a report of the reasons for the difference and— 5

- (a) present a copy of the report to the House of Representatives; and
- (b) make the report publicly available. 10

~~(8) If the Climate Change Commission exists and an emissions budget has been set,—~~

- ~~(a) the Minister must request the recommendations of the Commission for the purpose of **subsection (5)(c)**; and~~
- ~~(b) the Commission's recommendations must be made in accordance with the same requirements under **section 30GB** and this section that apply to the making of the Minister's recommendations.~~ 15

30GD Regulations for auction monitor

(1) The Governor-General may, by Order in ~~Council, make regulations recommended by the Minister~~ Council made on the recommendation of the Minister, make regulations under this section. 20

(2) If regulations are made, or are to be made, under **section 30GA**, the Minister may recommend the making of regulations under this section for any or all of the following purposes:

- (a) prescribing a method or process by which the Minister may appoint a person as an auction monitor, which must— 25
 - (i) require the person to be independent of any auction agents and any persons who are likely to be auction participants; and
 - (ii) include as functions of the auction monitor—
 - (A) validating auction results; and 30
 - (B) publishing reports on the results of auctions:

- (b) specifying that the auction monitor's functions include any of the following:
 - (i) monitoring the conduct of any auction agents and auction participants: 35
 - (ii) providing periodic assessments of the auction system and making recommendations for improvements:

| | | |
|-------|---|----|
| (iii) | calculating additional specified metrics in respect of the auction process and auction results (such as bid volume statistics and relevant aggregate information): | |
| (iv) | any other functions that the Minister considers are relevant to the effective conduct of the auction monitor's role. | 5 |
| (3) | In this section and section 30GE ,— | |
| | auction agent means any agent appointed under section 6A(b) to conduct an auction | |
| | auction monitor means a person appointed as an auction monitor under regulations recommended under subsection (2)(a) | 10 |
| | auction participant means a potential buyer who participates in an auction. | |
| | 30GE Sharing information with auction monitor | |
| (1) | The purpose of this section is to facilitate the provision of information— | |
| (a) | from the EPA, the Registrar, the chief executive, or any auction agent (a provider): | 15 |
| (b) | to the auction monitor (if appointed). | |
| (2) | A provider must provide information to the auction monitor if the information— | |
| (a) | is requested by the auction monitor; and | |
| (b) | is required by the auction monitor to assist in carrying out its functions. | 20 |
| | 30GF Obligation of confidentiality on auction monitor | |
| (1) | This section applies to the auction monitor (if appointed) while, and after, the auction monitor performs its functions or exercises its powers. | |
| (2) | The auction monitor— | |
| (a) | must keep confidential all information that comes into its knowledge when performing its functions or exercising its powers; and | 25 |
| (b) | must not disclose any of that information, except— | |
| (i) | with the consent of the person to whom the information relates or to whom the information is confidential; or | |
| (ii) | to the extent that the information is already in the public domain; or | 30 |
| (iii) | for the purposes of, or in connection with, the performance of its functions or the exercise of its powers; or | |
| (iv) | as provided under this Act or any other Act; or | |
| (v) | in connection with any investigation or inquiry (whether or not preliminary to any proceedings) in respect of, or any proceedings for, an offence against this Act or any other Act; or | 35 |

- (vi) for the purpose of complying with international climate change obligations.
- (3) The auction monitor commits an offence under **section 30GG** if the auction monitor knowingly contravenes this section.
- (4) Nothing in **subsection (2)** may be treated as prohibiting the auction monitor from—
- (a) providing or publishing general information in relation to its functions; or
- (b) with the prior approval of the Minister, preparing statistical information and supplying it to any person in a form that does not identify any individual.

30GG Offence for breach of auction monitor’s obligation of confidentiality

An auction monitor who knowingly acts in contravention of **section 30GF** commits an offence and is liable on conviction to either or both of the following:

- (a) imprisonment for a term not exceeding 6 months;
- (b) a fine not exceeding \$15,000.

30H Consultation and commencement for certain regulations about units and auctions

- (1) This section applies to regulations made under—
- (a) section 30G(1)(b)(i), (c), (j), and (k) (Part 2—institutional arrangements);
- (b) **section 30GA** (auctions to sell New Zealand units);
- (c) **section 30GB** (limits and price controls for units);
- (d) **section 30GD** (auction monitor).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force—
- (a) 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations; but
- (b) if the Minister considers it is in the national interest that they be made urgently, on any earlier date specified in the regulations.

42 ~~Section 30H amended (Procedure for certain regulations relating to units)~~

- (1) ~~In the heading to section 30H, after “units”, insert “and auctions”.~~
- (2) ~~Replace section 30H(1) with:~~
- (1) ~~Before recommending that regulations be made under section 30G(1)(b)(i), (e), (j), or (k), **30GA, 30GB, or 30GD**, the Minister must be satisfied that 1 of the~~

~~following has consulted the persons (or representatives of those persons) that appear to the consultant likely to be substantially affected by any regulations made in accordance with the recommendation:~~

- ~~(a) the Minister or the chief executive; or~~
- ~~(b) for regulations made under **section 30GB**, the Minister, the chief executive, or the Climate Change Commission.~~

- ~~(3) In section 30H(3), delete “, except regulations made under section 30G(1)(q),”.~~
- ~~(4) In section 30H(5), replace “section 30G(1)(b)(i), (e), (d), (j), (k), (p), or (q)” with “the provisions referred to in **subsection (1)**”.~~

43 Section 30I amended (Incorporation by reference in regulations made under section 30G) 10

- (1) In section 30I(1)(a) and (b)(i) and (ii), replace “the Convention or the Protocol” with “international climate change obligations”.
- (2) In section 30I(4), replace “sections 163 to 165, 167, and 168” with “a relevant empowering section”. 15

44 ~~New section 30IA inserted (Minister must obtain emission reductions to match reserve amounts of units released)~~

~~After section 30I, insert:~~

~~30IA Minister must obtain emission reductions to match reserve amounts of units released~~ 20

- ~~(1) This section applies if 1 or more reserve amounts of New Zealand units are released for sale at auction in a year.~~
- ~~(2) The Minister must ensure, or enter into agreements that require, that greenhouse gas emissions are reduced, or removals are increased, by 1 tonne for each New Zealand unit released as a reserve amount.~~ 25
- ~~(3) The Minister must do so as soon as is reasonably practicable after the end of the emissions budget period that includes that year.~~

44 New section 30IA inserted (Minister must obtain greenhouse gas reductions to match certain excess units)

After section 30I, insert:

30IA Minister must obtain greenhouse gas reductions to match certain excess units

- (1) This section applies to the following New Zealand units (if any) to the extent that they cause the emissions budget for an emissions budget period to be exceeded: 35
 - (a) the units sold by auction, after being released in a reserve amount, in that period:

| | | |
|------|--|----|
| | <u>(b) the units allocated for eligible activities, or provided to participants under negotiated greenhouse agreements, in that period.</u> | |
| (2) | <u>The Minister must ensure, or enter into agreements that require, that the emission of greenhouse gases is reduced, or the removal of greenhouse gases from the atmosphere is increased, by 1 tonne of carbon dioxide equivalent for each of the units, whether by domestic means or offshore mitigation.</u> | 5 |
| (3) | <u>The deadline for doing so is as soon as is reasonably practicable after the end of the emissions budget period.</u> | |
| 45 | Section 30J amended (Signing false declaration with respect to regulations made under section 30G) | 10 |
| (1) | In the heading to section 30J, after “ section 30G ”, insert “ or 30GA ”. | |
| (2) | In section 30J, after “section 30G”, insert “ or 30GA and that is false ”. | |
| 46 | New subparts 3 and 4 subpart 3 of Part 2 inserted | |
| | After section 30K, insert: | |
| | Subpart 3—Infringement offences | 15 |
| 30L | Meaning of infringement offence and infringement fee | |
| | In this subpart,— | |
| | infringement fee , for an infringement offence , means the infringement fee for an infringement <u>the offence prescribed in regulations made under this Act</u> | |
| | infringement offence means an offence specified <u>prescribed</u> as an infringement offence by regulations made under this Act. | 20 |
| 30M | Regulations about infringement offences | |
| (1) | The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for any or all of the following purposes: | |
| (a) | specifying the offences in this Act or regulations made under this Act that are infringement offences: | 25 |
| (a) | <u>prescribing infringement offences by—</u> | |
| (i) | <u>prescribing a duty, restriction, or prohibition for conduct that is similar to conduct, or similar to an element of conduct, for which there is a duty, restriction, or prohibition under any of sections 30J, 30K(1), 46, 47, 48, 129, 131, 132(1)(a), (b), and (f) to (i), 259, 260, 261(1)(a), (b), (d), and (e), and 264; and</u> | 30 |
| (ii) | <u>providing that a contravention of the duty, restriction, or prohibition is an infringement offence:</u> | |
| (b) | for an offence in this Act or the regulations, defining a class of only some of those offences and specifying the class as an infringement offence: | 35 |

- (e) ~~prescribing, for an infringement offence, an infringement fee not exceeding—~~
- (i) ~~\$1,000 for a person other than a body corporate;~~
 - (ii) ~~\$2,000 for a body corporate;~~
- (b) prescribing for the infringement offences— 5
- (i) maximum fines not exceeding—
 - (A) \$3,000 for an individual;
 - (B) \$6,000 in any other case; and
 - (ii) infringement fees not exceeding— 10
 - (A) \$1,000 for an individual;
 - (B) \$2,000 in any other case;
- (d) prescribing those infringement fees as different amounts for a first, second, or subsequent infringement offence:
- (e) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect. 15
- (2) Before the Minister recommends the making of regulations under **subsection (1)(a)**, the Minister must be satisfied, after consulting the Minister of Justice, that a contravention of each duty, restriction, or prohibition is sufficiently minor to be appropriate as an infringement offence.
- (3) A person may be prosecuted for, and convicted of, an offence against any provision referred to in **subsection (1)(a)(i)** even if their conduct is or may be an infringement offence. 20
- ~~**30N Procedure for regulations about infringement offences**~~
- (1) ~~Before recommending that regulations be made under **section 30M**, 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 regulations made in accordance with the recommendation.~~ 25
- (2) ~~The process for consultation must include—~~
- (a) ~~adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and~~ 30
 - (b) ~~a reasonable opportunity for interested persons to consider the recommendation and make submissions; and~~
 - (c) ~~adequate and appropriate consideration of submissions.~~
- (3) ~~Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date that may be set out in the regulations.~~ 35

~~(4) A failure to comply with this section does not affect the validity of regulations made under **section 30M**.~~

30N Consultation and commencement for regulations about infringement offences

- (1) This section applies to regulations made under **section 30M**. 5
- (2) See sections 3A and **3B** for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

30O Proceedings for infringement offences 10

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 30Q**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957. 15
- (3) See section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued.

30P Appointment of enforcement officers 20

- (1) The EPA may appoint 1 or more persons who are employees of the EPA as enforcement officers to exercise 1 or more of the powers and perform the functions conferred on enforcement officers under this subpart.
- (2) Section 93(2) to (5) applies in relation to the appointment.

30Q When infringement notice may be issued 25

- (1) An enforcement officer may issue an infringement notice to a person if the enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
- (2) The enforcement officer may require the person to provide their full name and any other information required so that the enforcement officer can issue the infringement notice. 30

30R Infringement notice may be revoked

- (1) The enforcement officer may revoke an infringement notice before the infringement fee is paid or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 35
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.

- (3) The revocation of an infringement notice under this section is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

30S What infringement notice must contain

- (1) An infringement notice must be in the form prescribed in regulations and must contain the following particulars: 5
- (a) details of the alleged infringement offence that fairly inform a person of the nature of the alleged offence, including, to any applicable extent, the time and place of the alleged offence:
 - (b) the amount of the infringement fee: 10
 - (c) the address of the EPA:
 - (d) how the infringement fee may be paid:
 - (e) the time within which the infringement fee must be paid:
 - (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 15
 - (g) a statement that the person served with the notice has a right to request a hearing:
 - (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
 - (i) any other matters prescribed in regulations. 20
- (2) The particulars contained in the notice under **subsection (1)(d)** must include at least 1 method of payment in person.

30T How infringement notice may be served

- (1) An infringement notice may be served on the person who the enforcement officer believes is committing or has committed the infringement offence by— 25
- (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business, or place of work, with another person; or 30
 - (d) sending it to the person by prepaid post addressed to—
 - (i) the mailing address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person, if they are an account holder; or 35
 - (ii) the person's last known place of residence or place of business or work; or
 - (e) sending it to,—

- (i) if the person is an account holder, the electronic address recorded in a register kept by the EPA under this Act for the person or any primary representative of the person; or
 - (ii) if the person does not have a known place of residence or business in New Zealand, an electronic address of the person. 5
- (2) An infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on the person on the fifth working day after the date on which it was posted.

30U Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid into a Crown Bank Account. 10

30V Reminder notices

A reminder notice must be in the form prescribed in regulations, and must include the same particulars, or substantially the same particulars, as the infringement notice. 15

~~Subpart 4 — Regulations setting price of carbon~~

~~**30W Regulations setting price of carbon**~~

- (1) ~~For the purpose of **sections 134 to 134D** and any other provisions that refer to regulations made under this section, the Governor General may, by Order in Council made on the recommendation of the Minister, make regulations — 20~~
 - (a) ~~prescribing the methodology for specifying the price of carbon; and~~
 - (b) ~~specifying the price of carbon by applying the methodology.~~
- (2) ~~Before making a recommendation, the Minister must take into account —~~
 - (a) ~~the price of the units used to calculate revenue from the emissions trading scheme in the Crown annual financial statements in the preceding 12 months; and 25~~
 - (b) ~~the price of New Zealand units sold by auction in the preceding 12 months; and~~
 - (c) ~~any changes to the operation of the emissions trading scheme that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year. 30~~
- (3) ~~Before recommending the making of regulations under **subsection (1)(a)**, 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 regulations made in accordance with the recommendation. 35~~
- (4) ~~The process for consultation must include —~~

- (a) ~~giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and~~
- (b) ~~providing a reasonable opportunity for interested persons to consider the recommendation and make submissions; and~~
- (c) ~~giving adequate and appropriate consideration to submissions.~~ 5
- (5) ~~Regulations made under **subsection (1)(a)** may not come into force earlier than 3 months after the date of their notification in the *Gazette*.~~
- (6) ~~A failure to comply with **subsection (4)** does not affect the validity of regulations made under this section.~~
- 47 Section 31 amended (Meaning of greenhouse gas)** 10
- (1) In section 31, replace “subpart” with “Part”.
- (2) In section 31, delete “, but does not include a gas that is covered by the Montreal Protocol on Substances that Deplete the Ozone Layer”.
- 48 Section 32 amended (Primary functions of inventory agency)**
- (1) After section 32(1)(b)(i), insert: 15
- (ia) New Zealand’s national inventory report under Article 13.7 of the Paris Agreement; and
- (2) Repeal section 32(1)(b)(iii).
- 49 Section 35 amended (Publication)**
- In section 35, replace “and its national communication (or periodic report) in electronic form by placing the report” with “, national inventory report, and national communication (or periodic report) in electronic form by placing the reports”. 20
- 50 Section 36 amended (Authorisation of inspectors)**
- In section 36(1)(c), replace “New Zealand Pastoral Agriculture Research Institute” with “AgResearch”. 25
- 50A Section 48 amended (Signing false declaration in respect of regulations made under section 50)**
- In section 48, after “section 50”, insert “and that is false”.
- 51 Section 49 amended (Reporting)** 30
- In section 49, replace “under the Convention and the Protocol” with “in accordance with international climate change obligations”.
- 52 Section 50 amended (Regulations)**
- (1) In section 50(1)(j), replace “the terms of the Convention and the Protocol” with “international climate change obligations”. 35

- (2) In section 50(1)(j), replace “with the Convention or the Protocol” with “with international climate change obligations”.
- (2A)** In section 50(2), replace “If recommended by the Minister, the Governor-General may, by Order in Council” with “The Governor-General may, by Order in Council made on the recommendation of the Minister”. 5
- (3) In section 50(2)(k), replace “the Convention or the Protocol” with “international climate change obligations”.
- (3A)** In section 50(3), replace “If recommended by the Minister, the Governor-General may, by Order in Council” with “The Governor-General may, by Order in Council made on the recommendation of the Minister”. 10
- (4) Replace section 50(7)(b) and (c) with:
(b) international climate change obligations.
- (5) Replace section 50(8) with:
- (8) The Governor-General may, by Order in Council, amend or replace Schedule 1, 2, or **2A** so that the schedule sets out an up-to-date form of the relevant document (the Convention, the Protocol, or the Paris Agreement). 15
- 53 Section 51 amended (Incorporation by reference in regulations made under section 50)**
- (1) In section 51(1)(a) and (b)(i) and (ii), replace “the Convention or the Protocol” with “international climate change obligations”. 20
- (2) In section 51(4), replace “sections 163 to 165, 167, and 168” with “a relevant empowering section”.
- 54 Section 52 amended (Inventory agency must report to Minister on certain matters before certain regulations are made)**
- (1)** In section 52(3)(b), replace “make, as he or she thinks fit, recommendations to the Governor-General to make” with “recommend the making of”. 25
- (2) In section 52(4), replace “obligations under the Convention or the Protocol” with “international climate change obligations”.
- 55 Section 53 repealed (Consequential amendments)**
- Repeal section 53. 30
- 56 Section 54 amended (Participants)**
- (1) In section 54(1)(a)(i) and (2), after “section 180,”, insert “186I,”.
- (2) In section 54(1)(b)(ii), replace “section 192” with “**Part 5**”.
- (3) In section 54(2), replace “this Part or Part 5” with “the ETS participant provisions”. 35

57 Section 55 amended (Associated persons)

In section 55(3)(b), replace “this Part ~~or~~ and Part 5” with “the ETS participant provisions”.

58 ~~Section 56 amended (Registration as participant in respect of activities listed in Schedule 3)~~

5

~~After section 56(4), insert:~~

~~(5) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to notify the EPA under subsection (1)(a), merely because they—~~

~~(a) deforest pre 1990 forest land that may not be treated as deforested under section 179A(1)(b); or~~ 10

~~(b) deforest land that has ceased to be forest land (and pre 1990 forest land) because it has been offset by pre 1990 offsetting forest land.~~

59 Section 57 amended (Applicant to be registered as participant in respect of activities listed in Schedule 4)

15

(1) In section 57(4)(b), replace “this Part or Part 5” with “the ETS participant provisions”.

~~(2) After section 57(4)(ba), insert:~~

~~(bb) has met any obligations incurred while previously registered in respect of the activity; and~~ 20

(3) Replace section 57(6) with:

(6) After registering a person under subsection (5), the EPA must notify the person that they have been registered as a participant in respect of the activity and the date from which the registration will take effect.

(4) In section 57(8), replace “section 198(2)(b), or 209(2)(b)” with “**section 198(2) or 209(2)**”. 25

60 Section 58 amended (Removal from register of participants in respect of activities listed in Schedule 4)

(1) Repeal section 58(3)(c).

(2) In section 58(4), replace “section 188(7)(a)(ii), 198(3)(b), or 209(3)(b)” with “~~section 191AB~~ 188(7), **198(3), or 209(3)**”. 30

61 Section 59 amended (Removal from register of participants in respect of activities listed in Schedules 3 and 4)

(1) In section 59(2)(b), delete “, and any other person specified in section 188(7)(a)(i), 198(3)(a), or 209(3)(a), as the case may require,”. 35

~~(2) In section 59(3), replace “and 211” with “, 211, and **211A**”.~~

62 ~~New sections 59A and 59B inserted~~ **section 59B inserted (Removal from register if participant never carried out activity)**

After section 59, insert:

59A Removal from register for persistent non-compliance (standard forestry participants only)

(1) ~~The EPA may remove the name of a person from the register kept under section 57 in respect of an activity of standard forestry if —~~

(a) ~~the person has not submitted an emissions return required by **section 489AB** by 365 days after the date on which the person was required to submit the emissions return; or~~

(b) ~~the person has not surrendered or repaid units by 365 days after the date on which the person was required to surrender or repay the units; or~~

(c) ~~the person has not paid a penalty imposed by **sections 434 to 434D** by a date that is both —~~

(i) ~~90 days after the date on which the person was required to pay the penalty; and~~

(ii) ~~365 days after the date on which the person was required to surrender or repay the units or submit the emissions return to which the penalty relates.~~

(2) ~~However, the EPA may not rely on **subsection (1)(a)** to remove the name of a person from the register if —~~

(a) ~~the person has submitted an emissions return under **section 489AA** within 365 days after the date on which the emissions return required by **section 489AB** was required to be submitted; or~~

(b) ~~the EPA has made an assessment under section 121 of the matters that should have been in the person's emissions return, and —~~

(i) ~~the person has surrendered any units required to be surrendered as a result of the assessment; and~~

(ii) ~~the person has paid any penalties resulting from the failure to submit the return and from the assessment.~~

(3) ~~At least 90 days before removing the name of the person from the register, the EPA must notify the person —~~

(a) ~~that the EPA proposes to remove the name of the person from the register; and~~

(b) ~~of the reason for the proposed removal (for example, failure to surrender units); and~~

(c) ~~of the actions that the person may take to prevent the removal (for example, surrender the units that the person has failed to surrender).~~

~~(4) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.~~

59B Removal from register if participant never carried out activity

- (1) The EPA must remove the name of a person from the register in respect of an activity if the EPA is satisfied that the person is not carrying out the activity and has never carried out the activity. 5
- (2) At least 60 days before removing the name of the person from the register, the EPA must notify the person—
- (a) that the EPA proposes to remove the name of the person from the register; and 10
 - (b) of the reason for the proposed removal; and
 - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity).
- (3) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address. 15

63 Section 60 amended (Exemptions in respect of activities listed in Schedule 3)

- (1) After section 60(1A), insert: 20
- (1B) To avoid doubt, an order made under subsection (1) may exempt a person from being a participant in respect of an activity or emissions that occurred before or after the commencement of the order.
- (2) In section ~~60A(2)(a)~~ 60(2)(a), and (3)(a) and (b), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”. 25
- (3) In section ~~60A(4)~~ 60(4), replace “this Part and Part 5” with “the ETS participant provisions”.
- (4) Replace section 60(5) with:
- (5) See sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section. 30
- (5) In section 60(6), replace “make a recommendation for” with “recommend”.
- (6) Repeal section 60(7) and (8).

64 New sections 60A and 60B inserted

After section 60, insert: 35

| | | |
|----------------|---|---------------|
| 60A | <u>Exemption for participants in standard forestry or permanent forestry activity listed in Part 1 of Schedule 4</u> | |
| (1) | The Governor-General may, by Order in Council made on the recommendation of the Minister, exempt any person or class of persons carrying out an activity listed in Part 1 or 1A of Schedule 4 from any provision or provisions of— | 5 |
| | (a) Part 4 or 5; or | |
| | (b) regulations made for the purposes of Part 4 or 5. | |
| (2) | An order under this section may— | |
| | (a) specify any terms and conditions of the exemption that the Governor-General thinks fit: | 10 |
| | (b) exempt a person generally, or in respect of a specified act, matter, or thing, or class of acts, matters, or things: | |
| | (c) exempt a person in respect of something that occurred before the order was made: | |
| | (d) require the EPA to deal with emissions returns or applications, update the register, or take other actions in respect of acts, matters, or things affected by the exemption. | 15 |
| (3) | The Minister must not recommend the making of an order under this section unless satisfied that— | |
| | (a) the order will not materially undermine the environmental integrity of the emissions trading scheme; and | 20 |
| | (b) the costs of making the order do not exceed the benefits of making the order. | |
| (4) | In determining whether to recommend the making of an order under this section, the Minister must have regard to the following: | 25 |
| | (a) the need to maintain the environmental integrity of the emissions trading scheme: | |
| | (b) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme: | |
| | (c) the relative costs of giving the exemption or not giving it, and who bears the costs: | 30 |
| | (d) any alternatives that are available for achieving the objectives of the Minister in respect of giving the exemption: | |
| | (e) any other matters that the Minister considers relevant. | |
| (5) | Before recommending the making of an order under this section, the Minister must— | 35 |
| | (a) consult the persons that the Minister considers are likely to be substantially affected by the making of the order; and | |
| | (b) give those persons the opportunity to make submissions; and | |

| | |
|--|----|
| (e) consider those submissions. | |
| (6) A failure to comply with subsection (5) does not affect the validity of the order. | |
| <u>(5) See sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.</u> | 5 |
| 60B Incorporation by reference in order made under section 60 or 60A | |
| (1) The following written material may be incorporated by reference in an order made under section 60 or 60A : | |
| (a) decisions, computer programmes, rules, guidelines, principles, measures, methodologies, modalities, procedures, mechanisms, or other matters; and | 10 |
| (b) standards, requirements, or recommended practices of a government agency, standard-setting organisation, or professional body. | |
| (2) Material may be incorporated by reference in the order— | |
| (a) in whole or in part; and | 15 |
| (b) with modifications, additions, or variations specified in the order. | |
| (3) Material incorporated by reference in the order has legal effect as part of the order. | |
| (4) Sections 170 to 177 apply to material incorporated by reference in the order as if— | 20 |
| (a) references to regulations, or regulations made under a relevant empowering section, were references to the order, or to another order made under section 60 or 60A , as appropriate; and | |
| (b) sections 173(2)(c) and (4)(b) and 174(1)(d) required a targeted notice instead of a notice in the <i>Gazette</i> , but section 174(1)(d) does not apply to material described by section 174(2)(b). | 25 |
| (5) In subsection (4)(b) , targeted notice means a notice to, or that is likely to come to the attention of, the persons that the chief executive considers are likely to be substantially affected by the making of the relevant regulations. | |
| 65 Section 61 amended (Requirement to have holding account) | 30 |
| In section 61(1)(a) and (b), replace “this Part or Part 5” with “the ETS participant provisions”. | |
| 66 Section 62 amended (Monitoring of emissions and removals) | |
| In section 62, insert as subsection (2): | |
| (2) Subsection (1)(b) does not apply in relation to emissions and removals that a person is not required to calculate under— | 35 |
| (a) section 194FG(2), relating to carbon accounting areas (averaging); | |

~~(b) **section 194PG(3)**, relating to temporary adverse event land.~~

67 Section 63 amended (Liability to surrender units to cover emissions)

~~(1) After section 63(1), insert:~~

~~(1A) However, subsection (1) does not apply to emissions for which a participant is not liable to surrender units as a result of any of the following:~~

~~(a) section 179A (when forest land may not be treated as deforested):~~

~~(b) **section 188AB** (certain natural events or clearance for forest management):~~

~~(c) **sections 190 and 194JD(3)** (limiting liability to unit balances for carbon accounting areas):~~

~~(d) **section 194FG(2)** (carbon accounting areas (averaging)):~~

~~(e) **section 194PG(1)** (temporary adverse event land).~~

~~(2) Replace section 63(3) with:~~

~~(3) If the provision of this Act that imposes a liability to surrender or repay units does not specify the deadline for doing so, the deadline is within 60 working days after the EPA gives the person a notice requiring the surrender or repayment.~~

~~(4) See also **sections 194DF and 194DG** in relation to liability to surrender units when transferring between standard forestry in a carbon accounting area (averaging) and permanent forestry.~~

67 Section 63 amended (Liability to surrender units to cover emissions)

After section 63(3), insert:

(4) If the provision of this Act that imposes a liability to surrender or repay units does not specify the deadline for doing so, the deadline is within 60 working days after the EPA gives the person a notice requiring the surrender or repayment.

68 Section 64 amended (Entitlement to receive New Zealand units for removal activities)

After section 64(1), insert:

~~(1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under —~~

~~(a) **section 194FG(2)**, relating to carbon accounting areas (averaging); or~~

~~(b) **section 194PG(1)**, relating to temporary adverse event land; or~~

~~(c) **section 197**, relating to grant funded forests.~~

68 Section 64 amended (Entitlement to receive New Zealand units for removal activities)

(1) After section 64(1), insert:

(1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under **section 197** (grant-funded forests).

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(2) Replace section 64(3) with:

(3) Subsection (2) does not apply—

(a) if, within 20 working days of the EPA receiving the emissions return, the EPA 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; or

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(b) to the extent that **subsection (4)** requires units to be transferred elsewhere.

(4) The EPA must apply **section 64A** as follows:

(a) the units the participant is entitled to receive are the **potential transfer units**:

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(b) the participant is the **recipient**:

(c) the end of the emissions return period for the emissions return is the **relevant time**.

68A New section 64A inserted (Transfer of units allocated, or entitled to be received or reimbursed, less any units that must be surrendered or repaid)

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After section 64, insert:

64A Transfer of units allocated, or entitled to be received or reimbursed, less any units that must be surrendered or repaid

(1) If this section applies, the EPA must calculate the **specified units** (if any) by counting as follows the units that the recipient was required to, but did not, surrender, or repay to a Crown holding account, by or before the relevant time:

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(a) starting from the units that were required to be surrendered or repaid by the earliest dates; but

(b) stopping once they equal the number of potential transfer units (if they do).

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(2) If there are any specified units, the EPA must notify the recipient of the following:

(a) the number of specified units required for surrender:

(b) the number of specified units required for repayment:

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(c) that the specified units will be deducted from the potential transfer units that are transferred to the recipient.

(3) The EPA must direct the Registrar to transfer—

- (a) the specified units required for surrender to a surrender account designated by the EPA; and
- (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
- (c) any potential transfer units left after the specified units are deducted to the recipient's holding account. 5
- (4) The transfer of the specified units for surrender or repayment satisfies—
 - (a) the recipient's entitlement to be transferred those units; and
 - (b) the recipient's obligation to surrender or repay the related units.
- (5) To avoid doubt, the recipient remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units). 10

69 Section 65 amended (Annual emissions returns)

- (1) ~~Replace section 65(1) and (1A) with:~~
- (1) ~~In the period beginning on 1 January and ending on 31 March in each year,—~~ 15
 - (a) ~~a participant must submit an annual emissions return to the EPA in respect of each of the activities listed in Schedule 3 or Part 2, 3, or 4 of Schedule 4 that the participant carried out in the immediately preceding year:~~
 - (b) ~~a person who carried out an activity listed in Part 1 of Schedule 3 on pre 1990 forest land that was the subject of an offsetting forest land application must submit an annual emissions return to the EPA if—~~ 20
 - (i) ~~the application is declined under section 186B; or~~
 - (ii) ~~any of the pre 1990 forest land is removed under a variation under **section 186CA**; or~~ 25
 - (iii) ~~approval of the application is revoked, or to be treated as revoked, under section 186G.~~
- (1A) ~~An emissions return required under **subsection (1)(b)** must cover the period—~~
 - (i) ~~beginning when the activity listed in Part 1 of Schedule 3 first occurred; and~~ 30
 - (ii) ~~ending on the date the event referred to in **subsection (1)(b)(i) to (iii)** occurred,—~~

~~as if that period were all part of the immediately preceding year.~~
- (2) ~~In section 65(2)(b), replace “section 62(b)” with “**section 62(1)(b)**”.~~ 35
- (1) In section 65(2A)(a), replace “do” with “does”.
- (3) Replace section 65(4) and (5) with:

- (4) Following the submission of an annual emissions return under subsection (1),—
- (a) a participant (other than a participant carrying out an activity listed in Part 5 of Schedule 3) must, by 31 May, surrender the number of units listed in the participant’s assessment under subsection (2)(c)(i) or recorded under subsection (2A)(b); and 5
- (b) a participant carrying out an activity listed in Part 5 of Schedule 3 must, by 31 May, surrender the number of units listed in the participant’s assessment under subsection (2)(c)(i) less the number of units allocated to the participant for the year to which the assessment relates under **section 86BAA**. 10
- (5) ~~Despite the rest of this section, a participant in an activity of standard forestry or permanent forestry (on post-1989 forest land) must instead submit emissions returns as required by **Part 5**.~~
- (6) To avoid doubt, a person does not carry out an activity listed in Schedule 3, and so does not have to submit an annual emissions return under **subsection (1)(a)**, merely because they— 15
- (a) deforest pre-1990 forest land that may not be treated as deforested under section 179A(1)(b); or
- (b) deforest land that has ceased to be forest land (and pre-1990 forest land) because it has been offset by pre-1990 offsetting forest land. 20

70 Section 67 amended (Retention of emissions records)

- (1) ~~In section 67(1)(b), replace “section 62(b)” with “**section 62(1)(b)**”.~~
- (2) ~~In section 67(2)(a), replace “section 62(d)” with “**section 62(1)(d)**”.~~
- (3) ~~In section 67(2)(b), replace “an activity listed in Part 1 of Schedule 3 or 4” with “a forestry activity”.~~ 25

71 Section 68 amended (Issuing New Zealand units)

- (1) Replace section 68(2)(b)(i) and (ii) with:
- (ii) international climate change obligations; and
- (2) In section 68(2)(b)(iii), replace “greenhouse gas emissions trading scheme established under this Act” with “emissions trading scheme”. 30
- (3) In section 68(2)(c), replace “1 January 2013, and if there is no subsequent commitment period specified or determined under the Protocol or no successor international agreement to the Protocol” with “1 January 2031, and if the Paris Agreement does not provide for a commitment period that starts on that date”. 35
- (4) Replace section 68(2)(c)(iii) with:
- (iii) international climate change obligations; and

- 72 Section 69 repealed (Notification of intention regarding New Zealand units)**
Repeal section 69.
- 73 Cross-heading above section 70 amended**
In the cross-heading above section 70, delete “*and fishing*”. 5
- 74 Sections 70 to 79 replaced**
Replace sections 70 to 79 with:
- 70 Allocation plan issued**
- (1) The Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 was made under this section to issue an allocation plan in respect of pre-1990 forest land. 10
- (2) The allocation plan may be revoked but not amended or replaced.
- (3) The allocation plan ~~comes~~ came into force on the day after the date it ~~is~~ was presented to the House of Representatives.
- (4) The allocation plan is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 15
- 75 Section 81 amended (Entitlement to provisional allocation for eligible industrial activities)**
- (1) In section 81, formula, replace the definition of variable LA with: 20
- 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 each year until and including 2020; and
- (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate: 25
- (b) for a highly emissions-intensive eligible industrial activity,—
- (i) 0.9 in each year until and including 2020; and
- (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate 30
- (2) In section 81, insert as subsection (2):
- (2) In this section, the **applicable phase-out rate** is,—
- (a) if regulations have not been made under **section 84A or 84B** that relate to the eligible industrial activity,—
- (i) 0.01 for each year after 2020 until and including 2030; and 35

- (ii) 0.02 for each year after 2030 until and including 2040; and
- (iii) 0.03 for each year after 2040; and
- (b) if regulations have been made under **section 84A or 84B** that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

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76 Section 83 amended (Annual allocation adjustment)

- (1) In section 83(2), formula, replace the definition of variable LA with:

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 each year until and including 2020; and
 - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate:
- (b) for a highly emissions-intensive eligible industrial activity,—
 - (i) 0.9 in each year until and including 2020; and
 - (ii) in each year after 2020, the level of assistance from the previous year less the applicable phase-out rate

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- (2) After section 83(2), insert:

- (2A) In subsection (2), the **applicable phase-out rate** is,—

- (a) if regulations have not been made under **section 84A or 84B** that relate to the eligible industrial activity,—
 - (i) 0.01 for each year after 2020 until and including 2030; and
 - (ii) 0.02 for each year after 2030 until and including 2040; and
 - (iii) 0.03 for each year after 2040; and
- (b) if regulations have been made under **section 84A or 84B** that set a different phase-out rate for the eligible industrial activity for the year, the phase-out rate set under those regulations.

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- (3) Replace section 83(7) with:

- (7) If a person is required to repay units under this section, then the units repaid must be of a type that may be transferred to a surrender account at the time the units are repaid.

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~~**77 New sections 84A to 84D inserted**~~

~~After section 84, insert:~~

~~**84A Regulations reducing general phase-out rate**~~

- ~~(1) The Governor General may, by Order in Council made on the recommendation of the Minister, make regulations that set the phase-out rate to be used by all~~

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~~participants for the purposes of sections **81(1)** and 83(2) for a year or years beginning on or after 1 January 2031.~~

- (2) ~~The phase out rate must be —~~
- (a) ~~less than the rate in sections **81(2)(a)** and **83(2A)(a)**; and~~
 - (b) ~~at least —~~
 - (i) ~~0.01 for a year in the period beginning on 1 January 2031 and ending on 31 December 2040; or~~
 - (ii) ~~0.02 for a year in the period beginning on 1 January 2041 and ending on 31 December 2050.~~
- (3) ~~The Minister may not recommend the making of regulations unless —~~
- (a) ~~the Climate Change Commission has recommended (under section **84D**) that the phase out rate be set at a lower rate than in sections **81(2)(a)** and **83(2A)(a)**; and~~
 - (b) ~~the Minister has complied with the requirements of section **84G**.~~

84B Regulations increasing phase out rate for specific activities

- (1) ~~The Governor General may, by Order in Council made on the recommendation of the Minister, make regulations that set the phase out rate to be used in respect of 1 or more eligible industrial activities for the purposes of sections **81(1)** and 83(2) for an emissions budget period beginning on or after 1 January 2026.~~
- (2) ~~The phase out rate must be more than the rate in sections **81(2)(a)** and **83(2A)(a)**.~~
- (3) ~~Regulations made in respect of an emissions budget period must include a statement of what phase out rate the Minister intends to set in respect of the subsequent emissions budget period.~~
- (4) ~~The Minister may not recommend the making of regulations unless —~~
- (a) ~~the Climate Change Commission has published a report (under section **84D**) considering whether the phase out rate for the eligible industrial activity should be set at a higher rate than in sections **81(2)(a)** and **83(2A)(a)**; and~~
 - (b) ~~the Minister has complied with the requirements of section **84G**.~~
- (5) ~~In order to apply to an emissions budget period, regulations must be made before the beginning of the emissions budget period.~~
- (6) ~~Regulations may not be amended during an emissions budget period unless —~~
- (a) ~~the emissions budget for the emissions budget period has been revised; or~~
 - (b) ~~the Minister is satisfied that, since the regulations were made, there has been a significant change that affects the considerations listed in section **84G(3)**.~~

- ~~(7) Before amending regulations, the Minister must seek advice from the Climate Change Commission under **section 84D**.~~
- 84C Procedure for regulations setting phase-out rates**
- ~~(1) Before recommending the making of regulations under **section 84A or 84B**, the Minister must —~~
- ~~(a) consult, or be satisfied that the chief executive or the Climate Change Commission has consulted, the persons (or representatives of those persons) that appear to the consulter likely to be substantially affected by the regulations; and~~
 - ~~(b) be satisfied that the regulations are consistent with meeting the emissions budget that will apply when the regulations are in force.~~
- ~~(2) The process for consultation must include —~~
- ~~(a) giving public notice of the proposed terms of the recommendation, and of the reasons for it; and~~
 - ~~(b) allowing at least 20 working days for interested persons to make submissions; and~~
 - ~~(c) considering the submissions.~~
- ~~(3) Before recommending the making of regulations under **section 84B** in respect of an eligible industrial activity, the Minister must consider —~~
- ~~(a) any targets or budgets set for reducing emissions of greenhouse gases; and~~
 - ~~(b) New Zealand's nationally determined contributions under the Paris Agreement; and~~
 - ~~(c) the level of risk of emissions leakage (increased emissions overseas as a result of emissions reductions in New Zealand, for example an activity being relocated outside of New Zealand to reduce the emissions related costs for the activity), based on —~~
 - ~~(i) the emissions related costs and policies in competing jurisdictions; and~~
 - ~~(ii) the markets for international trade in the products produced by the activity; and~~
 - ~~(iii) the ability of affected eligible persons to pass on increased costs to customers; and~~
 - ~~(d) the risk that the value of the allocation for the activity will exceed the cost of meeting the emissions trading scheme obligations in relation to the activity; and~~
 - ~~(e) other sources of supply into the emissions trading scheme, including offshore emissions reductions; and~~
 - ~~(f) the availability of low-emission technologies related to the activity; and~~

- ~~(g) international climate change obligations; and~~
- ~~(h) the proper functioning of the emissions trading scheme; and~~
- ~~(i) the cost to the taxpayer of providing allocations for the activity; and~~
- ~~(j) any recommendations of the Climate Change Commission; and~~
- ~~(k) any other matters that the Minister considers relevant.~~

~~**84D Climate Change Commission to advise on regulations setting phase-out rates**~~

- ~~(1) The Climate Change Commission may recommend that the Minister make regulations under **section 84A** if the Commission is satisfied that there is an ongoing and substantial risk that activities will be relocated outside of New Zealand to reduce emissions related costs.~~
- ~~(2) The Climate Change Commission may recommend that the Minister make regulations under **section 84B** if the Commission is satisfied that it is appropriate to do so, having regard to the matters listed in **section 84C(3)**.~~
- ~~(3) The Commission must make a report with its recommendations publicly available after providing it to the Minister.~~
- ~~(4) The Minister must, as soon as practicable, but within 16 weeks, after receiving a report from the Commission—~~
 - ~~(a) present a copy of the report to the House of Representatives; and~~
 - ~~(b) if the Minister decides not to take action recommended by the Commission, or to take different action than that recommended by the Commission, publish a report giving reasons for departing from the recommendations.~~

77 New sections 84A to 84C inserted

After section 84, insert:

84A Regulations setting decreased phase-out rates

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set a decreased phase-out rate to be used—
 - (a) in respect of 1 or more eligible industrial activities for the purposes of **sections 81(1)** and 83(2); and
 - (b) for a year or years beginning on or after 1 January 2031.
- (2) The Minister must not recommend the making or amendment of regulations under this section to set a decreased phase-out rate for an eligible industrial activity unless—
 - (a) the Climate Change Commission has recommended (under **section 5ZOB**) that a decreased phase-out rate should be set for the activity; and

- (b) the Minister has considered the recommendation and complied with the requirements of **section 84C**.
- (3) In order to apply to a year, the regulations must be made or amended before the beginning of the year.
- (4) In this section, **decreased phase-out rate** means any rate that, even if it is more than a rate previously set by regulations under this section, is— 5
- (a) less than the rate in **sections 81(2)(a) and 83(2A)(a)**; and
- (b) at least—
- (i) 0.01 for a year in the period beginning on 1 January 2031 and ending on 31 December 2040; or 10
- (ii) 0.02 for a year in the period beginning on 1 January 2041 and ending on 31 December 2050.
- 84B Regulations setting increased phase-out rates**
- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make or amend regulations to set an increased phase-out rate to be used— 15
- (a) in respect of 1 or more eligible industrial activities for the purposes of **sections 81(1)** and 83(2); and
- (b) for an emissions budget period beginning on or after 1 January 2026.
- (2) Regulations made in respect of an emissions budget period must include a statement of what phase-out rate the Minister intends to set in respect of the subsequent emissions budget period. 20
- (3) The Minister must not recommend the making or amendment of regulations under this section to set an increased phase-out rate for an eligible industrial activity unless— 25
- (a) the Climate Change Commission has recommended (under **section 5ZOB**) whether or not an increased phase-out rate should be set for the activity; and
- (b) the Minister has considered the recommendation and complied with the requirements of **section 84C**. 30
- (4) In order to apply to an emissions budget period, the regulations must be made or amended before the beginning of the emissions budget period.
- (5) However, the regulations may apply to an emissions budget period, despite being made or amended during that period, if—
- (a) the emissions budget for the emissions budget period has been revised; or 35
- (b) the Minister is satisfied that, since the regulations were made or last considered, there has been a significant change that affects the considerations listed in **section 84C(3)**.

(6) In this section, **increased phase-out rate** means any rate that is more than, or the same as, the rate in **sections 81(2)(a) and 83(2A)(a)**, even if it is less than a rate previously set by regulations under this section.

84C Procedure for regulations setting phase-out rates

(1) Before recommending the making or amendment of regulations under **section 84A or 84B**, the Minister must be satisfied that the regulations or amendments are consistent with meeting the emissions budget that will apply when the regulations or amendments are in force. 5

(2) See sections 3A and **3B** for consultation requirements that apply to the making or amendment of regulations under **section 84A or 84B**. 10

(3) Before recommending the making or amendment of regulations under **section 84B** in respect of an eligible industrial activity, the Minister must consider—

(a) any targets or budgets set for reducing emissions of greenhouse gases; and

(b) New Zealand's nationally determined contributions under the Paris Agreement; and 15

(c) the level of risk of emissions leakage (increased emissions overseas as a result of emissions reductions in New Zealand, for example, an activity being relocated outside of New Zealand to reduce the emissions-related costs for the activity), based on— 20

(i) the emissions-related costs and policies in competing jurisdictions; and

(ii) the markets for international trade in the products produced by the activity; and

(iii) the ability of affected eligible persons to pass on increased costs to customers; and 25

(d) the risk that the value of the allocation for the activity will exceed the cost of meeting the emissions trading scheme obligations in relation to the activity; and

(e) other sources of supply into the emissions trading scheme, including off-shore emissions reductions; and 30

(f) the availability of low-emission technologies related to the activity; and

(g) international climate change obligations; and

(h) the proper functioning of the emissions trading scheme; and

(i) the cost to the taxpayer of providing allocations for the activity; and 35

(j) the recommendations made by the Climate Change Commission under **section 5ZOB**; and

(k) any other matters that the Minister considers relevant.

(4) **Subsection (5)** applies if—

| | |
|---|---|
| <p>(a) <u>the Minister decides to recommend the making of regulations under section 84A or 84B but not as recommended by the Commission; or</u></p> <p>(b) <u>the Minister decides to recommend the amending of regulations under section 84A or 84B but the Commission—</u></p> <p style="padding-left: 2em;">(i) <u>recommended that they be amended differently; or</u></p> <p style="padding-left: 2em;">(ii) <u>did not recommend that they be amended at all; or</u></p> <p>(c) <u>the Minister decides not to recommend the making or amending of regulations under section 84A or 84B despite the recommendation of the Commission.</u></p> <p>(5) <u>The Minister must, as soon as is reasonably practicable, but within 16 weeks, after receiving the Commission’s recommendation, prepare a report of the reasons for the difference between the Minister’s and the Commission’s recommendation and—</u></p> <p style="padding-left: 2em;">(a) <u>present a copy of the report to the House of Representatives; and</u></p> <p style="padding-left: 2em;">(b) <u>make the report publicly available.</u></p> | <p>5</p> <p>10</p> <p>15</p> |
| <p>78 Section 85 amended (Allocation of New Zealand units in relation to agriculture)</p> <p>In section 85(2), formula, definition of variable LA, paragraph (a), replace “0.9” with “0.95”.</p> | |
| <p>79 Section 85A amended (Temporary suspension of phase-out rates for assistance under sections 81, 83(2), and 85(2))</p> <p>(1) Replace the heading to section 85A with “Temporary suspension of phase-out rate for assistance under section 85(2)”.</p> <p>(2) In section 85A(1), replace “rates” with “rate”.</p> <p>(3) In section 85A(1) and (2), replace “sections 81, 83(2), and 85(2)” with “section 85(2)”.</p> <p>(4) In section 85A(2)(a), replace “rates in those sections may not reduce the level of assistance for an eligible activity from its 2012 level or the level in the first year in which full surrender obligations are applicable for the activity (as the case may be)” with “rate in that section may not reduce the level of assistance for an eligible activity from the level in the first year in which full surrender obligations are applicable for the activity”.</p> <p>(5) In section 85A(2)(b), delete “relevant”.</p> <p>(6) <u>Replace section 85A(3) with:</u></p> <p>(2A) <u>Before recommending the making of an Order in Council under subsection (2)(a)(ii), the Minister must consider the advice of the Climate Change Commission about whether the phase-out rates should continue to be suspended.</u></p> | <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

(3) The Minister must not make a recommendation under subsection (2)(a)(ii) before surrender obligations for the relevant participants start.

79A Section 86 amended (Applications for allocation of New Zealand units for industry and agriculture)

Replace section 86(1) with:

(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 apply to the EPA in the relevant period under **subsection (1A)**, unless this subpart otherwise provides.

(1A) The application must be made,—

(a) for a provisional allocation for an eligible industrial activity, in the period starting on 1 January and ending on 30 April in the year in respect of which the allocation is sought:

(b) for an allocation for an eligible industrial activity (other than a provisional allocation), in the period starting on 1 January and ending on 30 April in the year after the year in respect of which the allocation is sought:

(c) for an allocation for an eligible agricultural activity, in the period starting on 1 January and ending on 31 March in the year after the year in respect of which the allocation is sought.

79B Section 86A amended (Provisional allocation to industry in and after 2013)

In section 86A, replace “section 86(1)(a)” with “**section 86(1A)(a)**”.

80 Section 86B amended (Decisions on applications for allocations of New Zealand units to industry and agriculture)

(1) In the heading to section 86B, delete “and agriculture”.

(2) In section 86B(1), after “section 86”, insert “in respect of an eligible industrial activity”.

(3) In section 86B(2)(a)(i), delete “, in the case of an eligible industrial activity,”.

(4) Replace section 86B(2)(b) with:

(b) comply with **section 86BA**, as long as the number of units allocated is greater than zero, even after any adjustment made under subsection (1).

81 ~~New section 86BA inserted (Transfer of allocated units, less any units that must be surrendered or repaid)~~

~~After section 86B, insert:~~

~~86BA Transfer of allocated units, less any units that must be surrendered or repaid~~

- (1) ~~This section applies to the units allocated to an applicant under section 86B, after any adjustment made under section 86B(1).~~
- (2) ~~The EPA must calculate the following (an applicant's **offset units**):~~ 5
- (a) ~~the units (if any) that the applicant was required to, but did not, surrender by a deadline before the start of the year to which the allocation relates:~~
- (b) ~~the units (if any) that the applicant was required to, but did not, repay to a Crown holding account before the start of the year to which the allocation relates.~~ 10
- (3) ~~However, if the offset units exceed the number of allocated units, the offset units are recalculated to equal the number of allocated units by counting units as offset units starting from the units that were required to be surrendered or repaid by the earliest deadlines.~~ 15
- (4) ~~If there are any offset units, the EPA must notify the applicant of the following:~~
- (a) ~~the number of offset units required for surrender:~~
- (b) ~~the number of offset units required for repayment:~~
- (c) ~~that the offset units will be deducted from the transfer of allocated units to the applicant.~~ 20
- (5) ~~The EPA must direct the Registrar to transfer units to achieve the following results:~~
- (a) ~~the offset units required for surrender are transferred to a surrender account designated by the EPA:~~
- (b) ~~the offset units required for repayment are transferred to a Crown holding account designated by the EPA:~~ 25
- (c) ~~if any allocated units remain after deducting the offset units, they are transferred to the holding account notified in the person's application.~~

81 New sections 86BAA to 86BB inserted

After section 86B, insert: 30

86BAA Decisions on applications for allocations of New Zealand units to agriculture

- (1) This section applies if—
- (a) the EPA receives an application under section 86 in respect of an eligible agricultural activity; and 35
- (b) the applicant has submitted any emissions returns that are due.
- (2) The EPA must decide—

- (a) whether the applicant is eligible to receive an allocation in respect of the application;
- (b) if in the EPA's opinion the applicant is eligible for an allocation, the number of units the applicant is entitled to be allocated.
- (3) If the EPA decides that an applicant is entitled to receive an allocation, then the EPA must— 5
- (a) notify the applicant of—
- (i) the number of units the applicant has been allocated; and
- (ii) the person's right under section 144 to seek a review of the allocation decision; and 10
- (b) comply with **section 86BB**.
- (4) If the EPA decides that an applicant is not eligible to receive an allocation, then the EPA must notify the applicant of—
- (a) the EPA's decision; and
- (b) the reasons for the decision; and 15
- (c) the person's right under section 144 to seek a review of the allocation decision.
- (5) The EPA must, as soon as practicable after deciding an eligible person's allocation for an eligible agricultural activity in respect of a year,—
- (a) publish the decision in the *Gazette*; and 20
- (b) ensure that it is accessible via the Internet site of the EPA.
- (6) However, the EPA is not required to publish the allocation of an eligible person for an eligible agricultural activity in respect of a year, or ensure that it is accessible via the Internet, if the EPA considers that publishing that information would be likely to prejudice unreasonably the commercial position of the eligible person who received the allocation. 25
- 86BA Transfer of allocated units to industry, less any units that must be surrendered or repaid**
- The EPA must apply **section 64A** as follows:
- (a) the units allocated to an applicant under section 86B, after any adjustment made under section 86B(1), are the **potential transfer units**; 30
- (b) the applicant is the **recipient**;
- (c) the start of the year to which the allocation relates is the **relevant time**.
- 86BB Transfer of allocated units to agriculture, less any units that must be surrendered or repaid** 35
- (1) This section applies to the units allocated to an applicant under **section 86BAA** (the **potential transfer units**).

- (2) The EPA must calculate the **specified units** by counting units in the following order, but stopping once they equal the number of potential transfer units (if they do):
- (a) first, the units required for surrender as a result of the assessment for the year to which the allocation relates: 5
 - (b) second, the units (if any) that the recipient was required to, but did not, surrender, or repay to a Crown holding account, as a result of an assessment for an earlier year, starting from the units that were required to be surrendered or repaid by the earliest dates.
- (3) The EPA must notify the applicant of the following: 10
- (a) the number of specified units calculated under **subsection (2)(a)** that are required for surrender:
 - (b) the number of specified units calculated under **subsection (2)(b)** that are required for surrender:
 - (c) the number of specified units calculated under **subsection (2)(b)** that are required for repayment: 15
 - (d) that the specified units will be deducted from the potential transfer units that are transferred to the recipient.
- (4) The EPA must direct the Registrar to transfer—
- (a) the specified units required for surrender to a surrender account designated by the EPA; and 20
 - (b) the specified units required for repayment to a Crown holding account designated by the EPA; and
 - (c) any potential transfer units left after the specified units are deducted to the applicant's holding account. 25
- (5) The transfer of the specified units for surrender or repayment satisfies—
- (a) the recipient's entitlement to be transferred those units; and
 - (b) the recipient's obligation to surrender or repay the related units.
- (6) To avoid doubt, the applicant remains liable to surrender or repay any units that are not counted as specified units (because they exceed the number of potential transfer units). 30

82 Section 86C amended (Reconsideration of allocation decisions)

- (1) In section 86C(1), after “section 86B”, insert “or **86BAA**”.
- (2) Repeal section 86C(5A).

83 Section 86E amended (Minister or EPA or chief executive may require further information for purpose of carrying out functions under subpart) 35

- (1) In the heading to section 86E, replace “**Minister or EPA or chief executive**” with “**EPA**”.

- (2) In section 86E(1), replace “a determination under section 77 or 78 or a decision under section 86B, the Minister or EPA or chief executive, as appropriate,” with “a decision under section 86B or **86BAA**, the EPA”.
- (3) In section 86E(1), replace “the Minister or EPA or chief executive” with “the EPA”. 5
- (4) In section 86E(1)(c), replace “a determination or decision” with “the decision”.
- (5) In section 86E(2), delete “determination or”.
- (6) Replace section 86E(4) with:
- (4) The EPA may, for the purpose of verifying whether a decision made under section 86B or **86BAA** was correct or whether it should be reconsidered, give a notice to a person who has been allocated New Zealand units under that section requiring the person to supply to the EPA any records, data, or other information that the person is required to keep in relation to the allocation. 10
- (7) Replace section 86E(6) with:
- (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 EPA, and who has applied for an allocation under section 86, is not entitled to receive an allocation in respect of that application. 15

84 Section 87 amended (Functions of EPA)

- (1) In section 87(1)(b), (e), and (g), replace “this Part and Part 5” with “the ETS participant provisions”. 20
- (2) In section 87(1)(e), replace “and the provisions of any regulations made under this Part” with “and any regulations made under those provisions”.

85 Section 88 amended (Directions to EPA)

In section 88(1), replace “this Part, Part 5, or any regulations made under this Part or Part 5” with “the ETS participant provisions or any regulations made under those provisions”. 25

86 Section 89 amended (EPA to publish certain information)

- (1AA) In section 89(1), replace “in accordance with subsection (2)” with “for each reporting year”. 30
- (1AB) In section 89(1)(e), replace “subsections (3) and (4)” with “subsection (4)”.
- (1) In section 89(1)(f)(i), replace “under section 65(1), 118(2), 189(4), 191, or 193” with “required by this Act”.
- (2) In section ~~89(1)(f)(i)~~ 89(1)(f)(ii), replace “under section 65(4), 118(5), 123(3) or (6), 125, 189, 191, or 193” with “as required by this Act”. 35
- ~~(3) After section 89(1), insert:~~
- ~~(1A) The EPA must publish a list each year that records —~~

- (a) ~~each penalty imposed in that year under —~~
(i) ~~section 134;~~ and
(ii) ~~sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing;~~
and 5
- (b) ~~each penalty still owing at the end of the year that was imposed in a previous year under —~~
(i) ~~section 134;~~ and
(ii) ~~sections 134A to 134D, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing.~~ 10
- (1B) The list must contain the following details in respect of each penalty:
- (a) ~~the name of the person on whom the penalty was imposed;~~
(b) ~~the section under which the penalty was imposed;~~
(c) ~~the amount of the penalty;~~
(d) ~~the date that the last payment for the penalty was due and, if the penalty has been paid in full, the date on which the penalty and any interest on it was paid in full;~~ 15
(e) ~~in the case of a penalty imposed under section 134, the provision under which the person was liable to surrender or repay units;~~
(f) ~~in the case of a penalty imposed under sections 134A to 134D, whether the penalty was imposed for behaviour that was grossly careless or behaviour that was knowing.~~ 20
- (4) ~~In section 89(2)(a) and (b), replace “subsection (1)” with “subsections (1) to (1B)”.~~
- (5) Replace section 89(3) and (4) with: 25
- (3) ~~The EPA is required to publish only —~~
(a) ~~the total quantity of emissions, and the total quantity of removals, in aggregate for standard forestry; and~~
(b) ~~the total quantity of emissions, and the total quantity of removals, in aggregate for permanent forestry.~~ 30
- (3) Repeal section 89(3).
- 87 New section 89A inserted (EPA to publish participant data on emissions and removals)**
After section 89, insert:
- 89A EPA to publish participant data on emissions and removals** 35
- (1) ~~The EPA must publish, for each participant or consolidated group from which it receives emissions returns, —~~

- (a) ~~the name of the participant, or names of the participants in the consolidated group; and~~
- (b) ~~the net emissions or removals set out in the participant's or group's return or returns, broken down by activity if the return relates to more than 1 activity; and~~ 5
- (c) ~~the period to which the return or returns relate.~~
- (1) The EPA must publish, for each participant or consolidated group for whom there is an emissions return,—
- (a) the name of the participant, or names of the participants in the consolidated group; and 10
- (b) the period to which the return or returns relate; and
- (c) the data in **paragraphs (d) to (f)** in tonnes of carbon dioxide equivalent and—
- (i) broken down by participant if a return relates to more than 1 participant; and 15
- (ii) broken down by activity if a return relates to more than 1 activity, except that the emissions or removals of a participant in any forestry activity must be combined for all of their forestry activities; and
- (d) if available, the emissions set out in the participant's or group's return or returns; and 20
- (e) if available, the removals set out in the participant's or group's return or returns; and
- (f) if the data in **paragraphs (d) and (e)** is not available, the net emissions or removals set out in the participant's or group's return or returns. 25
- (2) The EPA—
- (a) must publish the information at least annually, as soon as practicable after the date on which emissions returns are due; and
- (b) may publish the information, in whole or in part, at any other time ~~and in whatever manner and format that the EPA considers appropriate.~~ 30
- (3) The EPA must publish the information in whatever manner and format that the EPA considers appropriate.
- (4) The EPA must, at least 10 working days before publishing the information, give notice on its Internet site of the date on which it will publish the information. 35

88 Section 90 amended (EPA may prescribe form of certain documents)

- (1) In section 90(1), replace “this Part and Part 5” with “the ETS participant provisions and Part 2”.
- (2) Replace section 90(1)(b) with:

- (b) different forms or formats for different classes of participant or person or for different activities or purposes; and
- (3) In section 90(1)(c), replace “this Part or Part 5” with “the ETS participant provisions or Part 2”.
- 89 ~~Section 91 amended (Approval of unique emissions factors)~~** 5
~~In section 91(1), replace “section 62(b)” with “**section 62(1)(b)**”.~~
- 90 New section 91A inserted (Correction of unique emissions factors)**
 After section 91, insert:
- 91A Correction of unique emissions factors**
- (1) If the EPA is satisfied that the unique emissions factor approved for a participant under section 91 is incorrect for any reason, the EPA may amend the approval to correct the unique emissions factor. 10
- (2) The EPA must—
- (a) notify the applicant of the amended approval; and
- (b) publish a notice in the *Gazette* that specifies— 15
- (i) the name of the participant; and
- (ii) a description of the activity; and
- (iii) the details of the unique emissions factor that the EPA has, by amendment, approved the participant to use when calculating emissions or removals for the activity (the **corrected unique emissions factor**); and 20
- (iv) the date on which the corrected unique emissions factor has effect, which must be no earlier than the date on which the unique emissions factor became incorrect.
- (3) The corrected unique emissions factor has effect on and ~~from~~ after the date specified by the notice in the *Gazette*, even if that date has passed. 25
- 91 ~~Section 92 amended (Recognition of verifiers)~~**
~~In section 92(1), replace “section 62(a)” with “**section 62(1)(a)**”.~~
- 92 Section 93 amended (Appointment of enforcement officers)**
 In section 93(1), after “Part”, insert “(which relate to verification and inquiry about compliance with the ETS participant provisions)”. 30
- 93 Section 94 amended (Power to require information)**
- (1) In section 94(1)(a), replace “this Part and Part 5” with “the ETS participant provisions”.
- (2) Replace section 94(1)(b) with: 35

(b) ascertaining whether, or how, the EPA or the chief executive, as appropriate, should exercise any powers under the ETS participant provisions.

94 Section 95 amended (Power to inquire)

In section 95(1), replace “this Part or Part 5” with “the ETS participant provisions”.

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95 Section 96 amended (Inquiry before District Court Judge)

In section 96(1), replace “this Part or Part 5” with “the ETS participant provisions”.

96 Section 99 amended (Obligation to maintain confidentiality)

(1) In section 99(1)(a), (2)(a), and (4)(a), replace “this Part and Part 5” with “the ETS participant provisions”.

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(2) In section 99(2)(b)(vi), replace “any obligation under the Convention or the Protocol” with “international climate change obligations”.

(3) Replace section 99(4)(c) with:

- (c) providing information to any person about whether—
- (i) any land has a certain forestry classification or is exempt land; or
 - (ii) they consider any land to be land that could be given any particular forestry classification available under **section 196A(a)**.

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97 Section 100 amended (Power of entry for investigation)

(1) In section 100(1), replace “this Part or Part 5” with “the ETS participant provisions”.

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(2) In section 100(2)(d), replace “this Part and Part 5” with “the ETS participant provisions”.

98 Section 104 amended (Information obtained under section 100 or 101 only admissible in proceedings for alleged breach of obligations imposed under this Part and Part 5)

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(1) In the heading to section 104, replace “**this Part and Part 5**” with “**ETS participant provisions**”.

(2) In section 104, replace “this Part ~~and~~ or Part 5” with “the ETS participant provisions”.

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99 Section 107 amended (Applications for emissions rulings)

(1) Replace section 107(1)(b) and (c) with:

- (b) whether the person—
- (i) is a participant in respect of an activity listed in Schedule 3 or is eligible to register as a participant in respect of an activity listed in Schedule 4; or

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- (ii) would be either of those things if certain proposals were carried out or events happened:
- (c) the correct application of any provision contained in regulations made under section 161A, 161G, 163, 164, 167, 168, ~~185A~~, 186F, ~~194EG~~, ~~194LA~~, ~~194TA~~, ~~194UC~~, **196G**, or **197A** in respect of a particular matter specified in the person's application: 5
- (ca) whether any of this Act's requirements that relate to a decision that the EPA can make about forest land on land that the person has, or will have, an interest in are satisfied, or would be satisfied if certain proposals were carried out or events happened—for example, the requirements that must be satisfied— 10
 - (i) for any forest land that is cleared to not be treated as deforested (for the purposes of this Act) under section 179A:
 - (ii) for pre-1990 forest land to be eligible for a decision to be made under section 184(5)(a) (exemptions for deforestation of land with tree weeds): 15
 - (iii) for the EPA to approve an application relating to forest land:
- (2) Repeal section 107(3).

100 New section 107A inserted (Insufficient information provided for ruling on entire application) 20

After section 107, insert:

107A Insufficient information provided for ruling on entire application

- (1) If the EPA is satisfied that an application under section 107 does not include all information that is relevant to a proper consideration of the application, the EPA must give notice to the applicant— 25
 - (a) requesting any further information from the applicant that the EPA considers necessary to assist in the consideration of the application; and
 - (b) if the EPA already has information that is relevant to the application, describing the information and inviting the applicant to comment on or object to the information. 30
- (2) The EPA must—
 - (a) provide a reasonable deadline for the applicant to reply to the notice; and
 - (b) consider as part of the application—
 - (i) any further information provided by the applicant; and
 - (ii) the information already held by the EPA that is relevant to the application, and the applicant's comments on or objections to that information. 35

- (3) If, after that, the EPA is satisfied that it has sufficient information to make a ruling on only part of the matter applied for (such as part of an activity or part of a geographical area), the EPA may—
- (a) give notice of that decision to the applicant; and
 - (b) make a ruling under section 109 in respect of only that part of the matter.

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101 Section 108 amended (Matters in relation to which EPA may decline to make emissions rulings)

- (1) In section 108(1)(b), replace “section 107(3)” with “**section 107A(1)**”.
- (2) In section 108(2)(g)(i), after “ruling”, insert “but subject to **section 107A**”.

102 Section 109 amended (Making of emissions rulings)

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- (1) In section 109(1), replace “in respect of which a ruling is sought under section 107” with “applied for”.
- (2) In section 109(1)(b), replace “section 107(3)” with “**section 107A**”.
- (3) Replace section 109(3) and (4) with:

- (3) A ruling may be made subject to any conditions that the EPA considers appropriate, including any condition that a proposal is carried out or that something happens (*see* **section 107(1)(b)(ii)**).

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Example

The EPA may rule that a person is eligible to register as a participant in an activity of standard forestry listed in Part 1 of Schedule 4 on the condition that the relevant land is planted in forest species and meets the definition of forest land.

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- (4) Subsection (1) is subject to section 108 and the EPA’s discretion in **section 107A(3)(b)** to make a ruling on only part of a matter.

103 Section 116 amended (Effect of emissions rulings)

- (1) In section 116(1), replace “in respect of which a ruling is sought under section 107” with “that is ruled on”.
- (2) In section 116(2)(a), replace “in relation to which the ruling was sought” with “that is ruled on”.
- (3) After section 116(2), insert:

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- (2A) However, an emissions ruling is personal to the applicant and does not apply to, and cannot be transferred to, anyone else (including where land to which a ruling relates is transferred).

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104 Section 117 amended (EPA may publish certain aspects of emissions rulings)

- (1) In section 117(1), replace “this Part or Part 5” with “the ETS participant provisions”.

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(2) In section 117(1), after “ruling”, insert “in whatever manner and format that the EPA considers appropriate”.

105 Section 118 amended (Submission of final emissions returns)

After section 118(3), insert:

(3A) ~~However, subsections (1) and (3) do not apply to a participant in an activity of standard forestry or permanent forestry (on post 1989 forest land), who must instead submit emissions returns as required by Part 5.~~

106 Section 120 amended (Amendment to emissions returns by EPA)

In section 120, insert as ~~subsections (2) and (3)~~ subsection (2):

(2) Information contained in an emissions return may be incorrect, for example, because it is based on an incorrect unique emissions factor that was approved for the participant under section 91.

(3) ~~If the EPA proposes to amend a person’s emissions return, the EPA must notify the person of that proposal as soon as practicable.~~

107 Section 123 amended (Effect of amendment or assessment)

~~In section 123(2), replace “section 134(3)(b)” with “section 134A or 134C”.~~

108 Section 124 amended (Reimbursement of units by EPA)

Replace section 124(1) and (2) with:

(1) If the EPA is required by this Act to arrange for the reimbursement of units to a person, the EPA 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.

(2) However, **subsection (1)** does not apply to the extent that **subsection (2A)** requires units to be transferred elsewhere.

(2A) The EPA must apply **section 64A** as follows:

(a) the units the person is entitled to be reimbursed are the **potential transfer units**;

(b) the person is the **recipient**;

(c) the time when the requirement to reimburse arose is the **relevant time**.

109 Section 125 replaced (Repayment of units by persons in case of error)

Replace section 125 with:

125 Repayment of units by persons in case of error

(1) The EPA may, if satisfied ~~that that~~ as a result of an error, units to which a person is not entitled under the ETS participant provisions have been transferred from a Crown holding account or other account held by the Crown to the per-

son's holding account, give a notice to the person requiring that person to repay that number of units.

- (2) The person must, within 30 days after the notice is given, repay that number of units by transferring units to the Crown holding account designated in the notice. 5
- (3) The repaid units must be of a type that may be transferred to a surrender account ~~after~~ when they are repaid.

110 Section 127 amended (Time bar for amendment of emissions returns)

- (1) In section 127(1), replace "submitted under" with "required or permitted by".
- (2) In section 127(1)(a), replace "section 189 or 193" with "those specified in **paragraph (b)**". 10
- (3) ~~In section 127(1)(a), replace "under section 187 or 191" with "required by section 187 or **191BA**".~~
- (4) ~~In section 127(1)(b), replace "section 189 or 193" with "**section 189AA, 189AB, 192, 194GA, 194DA, 194CA, 194KG, 194NA, or 194QB**".~~ 15
- (3) Replace section 127(2) with:
- (2) However,—
- (a) if a person submits an emissions return on receiving a notice from the EPA under **section 134A(1)**, the period of 4 or 7 years in which the EPA may amend an emissions return under subsection (1)(a) or (b) starts from the date of submission of the emissions return; and 20
- (b) the EPA may amend an emissions return or assessment at any time to give effect to the correction of a unique emissions factor under **section 91A**; and
- (c) if the EPA is satisfied that an emissions return was fraudulent, was wilfully misleading, or deliberately omitted mention of emissions or removals in respect of which an emissions return was required to be submitted, the EPA may amend the emissions return at any time, under section 120, so as to— 25
- (i) increase the number of units required to be surrendered by the participant; 30
- (ii) decrease the number of New Zealand units to which the participant is entitled in respect of removal activities.
- (3) Without limiting **subsection (2)(c)**, that paragraph will apply in respect of all emissions returns by a person for an activity if the EPA is satisfied that the person's application to be registered was fraudulent or wilfully misleading. 35
- (5) ~~After section 127(2), insert:~~

~~(3) Without limiting subsection (2), that subsection will apply in respect of all emissions returns by a person for an activity if the EPA is satisfied that the person's application to be registered was fraudulent or wilfully misleading.~~

111 New sections 128A and 128B and cross-heading inserted

After section 128, insert:

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Notices required from participants

128A EPA may act if participant fails to give notice

~~(1) The EPA may act under this section if it is satisfied that a participant has failed to give a notice in accordance with **section 194JB or 194QB** (the notice provision).~~

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~~(2) The EPA may,—~~

~~(a) if no notice has been given, prepare the notice that ought to have been given (including any emissions return, new unit balance report, or other information that should have accompanied it); or~~

~~(b) if a notice has been given but is not complete, complete the notice (including by preparing or completing any emissions return, new unit balance report, or other information that should have accompanied it).~~

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~~(3) If the EPA has insufficient information to enable it to do so, it may make assumptions or estimates to enable the notice or accompanying information to be prepared.~~

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~~(4) If the notice provision requires 2 or more participants to give a joint notice and a notice is given by some but not all of them,—~~

~~(a) the EPA may accept it as a notice from the participants giving it and deal with it accordingly; and~~

~~(b) if the EPA does so, the other participants are to be treated as having failed to give the required notice.~~

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~~(5) Before taking action under this section, the EPA must notify the participant of its intention to do so and give them at least 60 working days to give or correct the required notice.~~

~~(6) If the participant gives or corrects the required notice by that deadline, it must be treated as having been given in accordance with the notice provision.~~

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~~(7) The EPA may still take action under this section if it is unable to notify the participant of its intention to do so because it is not reasonably practicable to identify or locate them or their address.~~

~~(8) Despite **subsection (2)**, for a notice required by **section 194JB**, the EPA cannot identify any land as excess forest land.~~

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~~128B~~ Effects of EPA acting after participant fails to give notice

- (1) ~~Anything prepared by the EPA acting under **section 128A**—~~
- ~~(a) must be taken to be correct; and~~
 - ~~(b) is to be treated as if it had been given to the EPA—~~
 - ~~(i) by the participant who was required to give it; and~~ 5
 - ~~(ii) in accordance with the notice provision; and~~
 - ~~(iii) on the last day on which it could have been given under that provision.~~
- (2) ~~As soon as practicable after taking action under **section 128A**, the EPA must notify the participant of the following:~~ 10
- ~~(a) the action taken (including a copy of anything prepared by the EPA) and the reasons for taking it; and~~
 - ~~(b) the participant’s right to seek a review of the decision under section 144.~~

112 Section 129 amended (Offences in relation to failure to comply with various provisions) 15

- (1) ~~In section 129(1)(a), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.~~
- (2) In section 129(1)(b)(ii), delete “under section 65, 118, 189, 191, or 193”.
- (3) Repeal section 129(1)(b)(iii)(B). 20
- (4) In section 129(1)(b)(iii)(C), replace “by a” with “by the”.

113 Section 132 amended (Other offences)

- (1) ~~In section 132(1)(e), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.~~ 25
- (2) In section 132(1)(d), delete “under section 65, 118, 189, 191, or 193”.
- (3) Repeal section 132(1)(e)(ii).
- (4) In section 132(1)(e)(iii), replace “by a” with “by the”.
- (5) In section 132(1)(f) and (g), replace “this Part or Part 5” with “the ETS participant provisions”. 30

114 Section 133 amended (Evasion or similar offences)

- (1) In section ~~133(2)(b)~~ 133(1)(b), delete “under section 65, 118, 189, 191, or 193”.
- (2) Repeal section 133(1)(c)(ii).
- (3) In section 133(1)(c)(iii), replace “by a” with “by the”. 35

- (4) In section 133(1)(d), replace “this Part or Part 5” with “the ETS participant provisions”.
- (5) In section 133(1)(e), replace “this Part and Part 5” with “the ETS participant provisions”.

115 Sections 134 to 136 replaced

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Replace sections 134 to 136 with:

134 Penalty for failing to surrender or repay units by due date

- (1) ~~This section applies if a person fails, by the applicable due date,~~
 - (a) ~~to surrender units that the person is required to surrender; or~~
 - (b) ~~to repay units that the person is required to repay.~~
- (2) ~~The person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:~~

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$$3 \times a \times b$$

~~where—~~

- a ~~is the number of units that the person failed to surrender or repay by the due date~~
- b ~~is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under **section 30W**.~~
- (3) ~~The EPA must give a notice to the person that—~~
 - (a) ~~refers to the person’s failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and~~
 - (b) ~~refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and~~
 - (c) ~~states the number of units that the person must surrender or repay; and~~
 - (d) ~~states the amount of the penalty that the person must pay under **subsection (2)**; and~~
 - (e) ~~advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~
- (4) ~~If the EPA notifies a person that the EPA proposes to amend the person’s emissions return under section 120, the EPA must reverse any penalty charged under this section that relates to the original return.~~

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134A Penalty for failing to submit emissions return by due date

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- (1) ~~This section applies if—~~
 - (a) ~~a person fails to submit an emissions return by the due date; and~~

- (b) ~~the EPA is satisfied that the person has not taken reasonable care; and~~
 (e) ~~the EPA gives a notice to the person stating that—~~
- (i) ~~the person has failed to submit the emissions return by the due date; and~~
 (ii) ~~if the person does not submit the return within 10 working days after the notice is given, the EPA will make an assessment under section 121 and penalties will apply; and~~
- (d) ~~the person fails to submit the emissions return within 10 working days after the notice is given.~~
- (2) ~~If an assessment made under section 121 results in a liability for the person to surrender or repay units, the person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:~~
- $a \times b \times e$
- where—
- a ~~is the number of units that the person is liable to surrender or repay~~
 b ~~is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under **section 30W**~~
 e ~~is the culpability factor determined under **subsection (3)**.~~
- (3) ~~The culpability factor for a person is determined using this table:~~
- | Person's level of culpability | Did person voluntarily disclose failure or error to EPA before being informed of it by EPA? | Culpability factor |
|---|--|-------------------------------|
| Person did not take reasonable care, but was not grossly careless and did not knowingly fail | Yes | 0.1 |
| | No | 0.2 |
| Person was grossly careless, but did not knowingly fail | Yes | 0.2 |
| | No | 0.4 |
| Person knowingly failed | Yes | 1.0 |
| | No | 1.0 |
- (4) ~~If an assessment made under section 121 results in an entitlement for the person to receive units, the person must pay to the EPA a penalty of \$1,000.~~
- (5) ~~The EPA must give a notice to the person that—~~
- (a) ~~refers to the person's failure to submit the emissions return by the due date and the provision under which the person is required to submit the return; and~~
 (b) ~~refers to the notice issued under **subsection (1)(c)**; and~~
 (c) ~~specifies the amount of the penalty that the person must pay under **subsection (2) or (4)**; and~~
 (d) ~~advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and~~

~~(e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~

134B Penalty for failing to submit annual or closing allocation adjustment by due date

~~(1) This section applies if—~~

~~(a) a person fails to submit an annual allocation adjustment under section 83 or a closing allocation adjustment under section 84 by the due date; and~~

~~(b) the EPA is satisfied that the person has not taken reasonable care; and~~

~~(c) the EPA gives a notice to the person stating that—~~

~~(i) the person has failed to submit the allocation adjustment by the due date; and~~

~~(ii) if the person does not submit the allocation adjustment within 10 working days after the notice is given, the EPA will make a decision under section 86B(4) and penalties will apply; and~~

~~(d) the person fails to submit the allocation adjustment within 10 working days after the notice is given.~~

~~(2) If the decision made under section 86B(4) results in a liability for the person to surrender or repay units, the person must (in addition to surrendering or repaying the units) pay to the EPA a penalty calculated as follows:~~

$$a \times b \times e$$

~~where—~~

~~a is the number of units that the person is liable to surrender or repay~~

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

~~e is the culpability factor determined under **subsection (3)**.~~

~~(3) The culpability factor for a person is determined using this table:~~

| Person's level of culpability | Did person voluntarily disclose failure or error to EPA before being informed of it by EPA? | Culpability factor |
|---|--|---------------------------|
| Person did not take reasonable care, but was not grossly careless and did not knowingly fail | Yes | 0.1 |
| | No | 0.2 |
| Person was grossly careless, but did not knowingly fail | Yes | 0.2 |
| | No | 0.4 |
| Person knowingly failed | Yes | 1.0 |
| | No | 1.0 |

~~(4) If the decision made under section 86B(4) results in an entitlement for the person to receive units, the person must pay to the EPA a penalty of \$1,000.~~

- (5) ~~The EPA must give a notice to the person that—~~
- (a) ~~refers to the person's failure to submit the allocation adjustment by the due date and the provision under which the person is required to submit the allocation adjustment; and~~
 - (b) ~~refers to the notice issued under **subsection (1)(c)**; and~~ 5
 - (c) ~~specifies the amount of the penalty that the person must pay under **subsection (2) or (4)**; and~~
 - (d) ~~advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and~~
 - (e) ~~advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~ 10

134C Penalty for submitting incorrect emissions return

- (1) ~~This section applies if—~~
- (a) ~~the EPA amends a person's emissions return under section 120; and~~ 15
 - (b) ~~the EPA is satisfied that the amendment was needed because the person failed to take reasonable care.~~
- (2) ~~The person must (in addition to surrendering or repaying any units as required by the amendment) pay to the EPA a penalty of an amount determined in accordance with this section.~~ 20
- (3) ~~If the effect of the amendment is that the person is required to surrender or repay additional units, or is entitled to receive fewer units, the penalty is calculated as follows:~~

$$a \times b \times e$$

~~where—~~ 25

- a ~~is the lesser of the number of units the person should have surrendered, repaid, or received (had the emissions return been correct) and the number of additional units that the person is liable to surrender or repay as a result of the amendment~~
 - b ~~is the price, in dollars, of carbon per tonne on the date on which the emissions return was due, as set by or in accordance with regulations made under **section 30W**~~ 30
 - e ~~is the culpability factor determined under **subsection (4)**.~~
- (4) ~~The culpability factor for a person is determined using this table:~~

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| Person's level of culpability | Did person voluntarily disclose failure or error to EPA before being informed of it by EPA? | Culpability factor |
|--|--|---------------------------|
| Person did not take reasonable care, but was not grossly careless and did not knowingly fail | Yes | 0.1 |
| | No | 0.2 |
| Person was grossly careless, but did not knowingly fail | Yes | 0.2 |
| | No | 0.4 |
| Person knowingly failed | Yes | 1.0 |
| | No | 1.0 |

(5) ~~If the effect of the amendment is that the person has surrendered or repaid too many units, is entitled to receive more units, or has no change in their unit entitlements, the penalty is \$1000.~~

(6) ~~The EPA must give a notice to the person that —~~

- (a) ~~refers to the amendment under section 120; and~~ 5
- (b) ~~specifies the amount of the penalty that the person must pay under this section; and~~
- (c) ~~advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and~~
- (d) ~~advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~ 10

134D Penalty for providing incorrect information in allocation application or adjustment

(1) ~~This section applies if —~~ 15

- (a) ~~the EPA reconsiders, varies, or revokes (**changes**) a decision on a person's allocation application or adjustment under section 86C; and~~
- (b) ~~the EPA is satisfied that the change was needed because the person failed to take reasonable care.~~

(2) ~~The person must (in addition to surrendering or repaying any units as required by the changed decision) pay to the EPA a penalty of an amount determined in accordance with this section.~~ 20

(3) ~~If the effect of the change is that the person is required to surrender or repay additional units, or is entitled to receive fewer units, the penalty is calculated as follows:~~ 25

$a \times b \times e$

where —

- a ~~is the lesser of the number of units the person should have surrendered, repaid, or received (had the original decision been correct) and the num~~

~~ber of additional units that the person is liable to surrender or repay as a result of the change~~

~~b is the price, in dollars, of carbon per tonne on the date the allocation application or adjustment was due, as set by or in accordance with regulations made under **section 30W**~~

~~e is the culpability factor determined under **subsection (4)**.~~

~~(4) The culpability factor for a person is determined using this table.~~

| Person's level of culpability | Did person voluntarily disclose failure or error to EPA before being informed of it by EPA? | Culpability factor |
|---|--|-------------------------------|
| Person did not take reasonable care, but was not grossly careless and did not knowingly fail | Yes | 0.1 |
| Person did not take reasonable care, but was not grossly careless and did not knowingly fail | No | 0.2 |
| Person was grossly careless, but did not knowingly fail | Yes | 0.2 |
| Person was grossly careless, but did not knowingly fail | No | 0.4 |
| Person knowingly failed | Yes | 1.0 |
| Person knowingly failed | No | 1.0 |

~~(5) If the effect of the change is that the person has surrendered or repaid too many units, is entitled to receive more units, or has no change in their unit entitlements, the penalty is \$1000.~~

~~(6) The EPA must give a notice to the person that, —~~

~~(a) refers to the change under section 86C; and~~

~~(b) specifies the amount of the penalty that the person must pay under this section; and~~

~~(c) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and~~

~~(d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.~~

~~**135 Due dates for payment of penalties**~~

~~A person must pay a penalty imposed under **sections 134 to 134D** within 20 working days after notice is given of the penalty, or by the date or dates agreed under a deferred payment arrangement under **section 135A**.~~

~~**135A Deferred payment arrangements for payments of penalties**~~

~~(1) A person who is liable to pay a penalty imposed under **sections 134 to 134D, 194EF, or 194EI** may request to enter into an arrangement with the EPA for the person to pay the penalty after its due date, either in a single payment or in instalments.~~

~~(2) The EPA must consider the request, taking into account the person's financial position on the date on which the request is made.~~

- ~~(3) The EPA may—~~
- ~~(a) accept the request; or~~
 - ~~(b) request further information from the person; or~~
 - ~~(c) make a counter offer; or~~
 - ~~(d) if **subsection (5)** applies, decline the request.~~ 5
- ~~(4) If the EPA requests further information from the person or makes a counter offer,—~~
- ~~(a) the person must provide the information or respond to the offer within 20 working days after the request or offer, or within a longer period allowed by the EPA; and~~ 10
 - ~~(b) if the person provides the information or responds to the offer later than required, the provision of the information or the response must be treated as a new request to enter into an arrangement.~~
- ~~(5) The EPA may decline to enter into an arrangement with the person if the EPA considers that—~~ 15
- ~~(a) the person is in a position to pay all of the penalty immediately; or~~
 - ~~(b) the person is being frivolous or vexatious; or~~
 - ~~(c) the person has not met their obligations under a previous arrangement.~~
- ~~(6) The renegotiation of an arrangement is treated as if it were a new request to enter into an arrangement. Renegotiation may be initiated—~~ 20
- ~~(a) by the person, at any time; or~~
 - ~~(b) by the EPA, at any time after the end of 12 months after the date on which the arrangement was entered into.~~
- ~~(7) The EPA may cancel an arrangement if—~~
- ~~(a) it was entered into on the basis of false or misleading information provided by the person; or~~ 25
 - ~~(b) the person is not meeting their obligations under the arrangement.~~

136 Penalties are debt due to Crown

~~The amount of a penalty imposed under **sections 134 to 134D, 194EF, or 194EI**, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.~~ 30

116 Section 137 amended (Interest for late payment)

~~(1) Replace section 137(1) with:~~

- ~~(1) This section applies if—~~ 35
- ~~(a) a person is liable to pay a penalty imposed under **sections 134 to 134D, 194EF, or 194EI**; and~~

| | |
|---|----|
| <p>(b) the person has not paid the penalty by the date on which the penalty was due (as stated in the notice issued under the relevant section); and</p> <p>(e) in the case of a penalty imposed under section 134, the person has not surrendered or repaid the units to which the penalty relates.</p> | |
| (2) In section 137(2), delete “excess emissions”. | 5 |
| (3) Replace section 137(2)(b) with: | |
| <p>(b) for the period from the date by which the penalty was due to be paid until the penalty and any interest due have been paid in full and, in the case of a penalty imposed under section 134, the person has surrendered or repaid the units to which the penalty relates.</p> | 10 |
| (4) Repeal section 137(3). | |
| (5) In section 137(4)(a), delete “or to transfer units to a Crown holding account under section 136”. | |
| 117 Section 138 amended (Obligation to pay penalty not suspended by appeal) | |
| (1) Replace section 138(1) with: | 15 |
| <p>(1) The obligation to pay and the right to receive and recover any penalty imposed under sections 134 to 134D, 194EF, or 194EI or interest imposed under section 137 are not suspended by any review or appeal.</p> | |
| (2) In section 138(2), delete “excess emissions”. | |
| 118 Section 138A replaced (Penalties to be paid into Crown account) | 20 |
| Replace section 138A with: | |
| 138A Penalties to be paid into Crown account | |
| <p>(1) The EPA must pay the amount of all penalties and interest on the penalties received from a person in accordance with sections 134 to 134D, 137, 194EF, or 194EI into a Crown Bank Account.</p> | 25 |
| <p>(2) However, this section is subject to a court order that a penalty imposed under section 194EF or 194EI must be applied first to pay the EPA’s actual costs in bringing the proceedings.</p> | |
| 119 Section 143 amended (Evidence in proceedings) | |
| <p>In section 143(1), replace “this Part or Part 5” with “the ETS participant provisions” in each place.</p> | 30 |
| 120 Section 144 amended (Request for review of decisions) | |
| (1) Replace section 144(1) with: | |
| <p>(1) A person affected by a decision of the EPA under a provision in the ETS participant provisions who is dissatisfied with the decision may request the EPA to review the decision.</p> | 35 |

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- (1A) The request must be made by notice to the EPA within the following period, or any further period that the EPA allows:
- (a) within 20 working days after the person receives notice of the decision; or
 - (b) for a decision of the EPA about whether to give an area of land a new or changed forestry classification, within 20 working days after that decision is published in accordance with regulations made under **section 196G**.
- (2) Replace section 144(3) with:
- (3) For the purposes of a review, the EPA may—
- (a) require the person requesting the review to supply information additional to that contained in the request; and
 - (b) consider any information that the EPA already holds and that is relevant to the review, as long as the EPA—
 - (i) gives a notice to the person requesting the review that describes the information and invites them to comment on or object to it; and
 - (ii) considers any comments or objections.
- (3) After section 144(4), insert:
- (4A) Before revoking or varying the forestry classification of an area of land, the EPA must, in accordance with regulations made under **section 196G**, consult the persons (if any) that appear likely to be substantially affected by the revocation or variation.

121 Section 148 amended (Giving of notices to EPA)

- (1) Replace section 148(2) with:
- ~~(2) If this section applies, the notice must be given—~~
- ~~(a) in writing; and~~
 - ~~(b) to the EPA at the office of the EPA; and~~
 - ~~(c) in 1 of the following ways:~~
 - ~~(i) by personal delivery during working hours;~~
 - ~~(ii) by an electronic means of communication in accordance with Part 4 of the Contract and Commercial Law Act 2017;~~
 - ~~(iii) by post to the post office box number for the office.~~
- (2) If this section applies, the notice must be given in writing in 1 of the following ways to the EPA's office:
- (a) by personal delivery during working hours;
 - (b) by an electronic means of communication in accordance with Part 4 of the Contract and Commercial Law Act 2017;

- (c) by post to the post office box number for the office.
- (2) In section 148(3), replace “subsection (2)(b)(ii)(C)” with “**subsection (2)(c) (iii)**”.
- 122 Section 150 amended (Formation of consolidated group)**
- (1) Replace section 150(1) and (2) with: 5
- (1) Any 2 or more members of a group may elect to form and be treated as a consolidated group, for the purposes of the ETS participant provisions, in respect of any activity or activities listed in Schedule 3 or 4 other than forestry activities.
- (2) A consolidated group may consist of any of the following: 10
- (a) 1 or more participants:
- (b) 1 or more eligible persons for an eligible ~~industrial~~ activity:
- (c) 1 other member that is not a participant, if that entity is to act as the nominated entity.
- (2) In section 150(4)(b), replace “this Part and Part 5” with “the ETS participant provisions” 15
- (3) In section 150(4)(c)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,” 20
- (4) In section 150(4)(c)(ii), after “activity”, insert “, or by an allocation relating to an eligible ~~industrial~~ activity,”.
- (5) In section 150(6), replace “If 2 or more participants have elected under subsection (1) to form a consolidated group, those participants must be treated for the purposes of this Part and Part 5” with “Two or more entities who make an election under **subsection (1)** must be treated, for the purposes of the ETS participant provisions,” 25
- (6) In section 150(6A), after “an activity”, insert “to which **subsection (1)** applies”.
- (7) In section 150(6B) and (7), after “participant”, insert “or an eligible person”. 30
- 123 Section 151 amended (Changes to consolidated groups)**
- (1) Replace section 151(1) with:
- (1) If a consolidated group has been formed and still has at least 1 member, any other person referred to in **section 150(2)(a) to (c)** may elect to join and be treated as a member of the consolidated group by giving notice to the EPA in a form that the EPA approves. 35
- (2) In section 151(2)(a)(ii), delete “if the entity is a participant,”.

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- (3) In section 151(2)(b)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,”.
- (4) In section 151(2)(b)(ii), delete “if the entity is a participant,”. 5
- (5) In section 151(2)(b)(ii), after “activities”, insert “, or by an allocation relating to an eligible ~~industrial~~ activity,”.
- (6) In section 151(2)(c)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations relating to,”. 10
- (7) In section 151(2)(c)(ii), after “that entity”, insert “, or by an allocation relating to an eligible ~~industrial~~ activity of that entity,”.
- (8) Replace section 151(4) and (5) with:
- (4) Subject to subsection (6), a participant or eligible person that elects under **subsection (1)** to join a consolidated group must be treated, for the purposes of the ETS participant provisions, as being a member of that consolidated group from 1 January of the year in which they gave the notice under **subsection (1)**. 15
- (5) An entity other than a participant or eligible person that elects under **subsection (1)** to join a consolidated group must be treated for the purposes of this Part as being a member of that consolidated group from the date of receipt by the EPA of the notice under **subsection (1)**, or from any later date that may be specified in the notice. 20
- (9) In section 151(6), replace “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,” with “A participant in respect of an activity may”. 25
- 124 Section 151A amended (Addition of activities to consolidated groups)**
- (1) In section 151A(2)(b)(i), replace “this Part or Part 5 in respect of emissions and removals resulting from” with “the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to,”. 30
- (2) In section 151A(2)(b)(ii), after “activities”, insert “, or by an allocation relating to an eligible ~~industrial~~ activity,”.
- 125 Section 152 amended (Nominated entities)** 35
- In section 152(1), replace “this Part and Part 5” with “the ETS participant provisions”.
- 126 Section 153 amended (Effect of being member of consolidated group)**
- Replace section 153(1) to (5) with:

- (1) The nominated entity of a consolidated group—
- (a) must have a holding account in the name of the consolidated group for the purposes of meeting the members' obligations under the ETS participant provisions; and
 - (b) must record in that holding account the names of all the members of the consolidated group; and 5
 - (c) must submit a single annual emissions return for the consolidated group in respect of a year, which must—
 - (i) meet the requirements of section 65(2) in respect of the activities listed in the notice under section 150(4)(a)(ii) or 151(2)(a)(ii) carried out by each member of the consolidated group: 10
 - (ii) be signed by the nominated entity in accordance with section 65(2)(f) on behalf of the consolidated group; and
 - (d) is responsible for applying for any allocation of units under section 86 for an eligible ~~industrial~~ activity, in place of the eligible person who is a member of the consolidated group. 15
- (2) Each member of a consolidated group is jointly and severally liable to surrender or repay the amount of units assessed for the consolidated group or its members in any year.
- (3) Each member of a consolidated group is jointly entitled to be transferred, for removal activities or for allocations of New Zealand units, the amount of units assessed for the consolidated group or its members in any year. 20
- (4) The joint and several liability, or the joint entitlement,—
- (a) applies to a member only as it relates to a period when they were a member of the consolidated group; and 25
 - (b) replaces the member's sole liability or entitlement; and
 - (c) must be met by transferring units from, or to, the consolidated group's holding account.
- (5) Despite this section, in calculating an allocation or provisional allocation of New Zealand units (including a related adjustment or repayment) for an eligible ~~industrial~~ activity, only the member's liabilities and entitlements must be used. 30
- (5A) However, **subsection (5)** does not apply to any calculation of offset units under **section 86BA**, which must be done in accordance with this section.
- (5B) Each member of a consolidated group is jointly and severally liable to pay any penalty or interest imposed on the consolidated group in relation to a period when they were a member of the consolidated group. 35

127 Section 154 repealed (Emissions returns by consolidated group in respect of activities in Part 1 of Schedule 4)

Repeal section 154.

128 Section 155 amended (Ceasing to be member of consolidated group)

(1) In section 155(1)(c) and (d), after “participant”, insert “or eligible person”. 5

(2) Replace section 155(2)(c) with:

- (c) if subsection (1)(c) applies, with effect from the date that,—
 - (i) in the case of a participant, their name is removed from the register of participants under section 58 or 59; or
 - (ii) in the case of an eligible person, they ceased to be an eligible person; and 10

~~(3) In section 155(5)(b), after “subsection (1)(b)”, insert “, (c)(ii)”.~~

129 Section 156 replaced (Effect of ceasing to be member of consolidated group)

Replace section 156 with: 15

156 Effect of ceasing to be member of consolidated group

If an entity ceases to be a member of a consolidated group, the entity—

- (a) continues to be jointly and severally liable with other members of the consolidated group for any obligations under the ETS participant provisions in respect of emissions and removals ~~from, or allocations~~ resulting from, or allocations, penalties, or interest relating to, the activities of the members of the consolidated group, and jointly entitled to any units transferred for the removal activities, or for allocations relating to the eligible ~~industrial~~ activities, of the consolidated group, during the period in which the entity was a member of the consolidated group; but 20 25
- (b) is not liable for any obligations under the ETS participant provisions in respect of emissions and removals ~~from, or allocations~~ resulting from, or allocations, penalties, or interest relating to, the activities of other members of the group, or entitled to the benefit of any units transferred for the removal activities, or for allocations relating to the eligible ~~industrial~~ activities, of other members of the group, for any period during which the entity is not a member of the consolidated group. 30

130 Section 156A amended (Removal of activities from consolidated groups)

(1) In section 156A(4), replace “this Part or Part 5 in respect of emissions and removals” with “the ETS participant provisions in respect of emissions, removals, and allocations”. 35

(2) In section 156A(4), after “removal activity”, insert “or an eligible ~~industrial~~ activity”.

131 Section 157 amended (Unincorporated bodies)

In section 157(2)(c)(ii)(C), after “may be,” insert “must”.

132 Section 159 amended (Recovery of costs)

(1) ~~In section 159(1)(a), replace “1 year of the date of a penalty notice given under section 134 or 136” with “90 days after the date of a penalty notice given under **section 134**”.~~ 5

(2) In section 159(2)(b), replace “any other provision of this Act” with “this Act (other than this provision)”.

(3) ~~In section 159(3), formula, replace the definition of variable C with:~~

~~C is the price, in dollars, of carbon per tonne on the relevant date, as set by or in accordance with regulations made under **section 30W**.~~ 10

(4) ~~In section 159(4), replace “, 134A, or 136” with “to **134D, 194EF, or 194EI**”.~~

(5) Replace section 159(5) with:

(5) ~~In this section—~~

~~**insolvency process** means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006~~ 15

~~**relevant date** means the earlier of—~~

(a) ~~the date that is 90 days after the date of the penalty notice; and~~

(b) ~~the date on which the person enters into an insolvency process.~~ 20

133 Section 160 amended (Review of operation of emissions trading scheme)

(1) In section 160(1), delete “established by this Act”.

(2) Replace section 160(4)(b) with:

(b) **make the report of the panel publicly available; and**

134 Section 161 amended (Appointment and conduct of review panel) 25

(1) Replace section 161(1)(c)(ii) with:

(ii) international climate change obligations and any other relevant international agreement; and

(2) In section 161(1)(c)(iii), delete “established under this Act”.

135 Section 161A amended (Regulations in relation to eligible industrial activities) 30

(1) Replace section 161A(1)(d) with:

(d) prescribing an allocation factor or factors for—

(i) electricity:

(ii) natural gas feedstock: 35

- (2) Replace section 161A(3) with:
- (3) The Minister may recommend ~~that regulations be made~~ the making of regulations under subsection (1)(a) that prescribe an activity as an eligible industrial activity if the Minister is satisfied that the activity is—
- (a) moderately emissions-intensive or highly emissions-intensive; and
 - (b) trade-exposed.
- (3) In section 161A(4), delete “161B or”.
- 136 Section 161B repealed (Australian eligible industrial activities)**
Repeal section 161B.
- 137 Section 161C amended (Other eligible industrial activities)**
- (1) In the heading to section 161C, replace “**Other eligible**” with “**Eligible**”.
 - (2) In section 161C(1) and (2), replace “section 161A(3)(a)” with “**section 161A(3)**”.
- 138 Section 161D amended (Power to require information for purposes of allocation to industry)**
In section 161D(3)(a), replace “section 161A(3)(a)” with “**section 161A(3)**”.
- 139 Section 161E amended (Requirements in respect of notice given under section 161D)**
- (1) Repeal section 161E(1)(e).
 - (2) After section 161E(3), insert:
 - (4) However, subsection (3) does not apply if the purpose of the notice under section 161D is to provide the Minister with the information necessary to determine whether any matter should be considered by a review under section 160.
 - (5) See **section 3B** for consultation requirements that apply to the giving of a notice specifying a description of an activity under section 161D(1)(a).
- ~~**140 Section 161F amended (Consultation on activities that may be prescribed as eligible industrial activities)**~~
- ~~(1) Repeal section 161F(1).~~
 - ~~(2) In section 161F(3), replace “The processes for consultation under subsections (1) and (2)” with “The process for consultation under subsection (2)”.~~
- 140 Section 161F repealed (Consultation on activities that may be prescribed as eligible industrial activities)**
Repeal section 161F.

140A Section 161G amended (Regulations in relation to eligible agricultural activities)

Replace section 161G(3) to (6) with:

- (3) Before recommending the making of regulations under subsection (1)(a)(ii) prescribing the allocative baseline or baselines of an eligible agricultural activity, the Minister must— 5
- (a) have regard to the most recent New Zealand Greenhouse Gas Inventory; and
- (b) comply with the consultation requirements in sections 3A and **3B**.
- (4) See section 3A for consultation requirements that apply to the making of other regulations under this section. 10
- (5) For each eligible agricultural activity, the Minister—
- (a) must recommend the making of regulations under this section before surrender obligations for participants in that activity start; and
- (b) must review those regulations at least once in every 5-year period; and 15
- (c) must not recommend the making of regulations that would result in there being no regulations in force under this section for the activity while surrender obligations for the activity exist.
- (6) In conducting a review under **subsection (5)(b)**, the Minister must comply with **subsections (3) and (4)**. 20

140B Section 162 amended (Regulations adding further activity to Part 2 of Schedule 4)

- (1) In the heading to section 162, replace “**Regulations**” with “**Order in Council**”.
- (2) Replace section 162(2) and (3) with: 25
- (2) See sections 3A and **3B** for consultation requirements that apply to the making of an Order in Council under subsection (1).

141 Section 163 amended (Regulations relating to methodologies and verifiers)

- (1) ~~In section 163(1)(a), replace “section 62(a)” with “**section 62(1)(a)**”.~~
- (2) In section 163(1)(ab), replace “an activity listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4” with “a forestry activity”. 30
- (3) ~~In section 163(1)(b), replace “section 62(b)” with “**section 62(1)(b)**”.~~
- (4) ~~In section 163(1)(c)(i), replace “section 62(a)” with “**section 62(1)(a)**”.~~
- (4A) In section 163(5), replace “making a recommendation in relation to a regulation” with “recommending the making of regulations”. 35
- (5) In section 163(5), replace “New Zealand’s international obligations” with “international climate change obligations”.

~~142 Section 166 amended (Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting)~~

- ~~(1) In the heading to section 166, delete “relating to methodologies, verification, unique emissions factors, and offsetting”.~~
- ~~(2) In section 166(1), replace “or 186F” with “~~185A, 186F, 194LA, 194TA, or 196G~~”.~~
- ~~(3) In section 166(4), replace “regulations made under section 163, 164, or 186F” with “the regulations”.~~
- ~~(4) Repeal section 166(5).~~

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142 Section 166 replaced (Procedure for regulations relating to methodologies, verification, unique emissions factors, and offsetting)

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Replace section 166 with:

166 Consultation and commencement for regulations about methodologies, verifiers, and unique emissions factors

- (1) This section applies to regulations made under—
 - (a) section 163 (methodologies and verifiers);
 - (b) section 164 (unique emissions factors).
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the Gazette, or on any later date specified in the regulations.

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143 Section 167 amended (Regulations relating to fees and charges)

- (1) In section 167(1), replace “this Part or Part 5” with “the ETS participant provisions”.
- (2) Replace section 167(2)(b) with:

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- (b) who is a participant, or who has applied to be a participant, in respect of a removal activity, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing 1 or more of the following in relation to the activity:
 - (i) publicising and informing people about the operation of the ETS participant provisions: 30
 - (ii) administering the operation of the ETS participant provisions:
 - (iii) enforcing and monitoring compliance with the ETS participant provisions:
 - (iv) doing anything else authorised or required under the ETS participant provisions; or 35

- (c) who submits an input return under **section 194UA**, to enable the recovery of all or part of the direct and indirect costs of the EPA in doing calculations and giving notice under **section 194UB**.
- (3) Replace section 167(3)(b)(ii) with:
- (ii) the administration of the ETS participant provisions in relation to a removal activity; or
 - (iii) input returns:
- 144 Section 168 amended (Other regulations)**
- (1) ~~In section 168(1)(j), replace “section 62(d)” with “**section 62(1)(d)**”.~~
- (2) In section 168(1)(k), (l), and (o), replace “this Part and Part 5” with “the ETS participant provisions”.
- (3) After section 168(1)(n), insert:
- ~~(na) prescribing additional criteria for the approval of —~~
 - ~~(i) an application to reconfigure carbon accounting areas for standard or permanent forestry, for the purposes of **section 194GB(2)(c)**;~~
 - ~~(ii) an application to change activity on post 1989 forest land, for the purposes of **section 194DB(2)(d)**; and~~
 - (nb) prescribing rules for the rounding of amounts of units calculated under, or referred to in, this Act; and
 - (nc) prescribing the meaning (or things that are included within the meaning) of New Zealand’s best practice forest management for the purposes of section 179A; and
- (3) After section 168(2), insert:
- (3) See sections 3A and **3B** for consultation requirements that apply to the making of regulations under **subsection (1)(nc)**.
- 145 Section 169 amended (Incorporation by reference in regulations made under section 163, 164, 167, or 168)**
- (1) In the heading to section 169, replace “**regulations made under section 163, 164, 167, or 168**” with “**certain regulations**”.
- (2) In section 169(1), replace “section 163, 164, 167, or 168” with “a relevant empowering section”.
- (3) After section 169(3), insert:
- (4) In this section and sections 170 to 174, **relevant empowering section** means section 161A, 161G, 163, 164, 167, 168, ~~185A,~~ 186F, ~~194EG, 194LA, 194TA, 194UC,~~ **196G, or 197A**.

146 Section 170 replaced (Effect of amendments to, or replacement of, material incorporated by reference in regulations)

Replace section 170 with:

- 170 Effect of amendments to, or replacement of, material incorporated by reference in regulations** 5
- (1) **Subsection (2)** applies to an amendment to, or a replacement of, material if the material—
- (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
 - (b) is adopted, agreed on, made, or approved by an international government agency, international organisation, or international professional body. 10
- (2) The amendment or replacement of the material has legal effect as part of the regulations only if regulations made under the relevant empowering section after the original regulations were made state that the particular amendment or replacement has that effect. 15
- (3) **Subsection (4)** applies to an amendment to, or a replacement of, material if the material—
- (a) is incorporated by reference in regulations made under a relevant empowering section (the **original regulations**); and
 - (b) is not material described by **subsection (1)(b)**. 20
- (4) The amendment or replacement of the material has immediate legal effect as part of the original regulations (without the need for an amendment to the original regulations, or the making of other regulations, to state that effect).

147 Section 172 replaced (Effect of expiry of material incorporated by reference) 25

Replace section 172 with:

- 172 Effect of expiry of material incorporated by reference**
- (1) This section applies to material incorporated by reference in regulations, made under a relevant empowering section, that expires, is revoked, or ceases to have effect without being amended or replaced. 30
- (2) The material ceases to have legal effect as part of the regulations only if regulations made under the relevant empowering section state that the material ceases to have legal effect.

148 Section 173 amended (Requirement to consult) 35

Replace section 173(1) with:

- (1) This section applies to regulations made under a relevant empowering section that—

| | |
|---|----|
| <ul style="list-style-type: none"> (a) incorporate material by reference; or (b) state, as required by section 170(2), that an amendment to, or a replacement of, material incorporated by reference in regulations has legal effect as part of the regulations. | 5 |
| | |
| 149 Section 174 amended (Public access to material incorporated by reference) | 5 |
| (1) Replace section 174(1)(d)(i) with: | |
| <ul style="list-style-type: none"> (i) that the material is incorporated in the regulations and— <ul style="list-style-type: none"> (A) the date on which the regulations were made; or (B) if the material has immediate legal effect under section 170(4), the date on which it had legal effect; and | 10 |
| (2) In section 174(2)(a), replace “section 163, 164, 165, 167, or 168” with “a relevant empowering section”. | |
| | |
| 150 Section 175 amended (Application of Legislation Act 2012 to material incorporated by reference) | |
| In section 175(1), replace “or replacement” with “or a replacement”. | 15 |
| | |
| 151 Section 178A amended (Option to pay money instead of surrendering units to cover emissions) | |
| (1) In the heading to section 178A, replace “ units to cover emissions ” with “ repaying, or reimbursing units ”. | |
| (2) Replace section 178A(1) with: | 20 |
| <ul style="list-style-type: none"> (1) This section applies if— <ul style="list-style-type: none"> (a) a person is required to surrender or repay units— <ul style="list-style-type: none"> (i) as a result of submitting an emissions return; or (ii) under section 123(3) or (6) or 183A(2)(b); or (b) the EPA is required by this Act to reimburse units to any person. | 25 |
| (3) In section 178A(2)(a)(i), replace “section 65(4), 118(5), 183A(2)(b), 186H, 187, 189(8), 191, or 193, as applicable” with “the relevant provision”. | |
| | |
| 152 Section 178B amended (Issuing New Zealand units to meet surrender obligations) | |
| (1) In section 178B(3), replace “to reimburse a person units under section 123(4), 186H, or 189(7)(d)” with “by this Act to reimburse units to any person”. | 30 |
| (2) In section 178B(6), replace “section 18CA(4)” with “ section 18CA(2) ”. | |
| | |
| 153 Section 178C repealed (Prohibition on ability to export New Zealand units) | |
| Repeal section 178C. | 35 |

154 Part 5 divided into Parts 5 to 5D and new Part 5 divided into subparts

- (1) In Part 5, replace the Part 5 heading, the subpart 1 heading, and the cross-heading above section 179 with:

Part 5
Sector-specific provisions: forestry

5

Subpart 1—Deforestation

- (2) Replace the cross-heading above section 180 with:

Subpart 2—Pre-1990 forest land

- (3) Replace the cross-heading above section 186A with:

Subpart 3—Pre-1990 offsetting forest land

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- (4) Replace the cross-heading above section 187 with:

Subpart 4—Post-1989 forest land (~~standard and permanent forestry~~)

- (5) Replace the cross-heading above section 195 with:

Subpart 7—General

- (6) In Part 5, replace the subpart 2 heading with:

Part 5A
Sector-specific provisions: liquid fossil fuels

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- (7) In Part 5, replace the subpart 3 heading with:

Part 5B
Sector-specific provisions: stationary energy

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- (8) In Part 5, replace the subpart 4 heading with:

Part 5C
Sector-specific provisions: agriculture

- (9) In Part 5, replace the subpart 5 heading with:

Part 5D
Sector-specific provisions: transitional provisions

25

155 Section 179 amended (Forest land to be treated as deforested in certain cases)

(1) Replace section 179(1)(a) with:

(a) ~~4 years after clearing, none of the following apply:~~

(i) ~~the hectare has at least 500 stems of exotic forest species growing:~~ 5

(ii) ~~the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion:~~

(iii) ~~the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or~~ 10

(2) ~~In section 179(1)(b)(i) and (e), replace “at least” with “more than”.~~

156 Section 179A amended (Forest land may not be treated as deforested in certain cases)

(1) ~~In section 179A(1)(b), replace “that the EPA has approved under section 186B” with “submitted under section 186A”.~~ 15

(2) ~~In section 179A(1)(b), delete “if cleared”.~~

(3) ~~In section 179A(1)(b)(i)(A), replace “approval is given” with “application is submitted”.~~

(4) ~~In section 179A(1)(b)(i)(B), replace “2 years after the date that the approval was given” with “4 years after the date that the application is submitted”.~~ 20

(5) Replace section 179A(1)(b)(ii) with:

(ii) ~~in the case where the land is not converted to another land use and remains forest land, in the 4 year period beginning on the date that the pre 1990 forest land was cleared:~~

(6) ~~In section 179A(1)(c)(i), replace “registration” with “the first registration of any person as a participant in standard forestry or permanent forestry in respect of the cleared land”.~~ 25

(7) Replace section 179A(2) with:

(2) ~~Subsection (1)(b) does not apply if—~~

(a) ~~the EPA declines the application under section 186B; or~~ 30

(b) ~~after approving it, the EPA revokes its approval under section 186G(1).~~

(2A) ~~If subsection (1)(c) applies (where land is cleared for forest management), see sections 188AB, 191AB, and 191BB.~~

(8) After section 179A(3), insert:

(4) If regulations prescribe any meaning for **New Zealand’s best practice forest management**, then that term has or includes that meaning in this section. 35

157 Section 181 amended (When deforestation to be treated as occurring in respect of pre-1990 forest land)

- (1) Replace section 181(1) with:
- (1) ~~This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land.~~ 5
- (1A) ~~The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.~~
- (2) ~~In section 181(2), replace “Subsection (3) applies to a landowner converting a hectare of pre-1990 forest land that” with “However, **subsection (3)** applies if the hectare of forest land”.~~ 10
- (3) Replace section 181(3) with:
- (3) ~~The hectare of forest land is to be treated as being deforested on the date of the first action on it that —~~
- (a) ~~is inconsistent with the hectare remaining forest land; and~~
- (b) ~~happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land.~~ 15
- (3A) ~~In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless section 186(2) applies.~~ 20

158 Section 183 amended (Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land)

- (1) In section 183(1)(a), replace “allocation plan referred to in section 72” with “pre-1990 forest land allocation plan”.
- (2) Replace section 183(1)(b) with: 25
- (b) was the landowner of an area of pre-1990 forest land at the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land.
- (3) In section 183(2)(c), replace “an allocation plan under section 72” with “the pre-1990 forest land allocation plan”. 30
- (4) In section 183(7), after “this section”, insert “and **section 183B**”.

159 Section 183A amended (Certain applications not otherwise permitted by section 183)

- (1) In section 183A(1)(b) and (3), replace “an allocation plan under section 72” with “the pre-1990 forest land allocation plan”. 35
- (2) In section 183A(5)(b), replace “the allocation plan” with “the pre-1990 forest land allocation plan”.

160 New section 183B inserted (Applications for exemption for some Maori land or land with 10 or more owners)

After section 183A, insert:

| | |
|--|----|
| 183B Applications for exemption for some Maori land or land with 10 or more owners | 5 |
| (1) This section applies to an area of pre-1990 forest land that— | |
| (a) is less than 50 hectares; and | |
| (b) on 1 September 2007,— | |
| (i) was all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and | 10 |
| (ii) was Maori land or was owned by more than 10 persons; and | |
| (c) was an area of pre-1990 forest land on the following date (the qualifying date): | 15 |
| (i) the date of issue of the pre-1990 forest land allocation plan; or | |
| (ii) the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land; and | |
| (d) after the qualifying date,— | 20 |
| (i) became owned by the trustees of a trust; or | |
| (ii) in the case of Maori freehold land, had an agent appointed for it under Te Ture Whenua Maori Act 1993 with the power to apply under this section; and | |
| (e) has not been the subject of an allocation of units to a landowner under the pre-1990 forest land allocation plan. | 25 |
| (2) The trustees or agent described in subsection (1)(d) may apply to the EPA for the area of pre-1990 forest land to be declared exempt land. | |
| (3) The application— | |
| (a) may be submitted to the EPA at any time; and | 30 |
| (b) must be in the prescribed form and accompanied by the prescribed fee (if any); and | |
| (c) must contain details of the area of pre-1990 forest land to which the application relates; and | |
| (d) must be accompanied by evidence showing that the land is pre-1990 forest land; and | 35 |
| (e) must be accompanied by a statutory declaration from the applicant stating that the area of pre-1990 forest land was, on 1 September 2007, all of | |

- the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and
- (f) must be signed by the applicant; and
 - (g) must be accompanied by any other prescribed information. 5
- (4) If the EPA is satisfied that the applicant is trustees or an agent described in **subsection (1)(d)**, that the land is pre-1990 forest land, and that each of the criteria specified in **subsection (1)(a) to (e)** is met, the EPA must—
- (a) declare the land to be exempt land; and
 - (b) notify the applicant that the land has been declared exempt land. 10

161 Section 184 amended (Exemptions for deforestation of land with tree weeds)

- (1) Replace section 184(1) to (4) with:
- (1) An application may be made under this section for pre-1990 forest land to be declared exempt land (in relation to deforestation) if a prescribed type of tree weed— 15
- (a) is growing on the land; or
 - (b) was cleared from the land as part of the deforestation process on or after 1 January 2008.
- (2) The application may be made by— 20
- (a) the landowner of the pre-1990 forest land; or
 - (b) a third party to whom section 180 applies.
- (2) In section 184(5), replace “every application received under subsection (4) against the criteria, and priorities in, and the number of whole tonnes of emissions that are to be covered by exemptions granted in respect of, the relevant notice given under subsection (1)” with “the application against the prescribed criteria and priorities” 25
- (3) Replace section 184(5)(b) with:
- (b) must, if the EPA declares any land to be exempt land, notify the applicant of— 30
 - (i) the declaration; and
 - (ii) any requirements or conditions that the EPA has decided to impose on the person whose land is exempted.
- (4) Replace section 184(6) and (7) with:
- (6) ~~The EPA— 35~~
- (a) ~~may declare that a person’s land ceases to be exempt land (under this section) if the person breaches any requirement or condition that the EPA imposed on them for the exempt land; and~~

~~(b) if it does so, must notify the person of the declaration.~~

(4) Replace section 184(6)(b) with:

(b) completed by the end of the mandatory emissions return period in which the exemption was granted.

162 ~~New section 185A inserted (Regulations about exemptions for deforestation of land with tree weeds)~~

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~~After section 185, insert:~~

~~185A Regulations about exemptions for deforestation of land with tree weeds~~

~~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 in relation to exemptions under section 184:~~

10

~~(a) prescribing the types of tree weed for which an application may be made for pre 1990 forest land to be declared exempt land:~~

~~(b) defining those types of tree weed based on any matter, such as the following:~~

15

~~(i) the species of tree weed:~~

~~(ii) the geographical location of the tree weed:~~

~~(iii) whether a weed control programme applies to the tree weed:~~

~~(c) prescribing processes for making applications to the EPA for an exemption, including fees for applications:~~

20

~~(d) prescribing the information required in an application, including—~~

~~(i) information to properly describe or define the land:~~

~~(ii) evidence about the land and the forest species on the land:~~

~~(e) prescribing the criteria and priorities that the EPA must consider in deciding whether to grant an exemption:~~

25

~~(f) prescribing any requirements or conditions that the EPA may impose on a person whose land is exempted, including for weed control on the land:~~

~~(g) specifying that 1 or more of the following is different for different types of tree weed:~~

30

~~(i) the process for making the application:~~

~~(ii) the information required in the application:~~

~~(iii) the criteria and priorities that the EPA must consider:~~

~~(iv) any requirements or conditions that the EPA may impose on a person whose land is exempted:~~

35

~~(h) providing for any other matters contemplated by sections 184 and 185, necessary for their administration, or necessary for giving them full effect.~~

163 Section 186 amended (Methodology for pre-1990 forest land cleared in 8 years or less)

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~~In section 186(2)(a), replace “sections 62(b)” with “**section 62(4)(b)**”.~~

164 Section 186B amended (Criteria for approving offsetting forest land applications)

(1) ~~After section 186B(1)(a)(ii)(E), insert:~~

~~(F) offsetting forest land under an approved offsetting forest land application that was removed as offsetting forest land under **section 186CA** within the period prescribed in regulations made under section 186F; or~~

10

~~(G) excess forest land that ceased to be approved swap land under **section 194JF(2)(c)** within the period prescribed in regulations made under section 186F; or~~

15

~~(H) land of a kind described in sub subparagraphs (A) to (E) that became post-1989 forest land within the 2 years before the offsetting forest land application is submitted; and~~

(2) ~~After section 186B(1)(a), insert:~~

20

~~(aa) if any of the proposed offsetting forest land is land that is in a carbon accounting area, all of the land in the carbon accounting area is in part of the proposed offsetting forest land; and~~

(3) ~~In section 186B(1)(c)(ii), after “become”, insert “or remain”.~~

(4) ~~After section 186B(2), insert:~~

25

~~(3) If the EPA approves offsetting forest land that includes any land in a carbon accounting area,—~~

~~(a) the participant for that carbon accounting area—~~

~~(i) is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and~~

30

~~(ii) ceases to be a participant in the relevant activity on that carbon accounting area; and~~

~~(b) the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this subsection.~~

35

~~(4) If the EPA declines an application, the provisions of this Act apply to the relevant pre-1990 forest land as if the relevant offsetting forest application had not been made (and therefore as if section 179A(1)(b) had not applied to it).~~

165 Section 186C amended (Conditions applicable to offsetting forest land)

~~In section 186C(1)(a)(i), after “become”, insert “or remain”.~~

166 New section 186CA inserted (Variation to approved offsetting forest land application)

~~After section 186C, insert:~~

5

186CA Variation to approved offsetting forest land application

~~(1) The person who owns the pre 1990 forest land that is subject to an approved offsetting forest land application (the approved offset) may apply to the EPA to vary the approved offset only once before submitting a declaration under section 186D.~~

10

~~(2) The application to vary —~~

~~(a) must propose to reduce the offsetting forest land; and~~

~~(b) may also propose to reduce the pre 1990 forest land that is to be offset by that land.~~

~~(3) The EPA must approve the variation if —~~

15

~~(a) the application to vary —~~

~~(i) is in the prescribed form, and accompanied by the payment of any prescribed fee; and~~

~~(ii) complies with any relevant regulations made under section 186F; and~~

20

~~(iii) is accompanied by any other relevant information that the EPA may require; and~~

~~(b) the EPA is satisfied that the offsetting forest land (as reduced) is likely to —~~

~~(i) achieve carbon equivalence with the pre 1990 forest land (as reduced, if applicable) that is to be offset by that land within the usual rotation period for forest species of the pre 1990 forest land; and~~

25

~~(ii) become or remain forest land before the pre 1990 forest land (as reduced, if applicable) that is to be offset by that land is deforested; and~~

30

~~(c) any other requirements with respect to offsetting specified in this Act or regulations made under this Act are satisfied.~~

~~(4) The EPA may decline a variation that does not meet all or any of the requirements specified in subsection (3).~~

35

~~(5) If the EPA approves the variation, the provisions of this Act apply —~~

~~(a) to the approved offset as if it had originally been approved as varied; and~~

~~(b) to any pre-1990 forest land that was removed in the reduction, as if the offsetting forest application had not been made in relation to that land (and therefore as if section 179A(1)(b) had not applied to it).~~

167 Section 186D amended (Requirements relating to offsetting forest land)

(1) ~~In section 186D(1), (2), and (3), after “has become”, insert “or remained”.~~ 5

(2) ~~After section 186(3), insert:~~

~~(3A) If a person has submitted a declaration under subsection (1), before the EPA decides whether it is satisfied for the purposes of subsection (2) or (3), it may give notice to the owner giving them the option to vary the application under **section 186GA** if —~~ 10

~~(a) some but not all of the offsetting forest land has become or remained forest land; and~~

~~(b) the person has not previously varied their approved offsetting forest land application under **section 186GA**.~~

~~(3B) A person given a notice under **subsection (3A)** —~~ 15

~~(a) may apply to vary the application under **section 186GA** (even though they have submitted their declaration), subject to any conditions specified by the EPA in the notice; and~~

~~(b) if they do so and the variation is approved, may submit a revised declaration under subsection (1).~~ 20

168 Section 186F amended (Regulations relating to offsetting)

(1) ~~After section 186F(e), insert:~~

~~(ea) prescribing time periods for re-using removed offsetting forest land or excess forest land:~~

(2) ~~In section 186F(d), replace “sections 186B and 186C” with “sections 186A to 186J”.~~ 25

168 Section 186F amended (Regulations relating to offsetting)

In section 186F, insert as subsections (2) and (3):

(2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations. 30

(3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

169 Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset)

(1) In section 186H(1)(b) and (5), replace “an allocation plan” with “the pre-1990 forest land allocation plan”. 35

(2) Replace section 186H(6) with:

(6) For the purposes of subsection (2), **second tranche**, in relation to an allocation, means the New Zealand units that are allocated to a person under the pre-1990 forest land allocation plan on or after 1 January 2013.

170 Section 186J amended (Methodology for pre-1990 offsetting forest land cleared after usual rotation period is completed)

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In section 186J(2)(a), replace “sections 62(b)” with “**sections 62(1)(b)**”.

171 New section 186K inserted (Standard and permanent forestry on post-1989 forest land)

Before section 187, insert:

186K Standard and permanent forestry on post-1989 forest land

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(1) In this subpart, —

final forestry emissions return means an emissions return that is prepared under **section 189BA** and is not a provisional forestry emissions return

permanent forestry means an activity listed in **Part 1A** of Schedule 4

provisional forestry emissions return means an emissions return submitted under **section 189AA**

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standard forestry means an activity listed in Part 1 of Schedule 4.

(2) To avoid doubt, standard forestry and permanent forestry comprise the same list of activities carried out in respect of post-1989 forest land, but the difference is that the relevant Part of Schedule 4 has been chosen to apply to the land.

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172 Section 187 amended (Conditions on registration as participant in respect of certain activities relating to post-1989 forest land)

(1) In the heading to section 187, replace “**respect of certain activities relating to post-1989 forest land**” with “**certain activities of standard or permanent forestry in respect of post-1989 forest land**”.

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(2) In section 187(1), replace “listed in Part 1 of Schedule 4” with “of standard forestry or permanent forestry”.

(3) In section 187(2), replace “carrying out an activity listed in Part 1 of Schedule 4 in relation to exempt land that has been deforested” with “an activity of standard forestry or permanent forestry in relation to exempt land that has been deforested 8 or less years ago”.

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(4) In section 187(2)(b), replace “20 working days of submission of the emissions return under paragraph (a)” with “60 working days after the EPA gives the person a notice requiring the surrender”.

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(5) Replace section 187(3) with:

(3) To avoid doubt, if any person is registered as a participant carrying out an activity of standard forestry or permanent forestry in respect of any post-1989

~~forest land, no person (including that person) can be registered as a participant carrying out a different activity of standard forestry or permanent forestry in respect of that land.~~

- (6) ~~In section 187(4), replace “carrying out an activity listed in Part 1 of Schedule 4 in respect of” with “an activity of standard forestry or permanent forestry in relation to”.~~ 5
- (7) ~~In section 187(5), replace “carrying out an activity listed in Part 1 of Schedule 4” with “an activity of standard forestry or permanent forestry”.~~

172 Section 187 amended (Conditions on registration as participant in respect of certain activities relating to post-1989 forest land) 10

- (1) In section 187(2), after “been deforested”, insert “8 or less years ago”.
- (2) Replace section 187(2)(b) with:
- (b) has surrendered, within 60 working days after the EPA gives the person a notice requiring the surrender, the number of units listed in the assessment under paragraph (a)(ii); and 15
- (3) In section 187(6), replace “the commencement of this section” with “1 January 2013”.

173 Section 188 amended (Registration as participant in respect of post-1989 forest land)

- (1) ~~In the heading to section 188, replace “in respect of post-1989 forest land” with “in standard or permanent forestry”.~~ 20
- (2) ~~In section 188(1), replace “listed in Part 1 of Schedule 4” with “of standard forestry or permanent forestry”.~~
- (3) ~~Replace section 188(2) and (3) with:~~
- (2) ~~The EPA must keep the following records for the activity of standard forestry or permanent forestry for which a person is a participant (whether by registration under section 57 or otherwise):~~ 25
- (a) ~~the carbon accounting area or areas in respect of which the person is a participant; and~~
- (b) ~~for each carbon accounting area used for an activity of standard forestry, whether or not it is a carbon accounting area (averaging); and~~ 30
- (c) ~~the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated under the last emissions return submitted for the area.~~
- (3) ~~A person who is a participant in standard forestry or permanent forestry (whether by registration under section 57 or otherwise) may apply to the EPA to add any carbon accounting area or areas to the post-1989 forest land in respect of which the person is recorded as a participant.~~ 35
- (4) ~~Replace section 188(5) to (10) with:~~

- (5) ~~The EPA may (under this section) add a carbon accounting area to the post 1989 forest land in respect of which a person is recorded as a participant only if—~~
- (a) ~~the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of that land under section 187; and~~ 5
 - (b) ~~where the forest species on that land is predominantly naturally regenerated tree weeds, the EPA is satisfied that the risk of tree weed spread from the land is low.~~
- (6) ~~If the EPA—~~
- (a) ~~registers a person as a participant under section 57 in relation to an activity of standard forestry or permanent forestry, the EPA must notify the person under section 57(6); or~~ 10
 - (b) ~~receives an application to add a carbon accounting area and **subsection (5)** is satisfied, the EPA must—~~
 - (i) ~~update the participant’s record to reflect the addition of the carbon accounting area; and~~ 15
 - (ii) ~~notify the participant accordingly.~~
- (7) ~~The addition of a carbon accounting area under **subsection (6)(b)(i)** has effect on and after the date of the notice given under **subsection (6)(b)(ii)**.~~
- (8) ~~See also **sections 188AC and 188AD** (which require notice to the participant and notice to interested parties, if any).~~ 20

173 Section 188 amended (Registration as participant in respect of post-1989 forest land)

- (1) In section 188(6)(a), replace “under section 57(6)(b),—” with “the person in accordance with **section 57(6)**; or”. 25
- (2) Repeal section 188(6)(a)(i) and (ii), and (b)(i).
- (3) Repeal section 188(7)(a)(i).
- (4) In section 188(7)(a)(ii)(A), replace “section 58(3)(c)” with “section 58(3)(b)”.
- (5) Repeal section 188(7)(b)(i).
- (6) In section 188(7A), replace “subsection (7)(b)(i) to (iii)” with “subsection (7)(b)(ii) and (iii)”. 30
- (7) After section 188(10), insert:
- (11) See also **sections 188AC and 188AD** (which require notice to the participant and notice to interested parties, if any).

- 174 Sections 188A to 191 replaced. New sections 188AC and 188AD inserted** 35
- Replace sections 188A to 191 with: After section 188A, insert:

~~188AA Removing registration as participant in standard or permanent forestry~~

- (1) ~~This section sets out some situations in which **section 191AA or 191BA** applies (which relate to ceasing participation for whole or part carbon accounting areas):~~
- (2) ~~**Section 191AA** applies if the EPA —~~ 5
- (a) ~~receives an application under section 58 for the removal of a person's name from the register as a participant in standard forestry; or~~
- (b) ~~is satisfied under section 59(2) that the person has ceased to carry out standard forestry or permanent forestry.~~
- (3) ~~**Section 191AA** applies if the EPA decides to remove the name of a person from the register in respect of an activity of standard forestry under **section 59A** (for persistent non-compliance), or in respect of an activity of standard forestry or permanent forestry under **section 59B** (because the person never carried out the activity):~~ 10
- (4) ~~A person who is a participant in standard forestry or permanent forestry —~~ 15
- (a) ~~may apply to the EPA to —~~
- (i) ~~remove any carbon accounting area or areas from the post 1989 forest land in respect of which the person is recorded as a participant; or~~
- (ii) ~~remove post 1989 forest land from any carbon accounting area or areas in respect of which the person is recorded as a participant; and~~ 20
- (b) ~~must, as soon as practicable, notify the EPA if the person ceases to carry out the activity in respect of —~~
- (i) ~~a carbon accounting area in respect of which the person is recorded as a participant; or~~ 25
- (ii) ~~any land in a carbon accounting area in respect of which the person is recorded as a participant.~~
- (5) ~~An application or a notice under **subsection (4)** must be —~~
- (a) ~~in the prescribed form; and~~ 30
- (b) ~~accompanied by any prescribed fee and any prescribed information.~~
- (6) ~~**Section 191AA** applies if the EPA —~~
- (a) ~~receives and approves an application to remove a carbon accounting area for which a person is recorded as a participant; or~~
- (b) ~~receives a notice that a person has ceased to carry out an activity on all of a carbon accounting area; or~~ 35
- (c) ~~is satisfied that a person has ceased to carry out standard forestry or permanent forestry on all of a carbon accounting area.~~
- (7) ~~**Section 191BA** applies if the EPA —~~

- ~~(a) receives and approves an application to remove land from a carbon accounting area for which a person is recorded as a participant; or~~
 - ~~(b) receives a notice that a person has ceased to carry out an activity on part of a carbon accounting area; or~~
 - ~~(c) is satisfied that a person has ceased to carry out standard forestry or permanent forestry on part of a carbon accounting area.~~ 5
- ~~(8) This section is subject to **section 194EB** (which restricts the removal of land relating to permanent forestry).~~

188AB Removing registration as participant in standard or permanent forestry in certain natural events or clearance for forest management 10

- ~~(1) A person who is a participant in standard forestry or permanent forestry may, as soon as practicable, notify the EPA if all of part of the post 1989 forest land on which the person carries out the activity—~~
- ~~(a) is affected by a natural event that permanently prevents re-establishing a forest on that land; or~~ 15
 - ~~(b) is cleared land to which section 179A(1)(c) applies (which is land cleared for best practice forest management that may not be treated as deforested).~~
- ~~(2) The notice must—~~
- ~~(a) include the prescribed information (if any); and~~ 20
 - ~~(b) be signed by the person; and~~
 - ~~(c) be given—~~
 - ~~(i) in the prescribed manner and format; and~~
 - ~~(ii) together with the prescribed fee (if any); and~~
 - ~~(iii) together with the prescribed information (if any).~~ 25
- ~~(3) If the EPA is satisfied that the post 1989 forest land is land to which **subsection (1)(a) or (b)** applies, then whichever of **section 194AA or 194BA** is relevant applies (so that the person is not liable to surrender units equal to the unit balance of the affected land).~~

188AC Notice to forestry participant if their registration added or removed 30

The EPA must give written or electronic notice to a participant, or former participant, of the following matters; as soon as practicable after the EPA carries them out under any of **Parts 5 to 5D**:

- (a) the participant's registration or removal from registration in respect of an activity, and the date on which this took or takes effect: 35
- (b) the addition or removal of any area or land for which the participant is registered, and the date on which this took or takes effect.

188AD Notice to interested party if forestry participant's registration added or removed

- (1) A participant must notify the interested party (if any) of the following matters under this section, in writing or electronically, as soon as practicable after receiving the EPA's notice about, or becoming aware of, the matter: 5
- (a) the participant's registration, or removal from registration, in respect of an activity, and the date that this took or takes effect:
 - (b) the addition or removal of any area or land for which the participant is registered, and the date that this took or takes effect.
- (2) The EPA must provide the participant with any address that it has recorded for the interested party. 10
- (3) In this section, **interested party** means—
- (a) the landowner, in relation to a participant who is registered for an activity relating to—
 - (i) holding a registered forestry right or registered lease over land; or 15
 - (ii) being a party to a Crown conservation contract over land; or
 - (b) any person with a registered forestry right or registered lease in respect of the land, in relation to a participant who is registered for an activity relating to owning post-1989 forest land.

Provisional and final forestry emissions returns 20

189AA Provisional forestry emissions return in any year

- (1) ~~This section applies to a person who is a participant in an activity of standard forestry or permanent forestry.~~
- (2) ~~The person may, once before 1 July in each year, submit a provisional forestry emissions return prepared under **section 189BA** for the activity—~~ 25
- (a) ~~that covers 1 or more of the carbon accounting areas for which the person is a participant in the activity (each a **CAA1**); and~~
 - (b) ~~that uses the last day of the previous calendar year as the **relevant date**.~~

189AB Final forestry emissions return at end of mandatory emissions return period 30

- (1) ~~This section applies to a person who is a participant in an activity of standard forestry or permanent forestry on the last day of a mandatory emissions return period.~~
- (2) ~~The person must submit a final forestry emissions return prepared under **section 189BA** for the activity—~~ 35
- (a) ~~that covers each carbon accounting area for which the person was a participant in the activity on the last day of the mandatory emissions return period (each a **CAA1**); and~~

- (b) ~~that uses the last day of the mandatory emissions return period as the relevant date.~~
- (3) ~~The deadline for submitting the emissions return is 6 months after the end of the mandatory emissions return period.~~
- (4) ~~However, **subsection (2)** does not apply in relation to a carbon accounting area in relation to which a participant is not entitled to receive units under—~~ 5
- ~~(a) **section 194FG(2)**, relating to carbon accounting areas (averaging); or~~
- ~~(b) **section 194PG(3)**, relating to temporary adverse event land.~~
- 189BA Preparing provisional or final forestry emissions return**
- (1) ~~An emissions return prepared under this section must—~~ 10
- ~~(a) specify the CAAs that the emissions return covers; and~~
- ~~(b) specify the activity for which the person was a participant on the CAAs; and~~
- ~~(c) for each CAA,—~~
- ~~(i) specify the emissions return period that applies, by using **subsection (4)** and the relevant date from the provision that requires the return; and~~ 15
- ~~(ii) specify the emissions and removals during the emissions return period; and~~
- ~~(iii) set out the calculation under **section 189CA** of the person's gross liability or entitlement for emissions and removals during the emissions return period; and~~ 20
- ~~(iv) specify the person's net liability or entitlement for emissions and removals during the emissions return period by,—~~
- ~~(A) for a provisional forestry emissions return, specifying the same value as the person's gross liability or entitlement; or~~ 25
- ~~(B) for a final forestry emissions return, setting out the calculation of that value under **section 189CB** (which takes into account the liability or entitlement under each provisional forestry emissions return for an overlapping period, if any);~~ 30
- ~~and~~
- ~~(v) set out the calculation under **section 189CC** of the unit balance; and~~
- ~~(d) set out the calculation under **section 189CD** of the person's total liability or entitlement for all the CAAs.~~ 35
- (2) ~~The emissions return must—~~
- ~~(a) include the prescribed information (if any); and~~
- ~~(b) be signed by the participant; and~~

- (e) ~~when submitted under the relevant provision, be submitted—~~
(i) ~~in the prescribed manner and format; and~~
(ii) ~~together with the prescribed fee (if any); and~~
(iii) ~~together with the prescribed information (if any).~~
- (3) ~~See **section 62(1)(b) and (c)** for the requirements to calculate (and potentially verify) emissions and removals.~~ 5
- (4) ~~In this section, **emissions return period**, for a CAA1, means the period that—~~
(a) ~~starts on the latest of the following:~~
(i) ~~the first day of the mandatory emissions return period in which the relevant date falls;~~ 10
(ii) ~~if the CAA1 was constituted by registration under section 188, the date on or before registration on which any of the land in the CAA1 became post-1989 forest land;~~
(iii) ~~if the CAA1 was constituted in another way, the constitution date of the CAA1;~~ 15
(iv) ~~the day after the last day of the emissions return period for the CAA1 under,—~~
(A) ~~for a provisional forestry emissions return, the last provisional or final forestry emissions return submitted for the CAA1; and~~ 20
(B) ~~for a final forestry emissions return, the last final forestry emissions return submitted for the CAA1; and~~
- (b) ~~ends on the relevant date.~~
- (5) ~~If **subsection (4)(a)(ii)** applies, the person must be treated as if they became a participant in respect of the CAA1 on the date under that subparagraph (before the CAA1 was actually constituted) for the purposes of calculating—~~ 25
(a) ~~emissions and removals from the CAA1; and~~
(b) ~~the unit balance of the CAA1.~~
- Calculations for provisional and final forestry emissions returns*
- ~~**189CA Gross liability or entitlement for each CAA1 in emissions return**~~ 30
- (1) ~~A person's **gross liability or entitlement** for a CAA1 over an emissions return period (g) is calculated as follows:~~
$$g = r - e$$

~~where—~~
r ~~is the number of units required for removals from the CAA1 during the emissions return period~~ 35

~~e is the number of units required for emissions from the CAA1 during the emissions return period.~~

~~Recalculation based on unit balance (section 190)~~

~~(2) However, if—~~

~~(a) the g calculated under **subsection (1)** is a negative number, giving a gross liability; and~~

~~(b) that gross liability is greater than the CAA1's previous unit balance (meaning p in the calculation under **section 189CG**),—~~

~~then g is recalculated as the negative of the previous unit balance.~~

~~**189CB Net liability or entitlement for each CAA1 in final forestry emissions return**~~

~~(1) A person's **net liability or entitlement** for a CAA1 over an emissions return period (h) is calculated as follows:~~

$$h = g - g_a$$

~~where—~~

~~g is the person's gross liability or entitlement for the CAA1 (under that same final forestry emissions return)~~

~~g_a is the sum of the person's gross liability or entitlement for the CAA1 under each overlapping provisional forestry emissions return (if any).~~

~~(2) To avoid doubt, if there is no overlapping provisional forestry emissions return, a person's net liability or entitlement is the same as their gross liability or entitlement for a CAA1.~~

~~(3) However, if **section 194DG** applies, the person's **net liability or entitlement** (h_s) is recalculated as follows:~~

$$h_s = h_a - s$$

~~where—~~

~~h_a is the person's net liability or entitlement calculated under **subsection (1)**~~

~~s is the number of units the person is liable to surrender under **section 194DG**.~~

~~*Definition*~~

~~(4) In this section, **overlapping provisional forestry emissions return** means each provisional forestry emissions return (if any) submitted for a period that overlaps with the emissions return period of the final forestry emissions return.~~

~~**189CC Unit balance calculation for each CAA1 in emissions return**~~

~~The **unit balance** of a CAA1 (u) is calculated for an emissions return as follows:~~

$$u = p + h$$

where—

p is—

- (a) ~~the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or~~
- (b) ~~zero, if there is no such return~~

h is ~~the person's net liability or entitlement for the CAA1 under the emissions return for which u is calculated.~~

~~189CD Total liability or entitlement for all CAA1s in emissions return~~

~~A person's total liability or entitlement for all the CAA1s covered by an emissions return (t) is calculated as follows:~~

$$t = h_n$$

where—

h_n is ~~the sum of the person's net liability or entitlement for each CAA1.~~

~~*Total liability or entitlement and unit balance has effect for all emissions returns*~~

~~189DA Total liability or entitlement has effect, and unit balance updated, when emissions return submitted~~

- (1) ~~This section applies when a person submits a provisional or final forestry emissions return.~~
- (2) ~~If the person's total liability or entitlement for the CAA1s covered by the emissions return is—~~
 - (a) ~~a positive number, the person is entitled to receive (or be reimbursed) that number of New Zealand units; or~~
 - (b) ~~a negative number, the person is liable to surrender (or repay) that number of New Zealand units.~~
- (3) ~~For a final forestry emissions return, the person—~~
 - (a) ~~is entitled to be reimbursed (instead of to receive) units; or~~
 - (b) ~~is liable to repay (instead of to surrender) units—~~
~~to the extent that they surrendered, or received, more units for a CAA1 under provisional forestry emissions returns than required to satisfy their net liability or entitlement for the CAA1 under the final forestry emissions return.~~
- (4) ~~The unit balance of each CAA1 covered by the emissions return is updated to the unit balance calculated under the return.~~

New unit balance report for certain applications or notices

189EA New unit balance report

- (1) ~~A new unit balance report prepared under this section must —~~
- (a) ~~specify the CAA2s that the report covers and, for each CAA2 whose boundaries are not the same as a CAA1, define the CAA2; and~~ 5
 - (b) ~~specify the CAA1s (that are replaced by the CAA2s); and~~
 - (c) ~~set out the calculation under this section of the opening unit balance of each CAA2; and~~
 - (d) ~~if any CAA1 forms a notional CAA2 and a remainder CAA2 (because participation ceases for part of the CAA1 under **section 191BA**), set out the calculation under this section of the person's final liability or entitlement.~~ 10

- (2) ~~However, **subsection (1)** is subject to the following provisions (which limit reconfiguration):~~
- (a) ~~**section 194FG(5)** (carbon accounting areas (averaging));~~ 15
 - (b) ~~**section 194HD** (approved swap land);~~
 - (c) ~~**section 194PE** (temporary adverse event land).~~

Opening unit balance if CAA2 has same boundaries as CAA1

- (3) ~~If a CAA2 has the same boundaries as a CAA1, the **opening unit balance** of the CAA2 (v) is calculated as follows:~~ 20

$$v = u$$

~~where —~~

~~u is the unit balance of the CAA1 (under the emissions return for the CAA1 that includes the report).~~

Opening unit balance if CAA2 formed from land in 1 or more CAA1s 25

- (4) ~~If a CAA2 is formed from land in 1 or more CAA1s, the **opening unit balance** of the CAA2 (v) is calculated by summing the result of the following calculation for each CAA1 that overlaps with the CAA2 (because any land in the CAA1 becomes land in the CAA2):~~

$$u_n \times (a_n \div b_n)$$
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~~where —~~

~~u_n is the unit balance of the overlapping CAA1 (under the emissions return for the CAA1 that includes the report)~~

~~a_n is the area of overlap between the CAA2 and the overlapping CAA1 (in hectares)~~ 35

~~b_n is the area of the overlapping CAA1 (in hectares).~~

Opening unit balance if CAA2s include different land

- (5) ~~If any of the land in the CAA2s that are replacing a CAA1 is land that was not in the CAA1, the opening unit balance of the any of the CAA2s (v) that are replacing the CAA1 is calculated as follows:~~

$$v = u \times (a \div b)$$

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where—

- u is the unit balance for the CAA1 in the emissions return
- a is the area of that CAA2 (in hectares)
- b is the total area of all of the CAA2s for the CAA1 (in hectares).

Final liability or entitlement if CAA1 forms notional CAA2 and remainder CAA2

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- (6) A person's ~~final liability or entitlement~~ (f) is calculated as follows:

$$f = t - u_n$$

where—

- t is the person's total liability or entitlement for the CAA1s (under the emissions return for the CAA1s that includes the report)
- u_n is the sum of the opening unit balance of each notional CAA2 formed from a CAA1.

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Maximum liability is unit balance of carbon accounting area

190 Maximum liability is unit balance of carbon accounting area

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~~Despite section 63, a person who is or was a participant in respect of an activity of standard forestry or permanent forestry 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.~~

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Ceasing participation in standard or permanent forestry

191AA Ceasing participation for whole carbon accounting areas

- (1) ~~This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the end date) on 1 or more whole carbon accounting areas (each a CAA1).~~

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- (2) ~~However, this section does not apply if another provision of this Act requires an emissions return to be prepared for the situation.~~

- (3) ~~To avoid doubt, this section applies whether—~~

- (a) ~~the person is ceasing to be a participant in the activity on a CAA1, or is removing a CAA1 for which the person is recorded as a participant; or~~

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- ~~(b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act; or~~
- ~~(e) the CAAs are some or all of the carbon accounting areas on which the person participates in the activity.~~

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~~191AB Effect of ceasing participation for whole carbon accounting areas~~

- ~~(1) If **section 191AA** applies, then, starting on the end date,—~~
 - ~~(a) the person ceases to be a participant in the activity on the CAAs; and~~
 - ~~(b) the person is liable to surrender the number of New Zealand units equal to the unit balance of each CAAs (calculated under the last emissions return submitted for the CAAs).~~
- ~~(2) However, **subsection (1)(b)** does not apply if the person has ceased to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).~~
- ~~(3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~
- ~~(4) See **sections 188AC and 188AD**, which require notice to the participant and notice to interested parties, if any.~~

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~~191BA Ceasing participation for part carbon accounting areas~~

- ~~(1) This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the end date) on only part of 1 or more carbon accounting areas (each a CAAs).~~
- ~~(2) To avoid doubt, this section applies whether—~~
 - ~~(a) the person ceases to be a participant in the activity on part of a CAAs, or is removed from being recorded as a participant in respect of part of a CAAs; or~~
 - ~~(b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act.~~
- ~~(3) However, this section does not apply to a situation for which another provision of this Act already requires an emissions return to be prepared.~~
- ~~(4) The person must—~~
 - ~~(a) prepare a final forestry emissions return under **section 189BA** for the activity—~~
 - ~~(i) that covers each CAAs; and~~
 - ~~(ii) that uses the end date as the relevant date; and~~

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- (b) ~~include in that return a new unit balance report under **section 189EA** for the activity that covers the following carbon accounting areas (each a **CAA2**) formed from each CAA1:~~
- (i) ~~a **notional CAA2** for the part of the CAA1 where participation ceases;~~
 - (ii) ~~a **remainder CAA2** for the rest of the land in the CAA1.~~
- (5) ~~The person must—~~
- (a) ~~include the emissions return with the application or notice when it is made or given; or~~
 - (b) ~~if there is no application or notice, provide the emissions return when required by the EPA.~~
- (6) ~~The land in a notional CAA2 must be treated as forest land if the person has ceased to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).~~
- 191BB Effect of ceasing participation for part carbon accounting areas**
- (1) ~~This section applies if a final forestry emissions return (for the CAAs) is provided to the EPA in accordance with **section 191BA**, including a new unit balance report (for the CAA2s).~~
- (2) ~~Starting on the end date,—~~
- (a) ~~the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAAs under **section 189DA**); and~~
 - (b) ~~the person ceases to be a participant in the activity on the notional CAA2s; and~~
 - (c) ~~the person is liable to surrender the number of New Zealand units equal to the opening unit balance calculated for each notional CAA2 in the new unit balance report; and~~
 - (d) ~~the person is a participant in the activity on the remainder CAA2s (instead of the CAAs); and~~
 - (e) ~~the unit balance of each remainder CAA2 is the opening unit balance calculated for it in the new unit balance report; but~~
 - (f) ~~any entitlement to receive units because of **paragraph (a)** is offset against any liability to surrender units under **paragraph (c)**, so that the person's final liability or entitlement is as calculated in the new unit balance report (as long as only New Zealand units are surrendered for the liability in **paragraph (c)**).~~
- (3) ~~However, **subsection (2)(c) and (f)** does not apply if the person has ceased to be a participant because of **section 188AB** (for a natural event that per~~

~~manently prevents re-establishing a forest or land cleared for best practice forest management).~~

- ~~(4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~
- ~~(5) See **sections 188AG and 188AD**, which require notice to the participant and notice to interested parties, if any.~~

~~**191CA If participant has never carried out activity in carbon accounting area**~~

- ~~(1) This section applies if the EPA is satisfied that the person is not carrying out, and has never carried out, the activity of standard or permanent forestry on a carbon accounting area, or part of an accounting area, for which they are registered.~~
- ~~(2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area.~~
- ~~(3) The person must surrender the unit balance that relates to the carbon accounting area (or part area).~~
- ~~(4) At least 60 days before amending the register, the EPA must notify the person —~~
 - ~~(a) that the EPA proposes to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area; and~~
 - ~~(b) of the reason for the proposed removal; and~~
 - ~~(c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity on the carbon accounting area).~~
- ~~(5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.~~

~~*Transmission of interest relating to standard or permanent forestry*~~

174A Section 189 amended (Emissions returns for post-1989 forest land activities)

- (1) In section 189(8)(d)(i), replace “20 working days” with “60 working days”.**
- (2) In section 189(9), repeal the definition of **mandatory emissions return period**.**

174B Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)

In section 191(3)(b)(i)(A), delete “(as defined in section 189(9))”.

174C New section 191CA inserted (If participant has never carried out activity in carbon accounting area)

After section 191, insert:

191CA If participant has never carried out activity in carbon accounting area

- (1) This section applies if the EPA is satisfied that the person is not carrying out, and has never carried out, the activity in Part 1 of Schedule 4 on a carbon accounting area, or part of an accounting area, for which they are registered. 5
- (2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to remove the person’s registration in respect of the carbon accounting area, or part carbon accounting area. 10
- (3) The person must surrender the unit balance that relates to the carbon accounting area (or part area).
- (4) At least 60 days before amending the register, the EPA must notify the person—
 - (a) that the EPA proposes to remove the person’s registration in respect of the carbon accounting area, or part carbon accounting area; and 15
 - (b) of the reason for the proposed removal; and
 - (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity on the carbon accounting area). 20
- (5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

175 Section 192 amended (Effect of transmission of interest in post-1989 forest land) 25

- (1) ~~In the heading to section 192, replace “Effect of transmission” with “Transmission”.~~
- (2) ~~In section 192(1)(a), (b), and (c), replace “listed in Part 1 of Schedule 4” with “of standard forestry or permanent forestry”.~~
- (3) ~~In section 192(1), in the table, Parts A, B, and C, in the heading to the 4th column, replace “in Part 1 of Schedule 4” with “of standard or permanent forestry”.~~ 30
- (4) ~~In section 192(1), in the table, Part B, in the 3rd and 4th columns, in the 1st and 2nd rows, after “forest land”, insert “(only if agreed under subsection (1A))”.~~
- (5) ~~After section 192(1), insert:~~ 35
 - (1A) ~~Despite subsection (1)(b), if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of Part B of the table in that subsection, this section applies only if, before the date of transmission,—~~

- (a) ~~the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post 1989 forest land to which the transmitted interest relates; and~~
- (b) ~~the transferor has given written notice of the agreement to the EPA.~~
- (6) ~~In section 192(2), replace “In subsections (1)” with “In subsections (1), **(1A)**”.~~ 5
- (7) ~~In section 192(2)(a), replace “**affected carbon accounting area**” with “**CAA1**”.~~
- (8) ~~Replace section 192(3) and (4) with:~~
- (3) ~~The transferor and transferee must give notice of the transmission to the EPA —~~
- (a) ~~within 20 working days of the date of transmission; or~~ 10
- (b) ~~if the transmission occurred by operation of law, as soon as practicable after the date of transmission.~~
- (4) ~~The notice must —~~
- (a) ~~include a final forestry emissions return prepared by the transferor under **section 189BA** for the activity —~~ 15
- (i) ~~that covers each CAA1; and~~
- (ii) ~~that uses the date of transmission as the **relevant date**; and~~
- (b) ~~include in that return a new unit balance report prepared by the transferor under **section 189EA** for the activity that covers the following carbon accounting areas (each a **CAA2**):~~ 20
- (i) ~~for each CAA1 where the transmitted interest applies to its entire area, a **transferee CAA2** with the same boundaries as the CAA1;~~
- (ii) ~~for each other CAA1, —~~
- (A) ~~a **transferee CAA2** for the part of the CAA1 to which the transmitted interest relates; and~~ 25
- (B) ~~a **transferor CAA2** for the rest of the CAA1.~~
- (9) ~~In section 192(5), replace “A notice given under subsection (3)(a)(i)” with “The notice”.~~
- (10) ~~Replace section 192(6) with:~~
- (6) ~~However, if the transmitted interest is part of a deceased participant’s estate, —~~ 30
- (a) ~~for the transfer to the executor or administrator, —~~
- (i) ~~subsections **(3)** to **(5)** do not apply (so that no notice, final forestry emissions return, or new unit balance report is required); but~~
- (ii) ~~**section 193(2)(b) and (c) and (3)** still applies; and~~
- (b) ~~for the transfer from the executor or administrator to a successor, —~~ 35
- (i) ~~the transferee (not the transferor) must prepare the final forestry emissions return and new unit balance report required by **subsection (4)**; and~~

| | | |
|------------|--|----|
| (ii) | for the purposes of those documents, the CAA1s are the CAA1s from the transfer to the executor or administrator. | |
| (11) | In section 192(7)(a), replace “carbon accounting area or part of the carbon accounting area” with “CAA1”. | |
| (12) | In section 192(7)(a), delete “required under section 189”. | 5 |
| 176 | Section 193 replaced (Effect of transmission of interest in post-1989 forest land) | |
| | Replace section 193 with: | |
| 193 | Effect of transmission of interest in post-1989 forest land | |
| (1) | This section applies if notice of a transmission is given to the EPA in accordance with section 192, including a final forestry emissions return (for the CAA1s) and new unit balance report (for the CAA2s). | 10 |
| (2) | Starting on the date of transmission,— | |
| (a) | the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under section 189DA); and | 15 |
| (b) | the transferee becomes a participant on the transferee CAA2s in the relevant activity referred to in the fourth column of the table in section 192(1); and | |
| (c) | the transferor,— | 20 |
| (i) | if there is 1 or more transferor CAA2s, is a participant in the relevant activity described in section 192(1) on the transferor CAA2s (instead of the CAA1s); or | |
| (ii) | otherwise, ceases to be a participant in that activity on the CAA1s; and | 25 |
| (d) | the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report. | |
| (3) | The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section. | 30 |
| 176 | <u>Section 193 amended (Emissions returns in relation to transmitted interests)</u> | |
| | <u>In section 193(2)(b)(i)(A), delete “(as specified in section 189(9))”.</u> | |
| 177 | New cross-heading above section 194 inserted | |
| | Before section 194, insert: | 35 |
| | <i>Information about status of forest land</i> | |

178 New sections 194AA to 194EL and cross-headings inserted

After section 194, insert:

Non-compliance for transmitted interests

194AA EPA may act if persons fail to give notice of transmitted interest

- (1) ~~Sections 128A and 128B~~ apply to a person's failure to give notice in accordance with section 192 (the **notice provision**) — 5
- (a) as if ~~sections 128A and 128B~~ referred to the transferor and transferee (as applicable) instead of a participant; and
- (b) with the modifications set out in this section.
- (2) The deadline that the EPA must give the transferor and transferee under ~~section 128A(5)~~ to give or correct the required notice is — 10
- (a) 6 months after the end of the mandatory emissions return period in which the date of transmission falls; or
- (b) if the EPA gives its notice after the deadline in **paragraph (a)**, the end of the 90th working day after the EPA gives its notice. 15
- (3) If the transferor and transferee do not give or correct the required notice by that deadline, the EPA may either —
- (a) take action under ~~section 128A~~; or
- (b) amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record that — 20
- (i) the transferee ceased to be a participant in the relevant activity on each transferee CAA2 immediately after becoming a participant for those; and
- (ii) if there are 1 or more transferor CAA2s, the transferor ceased to be a participant in the relevant activity on the transferor CAA2s immediately after becoming a participant for those. 25
- (4) If the EPA acts under ~~subsection (3)(b)~~, —
- (a) the transferee is liable to surrender the number of New Zealand units equal to the unit balance of each transferee CAA2 (calculated under the last emissions return submitted for the CAA2); and 30
- (b) if there are 1 or more transferor CAA2s, the transferor is liable to surrender the number of New Zealand units equal to the unit balance of each transferor CAA2 (calculated under the last emissions return submitted for the CAA2); and
- (c) see ~~sections 188AG and 188AD~~, which require notice to the participant and notice to interested parties, if any. 35
- (5) If the transferee or transferor submits an emissions return that assesses their entitlement to receive (or be reimbursed) units in respect of a transferee CAA2

~~or transferor CAA2 (as applicable), for any period starting on or after the date of transmission, the entitlement takes effect only when (if ever) —~~

- ~~(a) the transferor and transferee give or correct the required notice; or~~
- ~~(b) the EPA takes action under **section 128A** that has the same effect as the required notice.~~

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~~*Application to reconfigure carbon accounting areas for standard or permanent forestry*~~

~~**194CA Application to reconfigure carbon accounting areas for standard or permanent forestry**~~

~~(1) A participant in an activity of standard forestry or permanent forestry may apply to reconfigure any of the carbon accounting areas for the activity.~~

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~~(2) The application must —~~

- ~~(a) specify the activity; and~~
- ~~(b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the activity (each a CAA1); and~~
- ~~(c) include a final forestry emissions return prepared under **section 189BA** for the activity —~~

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- ~~(i) that covers the CAAs; and~~
- ~~(ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and~~

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~~(d) include in that return a new unit balance report prepared under **section 189EA** for the activity that covers 1 or more carbon accounting areas (CAAs) consisting of all the same land in the CAAs.~~

~~(3) The application must also —~~

- ~~(a) be signed by the applicant; and~~
- ~~(b) be submitted —~~
 - ~~(i) in the prescribed manner and format; and~~
 - ~~(ii) together with the prescribed fee (if any); and~~
 - ~~(iii) together with the prescribed information (if any).~~

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~~(4) However, **subsection (1)** is subject to the following provisions (which limit reconfiguration):~~

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- ~~(a) **section 194FG(5)** (carbon accounting areas (averaging));~~
- ~~(b) **section 194HD** (approved swap land);~~
- ~~(c) **section 194PE** (temporary adverse event land).~~

~~194CB~~ Criteria to reconfigure carbon accounting areas for standard or permanent forestry

- (1) ~~If a person submits an application under **section 194GA** (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity), the EPA,~~ 5
- ~~(a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or~~
 - ~~(b) otherwise, may decline the application.~~
- (2) ~~The criteria are —~~ 10
- ~~(a) that the application complies with **section 194GA**; and~~
 - ~~(b) that the applicant has paid any prescribed fees or charges; and~~
 - ~~(c) that any other criteria prescribed in regulations made under **section 168(1)(na)** are met.~~
- (3) ~~In considering the application, the EPA must treat the land to which it relates as post 1989 forest land.~~ 15

~~194CC~~ Approval of application to reconfigure carbon accounting areas for standard or permanent forestry

- (1) ~~This section applies if the EPA approves a person's application under **section 194GA** (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity).~~ 20
- (2) ~~Starting on the day on which the application was submitted to the EPA, —~~
- ~~(a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and~~
 - ~~(b) the person is a participant in the activity on the CAA2s (instead of the CAA1s); and~~ 25
 - ~~(c) the person is not liable to surrender the unit balance of each CAA1; and~~
 - ~~(d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.~~
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~ 30

~~194CD~~ Restriction start date of reconfigured carbon accounting area for permanent forestry

- (1) ~~This section applies if a person reconfigures carbon accounting areas for permanent forestry by approval of an application under **section 194GA**.~~ 35

(2) For the purposes of ~~section 194EA~~, the restriction start date of a CAA2 is the latest restriction start date of the CAA1s that overlap with the CAA2 (because any land in the CAA1 became land in the CAA2).

Application to change activity on post-1989 forest land

194DA Application to change activity on post-1989 forest land

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(1) A participant in an initial activity on any post-1989 forest land may apply to become a participant in a final activity on any of the land (to carry over the unit balances of carbon accounting areas from the initial activity to the final activity).

Change from standard or permanent forestry

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(2) If the initial activity is standard forestry or permanent forestry, the application must—

(a) specify the initial activity and the final activity; and

(b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the initial activity (each a CAA1); and

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(c) include a final forestry emissions return prepared under ~~section 189BA~~ for the initial activity—

(i) that covers the CAA1s; and

(ii) that uses the date on which the application is submitted to the EPA as the relevant date; and

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(iii) that includes any liability or entitlement required to be included by ~~section 194DF(4) or 194DG(4)~~; and

(d) include in that return a new unit balance report prepared under ~~section 189EA~~ for the final activity that covers the following 1 or more carbon accounting areas (each a CAA2):

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(i) CAA2s that have the same boundaries as the CAA1s, to the extent that ~~subparagraph (ii)~~ does not apply; or

(ii) if the clear-fell exception applies and any land that is now in 1 or more CAA1s was clear-felled after the forest sink covenant was terminated,—

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(A) a CAA2 for all of the land that was clear-felled; and

(B) a CAA2 for each CAA1 to the extent it was not clear-felled.

Change from PFSI activity

(3) If the initial activity is PFSI activity, the application must—

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(a) specify the initial activity and the final activity; and

- (b) ~~specify the land to which the application relates (the **PFSI land**), which must be all of the forest land that a forest sink covenant is registered against; and~~
- (c) ~~include an emissions return prepared under **section 194DD** for the initial activity that covers the PFSI land; and~~
- (d) ~~include in that return a new unit balance report prepared under **section 194DE** for the final activity that covers the following 1 or 2 carbon accounting areas (each a **CAA2**):~~
 - (i) ~~a CAA2 that has the same boundaries as the PFSI land, if **sub-paragraph (ii)** does not apply; or~~
 - (ii) ~~if the clear fell exception applies and any of the PFSI land was clear felled after the forest sink covenant was terminated,—~~
 - (A) ~~a CAA2 for all of the PFSI land that was clear felled; and~~
 - (B) ~~a CAA2 for the rest of the PFSI land.~~

General provisions

- (4) ~~The application must also—~~
 - (a) ~~be signed by the applicant; and~~
 - (b) ~~be submitted—~~
 - (i) ~~in the prescribed manner and format; and~~
 - (ii) ~~together with the prescribed fee (if any); and~~
 - (iii) ~~together with the prescribed information (if any).~~

- (5) ~~The following table specifies the matters referred to in this section (under the relevant headings):~~

| Previous activity | Initial activity | Final activity | Clear fell exception |
|------------------------------|-------------------------------|-------------------------------|---------------------------------|
| | PFSI activity | Standard forestry | |
| | PFSI activity | Permanent forestry | Exception applies |
| | Standard forestry | Permanent forestry | |
| PFSI activity | Standard forestry | Permanent forestry | Exception applies |
| | Permanent forestry | Standard forestry | |

- (6) ~~As indicated in the table, **the clear fell exception applies to—**~~
 - (a) ~~a change from PFSI activity (initial activity) to permanent forestry (final activity):~~
 - (b) ~~a change from standard forestry (initial activity) to permanent forestry (final activity), if the activity on the land was previously changed from PFSI activity (previous activity) to standard forestry under this section.~~

~~194DB~~ Criteria to change activity on post-1989 forest land

- (1) ~~If a person submits an application under **section 194DA** (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land), the EPA,—~~
- ~~(a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or~~
 - ~~(b) otherwise, may decline the application.~~
- (2) ~~The criteria are—~~
- ~~(a) that the application complies with **section 194DA**; and~~
 - ~~(b) that the applicant has paid any prescribed fees or charges; and~~
 - ~~(c) if the initial activity is PFSI activity, that the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of the land under section 187; and~~
 - ~~(d) that any other criteria prescribed in regulations made under **section 168(1)(na)** are met.~~
- (3) ~~In considering the application,—~~
- ~~(a) if the initial activity is standard forestry or permanent forestry, the EPA must treat the land to which the application relates as post-1989 forest land; or~~
 - ~~(b) if the initial activity is PFSI activity, the EPA must treat the forest land to which the application relates as post-1989 forest land.~~

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~~194DC~~ Approval of application to change activity on post-1989 forest land

- (1) ~~This section applies if the EPA approves a person's application under **section 194DA** (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land).~~
- (2) ~~If the initial activity is standard forestry or permanent forestry, then, starting on the day on which the application was submitted to the EPA,—~~
- ~~(a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and~~
 - ~~(b) the person ceases to be a participant in the initial activity on the CAA1s; and~~
 - ~~(c) the person becomes a participant in the final activity on the CAA2s; and~~
 - ~~(d) the person is not liable to surrender the unit balance of each CAA1; and~~
 - ~~(e) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.~~
- (3) ~~If the initial activity is PFSI activity, then, starting on the day on which the application was submitted to the EPA,—~~

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- (a) ~~the forest sink covenant registered against the PFSI land is terminated; and~~
 - (b) ~~the person becomes a participant in the final activity on the CAA2s; and~~
 - (c) ~~the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.~~
- (4) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~

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~~194DD Emissions return for application to change from PFSI activity~~

- (1) ~~An emissions return prepared under this section must—~~
- (a) ~~specify the PFSI land that the return covers; and~~
 - (b) ~~specify that the person carried out PFSI activity on the PFSI land; and~~
 - (c) ~~set out the calculation under **subsection (2)** of the person's liability or entitlement for emissions and removals from the PFSI land while the forest sink covenant was registered against it.~~
- (2) ~~A person's **liability or entitlement** for the PFSI land (g) is calculated as follows:~~

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$$g = r - e$$

~~where—~~

- ~~r is the number of units transferred by the Crown in respect of the PFSI land while the forest sink covenant was registered against it~~
- ~~e is the number of units transferred to the Crown in respect of the PFSI land while the forest sink covenant was registered against it.~~

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- (3) ~~The emissions return must—~~
- (a) ~~include the prescribed information (if any); and~~
 - (b) ~~be signed by the participant; and~~
 - (c) ~~when submitted under the relevant provision, be submitted—~~
 - (i) ~~in the prescribed manner and format; and~~
 - (ii) ~~together with the prescribed fee (if any); and~~
 - (iii) ~~together with the prescribed information (if any).~~

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~~194DE New unit balance report for application to change from PFSI activity~~

- (1) ~~A new unit balance report prepared under this section must—~~
- (a) ~~specify the CAA2 that the report covers, or specify and define both CAA2s that the report covers; and~~
 - (b) ~~specify the PFSI land (which will form the CAA2 or CAA2s); and~~

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~~(e) set out the calculation under this section of the opening unit balance of the CAA2 or each CAA2.~~

~~(2) If there is only 1 CAA2 (formed from all the PFSI land), the opening unit balance of the CAA2 (v) is calculated as the person's liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report):~~ 5

~~(3) If there are 2 CAA2s, the opening unit balance of a CAA2 (v) is calculated as follows:~~

$$v = g \times (a \div b)$$

~~where—~~ 10

~~g is the person's liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report)~~

~~a is the area of overlap between the CAA2 and the PFSI land (in hectares)~~

~~b is the area of the PFSI land (in hectares).~~

~~**194DF Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging)**~~ 15

~~(1) This section applies if—~~

~~(a) a person submits an application under **section 194DA**; and~~

~~(b) the initial activity is permanent forestry and the final activity is standard forestry; and~~ 20

~~(c) on the constitution date for any CAA2, any land in it (area A) will have a determined carbon stock greater than its nominal average carbon stock.~~

~~(2) If the EPA accepts the application, the person is liable to surrender the number of New Zealand units (s) calculated as follows:~~

$$s = (d - n) \times a$$

~~where—~~ 25

~~d is the determined carbon stock of area A, determined as if it were in a carbon accounting area (averaging) (in tonnes per hectare)~~

~~n is what the nominal average carbon stock for area A will be when CAA2 is constituted (in tonnes per hectare)~~ 30

~~a is the area (in hectares) of area A.~~

~~(3) If CAA2 will have 2 or more areas of land that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), **subsection (2)** applies separately in respect of each area.~~ 35

~~(4) The liability to surrender units under **subsection (2)**—~~

- (a) ~~is to be treated as a liability for emissions for the CAA1 that includes area A during the emissions return period for the emissions return under **section 194DA(2)(c)**; and~~
- (b) ~~must be included in that emissions return as part of the calculation under **section 189CA** of the person's gross liability or entitlement required by **section 189BA(1)(c)(iii)**.~~ 5
- (5) ~~In this section, terms defined in **section 194FA** have the meanings given in that section.~~

194DG Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry 10

- (1) ~~This section applies if—~~
- (a) ~~a person submits an application under **section 194DA**; and~~
- (b) ~~the initial activity is standard forestry and the final activity is permanent forestry; and~~
- (c) ~~any land (area A) in a CAA1 that is a carbon accounting area (averaging)—~~ 15
- (i) ~~has a subsequent rotation forest; and~~
- (ii) ~~has a determined carbon stock that is less than the nominal average carbon stock for area A.~~
- (2) ~~If the EPA accepts the application, the person is liable to surrender the number of New Zealand units (s) calculated as follows:~~ 20

$$s = (n - d) \times a$$

~~where—~~

- ~~n is the nominal average carbon stock for area A (in tonnes per hectare)~~
- ~~d is the determined carbon stock of area A (in tonnes per hectare)~~ 25
- ~~a is the area (in hectares) of area A.~~
- (3) ~~If a CAA1 has 2 or more areas of subsequent rotation forest that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), **subsection (2)** applies separately in respect of each area.~~ 30
- (4) ~~The liability to surrender units under **subsection (2)**—~~
- (a) ~~is to be treated as a liability for emissions for CAA1 during the emissions return period for the emissions return under **section 194DA(2)(c)**; and~~
- (b) ~~must be included in that emissions return as part of the calculation under **section 189CA** of the person's gross liability or entitlement required by **section 189BA(1)(c)(iii)**.~~ 35

~~(5) In this section, terms defined in **section 194FA** have the meanings given in that section.~~

Restrictions for permanent forestry land

194EA Permanent forestry period for land

- ~~(1) If a person becomes registered as a participant carrying out permanent forestry in respect of any land, the **permanent forestry period** for the land is —~~ 5
- ~~(a) an initial period of 50 years starting on the restriction start date; and~~
 - ~~(b) any 1 or more consecutive periods of a further 25 years for which a participant chooses the option under **section 194EK(1)(a)**.~~
- ~~(2) The **restriction start date** for the land is specified by column 4 of the table, which applies to a situation as follows:~~ 10
- ~~(a) if no initial activity is specified (in column 2), it means the person became registered for the permanent forestry without reference to any initial activity on the land:~~
 - ~~(b) if an initial activity is specified (in column 2) and no previous activity is specified (in column 1), it means —~~ 15
 - ~~(i) the person became registered for the permanent forestry by acceptance of an application under **section 194DA** to change from the initial activity; and~~
 - ~~(ii) the person previously became registered for the initial activity without reference to any previous activity:~~ 20
 - ~~(c) if an initial activity is specified (in column 2) and a previous activity is specified (in column 1), it means —~~ 25
 - ~~(i) the person became registered for the permanent forestry by acceptance of an application under **section 194DA** to change from the initial activity; and~~
 - ~~(ii) the person previously became registered for the initial activity by acceptance of an application under **section 194DA** to change from the previous activity.~~
- ~~(3) However, as indicated in column 5 of the table, the **restriction start date** is the registration date for the CAA2 formed from clear felled land if —~~ 30
- ~~(a) the clear fell exception applied in the application under **section 194DA** to change from the initial activity; and~~
 - ~~(b) any of the land in the application was clear felled after the forest sink covenant was terminated.~~ 35
- ~~(4) After any land's permanent forestry period has started, its permanent forestry period —~~

| (a) | may change under section 194GD (if carbon accounting areas are reconfigured); but | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------|---|-----------------------|-------------------------------|---|-----------------|-----------------|--------------------------|-------------------------|-----------------------|-------------------------------|---|--|---------------|--------------------|-------------------|-------------------|--|-------------------|--------------------|---------------|-------------------|---------------|-------------------|--------------------|-------------------|-------------------|--|---------------|--------------------|---------------|-------------------|--|
| (b) | does not change if the land becomes part of a new carbon accounting area when— | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (i) | a person ceases to be a participant on other land because of section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or | 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (ii) | an interest is transmitted under section 192; or | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (iii) | other land is removed in accordance with section 194EG (an exception requiring the Minister's approval); or | 10 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (iv) | any of the land in the carbon accounting area becomes temporary adverse event land under section 194NG. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (5) | In this section,— | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | covenant date means the date of registration of the forest sink covenant on land | 15 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | registration date means the date on which the person became registered as a participant in permanent forestry on the land. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (6) | The following table contains the columns referred to in this section: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | <table border="0" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Column 1</th> <th style="text-align: left;">Column 2</th> <th style="text-align: left;">Column 3</th> <th style="text-align: left;">Column 4</th> <th style="text-align: left;">Column 5</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Previous activity</td> <td style="vertical-align: top;">Initial activity</td> <td style="vertical-align: top;">Final activity</td> <td style="vertical-align: top;">Restriction start date</td> <td style="vertical-align: top;">Later restriction start date (for clear-felled land)</td> </tr> <tr> <td></td> <td style="vertical-align: top;">PFSI activity</td> <td style="vertical-align: top;">Permanent forestry</td> <td style="vertical-align: top;">Registration date</td> <td style="vertical-align: top;">Registration date</td> </tr> <tr> <td></td> <td style="vertical-align: top;">Standard forestry</td> <td style="vertical-align: top;">Permanent forestry</td> <td style="vertical-align: top;">Covenant date</td> <td style="vertical-align: top;">Registration date</td> </tr> <tr> <td style="vertical-align: top;">PFSI activity</td> <td style="vertical-align: top;">Standard forestry</td> <td style="vertical-align: top;">Permanent forestry</td> <td style="vertical-align: top;">Registration date</td> <td style="vertical-align: top;">Registration date</td> </tr> <tr> <td></td> <td style="vertical-align: top;">PFSI activity</td> <td style="vertical-align: top;">Permanent forestry</td> <td style="vertical-align: top;">Covenant date</td> <td style="vertical-align: top;">Registration date</td> </tr> </tbody> </table> | Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Previous activity | Initial activity | Final activity | Restriction start date | Later restriction start date (for clear-felled land) | | PFSI activity | Permanent forestry | Registration date | Registration date | | Standard forestry | Permanent forestry | Covenant date | Registration date | PFSI activity | Standard forestry | Permanent forestry | Registration date | Registration date | | PFSI activity | Permanent forestry | Covenant date | Registration date | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Previous activity | Initial activity | Final activity | Restriction start date | Later restriction start date (for clear-felled land) | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | PFSI activity | Permanent forestry | Registration date | Registration date | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | Standard forestry | Permanent forestry | Covenant date | Registration date | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| PFSI activity | Standard forestry | Permanent forestry | Registration date | Registration date | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | PFSI activity | Permanent forestry | Covenant date | Registration date | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | 194EB Restriction on ceasing to be registered for permanent forestry | 20 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (1) | The only ways in which a person may cease to be registered as a participant carrying out permanent forestry in respect of any land are as follows: | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (a) | the person is exempted from this section by an Order in Council under section 60A; | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (b) | a person ceases to be a participant because of— | 25 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (i) | section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| | |
|---|---|
| <ul style="list-style-type: none"> (ii) section 194QG(2)(c) (for temporary adverse event land that becomes permanently affected land): (e) the land becomes land for which a transferee under section 192 is instead registered as carrying out permanent forestry (if there is a transmitted interest): (d) the registration is removed in accordance with section 194EG (an exception requiring the Minister's approval): (e) the registration for the whole carbon accounting area that includes the land is removed because of section 194EH (after land is deforested): (f) after the permanent forestry period ends, — <ul style="list-style-type: none"> (i) the EPA removes the registration under section 194EL (because the person chooses that option, for example): (ii) the person changes from permanent forestry to standard forestry on the land by application under section 194DA. | <p>5</p> <p>10</p> <p>15</p> |
| <p>(2) This section overrides any other provision of this Act.</p> | |
| <p>194EC Minister may approve removal of land from permanent forestry</p> | |
| <ul style="list-style-type: none"> (1) This section sets out an exception by which a person can cease to be registered as a participant carrying out permanent forestry in respect of any land (the removal of land), whether all or part of a carbon accounting area: (2) The person must — <ul style="list-style-type: none"> (a) first obtain the Minister's approval in writing to the removal of land; and (b) then apply for the removal of land under section 188AA(4)(a)(i) or (ii) and comply with sections 191AA and 191AB or sections 191BA and 191BB (whichever apply): (3) The provisions referred to in subsection (2)(b), and the provisions applied by them, apply as if the land subject to the removal of land were forest land. (4) The Minister may approve the removal of land only to the extent that the Minister is satisfied that — <ul style="list-style-type: none"> (a) it would be unreasonable in the circumstances to require the person to remain registered in respect of the land; and (b) the removal will not materially undermine the environmental integrity of — <ul style="list-style-type: none"> (i) the activity of permanent forestry as a whole (not just by that person): (ii) the emissions trading scheme. (5) In considering those matters, the Minister must have regard to — <ul style="list-style-type: none"> (a) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme; and | <p>20</p> <p>25</p> <p>30</p> <p>35</p> |

- (b) ~~the relative costs of approving or not approving the removal of land, and who bears the costs; and~~
- (c) ~~any other matters the Minister considers relevant.~~

~~194ED Exception from prohibition on clear felling and deforestation~~

- (1) ~~Sections 194EE to 194EI do not apply to—~~ 5
 - (a) ~~land for which a person ceases to be a participant because of—~~
 - (i) ~~section 188AB (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or~~
 - (ii) ~~section 194QG(2)(c) (for temporary adverse event land that becomes permanently affected land); or~~ 10
 - (b) ~~temporary adverse event land.~~
- (2) ~~However, if land ceases to be temporary adverse event land and section 194SG applies, sections 194EE to 194EI do apply to the land.~~
- (3) ~~For that purpose,—~~ 15
 - (a) ~~any clear felling or deforestation that occurred while the land was temporary adverse event land is to be treated as having occurred on the date the land ceased to be temporary adverse event land; but~~
 - (b) ~~any penalty must be calculated by reference to the pre-event carbon stock rate for the land under section 194NA(3)(d)(i).~~ 20

~~194EE Permanent forestry land must not be clear felled~~

- (1) ~~A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not clear felled.~~
- (2) ~~If any of the land is clear felled (the clear felled land),—~~
 - (a) ~~the person must, as soon as practicable, notify the EPA of the clear felling; and~~ 25
 - (b) ~~the EPA must apply section 194EF (pecuniary penalty for clear felling) when required by that section.~~

~~194EF Pecuniary penalty for clear felling of permanent forestry land~~

- (1) ~~This section applies after—~~ 30
 - (a) ~~a person has notified the EPA of clear felling under section 194EE(2); and~~
 - (b) ~~a final forestry emissions return has been submitted that covers the 1 or more carbon accounting areas that include the clear felled land.~~
- (2) ~~The EPA must apply to the court for a pecuniary penalty order against the person for contravening section 194EE(1) unless the EPA is satisfied that the defence applies.~~ 35

- ~~(3) The court —~~
- ~~(a) must determine whether the person has contravened **section 194EE(1)**; and~~
 - ~~(b) must determine whether the defence applies; and~~
 - ~~(c) if it is satisfied that the person has contravened the provision without a defence, —~~5
 - ~~(i) must make a declaration of contravention; and~~
 - ~~(ii) must order the person to pay a pecuniary penalty to the Crown.~~
- ~~(4) The amount of the pecuniary penalty —~~
- ~~(a) must be the deemed value of the forest that was on the clear-felled land, as determined by regulations; but~~10
 - ~~(b) may be reduced, at the court's discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.~~
- ~~(5) In this section, **defence** means that —~~
- ~~(a) the clear-felling was beyond the person's control; and~~15
 - ~~(b) the person could not reasonably have foreseen the clear-felling; and~~
 - ~~(c) the person could not reasonably have taken steps to prevent the clear-felling.~~
- ~~**194EG Regulations for pecuniary penalty for clear-felling**~~
- ~~(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 in relation to a pecuniary penalty under **section 194EF**:~~20
- ~~(a) specifying the deemed value of the forest that was on clear-felled land:~~
 - ~~(b) specifying different deemed values based on different factors, for example, —~~25
 - ~~(i) the area of the clear-felled land in hectares;~~
 - ~~(ii) the geographic region of the clear-felled land;~~
 - ~~(iii) the forest species, or the type of forest, that was on the clear-felled land;~~
 - ~~(iv) the age or size of the forest that was on the clear-felled land;~~30
 - ~~(c) providing for any other matters contemplated by **section 194EF**, necessary for its administration, or necessary for giving it full effect.~~
- ~~(2) Before recommending the making of regulations under this section, 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 the regulations.~~35
- ~~(3) The process for consultation must include —~~

- (a) ~~adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and~~
- (b) ~~a reasonable opportunity for interested persons to consider the recommendation and make submissions; and~~
- (e) ~~adequate and appropriate consideration of submissions.~~ 5
- (4) ~~Before recommending the making of regulations under this section, the Minister must also consider —~~
- (a) ~~the differences in value between forests of different types or ages or with trees of different forest species or sizes; and~~
- (b) ~~the market value of the wood and other products removed from forests, and the historic variation in the market value; and~~ 10
- (c) ~~the need to assign an appropriate value for forests with no market, or for which no market price is available, so as to deter clear felling on all land in permanent forestry; and~~
- (d) ~~any need to deem the volume of the harvest from a forest.~~ 15
- (5) ~~Regulations made under this section come into force 3 months after the date of their notification in the *Gazette* or any later date specified in the regulations.~~
- (6) ~~A failure to comply with this section does not affect the validity of regulations made under it.~~
- 194EH Permanent forestry land must not be deforested** 20
- (1) ~~A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not deforested.~~
- (2) ~~If any of the land is deforested (the **deforested land**), —~~
- (a) ~~the person ceases to be a participant in permanent forestry in respect of each carbon accounting area that includes any deforested land (each a **CAA1**); and~~ 25
- (b) ~~accordingly, —~~
- (i) ~~the person must notify the EPA under **section 188AA(4)(b)** that they have ceased to carry out the activity on the CAAs; and~~
- (ii) ~~**sections 191AA and 191AB** apply in respect of the CAAs; and~~ 30
- (c) ~~the EPA must apply **section 194EI** (pecuniary penalty for deforestation).~~
- 194EI Pecuniary penalty for deforestation of permanent forestry land**
- (1) ~~If this section applies, the EPA must apply to the court for a pecuniary penalty order against the person for contravening **section 194EH(1)** unless the EPA is satisfied that the defence applies.~~ 35
- (2) ~~The court —~~

- (a) ~~must determine whether the person has contravened **section 194EH(1)**; and~~
- (b) ~~must determine whether the defence applies; and~~
- (c) ~~if it is satisfied that the person has contravened the provision without a defence,—~~ 5
- (i) ~~must make a declaration of contravention; and~~
- (ii) ~~must order the person to pay a pecuniary penalty to the Crown.~~
- (3) ~~The amount of the pecuniary penalty, in dollars (a), must be calculated as follows:~~
- ~~$a = b \times e$~~ 10
- ~~where—~~
- b ~~is the number of units equal to the sum of the unit balance of each CAA1 that was calculated under the last emissions return submitted for the CAA1 before the clearing that caused the deforestation~~
- e ~~is the price, in dollars, of carbon per tonne set by or in accordance with regulations made under **section 30W**.~~ 15
- (4) ~~However, the court may reduce the amount, at its discretion, but only if the court is satisfied that the person has a reasonable excuse for the contravention.~~
- (5) ~~In this section, **defence** means that—~~
- (a) ~~the deforestation was beyond the person's control; and~~ 20
- (b) ~~the person could not reasonably have foreseen the deforestation; and~~
- (c) ~~the person could not reasonably have taken steps to prevent the deforestation.~~
- 194EJ Due dates for payment of penalties and recovery of EPA's costs**
- (1) ~~This section applies if the court orders that a person pay a pecuniary penalty under **section 194EF or 194EI**.~~ 25
- (2) ~~The court must also order that the penalty must be applied first to pay the EPA's actual costs in bringing the proceedings.~~
- (3) ~~The person must pay the penalty—~~
- (a) ~~within 20 working days after the date on which the order is made or by any later date specified by the order; or~~ 30
- (b) ~~by the date or dates agreed under a deferred payment arrangement under **section 135A**.~~
- 194EK Option must be chosen at end of permanent forestry period**
- (1) ~~After the permanent forestry period ends, the participant carrying out permanent forestry on post 1989 forest land must **choose an option** for each carbon accounting area (each a CAA1) by doing 1 of the following:~~ 35

- (a) ~~giving notice to the EPA that they will carry out permanent forestry on the CAA1 for a further 25 years; or~~
- (b) ~~removing the CAA1 from permanent forestry by any means available under this Act.~~
- (2) ~~The participant must choose an option before or when the first of the following documents is submitted for the CAA1:~~ 5
- (a) ~~a provisional forestry emissions return; or~~
- (b) ~~a final forestry emissions return under **section 189AB** for the mandatory emissions return period in which the permanent forestry period ended.~~ 10
- (3) ~~If the participant does not choose an option before or when submitting an emissions return described by **subsection (2)**, or does not submit the final forestry emissions return described by **subsection (2)**, the EPA must give notice to the participant.~~
- (4) ~~The EPA's notice must state —~~ 15
- (a) ~~that the participant must choose an option for each CAA1 within 30 working days after the EPA gave its notice; and~~
- (b) ~~that a CAA1 will be removed from permanent forestry if the participant does not choose an option for it by then.~~
- 194EL Removal of carbon accounting area from permanent forestry** 20
- (1) ~~This section applies to a CAA1 if the participant does not choose an option for the CAA1 by the deadline in the EPA's notice given under **section 194EK(3)**.~~
- (2) ~~As a result, —~~
- (a) ~~the participant ceases to be a participant in permanent forestry on the CAA1; and~~ 25
- (b) ~~the participant is liable to surrender the number of New Zealand units equal to the unit balance of the CAA1 (calculated under the last emissions return submitted for the CAA1).~~
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~ 30

179 New subparts 5 and 6 of Part 5 inserted

After **section 194EL** (as inserted by **section 178**), insert:

~~Subpart 5—Averaging accounting methodology~~*General provisions***194FA Interpretation for subpart 5**~~In this subpart,—~~~~**approved swap land** means land that—~~ 5~~(a) has become approved swap land under **section 194GG(2)(f) or 194KE(2)(e)**; and~~~~(b) has not ceased to be approved swap land under a provision referred to in **section 194HA**~~~~**average carbon equality**, in relation to land in a carbon accounting area (averaging), means that the determined carbon stock of the land is equal to the nominal average carbon stock for the land~~ 10~~**carbon accounting area (averaging)** has the meaning given by **section 194FG(3)**~~~~**determined carbon stock**, for land in a carbon accounting area (averaging), means the carbon stock of the land determined in accordance with regulations made under **section 194LA**~~ 15~~**excess forest land** has the meaning given in **section 194JB**~~~~**expected carbon stock**, for remainder land, has the meaning given in **section 194JA**~~ 20~~**first rotation forest** has the meaning given by **section 194FD(1) and (2)**~~~~**nominal average carbon stock**, for land in a carbon accounting area (averaging), means the expected long term average level of carbon stock of the land over multiple forest rotations determined in accordance with regulations made under **section 194LA**~~ 25~~**non forest land** has the meaning given in **section 194JB**~~~~**qualifying forest land** has the meaning given in **section 194JB(3)**~~~~**reference carbon stock**, for a CAA1, has the meaning given in **section 194GA(2)(e)**~~~~**release criteria** has the meaning given in **section 194JA**~~ 30~~**release date**, for approved swap land, has the meaning given in **section 194GG(2)(g)**~~~~**remainder land** has the meaning given in **section 194JB**~~~~**subsequent rotation forest** has the meaning given by **section 194FD(4)**~~~~**swap application date** means the date on which an application for a carbon equivalent forest land swap was submitted to the EPA under **section 194GA**.~~ 35

~~194FB Averaging accounting methodology~~

~~(1) The object of averaging accounting methodology is to account for emissions and removals from an activity of standard forestry —~~

~~(a) by reference to the expected long term average level of carbon stock of the land over multiple forest rotations, rather than by reference to short-term changes in the actual carbon stock of the land (as required by sections 63 and 64); and~~

~~(b) in a way that achieves approximately the same result in the long term as would have been achieved using carbon stock change accounting but without the repeated receipt and surrender of units for each forest rotation.~~

~~(2) The number of units that a participant for a carbon accounting area (averaging) is entitled to receive, or is liable to surrender, is determined by reference to the expected long term average carbon stock of the land over multiple forest rotations and changes in that average.~~

~~(3) In general terms, the participant —~~

~~(a) is entitled to receive New Zealand units for removals —~~

~~(i) for land that has a first rotation forest, if —~~

~~(A) it has not reached average carbon equality; or~~

~~(B) after it reaches average carbon equality, its nominal average carbon stock increases;~~

~~(ii) for land that has a subsequent rotation forest, if its nominal average carbon stock increases; and~~

~~(b) is liable to surrender units for emissions —~~

~~(i) for land that has first rotation forest and has reached average carbon equality, if its nominal average carbon stock decreases; or~~

~~(ii) for land that has subsequent rotation forest, if its nominal average carbon stock decreases; or~~

~~(iii) in any case, if the land is deforested.~~

~~194FC Averaging accounting applies to carbon accounting areas (averaging)~~

~~(1) Averaging accounting methodology applies in respect of emissions and removals from an activity of standard forestry on a carbon accounting area (averaging).~~

~~(2) The participant in respect of a carbon accounting area (averaging) —~~

~~(a) is entitled to receive New Zealand units, and liable to surrender New Zealand units, for the emissions and removals from the activity in accordance with regulations made under **section 194LA**; and~~

~~(b) if provided in the regulations, is not required to —~~

- (i) ~~calculate emissions and removal for which they are not liable to surrender, or entitled to receive, units; or~~
- (ii) ~~submit emissions returns covering a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units.~~ 5
- (3) ~~A carbon accounting area in respect of which a participant is registered in respect of an activity of standard forestry is a **carbon accounting area (averaging)** if—~~
- (a) ~~its constitution date is after 31 December 2020; and~~
- (b) ~~it was constituted—~~ 10
- (i) ~~under section 188 from land that was not part of a previous carbon accounting area; or~~
- (ii) ~~under **section 194DC** from land on which the initial activity was permanent forestry or PFSI activity; or~~
- (iii) ~~from a reconfiguration of 1 or more carbon accounting areas (averaging) (and no other land).~~ 15
- (4) ~~See also **clause 26 of Schedule 1AA**, which allows some other carbon accounting areas to be converted into carbon accounting areas (averaging).~~
- Limit on reconfiguration*
- (5) ~~Carbon accounting areas cannot be reconfigured (whether by application under **section 194CA** or by any other process that requires the submission of a new unit balance report) so as to combine in a CAA2 land from a CAA1 that is a carbon accounting area (averaging) and land from a CAA1 that is not.~~ 20
- 194FD First rotation forest and subsequent rotation forest**
- (1) ~~Land in a carbon accounting area (averaging) has a **first rotation forest** if—~~ 25
- (a) ~~the land has not been cleared since it became forest land; or~~
- (b) ~~the land,—~~
- (i) ~~having been forest land, was deforested; and~~
- (ii) ~~remained deforested for at least the stand down period prescribed in regulations made under **section 194LA** (but see **subsection (4)**); and~~ 30
- (iii) ~~was re-established as forest land; and~~
- (iv) ~~has not been cleared since that re-establishment; or~~
- (e) ~~the land—~~
- (i) ~~is post 1989 forest land because of **paragraph (a)(iii) to (vii)** of the definition of post 1989 forest land in section 4; and~~ 35
- (ii) ~~has not been cleared since it became post 1989 forest land; or~~

- (d) ~~the land is declared by regulations made under **section 194LA** to have a first rotation forest.~~
- (2) ~~However, land that would otherwise have a first rotation forest under **subsection (1)** does not have a first rotation forest if it is declared by regulations made under **section 194LA** to have a subsequent rotation forest.~~ 5
- (3) ~~**Subsection (1)(b)(ii)** does not apply if the deforestation referred to in **subsection (1)(b)(i)** occurred before the commencement of this section.~~
- (4) ~~Land in a carbon accounting area (averaging) has a **subsequent rotation forest** if it does not have a first rotation forest.~~

Carbon equivalent forest land swaps: applications 10

194GA Application for carbon equivalent forest land swap

- (1) ~~A participant in an activity of standard forestry on 1 or more carbon accounting areas (averaging) may apply to the EPA to swap other land for those areas (to transfer the unit balance from the carbon accounting areas (averaging) to the new land).~~ 15
- (2) ~~The application must—~~
 - (a) ~~specify the carbon accounting areas (averaging) to which the application relates (each a **CAA1**); and~~
 - (b) ~~specify the land proposed to be swapped for each **CAA1**; and~~
 - (c) ~~include a final forestry emissions return prepared under **section 189BA** for the activity—~~ 20
 - (i) ~~that covers the **CAA1**s; and~~
 - (ii) ~~that uses the date on which the application is submitted to the EPA as the **relevant date**; and~~
 - (d) ~~include in that return a new unit balance report prepared under **section 189EA** that covers 1 or more carbon accounting areas (each a **CAA2**) for each **CAA1** consisting of the land specified under **paragraph (b)**; and~~ 25
 - (e) ~~include—~~
 - (i) ~~the carbon stock of each **CAA1** on the swap application date determined in accordance with regulations made under **section 194LA** (the **reference carbon stock** for the **CAA1**); and~~ 30
 - (ii) ~~if the person proposed as the participant in respect of any of the **CAA2**s is not already registered as a participant, the information necessary for that person to become registered; and~~ 35
 - (iii) ~~any other information prescribed in regulations made under **section 194LA**.~~

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- ~~(3) If the person proposed as the participant in respect of any of the CAA2s is not the participant in respect of the CAAs, the application must be made jointly with that other person.~~
- ~~(4) The application must—~~
- ~~(a) be signed by all of the applicants; and~~
 - ~~(b) be submitted—~~
 - ~~(i) in the prescribed manner and format; and~~
 - ~~(ii) together with the prescribed fee (if any); and~~
 - ~~(iii) together with the prescribed information (if any).~~

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194GB Criteria for carbon equivalent forest land swap

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- ~~(1) If a person submits an application under **section 194GA** for a carbon equivalent forest land swap, the EPA,—~~
- ~~(a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or~~
 - ~~(b) otherwise, may decline the application.~~

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- ~~(2) The criteria are that—~~

~~*CAA1 criteria*~~

- ~~(a) the land in each CAA1 is 1 or both of the following:~~
 - ~~(i) land that has a first rotation forest and has reached average carbon equality;~~
 - ~~(ii) land that has a subsequent rotation forest; and~~
- ~~(b) the forest species on each CAA1 were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and~~

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~~*CAA2 criteria*~~

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- ~~(e) the land in each CAA2 is 1 or more of the following:~~
 - ~~(i) land that is not forest land on the swap application date, but if it were to become forest land—~~
 - ~~(A) would be post 1989 forest land; and~~
 - ~~(B) would meet the criteria in **section 194FD** for having a first rotation forest;~~
 - ~~(ii) post 1989 forest land that—~~
 - ~~(A) became post 1989 forest land less than 2 years before the swap application date; and~~
 - ~~(B) meets the criteria in **section 194FD** for having a first rotation forest.~~

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~~(iii) offsetting forest land under an approved offsetting forest land application that was removed as offsetting forest land under **section 186CA** within the period prescribed in regulations made under **section 194LA**;~~

~~(iv) land that was approved swap land but became excess forest land and ceased to be approved swap land under **section 194JF(2)(c)** within the period prescribed in regulations made under **section 194LA**; and~~

~~(d) the total area (whether or not contiguous) of the CAA2s for a CAA1 is equal to or greater than the area of that CAA1; and~~

~~(e) each individual parcel that makes up the CAA2 is at least 1 hectare and has an average width of at least 30 metres; and~~

Participant criteria

~~(f) the participant in respect of each CAA2 would, if the land in the CAA2 were forest land, —~~

~~(i) if they are not already registered as a participant in the activity, qualify to be registered under section 57; and~~

~~(ii) qualify under section 187 to be registered as a participant in respect of the CAA2; and~~

Release criteria

~~(g) the EPA is satisfied that, on the release date, the release criteria are likely to be met in respect of each CAA1 and the CAA2s proposed in respect of it; and~~

Prescribed criteria

~~(h) any other criteria prescribed in regulations made under **section 194LA** are met.~~

194GC Effect of approval of application to swap land

~~(1) This section applies if the EPA approves an application under **section 194GA** for a carbon equivalent forest land swap.~~

~~(2) Starting on the swap application date, —~~

~~(a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and~~

~~(b) if any of the land proposed to be included in a CAA2 is already in a carbon accounting area, the participant for that land is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and~~

~~(c) the persons proposed as participants for CAA2s are participants in the activity on the CAA2s; and~~

- (d) ~~the participant in respect of the CAA1s—~~
 (i) ~~ceases to be a participant in the activity on the CAA1s; and~~
 (ii) ~~is not liable to surrender the unit balances of the CAA1s; and~~
- (e) ~~the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and~~ 5
- (f) ~~the land in the CAA2s for a CAA1 is the approved swap land for that CAA1; and~~
- (g) ~~the release date for the approved swap land for a CAA1 is—~~
 (i) ~~if, on the swap application date, every hectare of land in the CAA1 had forest species on it that had tree crown cover of more than 30%, 4 years after the swap application date; or~~ 10
 (ii) ~~if not, 4 years after the start of the last time the CAA1 was cleared before the swap application date.~~
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~ 15

~~Carbon equivalent forest land swaps: approved swap land~~

~~194HA Duration of approved swap land status~~

- (1) ~~Land that becomes approved swap land for a CAA1 under **section 194GG(2)(f)** remains approved swap land until one of the following occurs:~~ 20
- (a) ~~the land meets the release criteria and is released from being approved swap land on the release date under **section 194JF(2)(c)**;~~
- (b) ~~the person ceases to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest);~~
- (c) ~~the land becomes temporary adverse event land under **section 194NG**;~~ 25
- (d) ~~the land is non-forest land and ceases to be approved swap land under **section 194JF(2)(d)**;~~
- (e) ~~the land is excess forest land and ceases to be approved swap land under **section 194JF(2)(e)**;~~
- (f) ~~the land is removed land and ceases to be approved swap land under **section 194KE(2)(d)**;~~ 30
- (2) ~~To avoid doubt, the land continues to be approved swap land even if the carbon accounting areas containing the land are reconfigured (whether under **section 194GG** or by any other process that requires the submission of a new unit balance report).~~ 35

~~194HB~~ Effect of being approved swap land

~~All of the provisions of this Act that apply to post-1989 forest land that is in a carbon accounting area (averaging) apply to approved swap land as if it were post-1989 forest land, subject to **sections 194HG and 194HD**.~~

~~194HC~~ Subsequent rotation forest

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- (1) ~~Approved swap land is to be treated as having a subsequent rotation forest (despite **section 194FD(1)**).~~
- (2) ~~**Subsection (1)** continues to apply to remainder land until —~~
- (a) ~~it is first cleared after the release date (even though it ceases to be approved swap land on the release date); or~~
 - (b) ~~the participant becomes registered for an activity of permanent forestry on the land.~~
- (3) ~~To avoid doubt, when **subsection (1)** ceases to apply to any land, **section 194FD** applies.~~

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~~194HD~~ Reconfiguration restrictions

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- (1) ~~A carbon accounting area containing approved swap land cannot be reconfigured (whether by application under **section 194GA** or by any other process that requires the submission of a new unit balance report) except as permitted by **subsection (2)**.~~
- (2) ~~Reconfiguration is permitted —~~
- (a) ~~to reconfigure the carbon accounting areas that contain the approved swap land for the same CAA1 without including any other land;~~
 - (b) ~~to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with **sections 188AB and 191BA**;~~
 - (c) ~~to remove land that becomes temporary adverse event land under **section 194NG**;~~
 - (d) ~~on the release date as required under **section 194JB**;~~
 - (e) ~~to substitute land under **sections 194KG to 194KE**.~~

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~~194HE~~ No transfers to permanent forestry

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~~A participant for a carbon accounting area containing approved swap land cannot apply under **section 194DA** to become a participant in an activity of permanent forestry on that land.~~

Carbon equivalent forest land swaps: release of approved swap land

194JA Release criteria

(1) ~~The release criteria in respect of a CAA1 and its approved swap land that is remainder land are that, on the release date, —~~

(a) ~~the area of the remainder land is equal to or greater than the area of CAA1; and~~ 5

(b) ~~the expected carbon stock of the remainder land is equal to or greater than the reference carbon stock of the CAA1; and~~

(c) ~~any other criteria prescribed in regulations made under **section 194LA** are met.~~ 10

(2) ~~The expected carbon stock of land is the carbon stock that the land is expected to have achieved at the end of the period prescribed in regulations made under **section 194LA**, determined in accordance with the regulations made under **section 194LA**.~~

Adjustment if adverse event 15

(3) ~~If any of the approved swap land ceases to be approved swap land under **section 194HA(1)(b) or (c)** (because of adverse events) on or before the release date, —~~

(a) ~~for **subsection (1)(a)**, the area of the CAA1 on the swap application date is to be treated as reduced in accordance with **subsection (4)**; and~~ 20

(b) ~~for **subsection (1)(b)**, the reference carbon stock for the CAA1 is to be treated as reduced in accordance with **subsection (5)**.~~

(4) ~~The reduced area of the CAA1 (in hectares) (y) is calculated as follows:~~

$$y = a \times (j \div k)$$

~~where —~~ 25

~~a is the area of the CAA1 on the swap application date (in hectares)~~

~~j is the area of the land that ceased to be approved swap land under **section 194HA(1)(b) or (c)** (in hectares)~~

~~k is the area of the approved swap land when the land swap was approved (being all of the CAA2s under **section 194GA**) (in hectares).~~ 30

(5) ~~The reduced reference carbon stock for the CAA1 (in tonnes) (w) is calculated as follows:~~

$$w = e \times (j \div k)$$

~~where —~~

~~e is the reference carbon stock for the CAA1 (in tonnes)~~ 35

~~j is the area of the land that ceased to be approved swap land under **section 194HA(1)(b) or (c)** (in hectares)~~

~~k is the area of the approved swap land when the land swap was approved (being all of the CAA2s under **section 194GA**) (in hectares).~~

~~**194JB Notice of compliance with release criteria**~~

- ~~(1) The participants in an activity of standard forestry on the approved swap land for a CAA1 on the release date must give notice to the EPA of the extent of compliance with the release criteria on the release date. 5~~
- ~~(2) The notice must —~~
- ~~(a) identify all of the approved swap land that is each of the following:~~
 - ~~(i) **remainder land**, being all the approved swap land that is qualifying forest land on the release date, other than excess forest land: 10~~
 - ~~(ii) **non-forest land**, being all the approved swap land that is not qualifying forest land on the release date:~~
 - ~~(iii) **excess forest land**, being any approved swap land that —~~
 - ~~(A) is qualifying forest land on the release date; and~~
 - ~~(B) does not need to be part of the remainder land in order for the release criteria to be met; and 15~~
 - ~~(C) the participants want to be excluded from the remainder land; and~~
 - ~~(b) include final forestry emissions returns under **section 189BA** for each participant and activity — 20~~
 - ~~(i) that covers each carbon accounting area that contains the approved swap land (each a CAA3); and~~
 - ~~(ii) that uses the release date as the **relevant date**; and~~
 - ~~(c) include in that return a release date unit balance report under **section 194JE** that covers the following carbon accounting areas (each a CAA4) formed from each CAA3: 25~~
 - ~~(i) 1 or more **remainder CAA4s** for the remainder land in the CAA3:~~
 - ~~(ii) a **non-forest CAA4** for any non-forest land in the CAA3:~~
 - ~~(iii) 1 or more **excess CAA4s** for any excess forest land in the CAA3; 30~~
 - ~~and~~
 - ~~(d) include any information prescribed in regulations under **section 194LA**.~~
- ~~(3) Land is **qualifying forest land** if — 35~~
- ~~(a) each hectare of land has forest species on it that have, or are likely to have, tree crown cover of more than 30%; and~~
 - ~~(b) those forest species were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and~~

- (e) ~~each individual parcel of the forest land is at least 1 hectare and has an average width of at least 30 metres; and~~
- (d) ~~the land has not been declared not to be qualifying forest land under **section 194KA(2)**.~~
- (4) The notice must — 5
- (a) ~~be made jointly by the participants in respect of all of the approved swap land for the CAA1; and~~
- (b) ~~be signed by all of the applicants; and~~
- (e) ~~be given within 60 working days after the release date; and~~
- (d) ~~be given — 10~~
- (i) ~~in the prescribed manner and format; and~~
- (ii) ~~together with the prescribed fee (if any); and~~
- (iii) ~~together with the prescribed information (if any).~~
- (5) In relation to a final forestry emissions return required by **subsection (2)(b)**, **sections 189BA to 189DA** apply as if — 15
- (a) ~~the references in those sections to CAA1 were references to CAA3; and~~
- (b) ~~the references in those sections to CAA2 were references to CAA4.~~
- 194JC Liability to surrender units if release criteria not met**
- (1) This section applies in relation to the CAA3s for a CAA1 if the release criteria under either or both of **paragraphs (a) and (b) of section 194JA(1)** are not met. 20
- (2) The participants for the CAA3 are liable to surrender the number of New Zealand units determined under **subsections (4) to (6)**.
- (3) That liability is apportioned between the CAA3s under **section 194JD**.
- Liability for area insufficiency* 25
- (4) If **section 194JA(1)(a)** is not met, the number of units to be surrendered (s_u) is calculated as follows:
- $$s_u = [(e - d) \div e] \times u$$
- where —
- e is the area of CAA1 on the swap application date (reduced under section 194JA(3) if applicable) (in hectares) 30
- d is the total area of all of the remainder land for the CAA1 (in hectares)
- u is the unit balance of the CAA1 in the emissions return that accompanied the application under **section 194GA**.
- Liability for carbon insufficiency* 35
- (5) If **section 194JA(1)(b)** is not met, the number of units to be surrendered (s_u) is calculated as follows:

$$s_e = (e - f)$$

where—

e is the reference carbon stock for the CAA1 (reduced under section 194JA(3) if applicable) (in tonnes)

f is the total expected carbon stock of all of the remainder land for the CAA1 (in tonnes).

Total liability

(6) The total liability under this section (t) is calculated as follows:

$$t = s_a + s_e$$

194JD Maximum liability and apportionment

(1) This section applies if the participants for the CAA3s for a CAA1 have a liability under **section 194JG**.

One CAA3

(2) If there is only one CAA3,—

(a) section 190 applies; and

(b) the liability for that CAA3 is equal to t under **section 194JG(6)**.

Two or more CAA3s: maximum liability

(3) If there are 2 or more CAA3s,—

(a) section 190 does not apply; but

(b) if the total liability calculated under **section 194JG(6)** (t) is greater than the total of the unit balances of all of the CAA3s, t is reduced to be equal to that total unit balance.

Two or more CAA3s: apportionment

(4) If there are 2 or more CAA3s, the liability for each CAA3 (k) is calculated as follows:

$$k = t \times (a_s \div b_s)$$

where—

t is the total liability under **section 194JG(6)**, reduced under **subsection (3)** if applicable

a_s is the area of the CAA3 (in hectares)

b_s is the total area of all of the CAA3s (in hectares).

194JE Release date unit balance report

(1) A release date unit balance report required by **section 194JB(2)(e)** must—

(a) specify the CAA4s that the report covers and, for each CAA4 whose boundaries are not the same as a CAA3, define the CAA4; and

(b) specify the CAA3s (whose land will form the CAA4s); and

- (e) ~~specify the opening unit balance of each non-forest CAA4 and each excess CAA4 (if any) as zero; and~~
- (d) ~~set out the calculation under **subsection (2)** of the opening unit balance of each remainder CAA4.~~
- (2) ~~The opening unit balance of a remainder CAA4 (v) is calculated as follows:~~ 5
- $$v = (u - k) \times (a_4 \div b_4)$$
- ~~where —~~
- u ~~is the unit balance of the CAA3 in the emissions return under **section 194JB(2)(b)**~~
- k ~~is, —~~ 10
- (a) ~~if there is only one CAA4, zero; or~~
- (b) ~~if there are 2 or more CAA4s, the liability of the CAA3 under **section 194JB**~~
- a_4 ~~is the area of the remainder CAA4 (in hectares)~~
- b_4 ~~is the total area of all of the remainder land for the CAA1 (in hectares).~~ 15
- 194JF Effect on release date**
- (1) ~~This section applies if notice is given to the EPA in accordance with **section 194JB**, including a final forestry emissions return (for the CAA3s) and release date unit balance report (for the CAA4s).~~
- (2) ~~Starting on the release date, —~~ 20
- (a) ~~the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under **section 189DA**); and~~
- (b) ~~the participants are not liable to surrender the unit balances of each CAA3 (although they may be liable to surrender units under **section 194JC**); and~~ 25
- (c) ~~for each remainder CAA4, —~~
- (i) ~~the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the remainder CAA4 (instead of the CAA3); and~~ 30
- (ii) ~~the land in the remainder CAA4 is released from being approved swap land; and~~
- (iii) ~~the unit balance of each remainder CAA4 is the opening unit balance calculated for it in the release date unit balance report; and~~
- (d) ~~for each non-forest CAA4, —~~ 35
- (i) ~~the person who was the participant in respect of the CAA3 from which it was formed ceases to be a participant in respect of the non-forest CAA4; and~~

- (ii) ~~the land in the non-forest CAA4 ceases to be approved swap land; and~~
- (iii) ~~the unit balance of each non-forest CAA4 is zero; and~~
- (e) ~~for each excess CAA4,—~~
 - (i) ~~the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the excess CAA4; and~~
 - (ii) ~~the land in the excess CAA4 ceases to be approved swap land; and~~
 - (iii) ~~the unit balance of each non-forest CAA4 is zero.~~
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~
- (4) ~~After the release date, section 179(1) (except section 179(1)(a)) applies to the remainder land as if it had been cleared on the swap application date.~~
- (5) ~~**Subsection (4)** ceases to apply when that land is next cleared (after which section 179 will apply).~~

Carbon equivalent forest land swaps: action if original criteria not met

~~**194KA EPA may take action if original criteria not met**~~

- (1) ~~This section applies if the EPA—~~
 - (a) ~~approved an application for a carbon equivalent forest land swap; but~~
 - (b) ~~is now satisfied that the application should not have been approved because any of the approved swap land did not meet the criteria in **section 194GB(2)(c) or (e)** or any applicable criteria prescribed for **section 194GB(2)(h)**.~~

Action on or before release date

- (2) ~~If this section applies to land on or before the release date, the EPA may declare the land that did not meet the criteria not to be qualifying forest land for the purposes of **section 194JB**.~~

Action after release date

- (3) ~~If this section applies to land after the release date, the EPA may declare the whole of the carbon accounting area that now contains the land that did not meet the criteria to not be approved swap land.~~

Procedure

- (4) ~~The EPA cannot make a declaration under this section more than 7 years after the swap application date.~~
- (5) ~~Before making a declaration, the EPA must—~~

- (a) ~~notify the participant of its intention to do so and the grounds for doing so; and~~
- (b) ~~give them at least 60 working days to—~~
 - (i) ~~show cause why the EPA should not do so; or~~
 - (ii) ~~take other remedial action specified in the notice.~~ 5
- (6) ~~If the EPA makes a declaration under this section, it must give the participant notice of—~~
 - (a) ~~the declaration and the date on which it was made; and~~
 - (b) ~~the participant’s liability under **section 194KB**; and~~
 - (c) ~~the participant’s right under section 144 to seek a review of the decision to make the declaration.~~ 10

~~194KB Effect of declaration after release date~~

- (1) ~~This section applies if the EPA makes a declaration under **section 194KA(3)** that a carbon accounting area is not approved swap land (the CAA).~~
- (2) ~~Starting on the date on which the declaration is made,—~~ 15
 - (a) ~~the land ceases to be approved swap land; and~~
 - (b) ~~the person ceases to be a participant in the activity on the CAA; and~~
 - (c) ~~the person is liable to surrender the number of New Zealand units equal to the unit balance of the CAA.~~
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~ 20

~~194KC Remedial action: land substitution~~

- (1) ~~In a notice under **section 194KA(5)**, the EPA may give the participant the option to take remedial action by substituting other land for land that did not meet the criteria (the **non-compliant land**).~~ 25
- (2) ~~A participant given that option may apply to the EPA to do so.~~
- (3) ~~The application must—~~
 - (a) ~~specify the carbon accounting areas (each a CAA5) that include the non-compliant land for which other land is to be substituted; and~~ 30
 - (b) ~~identify all the land in each CAA5 as either—~~
 - (i) ~~**removed land**, being the non-compliant land for which other land is to be substituted; or~~
 - (ii) ~~**remaining land**, being all the land in the CAA5 that is not removed land; and~~ 35
 - (c) ~~identify the land that is proposed to be substituted for the removed land (**substitute land**); and~~

- (d) ~~include a final forestry emissions return prepared under **section 189BA** for the relevant activity—~~
- ~~(i) that covers the CAA5s; and~~
 - ~~(ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and~~ 5
- (e) ~~include in that return a new unit balance report that—~~
- ~~(i) relates to the following carbon accounting areas (each a CAA6):~~
 - ~~(A) a **removed CAA6** for the removed land;~~
 - ~~(B) a **remaining CAA6** for the remaining land;~~ 10
 - ~~(C) a **substitute CAA6** for the substitute land; and~~ - ~~(ii) specifies the opening unit balance of the removed CAA6 as zero; and~~
 - ~~(iii) calculates the opening unit balance for the remaining CAA6s and substitute CAA6s in accordance with **section 189EA(5)**; and~~
 - ~~(iv) is otherwise prepared under **section 189EA**; and~~ 15
- (f) ~~include any information prescribed in the regulations under **section 194LA**.~~
- (4) ~~The notice must—~~
- ~~(a) be signed by the participant; and~~
 - ~~(b) be given within the period specified in the notice under **section 194KA(5)**; and~~ 20
 - ~~(c) be given—~~
 - ~~(i) in the prescribed manner and format; and~~
 - ~~(ii) together with the prescribed fee (if any); and~~
 - ~~(iii) together with the prescribed information (if any).~~ 25
- (5) ~~In relation to the final forestry emissions return and new unit balance report required by **subsection (3)(d) and (e)**, **sections 189BA to 189EA** apply as if—~~
- ~~(a) the references in those sections to CAA1 were references to CAA5; and~~
 - ~~(b) the references in those sections to CAA2 were references to CAA6.~~ 30
- 194KD Criteria for land substitution**
- (1) ~~If a person submits an application under **section 194KC** to substitute land, the EPA,—~~
- ~~(a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or~~ 35
 - ~~(b) otherwise, may decline the application.~~
- (2) ~~The criteria are that—~~

- (a) ~~the substitute land is land of a kind specified in 1 or more of **subparagraphs (i) to (iv) of section 194GB(2)(c)**; and~~
- (b) ~~the area of the substitute land is equal to or greater than the area of the removed land; and~~
- (e) ~~the EPA is satisfied that, —~~ 5
 - (i) ~~if the substitution date is before the release date, the release criteria are likely to be met in respect of the CAA1 and the new approved swap land; or~~
 - (ii) ~~if the substitution date is on or after the release date, the expected carbon stock of the new approved swap land as at the substitution date was equal to or greater than the reference carbon stock of the CAA1; and~~ 10
- (d) ~~any other criteria prescribed in regulations made under **section 194LA** are met.~~
- (3) ~~In this section, —~~ 15
 - ~~**new approved swap land** means all of the land that will be approved swap land for the CAA1 if the application is approved~~
 - ~~**substitution date** means the date on which the application under **section 194KG** was submitted.~~
- 194KE Effect of land substitution** 20
- (1) ~~This section applies if the EPA approves an application under **section 194KD**.~~
- (2) ~~Starting on the date on which the application was submitted, —~~
 - (a) ~~the emissions return for the CAA5s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA5s under **section 189DA**); and~~ 25
 - (b) ~~if any of the land in a substitute CAA6 is already in a carbon accounting area, the participant for that land is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and~~
 - (e) ~~in respect of the remainder CAA6s and substitute CAA6s, —~~ 30
 - (i) ~~the person becomes a participant in the activity on those CAA6s (instead of the CAA5s); and~~
 - (ii) ~~the unit balance of each of those CAA6s is the opening unit balance calculated for it in the new unit balance report; and~~
 - (iii) ~~the land in those CAA6s is approved swap land for the original CAA1 (together with any approved swap land for the CAA1 that was not included in this application); and~~ 35
 - (d) ~~in respect of each removed CAA6, —~~

- (i) ~~the person ceases to be a participant in the activity of the removed CAA6; and~~
 - (ii) ~~the land ceases to be approved swap land; and~~
 - (iii) ~~the person is not liable to surrender units (because the unit balance is zero).~~ 5
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~
- (4) ~~To avoid doubt, the substitution of land under this section does not affect the release date for the CAA1.~~ 10

Regulations

194LA Regulations for averaging

- (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—~~ 15
 - (i) ~~how emissions and removals from an activity of standard forestry on a carbon accounting area (averaging) must be calculated and reported;~~
 - (ii) ~~the circumstances in which a participant is or is not liable to surrender units, or entitled to receive New Zealand units, for those emissions and removals;~~ 20
 - (iii) ~~the methodology for determining the number of units the participant is entitled to receive or liable to surrender in those circumstances;~~
 - (b) ~~providing that a participant for a carbon accounting area (averaging) is not required to—~~ 25
 - (i) ~~calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units;~~
 - (ii) ~~submit emissions returns for a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units;~~ 30
 - (c) ~~prescribing the methodology for determining—~~
 - (i) ~~determined carbon stock (**section 194FA**);~~
 - (ii) ~~nominal average carbon stock (**section 194FA**);~~
 - (iii) ~~reference carbon stock (**section 194GA**);~~ 35
 - (iv) ~~expected carbon stock (**section 194JA(2)**);~~
 - (d) ~~for the purposes the definition of first rotation forest (**section 194FD**),—~~

- (i) ~~prescribing the stand-down period:~~
- (ii) ~~declaring land to have a first rotation forest or a subsequent rotation forest:~~
- (e) ~~prescribing the information to be included in, and other requirements for, —~~ 5
- (i) ~~applications for a carbon equivalent forest land swap (**section 194GA**):~~
- (ii) ~~notices of compliance with release criteria (**section 194JB**):~~
- (iii) ~~applications to substitute land under (**section 194KG**):~~
- (f) ~~prescribing time periods for re-using removed offsetting forest land or excess forest land (**section 194GB(2)(c)(iii) and (iv)**):~~ 10
- (g) ~~prescribing additional criteria for the approval of —~~
- (i) ~~a land swap application (**section 194GB(2)(h)**):~~
- (ii) ~~a land substitution application (**section 194KD(2)(d)**):~~
- (h) ~~prescribing additional release criteria (**section 194JA(1)(c)**):~~ 15
- (i) ~~prescribing the period for the purposes of the definition of expected carbon stock (**section 194JA(2)**):~~
- General*
- (j) ~~providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.~~ 20
- (2) ~~Regulations made under this section may make different provision for different eases on any differential basis, including —~~
- (a) ~~for different forest species:~~
- (b) ~~for forest species of different ages:~~
- (c) ~~for different rotation periods:~~ 25
- (d) ~~for different parts of New Zealand:~~
- (3) ~~Regulations made under this section may have retrospective effect as follows:~~
- (a) ~~a regulation may apply from the commencement of the mandatory emissions return period in which the regulation is made or from a later date in that period:~~ 30
- (b) ~~a regulation made under **subsection (1)(d)(i)** may prescribe a stand-down period that begins before the regulation is made.~~
- (4) ~~Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.~~
- (5) ~~Regulations made under **subsection (1)(b)** may relate to emissions or removals that —~~ 35
- (a) ~~stem directly from an activity; or~~

~~(b) are associated with a product or other thing that is the subject of an activity.~~

~~(6) See also sections 166 (procedure) and 169 to 175 (incorporation by reference).~~

~~Subpart 6 — Temporary adverse events~~

~~194MA Interpretation for subpart 6~~

~~(1) In this subpart, —~~

~~**adverse event**, in relation to temporary adverse event land, means the event referred to in **section 194NA(1)(b)** as a result of which the land became temporary adverse event land~~

~~**affected land** has the meaning given in **section 194NA(1)**~~

~~**carbon recovery** has the meaning given in **section 194RA**~~

~~**event date**, in relation to an adverse event, means the later of, —~~

~~(a) if the event occurs —~~

~~(i) on only 1 day, that day; or~~

~~(ii) over 2 or more days, the first of those days (even if land in a particular carbon accounting area is not affected until the second or a later day of the event); or~~

~~(b) if the event occurs in circumstances specified in regulations made under **section 194TA**, the date provided for in the regulations~~

~~**non-established land** has the meaning given in **section 194QB**~~

~~**permanently affected land** has the meaning given in **section 194QB**~~

~~**pre-event carbon stock rate** for temporary adverse event land from a CAA1, means the average carbon stock per hectare of the affected land in the CAA1 on the day before the event date, determined in accordance with regulations made under **section 194TA**, unless **subsection (2)** applies~~

~~**re-established land** has the meaning given in **section 194QB**~~

~~**re-establishment** has the meaning given in **section 194QA**~~

~~**re-establishment date**, in relation to an adverse event, means the later of —~~

~~(a) the date 4 years after the event date; or~~

~~(b) in circumstances specified in regulations made under **section 194TA**, the date provided for in the regulations~~

~~**temporary adverse event land** means land that has become temporary adverse event land under **section 194NG(2)(c)** and has not ceased to be so under a provision referred to in **section 194PA**.~~

~~(2) For the definition of pre-event carbon stock rate, —~~

~~(a) if land that is temporary adverse event land in relation to an adverse event (**event 1**) becomes temporary adverse event land in relation to a~~

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~~later adverse event (event 2), the pre-event carbon stock rate for the land in relation to event 2 is the same as the pre-event carbon stock rate it had in relation to event 1; and~~

- (b) ~~if approved swap land becomes temporary adverse event land, the pre-event carbon stock rate for the land is the reference carbon stock (under **section 194GA**) per hectare of the CAA1 for which the land is approved swap land.~~

Application

194NA Application for temporary adverse event suspension

- (1) ~~Post-1989 forest land is affected land if—~~
- (a) ~~the land is in a carbon accounting area (a CAA1)—~~
- (i) ~~that is a carbon accounting area (averaging); or~~
- (ii) ~~for which a person is a participant in an activity of permanent forestry; and~~
- (b) ~~the land is affected by an event of a kind prescribed in regulations made under **section 194TA** (the adverse event); and~~
- (c) ~~the event results in each hectare of land ceasing to have forest species on it that have, or are likely to have, tree crown cover of more than 30%; and~~
- (d) ~~the area of affected land in each CAA1 is equal to or greater than any minimum prescribed in regulations made under **section 194TA**; and~~
- (e) ~~the extent of carbon stock lost from each CAA1 is equal to or greater than any minimum prescribed in regulations made under **section 194TA**.~~
- (2) ~~A participant in an activity of standard forestry or permanent forestry on a CAA1 may apply for a temporary adverse event suspension for the affected land in that CAA1.~~
- (3) ~~The application must—~~
- (a) ~~specify the CAA1s to which the application relates; and~~
- (b) ~~include a final forestry emissions return prepared under **section 189BA** for the activity—~~
- (i) ~~that covers the CAA1s; and~~
- (ii) ~~that uses the day before the event date as the relevant date; and~~
- (c) ~~include in that return a new unit balance report prepared under **section 189EA** for the activity that covers the following carbon accounting areas (CAA2s) formed from each CAA1:~~
- (i) ~~an affected CAA2 for the affected land in the CAA1;~~
- (ii) ~~a remainder CAA2 for the rest of the land in the CAA1; and~~

- (d) ~~include—~~
- (i) ~~the pre-event carbon stock rate for the affected land; and~~
 - (ii) ~~any other information prescribed in regulations made under **section 194TA**.~~
- (4) ~~The application must—~~
- (a) ~~be signed by the participant; and~~
 - (b) ~~be submitted by the deadline prescribed in regulations made under **section 194TA**; and~~
 - (c) ~~be submitted—~~
 - (i) ~~in the prescribed manner and format; and~~
 - (ii) ~~together with the prescribed fee (if any); and~~
 - (iii) ~~together with the prescribed information (if any).~~
- 194NB Criteria of temporary adverse event suspension**
- (1) ~~If a person submits an application under **section 194NA** for a temporary adverse event suspension, the EPA,—~~
- (a) ~~if satisfied that the criteria in **subsection (2)** are met, must approve the application; or~~
 - (b) ~~otherwise, may decline the application.~~
- (2) ~~The criteria are that—~~
- (a) ~~the land in the affected CAA2s is affected land; and~~
 - (b) ~~the participant notified the EPA of the occurrence of the adverse event in accordance with the regulations made under **section 194TA**; and~~
 - (c) ~~the EPA is satisfied that the land in the affected CAA2s—~~
 - (i) ~~is likely to achieve re-establishment under **section 194QA**; and~~
 - (ii) ~~is likely to achieve carbon recovery under **section 194RA**; and~~
 - (d) ~~any other criteria prescribed in regulations made under **section 194TA** are met.~~
- 194NC Approval of temporary adverse event suspension**
- (1) ~~This section applies if the EPA approves an application for a temporary adverse event suspension under **section 194NB**.~~
- (2) ~~Starting on the day before the event date,—~~
- (a) ~~the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and~~
 - (b) ~~the person is a participant in the activity on the CAA2s (instead of the CAA1s); and~~

- ~~(e) the person is not liable to surrender the unit balance of each CAA1; and~~
 - ~~(d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and~~
 - ~~(e) the land in the affected CAA2s formed from a CAA1 is the **temporary adverse event land** from that CAA1 in relation to the adverse event.~~ 5
- (3) ~~The approval of land as temporary adverse event land is subject to any conditions prescribed in regulations made under **section 194TA**.~~
- (4) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~ 10

Temporary adverse event land

194PA Duration of temporary adverse event land status

- (1) ~~Land that becomes temporary adverse event land under **section 194NG(2)(c)** remains temporary adverse event land until one of the following occurs:~~
- ~~(a) the land achieves carbon recovery and is released from being temporary adverse event land under **section 194RB**;~~ 15
 - ~~(b) the person ceases to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest), whether as a result of the adverse event or a different event;~~
 - ~~(e) the land is affected by another event and becomes temporary adverse event land under **section 194NG(2)(c)** in relation to that later event;~~ 20
 - ~~(d) the land is non-established land and ceases to be temporary adverse event land under section 194QC(2)(d);~~
 - ~~(e) the land is permanently affected land and ceases to be temporary adverse event land under section 194QC(2)(e);~~ 25
 - ~~(f) the land ceases to be temporary adverse event land under **section 194SA** because of a breach of condition;~~
 - ~~(g) the land ceases to be temporary adverse event land under **section 194SB** because of deforestation or early clearing.~~
- (2) ~~To avoid doubt, the land continues to be temporary adverse event land even if the carbon accounting areas containing the land —~~ 30
- ~~(a) are reconfigured (whether under **section 194GG** or by any other process that requires the submission of a new unit balance report); or~~
 - ~~(b) change activity from standard forestry to permanent forestry or vice versa.~~ 35

~~194PB Effect of being temporary adverse event land~~

~~All of the provisions of this Act that apply to post 1989 forest land continue to apply to temporary adverse event land as if it remained forest land, subject to sections 194PC to 194PF.~~

~~194PC No liability or entitlement~~

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(1) ~~A participant in respect of temporary adverse event land is not liable to surrender units, or entitled to receive New Zealand units, for emissions and removals for the land (including emissions resulting from the adverse event).~~

(2) ~~However, subsection (1) is subject to sections 194DF and 194DG, and the participant is liable to surrender units under those sections if they apply.~~

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(3) ~~If provided in regulations made under section 194TA, the participant is not required to—~~

(a) ~~calculate emissions and removal for which they are not liable to surrender, or entitled to receive, units; or~~

(b) ~~submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units.~~

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~~194PD First rotation forest~~

(1) ~~If temporary adverse event land is in carbon accounting area (averaging), and on the day before the event date the land had a first rotation forest, then the land is to be treated as continuing to have a first rotation forest.~~

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(2) ~~Subsection (1) continues to apply in relation to re-established land until it is first cleared after the re-establishment date (even though it ceases to be temporary adverse event land on the re-establishment date).~~

(3) ~~To avoid doubt, when subsection (1) ceases to apply to land, section 194FD applies.~~

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~~194PE Reconfiguration restrictions~~

(1) ~~A carbon accounting area containing temporary adverse event land cannot be reconfigured (whether by application under section 194CA or by any other process that requires the submission of a new unit balance report) except as permitted by subsection (2).~~

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(2) ~~Reconfiguration is permitted—~~

(a) ~~to reconfigure the carbon accounting areas that contain the temporary adverse event land from the same CAA1 without including any other land;~~

(b) ~~to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with sections 188AB and 191BA (whether that is the adverse event or a different event).~~

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- ~~(e) to remove land that becomes temporary adverse event land in relation to a different event;~~
- ~~(d) on the re-establishment date as required under **section 194QB**;~~
- ~~(e) to remove land that has ceased to be temporary adverse event land when **section 194SG(5)** applies.~~

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194PF Damage to land turns out to be permanent

- (1) If the adverse event was a natural event and it becomes apparent that it permanently prevents the re-establishing of a forest on the land,
 - ~~(a) if that becomes apparent before the re-establishment date, the participant may notify the EPA under **section 188AB** (then see **section 194PA(1)(b)**); or~~
 - ~~(b) if that is apparent at the re-establishment date and the participant has not notified the EPA under **section 188AB**, the participant must identify the land as permanently affected land under **section 194QB** (then see **section 194QG(2)(c)**); or~~
 - ~~(c) if that becomes apparent after the re-establishment date, the participant may notify the EPA under **section 188AB** (then see **section 194PA(1)(b)**).~~
- (2) To avoid doubt, if approved swap land is affected by another event that permanently prevents re-establishing a forest on that land, the participant may comply with **section 188AB** in relation to that event.

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*Re-establishment***194QA Re-establishment criteria**

~~A hectare of temporary adverse event land achieves re-establishment if, on the re-establishment date, the hectare has forest species on it that have, or are likely to have, tree crown cover of more than 30%.~~

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194QB Notice of achievement of re-establishment

- (1) ~~A participant in an activity of standard forestry or permanent forestry on 1 or more carbon accounting areas that contain temporary adverse event land from a CAA1 (each a CAA3) must give notice to the EPA of the extent to which the temporary adverse event land has achieved re-establishment.~~
- (2) ~~The notice must,~~
 - ~~(a) for each CAA3, identify all of the land in the CAA3 that is each of the following:~~
 - ~~(i) **re-established land**, being all of the land in the CAA3 that, on the re-establishment date, has achieved re-establishment;~~

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- (ii) ~~non-established land, being all of the land in the CAA3 that, on the re-establishment date, has not achieved re-establishment and is not permanently affected land;~~
- (iii) ~~if the adverse event was a natural event, permanently affected land, being all of the land in the CAA3—~~ 5
- ~~(A) that, on the re-establishment date, has not achieved re-establishment; and~~
- ~~(B) on which the adverse event has permanently prevented re-establishing a forest; and~~
- (b) ~~include a final forestry emissions return under **section 189BA** for the activity—~~ 10
- ~~(i) that covers each CAA3; and~~
- ~~(ii) that uses the re-establishment date as the **relevant date**; and~~
- (e) ~~include in that return a new unit balance report under **section 189EA** that covers the following carbon accounting areas (each a CAA4) formed from each CAA3:~~ 15
- ~~(i) 1 or more **re-established CAA4s** for any re-established land in the CAA3;~~
- ~~(ii) a **non-established CAA4** for any non-established land in the CAA3;~~ 20
- ~~(iii) a **permanently affected CAA4** for any permanently affected land in the CAA3; and~~
- (d) ~~include any information prescribed in the regulations under **section 194TA**.~~
- (3) ~~The notice must—~~ 25
- ~~(a) be signed by the participant; and~~
- ~~(b) be given within 60 working days after the re-establishment date; and~~
- ~~(c) be given—~~
- ~~(i) in the prescribed manner and format; and~~
- ~~(ii) together with the prescribed fee (if any); and~~ 30
- ~~(iii) together with the prescribed information (if any).~~
- (4) ~~In relation to the final forestry emissions return and new unit balance report required by **subsection (2)(b) and (c), sections 189BA to 189EA** apply as if—~~
- ~~(a) the references in those sections to CAA1 were references to CAA3; and~~ 35
- ~~(b) the references in those sections to CAA2 were references to CAA4.~~

194QC Effect on re-establishment date

- (1) ~~This section applies if a person gives the EPA a notice in accordance with **section 194QB**, including a final forestry emissions return (for the CAA3s) and new unit balance report (for the CAA4s).~~
- (2) ~~Starting on the re-establishment date, —~~ 5
- (a) ~~the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under **section 189DA**); and~~
- (b) ~~the person is not liable to surrender the unit balance of each CAA3; and~~
- (c) ~~for each re-established CAA4, —~~ 10
- (i) ~~the person is the participant in respect of the re-established CAA4 (instead of the CAA3); and~~
- (ii) ~~the land in the re-established CAA4 remains temporary adverse event land; and~~
- (iii) ~~the unit balance of the re-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and~~ 15
- (d) ~~for each non-established CAA4, —~~
- (i) ~~the person is a participant in respect of the non-established CAA4; and~~
- (ii) ~~the land in the non-established CAA4 ceases to be temporary adverse event land; and~~ 20
- (iii) ~~the unit balance of the non-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and~~
- (iv) ~~**section 194SC** applies to the land; and~~
- (e) ~~for each permanently affected CAA4, —~~ 25
- (i) ~~the person ceases to be a participant in respect of the permanently affected CAA4; and~~
- (ii) ~~the land in the permanently affected CAA4 ceases to be temporary adverse event land; and~~
- (iii) ~~the person is not liable to surrender the unit balance of each permanently affected CAA4.~~ 30
- (3) ~~The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.~~

Carbon recovery

194RA Carbon recovery criteria

A hectare of temporary adverse event land achieves **carbon recovery** when the carbon stock of the hectare (determined in accordance with regulations made under **section 194TA**) is equal to the pre-event carbon stock rate.

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194RB Notice when land achieves carbon recovery

(1) When temporary adverse event land achieves carbon recovery, the participant in respect of the land must give notice to the EPA that the land has achieved carbon recovery.

(2) The notice must —

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(a) be signed by the participant; and

(b) be given when the next emissions return that covers the land is submitted; and

(c) be given —

(i) in the prescribed manner and format; and

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(ii) together with the prescribed fee (if any); and

(iii) together with the prescribed information (if any).

(3) If a participant gives the EPA notice in accordance with this section, the land is taken to have recovered and is released from being temporary adverse event land with effect from when carbon recovery was achieved.

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Ceasing to be temporary adverse event land before recovery

194SA Cancellation for breach of conditions

(1) If the EPA is satisfied that a condition applying under **section 194NG(3)** has not been met in respect of temporary adverse event land in a carbon accounting area, the EPA may cancel the approval in respect of all of the land in the carbon accounting area.

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(2) If the approval is cancelled, —

(a) the land ceases to be temporary adverse event land; and

(b) **section 194SC** applies to the land.

Procedure

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(3) Before cancelling an approval, the EPA must —

(a) notify the participant of its intention to do so and the grounds for doing so; and

(b) give them at least 60 working days to —

(i) rectify the non-compliance; or

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(ii) show cause why the EPA should not cancel the approval.

- ~~(4) If the EPA cancels an approval, it must give the participant notice of —~~
- ~~(a) its decision and the reasons for it; and~~
 - ~~(b) the date on which the cancellation occurred; and~~
 - ~~(c) the person's right to seek a review of the decision under section 144.~~

~~**194SB Other circumstances causing land to cease to be temporary adverse event land**~~

~~*Intentional conversion to non forest land*~~

- ~~(1) Temporary adverse event land is **intentionally converted** if the participant —~~
- ~~(a) takes any action that is inconsistent with the land achieving re-establishment; or~~
 - ~~(b) otherwise takes any action for the purpose of converting the land to land that is not forest land.~~

- ~~(2) If temporary adverse event land is intentionally converted, —~~
- ~~(a) the land ceases to be temporary adverse event land; and~~
 - ~~(b) the land is to be treated as deforested (despite section 179A); and~~
 - ~~(c) the reversion date for **section 194SG** is the date on which the first action referred to in **subsection (1)(a) or (b)** occurred.~~

~~*Re-established land cleared before carbon recovery*~~

- ~~(3) If re-established land is cleared after its re-establishment date but before it achieves carbon recovery, —~~
- ~~(a) the land ceases to be temporary adverse event land; and~~
 - ~~(b) the land is to be treated as deforested; and~~
 - ~~(c) the reversion date for **section 194SG** is the date the clearing commenced.~~

~~*Re-established land treated as deforested*~~

- ~~(4) If re-established land becomes land that is to be treated as deforested under section 179(1)(b) or (c) before it achieves carbon recovery, —~~
- ~~(a) the land ceases to be temporary adverse event land; and~~
 - ~~(b) the reversion date for **section 194SG** is the 10 or 20 year date under section 179.~~

~~**194SC Consequences if land ceases to be temporary adverse event land**~~

- ~~(1) This section applies to the following land:~~
- ~~(a) non-established land that ceases to be temporary adverse event land under **section 194QG(2)(d)**, for which the reversion date is the re-establishment date:~~

~~(b) land in a carbon accounting area in respect of which the approval is cancelled under **section 194SA**, for which the **reversion date** is the date of the cancellation;~~

~~(e) land that ceases to be temporary adverse event land under **section 194SB**, for which the **reversion date** is the date specified in that section.~~

Act reappplies

~~(2) Starting on the reversion date, the provisions of the Act apply to the land as if the land had never become temporary adverse event land.~~

Liability or entitlement

~~(3) As a result, the participant must include all the emissions and removals for the land on and after the event date (including as a result of the adverse event) in the next emissions return the participant is required to submit.~~

~~(4) For that purpose,—~~

~~(a) all of those emissions and removals are to be treated as having occurred on the re-establishment date; but~~

~~(b) the emissions resulting from the adverse event are to be determined by reference to the pre-event carbon stock rate for the land.~~

Reconfiguration

~~(5) **Section 194PE(2)(c)** applies to a reconfiguration if—~~

~~(a) the land to which this section applies is only part of a carbon accounting area; and~~

~~(b) as a result of **subsection (2)**, the participant is required to reconfigure that carbon accounting area to remove that land.~~

Permanent forestry

~~(6) If the activity on the land is permanent forestry, *see also* **section 194ED(2)**.~~

Regulations

194TA Regulations for temporary adverse events

~~(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 circumstances and dates for the definitions of event date and re-establishment date in **section 194MA**;~~

~~(b) prescribing the methodology for determining:~~

~~(i) pre-event carbon stock rate (**section 194MA**);~~

~~(ii) carbon stock loss (**section 194NA**);~~

~~(iii) carbon stock for the purpose of determining carbon recovery (**section 194RA**);~~

- ~~(e) prescribing the kinds of events that are adverse events (**section 194NA**):~~
- ~~(d) prescribing —~~
 - ~~(i) minimum affected area (**section 194NA(1)(d)**):~~
 - ~~(ii) minimum carbon stock loss (**section 194NA(1)(e)**):~~ 5
- ~~(e) prescribing other information to be included in, the submission date for, and other requirements for applications made under **section 194NA**:~~
- ~~(f) prescribing notification requirements and other criteria for approval under **section 194NB**:~~
- ~~(g) prescribing conditions for **section 194NG(3)**:~~ 10
- ~~(h) providing that a participant for temporary adverse event land is not required to —~~
 - ~~(i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units:~~
 - ~~(ii) submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units (**section 194PG(3)**):~~ 15
- ~~(i) prescribing other information to be included in, and other requirements for, notices under **section 194QB**:~~
- ~~(j) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.~~ 20
- ~~(2) Regulations under this section may make different provision for different cases on any differential basis.~~
- ~~(3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.~~ 25
- ~~(4) Regulations made under **subsection (1)(g)** may relate to emissions or removals that —~~
 - ~~(a) stem directly from an activity; or~~
 - ~~(b) are associated with a product or other thing that is the subject of an activity.~~ 30
- ~~(5) See also sections 166 (procedure) and 169 to 175 (incorporation by reference).~~

180 New sections 194UA to 194UC and cross-headings inserted

Before section 195, insert:

Input returns may be submitted before actual emissions returns

194UA Input returns may be submitted for certain emissions returns for forestry activities

- (1) This section applies before a person submits an emissions return (for a forestry activity) of a type specified in the regulations. 5
- (2) The person may first submit, for the activity and 1 or more of the areas or carbon accounting areas covered by the emissions return, an input return that contains the data or information required by the regulations.
- (3) The input return must be submitted by—
 - (a) the deadline specified in the regulations; or 10
 - (b) any extended deadline granted by the EPA under the regulations.
- (4) In this section, **regulations** means regulations made under **section 194UC**.

194UB EPA may do calculations based on input return

- (1) This section applies if the EPA receives an input return in accordance with **section 194UA**. 15
- (2) As soon as practicable after receipt, the EPA must—
 - (a) calculate for each area or carbon accounting area covered by the input return, as required for the relevant emissions return,—
 - (i) the participant's emissions and removals; and
 - (ii) the participant's liability to surrender units for their emissions or entitlement to receive New Zealand units for their removals; and 20
 - (b) give a notice to the participant that includes—
 - (i) the calculations and the calculated amounts; and
 - (ii) the data, information, or other matters on which the calculations ~~were~~ are based; and 25
 - (iii) a statement that the participant may choose to include the calculations and the calculated amounts in the relevant emissions return; and
 - (iv) a statement about the effect of **subsection (3)**.
- (3) The EPA is not liable for anything that results from its calculations under this section, and the EPA's calculations ~~or notice do not~~ and notice do not affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return). 30

194UC Regulations for input returns

- (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: 35

- (a) specifying the 1 or more types of emissions return for a forestry activity for which input returns may be submitted, which may be specified by reference to 1 or more of the following:
- (i) the type of forestry activity:
 - (ii) any feature of the forest or land to which the activity relates: 5
 - (iii) any other matter:
- (b) specifying the data or information that must be contained in any input return or the input return for each type of emissions return:
- (c) specifying the deadline for submitting the input return for each type of emissions return, which must be a reasonable period before the deadline for submitting the emissions return: 10
- (d) providing for how, and for how long, the EPA may extend a deadline for submitting the input return for any emissions return or for each type of emissions return:
- (e) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to the matters specified under **paragraphs (b) to (d)**. 15
- ~~(2) Before recommending the making of regulations under this section, 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 the regulations. 20~~
- ~~(3) The process for consultation must include—~~
- ~~(a) giving adequate and appropriate notice of the proposed terms of the recommendation, and of the reasons for it; and~~
 - ~~(b) the provision of a reasonable opportunity for interested persons to consider the recommendation and make submissions; and 25~~
 - ~~(c) adequate and appropriate consideration of submissions.~~
- ~~(4) A failure to comply with this section does not affect the validity of regulations made under it.~~
- (2) See sections 3A and 3B for consultation requirements that apply to the making of the regulations. 30
- (5) Any guidelines or standards issued by the EPA under regulations made under **subsection (1)(e)** are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act. 35
- (6) A person who has complied with guidelines or standards issued by the EPA under regulations made under **subsection (1)(e)** is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

Notification of status of forest land

181 Section 195 amended (Notification of status of forest land)

(1) In section 195(1), replace “pre 1990 forest land, pre 1990 offsetting forest land, or post 1989 forest land in respect of which a person has registered as a participant under section 57, or that the EPA has declared to be exempt land” with “a type of land described by **subsection (1A)**”.

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(2) After section 195(1), insert:

(1A) The types of land are—

(a) the following types of land in respect of which a person is registered as a participant:

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(i) pre 1990 forest land;

(ii) pre 1990 offsetting forest land;

(iii) post 1989 forest land;

(b) the following types of post 1989 forest land:

(i) approved swap land (as defined by **section 194FA**);

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(ii) temporary adverse event land;

(iii) land for which a person is registered as a participant in permanent forestry;

(c) land that the EPA has declared to be exempt land.

182 Sections 196 and 197 and cross-heading replaced

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Replace sections 196 and 197 and the cross-heading above section 196 with:

Forestry classifications of land

196A Meaning of forestry classification

In this Act, **forestry classification** means 1 or more classifications of an area of land that—

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(a) classifies the area by whether or how—

(i) a definition or matter in the Act that relates to forestry applies to the area; or

(ii) the area is eligible to have a definition or matter in the Act apply to it if certain requirements are satisfied; and

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(b) is given—

(i) by the EPA under **section 196B** (initial classification), **196D** (change of classification to correct error), **196E** (change of classification to update for changes), or 144 (review of classification); or

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- (ii) by the decision of the District Court or High Court under section 145 or 146.

Examples

If specified by regulations, an area of land might be classified as—

- pre-1990 forest land: 5
- post-1989 forest land:
- land that is eligible to become post-1989 forest land (if it becomes forest land):
- pre-1990 offsetting forest land:
- land that has been deforested, or deforested on specified dates: 10
- land that is eligible to be declared exempt land under section 184 (because of tree weeds):
- ~~post-1989 forest land for which a participant is registered for standard forestry that is or is not a carbon accounting area (averaging):~~
- ~~post-1989 forest land for which a participant is registered for permanent forestry:~~ 15
- land that was forest land on 31 December 1989:
- exempt land:
- pre-1990 forest land to which the pre-1990 forest land allocation plan applies: 20
- something else.

196B EPA may give forestry classifications to areas of land

The EPA may give 1 or more forestry classifications to an area of land in accordance with regulations made under **section 196G**.

196C Effect of forestry classifications 25

- (1) The forestry classification of an area of land is conclusive evidence of how the relevant definition or matter in the Act applies to the area.
- (2) The EPA must apply this Act to the area in accordance with the forestry classification.
- (3) If a person’s application, notice, emissions return, or other document under this Act specifies the forestry classification of an area of land, the document— 30
 - (a) need not include any information that is covered by the forestry classification; but
 - (b) for a forestry classification that an area of land is eligible for something if certain requirements are satisfied, must include information about 35 whether the requirements are satisfied.
- (4) The EPA, or any person carrying out its powers, duties, or functions,—

- (a) does not warrant that any forestry classification is correct and not based on, or affected by, something that is incorrect or that has materially changed; and
- (b) is not liable for anything that results from a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed.

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196D Change of forestry classification to correct error

- (1) The EPA may change the forestry classification of an area of land to correct any error that the EPA is satisfied is contained in the classification, including where the classification was based on incorrect information.
- (2) The EPA must make the change in accordance with regulations made under **section 196G**.

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196E Change of forestry classification to update for changes

- (1) The EPA may change the forestry classification of an area of land if—
 - (a) there is a material change in any of the information or facts on which the classification is based; or
 - (b) there is a material change to this Act, or to any regulations made under this Act, that affects the classification.
- (2) The EPA must make the change in accordance with regulations made under **section 196G**.

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196F Forestry classification with effect before date classification given

- (1) This section applies if a forestry classification has effect before the date on which the classification is given, whether—
 - (a) by the EPA under **section 196B, 196D, or 196E** or on review under section 144; or
 - (b) by the decision of a court on appeal under section 145 or 146.
- (2) The forestry classification must be ignored in respect of the period before the date of the decision—
 - (a) to the extent that it would increase the number of units that a person is required to surrender, or decrease the number of New Zealand units that a person is entitled to receive, in respect of that period; and
 - (b) in respect of any other matter specified by regulations made under **section 196G**.
- (3) In all other respects, the forestry classification must be applied to that period.
- (4) To avoid doubt, where the forestry classification is ignored under **subsection (2)**, the earlier forestry classification (if any) applies instead.

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196G Regulations for forestry classifications

- (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) specifying the forestry classifications that the EPA may give to areas of land: 5
 - (b) prescribing 1 or more methods or processes by which the EPA may give a new or changed forestry classification to an area, and those methods or processes—
 - (i) may or may not provide for a person to apply for a classification; and 10
 - (ii) may prescribe the fees or charges payable by an applicant for a classification to enable the recovery of all or part of the direct and indirect costs of the EPA in—
 - (A) receiving and processing the application; and
 - (B) considering, granting, or declining the application; and 15
 - (iii) must require the EPA to first consult the persons that the regulations specify are likely to be substantially affected by the classification, unless the only persons likely to be substantially affected have applied for, or agreed to, the classification:
 - (c) providing for when a forestry classification comes into effect, which may, for example,— 20
 - (i) subject to **section 196F**, be before the date of the decision if the classification is changed under **section 196D** or **196E**, on review by the EPA under section 144, or on appeal to the court under section 145 or 146: 25
 - (ii) differ for different forestry classifications or circumstances, such as whether a person is responsible for a material change described in **section 196E(1)(a)**:
 - (d) specifying matters for the purposes of **section 196F(2)(b)** (in respect of which a forestry classification is ignored for the period before the date of the decision): 30
 - (e) providing for the publication of the following in 1 or more notices, instruments, maps, or tools, which may be electronic:
 - (i) any decision to give a forestry classification to an area of land:
 - (ii) the current forestry classifications of all areas of land, and any related matters. 35
- (2) Examples of the costs that may be recovered under regulations made under **subsection (1)(b)(ii)** include (but are not limited to)—
- (a) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with the application: 40

- (b) the costs of services provided by third parties.
- (3) Section 167(4) also applies to regulations made under **subsection (1)(b)(ii)**.
- (4) See sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.
- (5) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

Grant-funded forests

197 Entitlement to units for removals from grant-funded forests

A participant in an activity of standard forestry or permanent forestry on a carbon accounting area is not entitled to receive New Zealand units for removals that—

- (a) are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under **section 197A** (a **grant-funded forest**); and
- (b) occur during the stand-down period for that forest prescribed in regulation made under **section 197A**.

197A Regulations for grant-funded forests

- (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 Crown grant schemes relating to forestry:
 - (b) prescribing stand-down periods for grant-funded forests:
 - (c) prescribing methodologies for attributing removals to grant-funded forests:
 - (d) providing for any other matters contemplated by **section 197**, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
 - (a) for different grant schemes:
 - (b) for different periods of time:
 - (c) for different forest species:
 - (d) for different parts of New Zealand.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under **subsection (1)(c)** may relate to emissions or removals that—

- (a) stem directly from the activity; or
- (b) are associated with a product or other thing that is the subject of the activity.

183 Section 198 amended (Registration as participant by purchasers of obligation fuel) 5

Replace section 198(2) and (3) with:

- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 3 of Schedule 4, the registration takes effect 12 months after the date of the notice issued under **section 57(6)**.
- (3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 3 of Schedule 4, the EPA must remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the notice issued under section 58(3)(b). 10
- (4) The participant who is registered, or removed from registration, under this section must give notice of that matter, and the date that it took or takes effect, to every person who is registered under section 56 in respect of an activity in Part 2 of Schedule 3. 15
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA's notice about, or becomes aware of, the matter. 20
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

184 Section 202 amended (Activities added to Part 2 of Schedule 3) 25

- (1) In section 202(2), replace "that an Order in Council be made" with "recommend the making of an Order in Council".
- (2) In section 202(2)(b)(ii), replace "New Zealand's international obligations" with "international climate change obligations".

185 Section 209 amended (Registration as participant by purchasers of coal or natural gas) 30

Replace section 209(2) to (4) with:

- (2) If the EPA registers a person as a participant under section 57 in respect of an activity listed in Part 4 of Schedule 4, the registration takes effect 12 months from the date of the notice issued under **section 57(6)**.
- (3) If the EPA has received an application under section 58 for removal of a person's name from the register as a participant in respect of an activity listed in Part 4 of Schedule 4, the EPA must remove, under section 58(4), the applicant's name from the register on the date that is 48 months after the date of the notice issued under section 58(3)(b). 35

- (4) The participant who is registered, or removed from registration, under this section in respect of an activity must give notice of that matter, and the date that it took or takes effect, to every person who—
- (a) mines—
 - (i) coal, if the activity is purchasing coal; or
 - (ii) natural gas, if the activity is purchasing natural gas; and
 - (b) is registered under section 56.
- (5) The notice must be given in writing or electronically as soon as practicable after the participant receives the EPA’s notice about, or becomes aware of, the matter.
- (6) The EPA must provide the participant with any address that it has recorded for each person who must be notified.

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~~186 New section 211A inserted (Effect of stockpiling coal by coal importer or miner)~~

~~After section 211, insert:~~

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~~211A Effect of stockpiling coal by coal importer or miner~~

- (1) ~~This section applies to a person if—~~
- (a) ~~they are registered as a participant in an activity listed in Part 3 of Schedule 3 of—~~
 - (i) ~~importing coal; or~~
 - (ii) ~~mining coal where the volume of coal mined exceeds 2,000 tonnes in a year; and~~
 - (b) ~~any of the coal they imported or mined as a participant in that activity has not been used or sold, gifted, or otherwise provided free of charge to anyone else.~~
- (2) ~~If this section applies to a person,—~~
- (a) ~~the person must not notify the EPA under section 59(1) that they have ceased, or will cease, to carry out the activity; and~~
 - (b) ~~the EPA must not, under section 59(2), treat the person as having ceased to carry out the activity; and~~
 - (c) ~~the person remains a participant in the activity until their name is removed, in accordance with this Act, from the register that is kept for the purposes of section 57.~~

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186A Section 213 amended (Participant in respect of subpart 4 of Part 5 of Schedule 3)

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In section 213(1)(b)(i) and (ii), replace “section 2A(9)” with “**section 2A(5D)**”.

186B New sections 215 and 216 inserted

After section 214, insert:

215 Ministers to report on alternative pricing system for farm-level agriculture emissions

(1) The Minister and the Minister of Agriculture must prepare a report that outlines a system to put a price on emissions from agricultural activities (including, but not limited to, the activities listed in Part 5 of Schedule 3) as an alternative to the emissions trading scheme currently provided for in this Act.

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(2) The report must be prepared and made publicly available by 31 December 2022.

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(3) The report must discuss the following matters in relation to the emissions trading scheme and the alternative system outlined under **subsection (1)**:

(a) how emissions from those activities would be priced and accounted for:

(b) whether other activities or participants would be included in the system:

(c) what methodologies would be used for calculating emissions and removals:

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(d) what assistance, if any, would be given to participants:

(e) how emissions of methane would be treated relative to other greenhouse gases, including whether, how, and what types of removals would be recognised:

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(f) what information participants would need to provide and how that information would be used, shared, or made publicly available:

(g) how participants and relevant industry groups would be engaged with in designing, implementing, and operating the system:

(h) who would be responsible for administering the system:

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(i) what amendments would need to be made to legislation to enable the system to work.

(4) Before preparing the report, the Ministers must—

(a) request a report from the Climate Change Commission under **section 5K** about what assistance, if any, should be given to participants; and

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(b) consider that advice.

(5) In this section, **Minister of Agriculture** means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of the Commodity Levies Act 1990.

216 Regulations for voluntary reporting or surrender for animals–farmer or fertiliser–farmer activity

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(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) providing for a process by which a person carrying out an activity described by the fertiliser–farmer subpart or animals–farmer subpart (of Part 5 of Schedule 3) may choose to be treated as a participant in the activity described:
- (b) providing that the person may choose to be treated in that way in respect of 1 or both of— 5
- (i) obligations to report under this Act on the emissions from the activity:
- (ii) obligations to surrender units under this Act for the emissions from the activity: 10
- (c) providing for the following participants in **corresponding processor activities** to be notified:
- (i) a participant in a fertiliser–processor activity that corresponds to a fertiliser–farmer activity for which a participant has become subject to obligations to surrender under this Act: 15
- (ii) a participant in an animals–processor activity that corresponds to an animals–farmer activity for which a participant has become subject to obligations to surrender under this Act:
- (d) if regulations are made under **paragraph (b)(ii)**, providing for a process by which a participant in a corresponding processor activity— 20
- (i) ceases to be subject to obligations to surrender under this Act in respect of that activity, or becomes subject to such obligations as varied to ensure that only 1 person is liable to surrender units in respect of the corresponding processor activities or the activities to which they correspond; and 25
- (ii) ceases to be entitled to allocations in respect of the activities for which they are no longer liable to surrender units.
- (2) Before recommending the making of the regulations, the Minister must consult the Minister of Agriculture.
- (3) See **section 3B** for consultation requirements that apply to the making of the regulations. 30

187 Section 217 amended (Transitional provision for penalties)

- (1) Repeal section 217(1)(a) to (e) and (2)(a).
- (2) In section 217(2)(b)(ii), replace “an excess emissions penalty under section 134(2)(b)(ii) or 134A(2)(b)” with “a penalty under **section 134, 134A, or 134C**”. 35
- (3) In section 217(2)(c), replace “section 134, 134A, or 136” with “**section 134**”.

187 Section 217 amended (Transitional provision for penalties)

- (1) Replace section 217(1) with:

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Amendment Bill

Part 1 cl 188

(1) This section applies in respect of the first year in which a participant is required to surrender units for emissions in respect of an activity listed in subpart 2 or 4 of Part 5 of Schedule 3.

(1A) Subsection (2) applies—

(a) to the participant if they submit an annual emissions return that relates to that first year; and

(b) in respect of the units that the participant is required to surrender in respect of the activity.

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(2) Repeal section 217(2)(a).

188 Section 218 amended (Transitional provision for voluntary reporting)

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(1) Replace section 218(1) with:

(1) This section applies to a person who carries out an activity listed in subpart 2 of Part 5 of Schedule 3 in the year commencing on a date appointed by Order in Council made under ~~section 2A(8)~~ **section 2A(5B)** (to the extent the order applies to persons carrying out an activity listed in ~~those subparts~~ that subpart) on and after which ~~the relevant~~ that subpart applies to the person.

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(2) Repeal section 218(2)(a).

(3) In section 218(2)(ab), delete “, if the person carries out an activity specified in subsection (1)(a)(iv) during the relevant period,”.

(4) In section 218(2)(b), delete “, if the person has notified the EPA that the person carries out an activity in subsection (1)(a), or is a person to whom subsection (1)(b) applies,”.

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(5) In section 218(2)(b), delete “66 or”.

~~**189 Section 219 amended (Transitional provision for mandatory reporting by certain participants)**~~

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~~(1) Replace section 219(1) with:~~

~~(1) This section applies to a person who carries out an activity listed in any of the following:~~

~~(a) subpart 1 or 3 of Part 5 of Schedule 3 in the period—~~

~~(i) beginning on 1 January 2012; and~~

~~(ii) ending on the date that surrender obligations for agriculture start.~~

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~~(b) subpart 2 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) (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;~~

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~~(c) subpart 4 of Part 5 of Schedule 3 in the 2024 calendar year.~~

~~(2) Repeal section 219(3) to (5).~~

~~190 Sections 220 to 222 repealed~~

~~Repeal sections 220 to 222.~~

190 Sections 219 to 222 replaced

Replace sections 219 to 222 with:

219 Transitional provision for surrender obligations of certain participants

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(1) This section applies to a person who carries out the following in the specified period (the **excluded period):**

(a) a fertiliser–processor activity in the period starting on 1 January 2011 and ending on—

(i) 31 December 2024, if by that date no earlier date has been appointed; or

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(ii) an earlier date appointed by an Order in Council made under **subsection (3); or**

(b) a fertiliser–farmer activity in the first year in which the fertiliser–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on a date appointed by an Order in Council made under **section 2A(5B)); or**

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(c) an animals–processor activity in the period starting on 1 January 2011 and ending on—

(i) 31 December 2024, if by that date no earlier date has been appointed; or

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(ii) an earlier date appointed by an Order in Council made under **subsection (3); or**

(d) an animals–farmer activity in the first year in which the animals–farmer subpart applies to persons, or the class of persons, carrying out that activity (starting on 1 January 2024 or a later date appointed by an Order in Council made under **section 2A(5D)).**

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(2) Even if the person’s emissions return reports emissions for the excluded period, the person is not liable under this Act to surrender units for those emissions.

(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, appoint a date for the purpose of **subsection (1)(a)(ii) or (c)(ii) (the **earlier date**).**

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(4) Before recommending the making of an order appointing an earlier date, the Minister must—

(a) consult with the Minister of Agriculture (as defined in **section 215); and**

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(b) consider the report provided by the Climate Change Commission under **section 220; and**

- (c) be satisfied that progress of the kind referred to in **section 220(b)** has been insufficient.
- (5) In recommending the making of an order appointing an earlier date, the Minister must not recommend a date that is before 1 July 2022.
- 220 Commission to report on progress towards meeting farm-level obligations** 5
The Commission must, not later than 30 June 2022, provide written advice to the Minister on—
- (a) the progress that has been made towards meeting the primary sector climate change commitments set out in **Schedule 5**; and
- (b) the progress that has been made towards participants in an activity listed in subpart 4 of Part 5 of Schedule 3 being ready to start complying with reporting and surrender obligations under this Act in respect of that activity; and 10
- (c) any barriers to those participants being ready to start complying with those obligations; and 15
- (d) what further steps (if any) are required by the primary sector or the Government for those participants to be ready to start complying with those obligations.
- 191 Section 222H amended (Transitional provision for unincorporated bodies)**
Repeal section 222H(3) to (5). 20
- ~~**192 Section 233 amended (Rate of synthetic greenhouse gas levy)**~~
- (1) ~~In section 233(1), formula, replace the definition of variable B with:~~
- ~~**B** is the lesser of \$25 and the price of carbon specified by or under regulations made under **section 30W**~~
- (2) ~~Repeal section 233(4) to (6).~~ 25
- 192 Section 233 amended (Rate of synthetic greenhouse gas levy)**
- (1) Replace section 233(5) with:
- (5) Regulations made under subsection (4)(a)—
- (a) must be made in accordance with the consultation requirements in **section 3B**; and 30
- (b) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.
- (2) In section 233(6), replace “making a recommendation under subsection (4)” with “recommending the making of the regulations”.
- ~~**193 Sections 234 and 236 repealed**~~ 35
~~Repeal sections 234 and 236.~~

- 193 Section 234 repealed (Transitional provision for synthetic greenhouse gas levy)**
Repeal section 234.
- 193A Section 236 amended (Maximum price of carbon for purpose of levy calculation)** 5
In section 236(3), replace “the Minister may make a recommendation” with “recommending the making of an Order in Council”.
- 194 Section 243 amended (Circumstances where levy may be refunded)**
In section 243(1)(b), replace “greenhouse gas emissions” with “emissions”.
- 194A Section 244 amended (Exemptions from payment of synthetic greenhouse gas levy)** 10
Replace section 244(6) with:
(6) See sections 3A and 3B for consultation requirements that apply to the making or revocation of an order under this section.
- 194B Section 245 amended (Regulations specifying levy rates)** 15
Replace section 245(4) with:
(4) Regulations made under subsection (1) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.
- ~~**195 Section 246 amended (Regulations relating to synthetic greenhouse gas levy)**~~ 20
~~In section 246(2), replace “New Zealand’s international obligations” with “international climate change obligations”.~~
- 195 Section 246 amended (Regulations relating to synthetic greenhouse gas levy)** 25
Replace section 246(2) and (3) with:
(2) Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations relating to synthetic greenhouse gases.
(3) See sections 3A and 3B for consultation requirements that apply to the making of regulations under subsection (1)(a) to (e). 30
(4) Regulations made under subsection (1)(a) to (e) come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

| Climate Change Response (Emissions Trading Reform) | |
|--|--|
| Amendment Bill | |
| Part 1 of 196 | |
| 196 | Section 247 amended (Process for making orders and regulations) |
| | In section 247(1) and (3), replace “section 233(4)(a), 246(1)(a) to (e), or” with “section 246(1)(a) to (e) or”. |
| 196 | Section 247 repealed (Process for making orders and regulations) |
| | Repeal section 247. 5 |
| 197 | Section 249 amended (Application of section 88 (Directions to EPA)) |
| | In section 249, replace “Part 5” with “the ETS participant provisions”. |
| 198 | Section 252 amended (Enforcement officers) |
| | In section 252, replace “under Part 4 in relation to this Part” with “under this Part (which relate to verification and inquiry about compliance with this Part)”. 10 |
| 199 | Section 257 amended (Power of entry for investigation, warrants, etc) |
| | In section 257, replace “Part 5” with “the ETS participant provisions”. |
| 200 | Section 258 amended (Regulations relating to verifiers) |
| | In section 258(3), replace “New Zealand’s international obligations” with “international climate change obligations”. 15 |
| 200 | Section 258 amended (Regulations relating to verifiers) |
| | Replace section 258(3) with: |
| | (3) <u>Before recommending the making of regulations under subsection (1)(a), the Minister must have regard to international climate change obligations in respect of the collection of data and information relating to specified synthetic greenhouse gases.</u> 20 |
| | (4) <u>See sections 3A and 3B for consultation requirements that apply to the making of regulations under this section.</u> |
| 200A | Section 269 amended (Review of operation and effectiveness of levy) |
| | Replace section 269(4)(b) with: 25 |
| | (b) <u>make the report of the panel publicly available; and</u> |
| 201 | Section 270 amended (Appointment and conduct of independent panel) |
| | Replace section 270(1)(c)(ii) with: |
| | (ii) <u>international climate change obligations and any other relevant international agreement; and</u> 30 |
| 202 | New Schedule 1AA inserted |
| | Before Schedule 1, insert the Schedule 1AA set out in Schedule 1 of this Act. |

202 Schedule 1AA amended

In Schedule 1AA, after clause 3, insert:

Part 2
Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2019

4 **Interpretation**

In this Part,—

amendment Act means the Climate Change Response (Emissions Trading Reform) Amendment Act 2019

third mandatory emissions return period means the 5-year period starting on 1 January 2018 and ending on 31 December 2022.

Subpart 1—Provisions that commence on day after Royal assent

5 **Satisfying requirements for making regulations**

(1) This clause applies to any requirement for the making of any regulations under this Act as amended by the amendment Act.

(2) Anything done before the commencement of this clause satisfies the requirement as long as it would have satisfied the requirement if it had been done after the commencement.

6 **New regulations may commence on or after commencement of clause**

Any regulations made under this Act before the commencement of this clause may come into force on, or at any time after, that commencement, despite anything in this Act that prevents them from coming into force within a certain period after the date of their notification in the *Gazette*.

7 **Making first regulations about limits and price controls for units**

(1) If regulations are to be made under **section 30GB** before there is an emissions budget, **section 30GC(2)(a)** applies as if it instead referred to any provisional budget for the emission of greenhouse gases that is set by the Crown.

(2) When an emissions budget is first set,—

(a) the Minister must recommend the making of regulations under **section 30GB** to prescribe new limits or price control settings as required to comply with **section 30GC(2)**; and

(b) the Minister may recommend prescribing a new limit or price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made, despite **section 30GB(5)**.

- 8** **Existing accounts continue**
If any account established in the Registry (under section 7(1)(a), for example) existed immediately before the commencement of this clause, it continues to exist after the commencement.
- 9** **Information accessible by search of unit register** 5
If section 27 applies to information immediately before its amendment by the amendment Act, it continues to apply in accordance with that section as if it were not amended.
- 10** **Information to be published by EPA**
(1) For a reporting year beginning before 1 January 2023, the EPA is not required to publish the information required under section 89(1)(e) in respect of an activity or the information required under section 89(1)(i) if the EPA is satisfied that publishing the information would result in the disclosure of a participant’s individual emissions or an eligible person’s own allocation, unless— 10
(a) the participant or eligible person to whom the information relates has consented to the publication of the information; or 15
(b) the information is already in the public domain.
(2) **Section 89A** does not apply in respect of an emissions return for emissions or removals before 1 January 2020, unless—
(a) the return also relates to a period after 1 January 2020; and 20
(b) it is possible for emissions or removals occurring before 1 January 2020 to be excluded from the published information.
(3) **Section 89A—**
(a) applies in respect of emissions returns submitted under section 189, 191, or 193 for emissions or removals on or after 1 January 2020; but 25
(b) does not apply in respect of any other emissions returns in relation to post-1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.
- 11** **Members of existing consolidated groups jointly and severally liable**
(1) The joint and several liability to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it were joint and several liability for any obligations under the ETS participant provisions in respect of emissions and removals resulting from, or allocations, penalties, or interest relating to, the relevant activities. 30
(2) The transfer of units to the consolidated group’s holding account (on behalf of the group) to which each member of a consolidated group has agreed, immediately before the commencement of this clause, is treated as if it included the transfer of any units to which a member becomes entitled by an allocation relating to a relevant eligible activity. 35

12 Consolidated group for activity relating to forestry

(1) In this clause, an **existing forestry consolidated group** means a consolidated group that—

(a) was formed in respect of an activity or activities listed in Part 1 or 1A of Schedule 3 or Part 1 of Schedule 4; and

(b) exists immediately before the commencement of this clause.

(2) Sections 150 and 151A do not apply to an existing forestry consolidated group (so that no members or activities may be added to the group).

(3) The nominated entity of an existing forestry consolidated group—

(a) may submit a single emissions return under section 189(3) in respect of 1 or more of the activities listed in Part 1 of Schedule 4 carried out by a member of the group in a year; and

(b) must submit any emissions return required under a provision of **Part 5** on behalf of any member of the group when the member is required to do so; and

(c) must sign any emissions return submitted by the nominated entity in accordance with section 65(2)(f) on behalf of the group.

(4) In relation to an existing forestry consolidated group, **section 153(2) to (4)** applies to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in **subclause (2)** as if the references in that section to a year were references to the period covered by the emissions return.

(5) To avoid doubt, only the nominated entity for an existing forestry consolidated group may submit an emissions return for the group.

203 New Schedule 2A inserted

After Schedule 2, insert the **Schedule 2A** set out in **Schedule 2** of this Act.

204 Schedule 3 amended

(1) In Schedule 3, Part 1, replace “the 5-year period commencing on 1 January 2008, or in any subsequent 5-year period after that” with “any mandatory emissions return period”.

(2) In Schedule 3, Part 2, delete “, *subject to sections 218 and 219,*”.

(2A) In Schedule 3, Part 3, subpart 1, replace the item “Mining coal where the volume of coal mined exceeds 2 000 tonnes in a year” with:

Satisfying 1 or both of the following in respect of a year (**mining coal**):

(a) mining more than 2 000 tonnes of coal in the year (**direct coal mining**):

(b) owning at least 2 000 tonnes of coal, from the person’s direct coal mining, at the start of the year, and where the year is immediately after (**coal stockpiling**)—

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- (i) a year of direct coal mining; or
- (ii) 1 or more consecutive years of owning at least 2 000 tonnes of coal (from the person’s direct coal mining) at the start of the year, after an initial year of direct coal mining.

(2B) In Schedule 3, Part 3, subpart 1, after the final item, insert: 5

Example

A person mines 2 500 tonnes of coal in 2022, which is “direct coal mining” and therefore “mining coal” in 2022. They stop direct coal mining, but still own (from their mining) 2 250 tonnes of coal at the start of 2023 and 2 000 tonnes at the start of 2024, which is “coal stockpiling” and therefore “mining coal” in 2023 and 2024 (under **paragraph (b)(i) and (ii)** of that term, respectively). 10

- (3) In Schedule 3, subpart 2 of Part 4, delete “, *subject to sections 218 and 219,*”.
- (4) In Schedule 3, subpart 1 of Part 5, replace “(*applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 2 brought into force*)” with “(~~*reporting obligations apply from 1 January 2011; surrender obligations apply from 1 January 2025*~~)(*applies on and after 1 January 2011, but is subject to **section 219***”. 15
- (5) In Schedule 3, subpart 2 of Part 5, replace “(*applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council*)” with “(~~*reporting and surrender obligations apply from a date to be determined by Order in Council*~~)(*applies on and after a date appointed by Order in Council, but is subject to sections 218 and **219***”. 20
- (6) In Schedule 3, subpart 3 of Part 5, replace “(*applies, subject to sections 218 and 219, on and after 1 January 2011 unless subpart 4 brought into force*)” with “(~~*reporting obligations apply from 1 January 2011*~~)(*applies on and after 1 January 2011, but is subject to **section 219***”. 25
- (7) In Schedule 3, subpart 4 of Part 5, replace “(*applies, subject to sections 218 and 219, from 1 January 2011, if determined by Order in Council*)” with “(~~*reporting obligations apply from 1 January 2024; surrender obligations apply from 1 January 2025*~~)(*applies on and after 1 January 2024 or a later date appointed by Order in Council, but is subject to **section 219***”. 30
- (8) In Schedule 3, Part 6, delete “, *subject to sections 218 and 219,*”.

205 Schedule 4 amended

~~(1) In Schedule 4, replace Part 1 with:~~

Part 1

Standard forestry removal activities

(applies on and after 1 January 2008)

~~Any of the following activities in respect of post 1989 forest land, having chosen this Part (instead of **Part 1A**) to apply to the land:~~

- ~~(a) owning the land, other than post 1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949:~~
- ~~(b) holding a registered forestry right for the land or being the leaseholder under a registered lease of the land, other than post 1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949:~~
- ~~(c) being a party to a Crown conservation contract in respect of the land.~~

Part 1A

Permanent forestry removal activities

~~*(applies on and after the day after Royal assent for Climate Change Response (Emissions Trading Reform) Amendment Act 2019)*~~

~~Any of the activities specified in Part 1 in respect of post 1989 forest land, having chosen this Part (instead of Part 1) to apply to the land.~~

- ~~(2) In Schedule 4, subpart 1 of Part 2, paragraph (c)(ii), replace “New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement” with “any emissions report provided by New Zealand under its international climate change obligations”.~~
- ~~(3) In Schedule 4, subpart 2 of Part 2, paragraph (b), replace “New Zealand’s annual inventory report under the Convention or Protocol or any emissions report from New Zealand under a successor international agreement” with “any emissions report provided by New Zealand under its international climate change obligations”.~~
- ~~(4) In Schedule 4, subpart 3 of Part 2, delete “, subject to sections 218, 219, and 220,”.~~

205A New Schedule 5 inserted

After Schedule 4, insert the **Schedule 5** set out in **Schedule 2A** of this Act.

Subpart 2—Amendments that commence on 30 November 2020

206 Section 30G amended (Regulations relating to Part 2)

Replace section 30G(3) with:

- (3) Any regulation made under subsection (1)(b)(i) or (c) applies to only the following units:
- (a) all units that are not held in an account in the Registry at the time that the regulation comes into force; and
 - (b) approved overseas units that are issued before 1 January 2021 (the start of the third commitment period). 5
- 207 Section 183A amended (Certain applications not otherwise permitted by section 183)**
In section 183A(2)(b), replace “New Zealand units” with “units”.
- ~~**208 Section 186B amended (Criteria for approving offsetting forest land applications)**~~ 10
~~In **section 186B(3)(a)(i)**, delete “New Zealand”.~~
- 209 Section 186H amended (Treatment of allocations in respect of pre-1990 forest land that is offset)**
- (1) In section 186H(2)(b), replace “New Zealand units equivalent to the portion of New Zealand” with “units equivalent to the portion of”. 15
 - (2) In section 186H(3)(a), (4), and **(6)**, delete “New Zealand”.
- 209A Section 189 amended (Emissions returns for post-1989 forest land activities)** 20
In section 189(8)(b), delete “New Zealand”.
- 209B Section 191 amended (Ceasing to be registered as participant in respect of post-1989 forest land)**
Repeal section 191(1)(c) and (1A).
- ~~**210 Section 189DA amended (Total liability or entitlement has effect, and unit balance updated, when emissions return submitted)**~~ 25
~~In **section 189DA(2)(b)**, delete “New Zealand”.~~
- ~~**211 Section 191AB amended (Effect of ceasing participation for whole carbon accounting areas)**~~
~~In **section 191AB(1)(b)**, delete “New Zealand”.~~
- ~~**212 Section 191BB amended (Effect of ceasing participation for part carbon accounting areas)**~~ 30
- (1) ~~In **section 191BB(2)(c)**, delete “New Zealand”.~~
 - (2) ~~In **section 191BB(2)(f)**, delete “(as long as only New Zealand units are surrendered for the liability in **paragraph (c)**)”.~~

- 213** ~~Section 194AA amended (EPA may act if persons fail to give notice of transmitted interest)~~
In ~~section 194AA(4)(a) and (b)~~, delete “New Zealand”.
- 214** ~~Section 194DF amended (Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging))~~ 5
In ~~section 194DF(2)~~, delete “New Zealand”.
- 215** ~~Section 194DG amended (Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry)~~ 10
In ~~section 194DG(2)~~, delete “New Zealand”.
- 216** ~~Section 194EL amended (Removal of carbon accounting area from permanent forestry)~~
In ~~section 194EL(2)(b)~~, delete “New Zealand”.
- 217** ~~Section 194FC amended (Averaging accounting applies to carbon accounting areas (averaging))~~ 15
In ~~section 194FC(2)(a)~~, replace “surrender New Zealand units” with “surrender units”.
- 218** ~~Section 194GC amended (Effect of approval of application to swap land)~~
In ~~section 194GC(2)(b)~~, delete “New Zealand”.
- 219** ~~Section 194JC amended (Liability to surrender units if release criteria not met)~~
In ~~section 194JC(2)~~, delete “New Zealand”.
- 220** ~~Section 194KB amended (Effect of declaration after release date)~~
In ~~section 194KB(2)(c)~~, delete “New Zealand”.
- 221** ~~Section 194KE amended (Effect of land substitution)~~
In ~~section 194KE(2)(b)~~, delete “New Zealand”.
- 222** ~~Schedule 1AA amended~~
(1) In ~~Schedule 1AA, clause 12(3)(c)(i)(A)~~, delete “New Zealand”.
(2) In ~~Schedule 1AA~~, after ~~clause 13~~, insert: 30
- 14** ~~Cancellation of historic approved overseas units~~
(1) This clause applies to approved overseas units that were issued in the first commitment period starting on 1 January 2008 and ending on 31 December 2012;

- ~~other than those that are held by the Crown in a Crown holding account or an account established under section 7.~~
- (2) ~~If any person holds any of the approved overseas units, the Registrar must transfer the units to a cancellation account.~~
- (3) ~~The EPA must direct the Registrar to transfer a New Zealand unit from a Crown holding account to a person's holding account for each of that person's approved overseas units—~~ 5
- ~~(a) that is a New Zealand assigned amount unit (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); and~~
- ~~(b) that the Registrar transfers to a cancellation account under this clause.~~ 10
- (4) ~~No compensation is payable for any other units that the Registrar transfers to a cancellation account under this clause.~~
- (3) ~~In **Schedule 1AA, clause 26(2)(b)**, delete “New Zealand”.~~

222 Schedule 1AA amended

In Schedule 1AA, after **clause 12**, insert:

Subpart 2—Provisions that commence on 30 November 2020

13 Cancellation of historic approved overseas units

- (1) This clause applies to approved overseas units that were issued in the first commitment period starting on 1 January 2008 and ending on 31 December 2012, other than those that are held by the Crown in a Crown holding account or an account established under section 7. 20
- (2) If any person holds any of the approved overseas units, the Registrar must transfer the units to a cancellation account.
- (3) The EPA must direct the Registrar to transfer a New Zealand unit from a Crown holding account to a person's holding account for each of that person's approved overseas units— 25
- (a) that is a New Zealand assigned amount unit (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); and
- (b) that the Registrar transfers to a cancellation account under this clause.
- (4) No compensation is payable for any other units that the Registrar transfers to a cancellation account under this clause. 30

~~Subpart 3—Amendment that commences on 31 December 2020~~

223 Section 89 amended (EPA to publish certain information)

Repeal section 89(1)(c) and ~~(3)~~.

Subpart 3—Amendments that commence on 1 January 2021

222A Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

After **section 3A(a)(vi)**, insert:

(via) **section 30W(1)(a)** (price of carbon):

222B Section 3B amended (Consultation about certain regulations, orders, and notices) 5

(1) After **section 3B(1)(e)**, insert:

(ea) **section 30W(1)(a)** (price of carbon):

(2) Repeal **section 3B(1)(s)**.

222C Section 4 amended (Interpretation) 10

In section 4(1), replace the definition of **deforest** with:

deforest, in relation to forest land,—

(a) means to convert forest land to land that is not forest land (see section 181, for example); and

(b) includes deforestation after forest land is cleared, where section 179 applies 15

222D New subpart 4 of Part 2 inserted

After **section 30V**, insert:

Subpart 4—Regulations setting price of carbon

30W Regulations setting price of carbon 20

(1) For the purpose of **sections 134 to 134D** and any other provisions that refer to regulations made under this section, the Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations—

(a) prescribing the methodology for specifying the price of carbon; and

(b) specifying the price of carbon by applying the methodology. 25

(2) Before recommending the making of regulations, the Minister must take into account—

(a) the price of the units used to calculate revenue from the emissions trading scheme in the Crown annual financial statements in the preceding 12 months; and 30

(b) the price of New Zealand units sold by auction in the preceding 12 months; and

(c) any changes to the operation of the emissions trading scheme that have affected the price of the units surrendered under that scheme, or that may do so before the end of the next levy year. 35

- (3) See sections 3A and **3B** for consultation requirements that apply to the making of regulations under **subsection (1)(a)**.
- (4) Regulations made under **subsection (1)(a)** come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

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223 Section 89 amended (EPA to publish certain information)

- (1) Repeal section 89(1)(e).
- (2) After section 89(1), insert:
- (1A) The EPA must, for each reporting year, publish information about—
- (a) each qualifying penalty imposed in that reporting year; and
- (b) each qualifying penalty imposed in a previous reporting year that has any amount still owing at any time in that reporting year.
- (1B) The information required for each of those penalties is—
- (a) the name of the person on whom the penalty was imposed; and
- (b) the section under which the penalty was imposed; and
- (c) the amount of the penalty; and
- (d) the date on which the last payment for the penalty was due and, if the penalty has been paid in full, the date on which it was paid in full; and
- (e) in the case of a penalty imposed under **section 134**, the provision under which the person was liable to surrender or repay units; and
- (f) in the case of a penalty imposed under **sections 134A to 134D**, whether the penalty was imposed for behaviour that was grossly careless or behaviour that was knowing.
- (1C) In **subsection (1A)**, **qualifying penalty** means—
- (a) a penalty imposed under **section 134**; or
- (b) a penalty imposed under **sections 134A to 134D**, if the EPA is satisfied that the penalty was imposed for behaviour that was grossly careless or knowing.

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- (3) In section 89(2)(a) and (b), replace “subsection (1)” with “subsections (1) to **(1B)**”.

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- (4) Repeal section 89(4).

223A Section 120 amended (Amendment to emissions returns by EPA)

After **section 120(2)**, insert:

- (3) If the EPA proposes to amend a person’s emissions return, the EPA must notify the person of that proposal as soon as practicable.
- (4) If the EPA then becomes satisfied that the information contained in the emissions return was correct,—

35

- (a) the EPA must notify the person of that fact and of the effects of **paragraph (b)**; and
- (b) section 123 applies as if the EPA had assessed the matters in the emissions return under section 121.

223B Section 123 amended (Effect of amendment or assessment) 5

In section 123(2), replace “section 134(3)(b)” with “**section 134A or 134C**”.

223C Section 129 amended (Offences in relation to failure to comply with various provisions) 10

In section 129(1)(a), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.

223D Section 132 amended (Other offences) 15

In section 132(1)(c), replace “(requirement to collect data or other information, calculate emissions and removals, and keep records)” with “(other than by submitting an emissions return containing incorrect calculations)”.

223E Sections 134 to 136 replaced

Replace sections 134 to 136 with:

134 Penalty for failing to surrender or repay units by due date

(1) This section applies if a person fails, by the due date,— 20

- (a) to surrender units that the person is required to surrender; or
- (b) to repay units that the person is required to repay.

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

$$3 \times a \times b$$

where— 25

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

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

(3) The EPA must give a notice to the person that— 30

(a) refers to the person’s failure to surrender or repay units by the due date and the provision under which the person is liable to surrender or repay the units; and

(b) refers to any relevant notice that the EPA has given the person in respect of the requirement to surrender or repay the units (for example, a notice given under section 123(1)); and 35

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- (c) specifies the number of units that the person must surrender or repay; and
- (d) specifies the amount of the penalty that the person must pay under this section; and
- (e) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and 5
- (f) advises that, unless the units are surrendered or repaid and the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (4) If the EPA notifies a person that the EPA proposes to amend the person's emissions return under section 120, the EPA must reverse any penalty charged under this section that relates to the original return. 10
- (5) In this section, **due date** means the final date by which the person was required to surrender or repay the units.
- 134A Penalty for failing to submit emissions return by due date** 15
- (1) This section applies if—
- (a) a person fails to submit an emissions return by the due date; and
- (b) the EPA is satisfied that the person has not taken reasonable care; and
- (c) the EPA gives a notice to the person stating that—
- (i) the person has failed to submit the emissions return by the due date; and 20
- (ii) if the person does not submit the return within 20 working days after the notice is given, the EPA will make an assessment under section 121 and a penalty may apply; and
- (d) the person fails to submit the emissions return within 20 working days after the notice is given. 25
- (2) If the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry), the person has either—
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or 30
- (b) **removals** equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units.
- (3) If the emissions return is for any other activity, the person has either— 35
- (a) **emissions** equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or
- (b) **removals** equal to carbon dioxide equivalent tonnes of removals assessed for the return.

- (4) If the person has—
- (a) emissions, they must pay to the EPA the penalty calculated under **subsection (5)**:
 - (b) removals, they must pay to the EPA the penalty calculated under **subsection (5)**, but the maximum penalty is \$1,000:
 - (c) neither emissions nor removals, no penalty is payable.

5

- (5) The calculation is—

$$a \times b \times c$$

where—

- a is the person’s emissions or removals in tonnes (whichever applies)
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under **section 30W**
- c is the culpability factor determined under **subsection (6)**.

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- (6) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

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| <u>Person’s level of culpability</u> | <u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u> | <u>Culpability factor</u> |
|--|--|---------------------------|
| <u>Person did not take reasonable care</u> | <u>Yes</u> | <u>0.1</u> |
| | <u>No</u> | <u>0.2</u> |
| <u>Person was grossly careless</u> | <u>Yes</u> | <u>0.2</u> |
| | <u>No</u> | <u>0.4</u> |
| <u>Person knowingly failed</u> | <u>Yes</u> | <u>1.0</u> |
| | <u>No</u> | <u>1.0</u> |

Notice of penalty

- (7) If the person must pay a penalty, the EPA must give a notice to the person that—

- (a) refers to the person’s failure to submit the emissions return by the due date and the provision under which the person is required to submit the return; and
- (b) refers to the notice issued under **subsection (1)(c)**; and
- (c) specifies the amount of the penalty that the person must pay under this section; and
- (d) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and
- (e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

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Meaning of due date

- (8) In this section, **due date**—
- (a) means the final date by which the person—
 - (i) was originally required to submit the emissions return; or
 - (ii) would have been required to submit the emissions return had they complied with this Act in all respects; and
 - (b) excludes any extension under **subsection (1)(d)**.

134B Penalty for failing to submit annual or closing allocation adjustment by due date

- (1) This section applies if—
- (a) a person fails to submit an annual allocation adjustment under section 83 or a closing allocation adjustment under section 84 by the due date; and
 - (b) the EPA is satisfied that the person has not taken reasonable care; and
 - (c) the EPA gives a notice to the person stating that—
 - (i) the person has failed to submit the allocation adjustment by the due date; and
 - (ii) if the person does not submit the allocation adjustment within 20 working days after the notice is given, the EPA will make a decision under section 86B(4) and a penalty may apply; and
 - (d) the person fails to submit the allocation adjustment within 20 working days after the notice is given.
- (2) If the result of a decision made under section 86B(4) is that—
- (a) the person is liable to surrender or repay units, they must pay to the EPA the penalty calculated under **subsection (3)** (in addition to surrendering or repaying the units);
 - (b) the person is entitled to receive units, they must pay to the EPA the penalty calculated under **subsection (3)**, but the maximum penalty is \$1,000;
 - (c) there is no change in the person's liability or entitlement, no penalty is payable.
- (3) The calculation is—
- $$a \times b \times c$$
- where—
- a is the number of units that the person—
 - (i) is liable to surrender or repay; or
 - (ii) is entitled to receive

- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under **section 30W**
- c is the culpability factor determined under **subsection (4)**.

(4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:

5

| <u>Person's level of culpability</u> | <u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u> | <u>Culpability factor</u> |
|--|--|---------------------------|
| <u>Person did not take reasonable care</u> | <u>Yes</u> | <u>0.1</u> |
| | <u>No</u> | <u>0.2</u> |
| <u>Person was grossly careless</u> | <u>Yes</u> | <u>0.2</u> |
| | <u>No</u> | <u>0.4</u> |
| <u>Person knowingly failed</u> | <u>Yes</u> | <u>1.0</u> |
| | <u>No</u> | <u>1.0</u> |

(5) If the person must pay a penalty, the EPA must give a notice to the person that—

- (a) refers to the person's failure to submit the allocation adjustment by the due date and the provision under which the person is required to submit the allocation adjustment; and
- (b) refers to the notice issued under **subsection (1)(c)**; and
- (c) specifies the amount of the penalty that the person must pay under this section; and
- (d) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and
- (e) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

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(6) In this section, **due date**—

- (a) means the final date by which the person was originally required to submit the allocation adjustment; and
- (b) excludes any extension under **subsection (1)(d)**.

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134C Penalty for submitting incorrect emissions return

(1) This section applies if—

- (a) the EPA amends a person's emissions return under section 120; and
- (b) the EPA is satisfied that the amendment was needed because the person failed to take reasonable care.

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(2) In particular,—

- (a) **subsections (3) to (5)** apply if the emissions return is for an activity listed in Part 1 of Schedule 4 (for post-1989 forestry):

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- (b) subsections (6) to (8) apply if the emissions return is for any other activity.
- Activities relating to post-1989 forestry*
- (3) The person has either—
- (a) emissions equal to the carbon dioxide equivalent tonnes of emissions, less removals (if any), assessed for the return to the extent they match a net liability to surrender or repay units; or 5
- (b) removals equal to the carbon dioxide equivalent tonnes of removals, less emissions (if any), assessed for the return to the extent they match a net entitlement to receive or be reimbursed units. 10
- (4) If the effect of the amendment is that—
- (a) the person's emissions are greater, removals are lesser, or removals have become emissions, they must pay to the EPA the penalty calculated under subsection (5):
- (b) the person's removals are greater, emissions are lesser, or emissions have become removals, they must pay to the EPA the penalty calculated under subsection (5), but the maximum penalty is \$1,000: 15
- (c) there is no change in the person's emissions or removals, no penalty is payable.
- (5) The calculation is— 20
- $a \times b \times c$
- where—
- a is the lesser of—
- (a) the person's emissions or removals under the emissions return, as amended; and 25
- (b) the difference between (whichever applies)—
- (i) the person's emissions under the emissions return before and after amendment; or
- (ii) the person's removals under the emissions return before and after amendment; or 30
- (iii) the person's emissions and removals under the emissions return before and after amendment, with the emissions converted to a negative number
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W 35
- c is the culpability factor determined under subsection (9).
- Other activities*
- (6) The person has either—

| <p>(a) <u>emissions</u> equal to the carbon dioxide equivalent tonnes of emissions assessed for the return; or</p> <p>(b) <u>removals</u> equal to the carbon dioxide equivalent tonnes of removals assessed for the return.</p> <p>(7) <u>If the effect of the amendment is that—</u></p> <p>(a) <u>the person’s emissions are greater or removals are lesser, they must pay to the EPA the penalty calculated under subsection (8):</u></p> <p>(b) <u>the person’s removals are greater or emissions are lesser, they must pay to the EPA the penalty calculated under subsection (8), but the maximum penalty is \$1,000:</u></p> <p>(c) <u>there is no change in the person’s emissions or removals, no penalty is payable.</u></p> <p>(8) <u>The calculation is—</u></p> <p style="text-align: center;"><u>$a \times b \times c$</u></p> <p><u>where—</u></p> <p>a <u>is the lesser of—</u></p> <p>(a) <u>the person’s emissions or removals under the emissions return, as amended; and</u></p> <p>(b) <u>whichever of the following applies:</u></p> <p>(i) <u>the difference between the person’s emissions under the emissions return before and after amendment; or</u></p> <p>(ii) <u>the difference between the person’s removals under the emissions return before and after amendment</u></p> <p>b <u>is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under section 30W</u></p> <p>c <u>is the culpability factor determined under subsection (9).</u></p> <p><u><i>Culpability factor</i></u></p> <p>(9) <u>The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:</u></p> <table border="0" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;"><u>Person’s level of culpability</u></th> <th style="text-align: left;"><u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u></th> <th style="text-align: left;"><u>Culpability factor</u></th> </tr> </thead> <tbody> <tr> <td rowspan="2"><u>Person did not take reasonable care</u></td> <td><u>Yes</u></td> <td><u>0.1</u></td> </tr> <tr> <td><u>No</u></td> <td><u>0.2</u></td> </tr> <tr> <td rowspan="2"><u>Person was grossly careless</u></td> <td><u>Yes</u></td> <td><u>0.2</u></td> </tr> <tr> <td><u>No</u></td> <td><u>0.4</u></td> </tr> <tr> <td rowspan="2"><u>Person knowingly failed</u></td> <td><u>Yes</u></td> <td><u>1.0</u></td> </tr> <tr> <td><u>No</u></td> <td><u>1.0</u></td> </tr> </tbody> </table> | <u>Person’s level of culpability</u> | <u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u> | <u>Culpability factor</u> | <u>Person did not take reasonable care</u> | <u>Yes</u> | <u>0.1</u> | <u>No</u> | <u>0.2</u> | <u>Person was grossly careless</u> | <u>Yes</u> | <u>0.2</u> | <u>No</u> | <u>0.4</u> | <u>Person knowingly failed</u> | <u>Yes</u> | <u>1.0</u> | <u>No</u> | <u>1.0</u> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> |
|--|--|--|---------------------------|--|------------|------------|-----------|------------|------------------------------------|------------|------------|-----------|------------|--------------------------------|------------|------------|-----------|------------|--|
| <u>Person’s level of culpability</u> | <u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u> | <u>Culpability factor</u> | | | | | | | | | | | | | | | | | |
| <u>Person did not take reasonable care</u> | <u>Yes</u> | <u>0.1</u> | | | | | | | | | | | | | | | | | |
| | <u>No</u> | <u>0.2</u> | | | | | | | | | | | | | | | | | |
| <u>Person was grossly careless</u> | <u>Yes</u> | <u>0.2</u> | | | | | | | | | | | | | | | | | |
| | <u>No</u> | <u>0.4</u> | | | | | | | | | | | | | | | | | |
| <u>Person knowingly failed</u> | <u>Yes</u> | <u>1.0</u> | | | | | | | | | | | | | | | | | |
| | <u>No</u> | <u>1.0</u> | | | | | | | | | | | | | | | | | |

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Notice of penalty

(10) If the person must pay a penalty, the EPA must give a notice to the person that—

- (a) refers to the amendment under section 120; and
- (b) specifies the amount of the penalty that the person must pay under this section; and
- (c) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and
- (d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.

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Meaning of due date

(11) In this section, **due date**—

- (a) means the final date by which the person—
 - (i) was originally required to submit the emissions return; or
 - (ii) would have been required to submit the emissions return had they complied with this Act in all respects; and
- (b) excludes any extension under **section 134A(1)(d)**.

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134D Penalty for providing incorrect information in allocation application or adjustment

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(1) This section applies if—

- (a) the EPA reconsiders, varies, or revokes (**changes**) a decision on a person's allocation application or adjustment under section 86C; and
- (b) the EPA is satisfied that the change was needed because the person failed to take reasonable care.

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(2) If the effect of the change is that—

- (a) the person is liable to surrender or repay additional units, or is entitled to receive fewer units, they must pay to the EPA the penalty calculated under **subsection (3)** (in addition to surrendering or repaying any required units);
- (b) the person is liable to surrender or repay fewer units, or is entitled to receive additional units, they must pay to the EPA the penalty calculated under **subsection (3)**, but the maximum penalty is \$1,000;
- (c) there is no change in the person's liability or entitlement, no penalty is payable.

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(3) The calculation is—

$$a \times b \times c$$

where—

- a is the lesser of—
- (a) the total number of units the person is liable to surrender or repay, or is entitled to receive, under the decision, as changed; and
- (b) the number of units that the person—
- (i) is now liable to surrender or repay as additional units, or is no longer entitled to receive, as a result of the change (if **subsection (2)(a)** applies); or
- (ii) is no longer liable to surrender or repay, or is now entitled to receive as additional units, as a result of the change (if **subsection (2)(b)** applies)
- b is the price, in dollars, of carbon per tonne on the due date, as set by or in accordance with regulations made under **section 30W**
- c is the culpability factor determined under **subsection (4)**.
- (4) The culpability factor for a person is the greatest culpability factor that the EPA is satisfied applies under this table:
- | <u>Person's level of culpability</u> | <u>Did person voluntarily disclose failure or error to EPA before being informed of it by EPA?</u> | <u>Culpability factor</u> |
|--|--|---------------------------|
| <u>Person did not take reasonable care</u> | <u>Yes</u> | <u>0.1</u> |
| | <u>No</u> | <u>0.2</u> |
| <u>Person was grossly careless</u> | <u>Yes</u> | <u>0.2</u> |
| | <u>No</u> | <u>0.4</u> |
| <u>Person knowingly failed</u> | <u>Yes</u> | <u>1.0</u> |
| | <u>No</u> | <u>1.0</u> |
- (5) If the person must pay a penalty, the EPA must give a notice to the person that—
- (a) refers to the change under section 86C; and
- (b) specifies the amount of the penalty that the person must pay under this section; and
- (c) advises that the person may request to enter into a deferred payment arrangement under **section 135A**; and
- (d) advises that, unless the penalty is paid in full within 20 working days after the notice is given, interest on the amount of the penalty will accrue in accordance with section 137.
- (6) In this section, **due date**—
- (a) means the final date by which the person was originally required to submit the allocation application or adjustment; and
- (b) excludes any extension under **section 134B(1)(d)**.

135 Date for payment of penalty

- (1) A person must pay a penalty imposed under **sections 134 to 134D** within 20 working days after notice is given of the penalty.
- (2) However, if a deferred payment arrangement has been made under **section 135A**, the person must pay the penalty by the date or dates agreed under the arrangement.

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135A Deferred payment arrangements for payments of penalties

- (1) A person who is liable to pay a penalty imposed under **sections 134 to 134D** may request to enter into an arrangement with the EPA for the person to pay the penalty after the date required by **section 135(1)**, either in a single payment or in instalments.
- (2) The EPA must consider the request, taking into account the person's financial position on the date on which the request is made.
- (3) The EPA may—
- (a) accept the request; or
 - (b) request further information from the person; or
 - (c) make a counter offer; or
 - (d) if **subsection (5)** applies, decline the request.
- (4) If the EPA requests further information from the person or makes a counter offer,—
- (a) the person must provide the information or respond to the offer within 20 working days after the request or offer, or within a longer period allowed by the EPA; and
 - (b) if the person provides the information or responds to the offer later than required, the provision of the information or the response must be treated as a new request to enter into an arrangement.
- (5) The EPA may decline to enter into an arrangement with the person if the EPA considers that—
- (a) the person is in a position to pay all of the penalty immediately; or
 - (b) the person is being frivolous or vexatious; or
 - (c) the person has not met their obligations under a previous arrangement.
- (6) The renegotiation of an arrangement is treated as if it were a new request to enter into an arrangement. Renegotiation may be initiated—
- (a) by the person at any time; or
 - (b) by the EPA at any time after the end of 12 months after the date on which the arrangement was entered into.
- (7) The EPA may cancel an arrangement if—

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- (a) it was entered into on the basis of false or misleading information provided by the person; or
- (b) the person is not meeting their obligations under the arrangement.

136 Penalties are debt due to Crown

The amount of a penalty imposed under **sections 134 to 134D**, together with any interest that accrues on that penalty, constitutes a debt due to the Crown and is recoverable by the EPA in a court of competent jurisdiction.

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223F Section 137 amended (Interest for late payment)

(1) Replace section 137(1) with:

(1) This section applies if—

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- (a) a person is liable to pay a penalty imposed under **sections 134 to 134D**; and
- (b) the person has not paid the penalty by the date on which the penalty was due (as stated in the notice issued under the relevant section); and
- (c) in the case of a penalty imposed under **section 134**, the person has not surrendered or repaid the units to which the penalty relates.

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(2) In section 137(2), delete “excess emissions”.

(3) Replace section 137(2)(b) with:

- (b) for the period from the date by which the penalty was due to be paid until the penalty and any interest due have been paid in full and, in the case of a penalty imposed under **section 134**, the person has surrendered or repaid the units to which the penalty relates.

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(4) Repeal section 137(3).

(5) In section 137(4)(a), replace “or to transfer units to a Crown holding account under section 136 and pay the penalty in full” with “and pay the penalty”.

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(6) Replace section 137(6) with:

(6) Despite anything in this section, the EPA may remit all or part of an amount of interest that has accrued under this section if the EPA is satisfied that it would be manifestly unfair or unjust to impose all, or that part, of the amount.

223G Section 138 amended (Obligation to pay penalty not suspended by appeal)

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(1) Replace section 138(1) with:

(1) The obligation to pay and the right to receive and recover any penalty imposed under **sections 134 to 134D** or interest imposed under section 137 are not suspended by any review or appeal.

(2) In section 138(2) and (4), delete “excess emissions”.

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223H Section 138A replaced (Penalties to be paid into Crown account)

Replace section 138A with:

138A Penalties to be paid into Crown account

The EPA must pay the amount of all penalties and interest on the penalties received from a person in accordance with **sections 134 to 134D** or 137 into a Crown Bank Account.

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223I Section 159 amended (Recovery of costs)

(1) In section 159(1)(a), replace “1 year of the date of a penalty notice given under section 134 or 136” with “90 days after the date of a penalty notice given under **section 134**”.

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(2) In section 159(3), replace definition of variable C with:

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

(3) In section 159(4), replace “section 134, 134A, or 136” with “**section 134 to 134D**”.

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(4) Replace section 159(5) with:

(5) In this section—

insolvency process means receivership under the Receiverships Act 1993, liquidation under the Companies Act 1993, or bankruptcy under the Insolvency Act 2006

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relevant date means the earlier of—

(a) the date that is 90 days after the date of the penalty notice; and

(b) the date on which the person enters into an insolvency process.

223J Section 179 amended (Forest land to be treated as deforested in certain cases)

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(1) Replace section 179(1)(a) with:

(a) 4 years after clearing, none of the following apply:

(i) the hectare has at least 500 stems of exotic forest species growing:

(ii) the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion:

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(iii) the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or

(2) In section 179(1)(b)(i) and (c), replace “at least” with “more than”.

223K Section 181 amended (When deforestation to be treated as occurring in respect of pre-1990 forest land)

- (1) Replace section 181(1) with:
- (1) This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land. 5
- (1A) The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.
- (2) In section 181(2), replace “Subsection (3) applies to a landowner converting a hectare of pre-1990 forest land that” with “However, **subsection (3)** applies if the hectare of forest land”. 10
- (3) Replace section 181(3) with:
- (3) The hectare of forest land is to be treated as being deforested on the date of the first action on it that—
- (a) is inconsistent with the hectare remaining forest land; and
- (b) happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land. 15
- (3A) In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless section 186(2) applies. 20

223L Section 189 amended (Emissions returns for post-1989 forest land activities)

In section 189(8)(d)(ii), replace “sections 134 and 135” with “**sections 134, 134A, and 134C**”.

223M Section 192 amended (Effect of transmission of interest in post-1989 forest land) 25

- (1) In section 192(1), table, Part B, in the first and second rows, in the third and fourth columns, after “forest land”, insert “(only if agreed under **subsection (1A)**”.
- (2) After section 192(1), insert: 30
- (1A) Despite subsection (1)(b), if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of Part B of the table in that subsection, this section applies only if, before the date of transmission,—
- (a) the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post-1989 forest land to which the transmitted interest relates; and 35
- (b) the transferor has given written notice of the agreement to the EPA.

(3) In section 192(2), replace “In subsections (1)” with “In subsections (1), **(1A)**.”.

223N Section 217 amended (Transitional provision for penalties)

(1) In section 217(2)(b)(ii), replace “excess emissions penalty under section 134(2)(b)(ii) or 134A(2)(b)” with “a penalty under **section 134, 134A, or 134C**”.

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(2) In section 217(2)(c), replace “section 134, 134A, or 136” with “**section 134**”.

(3) After section 217(2), insert:

(3) The participant—

(a) is not liable to pay a penalty under **section 134B or 134D** that relates to an allocation of units in respect of that first year; and

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(b) is not liable for any infringement offence (as defined by **section 30L**) in respect of an act or omission in that first year.

223O Section 233 amended (Rate of synthetic greenhouse gas levy)

(1) In section 233(1), replace definition of variable B with:

B is the lesser of \$25 and the price of carbon specified by or under regulations made under **section 30W**

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(2) Repeal section 233(4) to (6).

223P Section 236 repealed (Maximum price of carbon for purpose of levy calculation)

Repeal section 236.

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223Q Schedule 1AA amended

(1) In Schedule 1AA, after **clause 10(3)**, insert:

(4) **Section 89(1A) and (1B)** does not apply in respect of failures or errors made by a person before 1 January 2021.

(2) In Schedule 1AA, after **clause 13**, insert:

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Subpart 3—Provisions that commence on 1 January 2021

14 Existing regulations about price of carbon

(1) This clause applies to any regulations made under section 233(4) that, immediately before the commencement of this clause,—

(a) prescribe the methodology for specifying the price of carbon; or

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(b) specify the price of carbon by applying the methodology.

(2) On and after the commencement of this clause, the regulations continue in force and must be treated as if they were made under **section 30W**.

15 Penalties

- (1) This clause applies in respect of a person who, before the commencement of this clause,—
- (a) fails to surrender or repay units by the due date; or
 - (b) fails to submit an emissions return or annual or closing allocation adjustment; or
 - (c) submits an incorrect emissions return, allocation application, or allocation adjustment.
- (2) **Sections 134 to 134D**, as inserted by the amendment Act, do not apply in respect of the person for the failure or error.
- (3) This Act, as in force immediately before the commencement of this clause, applies in respect of the person for the failure or error.

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Subpart 3A—Amendments that commence on 1 January 2022

223R Section 3A amended (Treaty of Waitangi (Te Tiriti o Waitangi))

- (1) Replace **section 3A(a)(viii)** with:
- (viii) **section 60A** (exemptions for participants in standard forestry or permanent forestry):
- (2) Replace **section 3A(a)(xvi)** with:
- (xva) **section 185A** (exemptions for deforestation of land with tree weeds):
 - (xvi) **section 186FC** (P90 offsetting):
 - (xvia) **section 194EG** (pecuniary penalty for clear-felling):
 - (xvib) **section 194FE** (averaging):
 - (xvic) **section 194LA** (P89 offsetting):
 - (xvid) **section 194TA** (temporary adverse event suspensions):

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223S Section 3B amended (Consultation about certain regulations, orders, and notices)

- (1) Replace **section 3B(1)(g)** with:
- (g) **section 60A** (exemptions for participants in standard forestry or permanent forestry):
- (2) Replace **section 3B(1)(o)** with:
- (na) **section 185A** (exemptions for deforestation of land with tree weeds):
 - (o) **section 186FC** (P90 offsetting):
 - (oa) **section 194EG** (pecuniary penalty for clear-felling):
 - (ob) **section 194FE** (averaging):

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(oc) **section 194LA** (P89 offsetting):

(od) **section 194TA** (temporary adverse event suspensions):

223T Section 4 amended (Interpretation)

(1) In section 4(1), repeal the definitions of **carbon accounting area**, **carbon equivalence**, **clear**, **forestry activity**, **offsetting forest land**, **pre-1990 forest land**, **pre-1990 offsetting forest land**, **removal activity**, and **usual rotation period**.

(2) In section 4(1), insert in their appropriate alphabetical order:

carbon accounting area means an area of post-1989 forest land—

(a) that—

(i) is defined by a person who is registered, or has applied to register, as a participant under section 57 in relation to an activity of stand-ard forestry or permanent forestry; and

(ii) meets any relevant criteria specified in regulations made under this Act; or

(b) that is constituted as a carbon accounting area by a provision of this Act
carbon accounting area (averaging) has the meaning given in **section 194FC(3)**

clear,—

(a) in relation to a tree,—

(i) includes—

(A) felling, harvesting, burning, removing by mechanical means, spraying with a herbicide intended to kill the tree, or undertaking any other form of human activity that kills the tree; and

(B) felling, burning, killing, uprooting, or destroying by a nat-ural cause or event; but

(ii) does not include pruning or thinning; and

(b) in relation to land, means to clear (as defined in **paragraph (a)**) the for-est species that are on the land

clear-felled, in relation to an area of land, means an area—

(a) of at least 1 hectare; and

(b) on which any trees are cleared or killed by any form of human activity, including by felling, harvesting, burning, removing by mechanical means, or spraying with a herbicide intended to kill the tree; and

(c) that, after that type of clearing or killing, has tree crown cover from for-est species of 30% or less in each hectare

constitution date, in relation to a carbon accounting area, means,—

- (a) for a carbon accounting area that is defined in an application referred to in **section 188(1)**, the date the applicant’s registration takes effect under section 57(8); or
- (b) for a carbon accounting area that a participant applies to add under **section 188(3)**, the date of the notice given under **section 188(6)(b)(ii)**;
or
- (c) for any other carbon accounting area, the date on which a person becomes a participant in an activity on the carbon accounting area under a provision of **Part 5**

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first rotation forest has the meaning given in **section 194FD(1) and (2)**

forest sink covenant means a forest sink covenant that is or was registered against land under section 67ZD of the Forests Act 1949

forestry activity means—

- (a) an activity listed in Part 1 or 1A of Schedule 3 (deforesting certain pre-1990 forest land or P90 offsetting land); or
- (b) an activity listed in Part 1 or **1A** of Schedule 4 (standard forestry or permanent forestry on post-1989 forest land)

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permanent forestry has the meaning given in **section 186K**

pre-1990 forest land means forest land that—

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- (a) is either of the following:
 - (i) land—
 - (A) that was forest land on 31 December 1989; and
 - (B) that remained as forest land on 31 December 2007 (taking into account subsection (5)); and
 - (C) where the forest species on the forest land on 31 December 2007 consisted predominantly of exotic forest species; or
 - (ii) land that has become pre-1990 forest land under **section 186EE**;
and
- (b) is not either of the following:
 - (i) land that has been deforested and in respect of which any liability to surrender units arising in respect of an activity listed in Part 1 of Schedule 3 has been satisfied; or
 - (ii) land that was declared to be exempt land, has been deforested, and in respect of which the number of units that would have been required to be surrendered in respect of an activity listed in Part 1 of Schedule 3 had the land not been exempt land have been surrendered under section 187(2)(b)

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- removal activity** means—
- (a) an activity of standard forestry or permanent forestry (on post-1989 forest land); or
 - (b) an activity that is listed in Part 2 of Schedule 4 (other removal activities)
- standard forestry** has the meaning given in **section 186K** 5
- subsequent rotation forest** has the meaning given in **section 194FD(4)**
- temporary adverse event land** has the meaning given in **section 194MA(1)**
- (3) In section 4(1), definition of **exempt land**, replace paragraph (a)(ii) with:
- (ii) under **section 184**, as long as the EPA has not declared otherwise (because a requirement or condition has been breached); but 10
- (4) In section 4(1), definition of **post-1989 forest land**, replace paragraph (a)(iv) with:
- (iv) land—
 - (A) that was pre-1990 forest land that was the subject of a P90 offset application; and 15
 - (B) that ceased to be forest land while **section 179A(1)(b)** applied to it (so it could not be treated as deforested); and
 - (C) in respect of which a liability to surrender units arose under **section 186BD** (because the P90 offset application was declined) or **section 186DI(3)** (because the land became area 1 (not offset) land),— 20

but only if that liability has been satisfied; or
- (5) In section 4(1), definition of **post-1989 forest land**, paragraph (a)(v), replace “pre-1990 offsetting forest land” with “P90 offsetting land”.
- (6) In section 4(1), definition of **post-1989 forest land**, replace paragraph (b) with: 25
- (b) is not area 1 (approved) land (as defined in **section 186AA**) or P90 offsetting land
- (7) In section 4(1), definition of **tree weed**, replace “a tree” with “a forest species”.
- 223U Section 54 amended (Participants)**
- In section 54(1)(a)(i) and (2), replace “186I” with “**186EA**”. 30
- 223V Section 56 amended (Registration as participant in respect of activities listed in Schedule 3)**
- After section 56(4), insert:
- (5) To avoid doubt, a person carrying out an activity on land to which section 179A applies (and which therefore may not be treated as deforested) is not carrying out an activity listed in Schedule 3, and so does not have to notify the EPA under subsection (1)(a). 35

223W Section 57 amended (Applicant to be registered as participant in respect of activities listed in Schedule 4)

After section 57(4)(ba), insert:

- (bb) if the activity is standard forestry or permanent forestry, has met any obligations incurred while previously registered (if ever) in respect of an activity of standard forestry; and**

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223X Section 58 amended (Removal from register of participants in respect of activities listed in Schedule 4)

In section 58(4), replace “section 188(7)” with “**section 191AB**”.

223Y New section 59A inserted (Removal from register for persistent non-compliance (standard forestry participants only))

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After section 59, insert:

59A Removal from register for persistent non-compliance (standard forestry participants only)

(1) The EPA may remove the name of a person from the register kept under section 57 in respect of an activity of standard forestry if—

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(a) the person has not submitted an emissions return required by section 189AB by 365 days after the date on which the person was required to submit the emissions return; or

(b) the person has not surrendered or repaid units by 365 days after the date on which the person was required to surrender or repay the units; or

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(c) the person has not paid a penalty imposed by sections 134 to 134D by the first day that is—

(i) at least 90 days after the date on which the person was required to pay the penalty; and

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(ii) at least 365 days after the date on which the person was required to surrender or repay the units or submit the emissions return to which the penalty relates.

(2) However, the EPA may not rely on subsection (1)(a) to remove the name of a person from the register if—

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(a) the person has submitted an emissions return under section 189AA within 365 days after the date on which the emissions return required by section 189AB was required to be submitted; or

(b) the EPA has made an assessment under section 121 of the matters that should have been in the person’s emissions return, and—

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(i) the person has surrendered any units required to be surrendered as a result of the assessment; and

- (ii) the person has paid any penalties resulting from the failure to submit the return and from the assessment.
- (3) At least 90 days before removing the name of the person from the register, the EPA must notify the person—
- (a) that the EPA proposes to remove the name of the person from the register; and 5
- (b) of the reason for the proposed removal (for example, failure to surrender units); and
- (c) of the actions that the person may take to prevent the removal (for example, surrender the units that the person has failed to surrender). 10
- (4) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address.

223Z Section 60A amended (Exemption for participants in activity listed in Part 1 of Schedule 4) 15

- (1) In the heading to **section 60A**, replace “activity listed in Part 1 of Schedule 4” with “standard forestry or permanent forestry”.
- (2) In **section 60A(1)**, replace “an activity listed in Part 1 of Schedule 4” with “standard forestry or permanent forestry”.

223ZA Section 62 amended (Monitoring of emissions and removals) 20

In section 62, insert as subsection (2):

- (2) **Subsection (1)(b)** does not apply in relation to emissions and removals that a person is not required to calculate under—
- (a) **section 194FC(2)**, relating to carbon accounting areas (averaging); or
- (b) **section 194PC(3)**, relating to temporary adverse event land. 25

223ZB Section 63 amended (Liability to surrender units to cover emissions)

- (1) After section 63(1), insert:
- (1A) However, subsection (1) does not apply to emissions for which a participant is not liable to surrender units as a result of any of the following:
- (a) **section 179A** (when forest land may not be treated as deforested): 30
- (b) **section 188AB** (certain natural events or clearance for forest management):
- (c) **sections 190 and 194JD(3)** (limiting liability to unit balances for carbon accounting areas):
- (d) **section 194FC(2)** (carbon accounting areas (averaging)); 35
- (e) **section 194PC(1)** (temporary adverse event land).
- (2) Repeal section 63(3).

- (3) After **section 63(4)**, insert:
- (5) See also **sections 194DEA, 194DF, and 194DG** in relation to liability to surrender units when transferring—
- (a) from PFSI activity to standard forestry in a carbon accounting area (averaging); or
- (b) between permanent forestry and standard forestry in a carbon accounting area (averaging).

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223ZC Section 64 amended (Entitlement to receive New Zealand units for removal activities)

Replace **section 64(1A)** with:

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- (1A) Subsection (1) does not apply to removals for which a participant is not entitled to receive units under—
- (a) **section 194FC(2)**, relating to carbon accounting areas (averaging); or
- (b) **section 194PC(1)**, relating to temporary adverse event land; or
- (c) **section 197**, relating to grant-funded forests.

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223ZD Section 65 amended (Annual emissions returns)

- (1) Replace section 65(1) and (1A) with:
- (1) In the period beginning on 1 January and ending on 31 March in each year, a participant must submit an annual emissions return to the EPA in respect of each of the activities listed in Schedule 3 or Part 2, 3, or 4 of Schedule 4 that the participant carried out in the immediately preceding year.
- (2) In section 65(2)(b), replace “section 62(b)” with “**section 62(1)(b)**”.
- (3) Repeal section 65(2A).
- (4) In section 65(4)(a), delete “or recorded under subsection (2A)(b)”.
- (5) Replace **section 65(5)** with:
- (5) Despite the rest of this section, a participant in an activity of standard forestry or permanent forestry (on post-1989 forest land) must instead submit emissions returns as required by **Part 5**.
- (6) To avoid doubt, a person carrying out an activity on land to which section 179A applies (and which therefore may not be treated as deforested) is not carrying out an activity listed in Schedule 3, and so does not have to notify to submit an annual emissions return under **subsection (1)**.

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223ZE Section 67 amended (Retention of emissions records)

- (1) In section 67(1)(b), replace “section 62(b)” with “**section 62(1)(b)**”.
- (2) In section 67(2)(a), replace “section 62(d)” with “**section 62(1)(d)**”.
- (3) In section 67(2)(b), replace “an activity listed in Part 1 of Schedule 3 or 4” with “a forestry activity”.

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223ZF Section 89 amended (EPA to publish certain information)

After **section 89(1C)(b)**, insert:

(c) a penalty imposed under **section 194EF or 194EI**.

223ZG Section 91 amended (Approval of unique emissions factors)

In section 91(1), replace “section 62(b)” with “**section 62(1)(b)**”.

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223ZH Section 92 amended (Recognition of verifiers)

In section 92(1), replace “section 62(a)” with “**section 62(1)(a)**”.

223ZI Section 107 amended (Applications for emissions rulings)

(1) In **section 107(1)(c)**, replace “186F,” with “**185A, 186FC, 194EG, 194FE, 194LA, 194TA,**”.

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(2) In **section 107(1)(ca)(ii)**, replace “section 184(5)(a)” with “**section 184(3)(a)**”.

223ZJ Section 109 amended (Making of emissions rulings)

In **section 109(3)**, example, replace “listed in Part 1 of Schedule 4” with “of standard forestry”.

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223ZK Section 118 amended (Submission of final emissions returns)

After section 118(3), insert:

(3A) However, subsections (1) and (3) do not apply to a participant in an activity of standard forestry or permanent forestry (on post-1989 forest land), who must instead submit emissions returns as required by **Part 5**.

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223ZL Section 127 amended (Time bar for amendment of emissions returns)

(1) In section 127(1)(a), replace “under section 187 or 191” with “required by **section 187 or 191BA**”.

(2) In section 127(1)(b), replace “section 189 or 193” with “**section 189AA, 189AB, 192, 194CA, 194DA, 194GA, 194KC, 194NA, or 194QB**”.

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223ZM New section 128A and cross-heading inserted

After section 128, insert:

Notices required from participants

128A EPA may act if participant fails to give notice

(1) The EPA may act under this section if it is satisfied that a participant has failed to give a notice in accordance with section 186DB, 194JB or 194QB (the **notice provision**).

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(2) The EPA may,—

- (a) if no notice has been given, prepare the notice that ought to have been given; or
- (b) if a notice has been given but is not complete, complete the notice.
- (3) The EPA may do the following when preparing or completing the notice:
- (a) if the notice must include an emissions return (including any new unit balance report), the EPA may apply—
- (i) section 120 to amend an emissions return that was included; or
- (ii) section 121 to assess the matters that should have been in an emissions return that was not included; and
- (b) if the notice must include any other information, prepare or complete that information by making any required assumptions or estimates.
- (4) Before taking action under this section, the EPA must notify the participant of its intention to do so, and give them at least 60 working days to give or correct the required notice.
- (5) If the participant gives or corrects the required notice by that deadline, the notice must be treated as having been given to the EPA—
- (a) in accordance with the notice provision; and
- (b) on the last day on which it could have been given under that provision.
- (6) The EPA may still take action under this section if it is unable to notify the participant of its intention to do so because it is not reasonably practicable to identify or locate them or their address.
- (7) Despite subsection (2),—
- (a) for a notice under **section 186DB**,—
- (i) the EPA cannot identify land as area 2 (excess) land; and
- (ii) if any land in area 2 that is qualifying forest land is not identified as area 2 (forested land), the EPA must identify it as area 2 (non-ETS) land; and
- (b) for a notice required by section 194JB, the EPA cannot identify any land as P89 offsetting (excess) land.

223ZN Section 134A amended (Penalty for failing to submit emissions return by due date)

In **section 134A(2)**, replace “listed in Part 1 of Schedule 4 (for post-1989 forestry)” with “of standard forestry or permanent forestry”.

223ZO Section 134C amended (Penalty for submitting incorrect emissions return)

In **section 134C(2)(a)**, replace “listed in Part 1 of Schedule 4 (for post-1989 forestry)” with “of standard forestry or permanent forestry”.

223ZP Section 135A amended (Deferred payment arrangements for payments of penalties)

- (1) In **section 135A(1)**, after “sections 134 to 134D”, insert “, **194EF, or 194EI**”.
- (2) In **section 135A(1)**, after “**section 135(1)**”, insert “or **194EJ(3)(a)**”. 5

223ZQ Section 136 amended (Penalties are debt due to Crown)

In **section 136**, after “**sections 134 to 134D**”, insert “, **194EF, or 194EI**”.

223ZR Section 137 amended (Interest for late payment)

In **section 137(1)(a)**, after “**sections 134 to 134D**”, insert “, **194EF, or 194EI**”. 10

223ZS Section 138 amended (Obligation to pay penalty not suspended by appeal)

In **section 138(1)**, after “**sections 134 to 134D**”, insert “, **194EF, or 194EI**”.

223ZT Section 138A amended (Penalties to be paid into Crown account) 15

- (1) In **section 138A**, replace “or 137” with “, 137, **194EF, or 194EI**”.
- (2) In **section 138A**, insert as subsection (2):
- (2) However, this section is subject to a court order that a penalty imposed under **section 194EF or 194EI** must be applied first to pay the EPA’s actual costs in bringing the proceedings. 20

223ZU Section 159 amended (Recovery of costs)

In section 159(4), after “**section 134 to 134D**”, insert “, **194EF, or 194EI**”.

223ZV Section 163 amended (Regulations relating to methodologies and verifiers)

- (1) In section 163(1)(a) and (e)(i), replace “section 62(a)” with “**section 62(1)(a)**”. 25
- (2) In section 163(1)(b), replace “section 62(b)” with “**section 62(1)(b)**”.

223ZW Section 168 amended (Other regulations)

- (1) In section 168(1)(j), replace “section 62(d)” with “**section 62(1)(d)**”.
- (2) After section 168(1)(n), insert: 30
- (na) prescribing additional criteria for the approval of—
- (i) an application to reconfigure carbon accounting areas for standard or permanent forestry, for the purposes of **section 194CB(2)(c)**;
- (ii) an application to change activity on post-1989 forest land, for the purposes of **section 194DB(2)(d)**; and 35

223ZX Section 169 amended (Incorporation by reference in certain regulations)

In **section 169(4)**, replace “186F,” with “**185A, 186FC, 194EG, 194FE, 194LA, 194TA,**”.

223ZY Part 5 replaced

Replace Part 5 with:

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Part 5

Sector-specific provisions: forestry

Subpart 1—Deforestation

179 Forest land to be treated as deforested in certain cases

(1) Without limiting **paragraph (a) of the definition of deforest** in section 4(1), a hectare of forest land must be treated as deforested for the purposes of this Act if the forest species on that hectare have been cleared and,—

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(a) 4 years after clearing, none of the following apply:

(i) the hectare has at least 500 stems of exotic forest species growing;

(ii) the hectare has been replanted with at least 100 stems of willows or poplars in a manner consistent with managing soil erosion;

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(iii) the hectare has predominantly indigenous forest species growing in a manner in which the hectare is likely to be forest land 10 years after the hectare was cleared; or

(b) 10 years after clearing,—

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(i) predominantly exotic forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height; or

(ii) predominantly indigenous forest species are growing, but that hectare is not forest land; or

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(c) 20 years after clearing, predominantly indigenous forest species are growing, but that hectare does not have tree crown cover of more than 30% from trees that have reached 5 metres in height.

(2) **Subsection (1)(a)(iii)** applies only if the EPA is satisfied that the relevant local authority has determined that the soil erosion risk of the land is at least moderate.

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(3) If forest land is to be treated as deforested under **subsection (1)**,—

(a) the deforestation is to be treated as having been carried out 4 years, 10 years, or 20 years after the clearing of the forest species, as the case may be; but

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- (b) the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees cleared 4 years, 10 years, or 20 years earlier, as the case may be.
- (4) Nothing in this section limits the EPA's ability to exercise powers under section 121 in respect of the deforestation of a hectare of forest land whenever the EPA considers that— 5
- (a) the hectare has been converted to land that is not forest land; and
- (b) any obligations imposed under this Act in respect of the deforestation have not been complied with.
- 179A Forest land may not be treated as deforested in certain cases** 10
- (1) Despite **section 179** and the definition of deforest in section 4(1),—
- (a) in the case of pre-1990 forest land, pre-1990 forest land that is cleared may not be treated as deforested for the purposes of this Act if the cleared land is exempt land or—
- (i) is contiguous with the edge of pre-1990 forest land that existed on 31 December 2007; and 15
- (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and
- (iii) is required to be or remain cleared to implement New Zealand's best practice forest management; and 20
- (iv) is used only for the purpose of implementing New Zealand's best practice forest management:
- (b) in the case of pre-1990 forest land in relation to which a P90 offset application has been submitted under **section 186BA**, the land may not be treated as deforested during the period— 25
- (i) starting on the date on which the application is submitted; and
- (ii) ending on the P90 offset date for the land under **section 186DA(3)**:
- (c) in the case of post-1989 forest land, the post-1989 forest land that is cleared may not be treated as deforested if the cleared land— 30
- (i) is contiguous with the edge of post-1989 forest land that existed on the date of the first registration of any person as a participant in standard forestry or permanent forestry in respect of the cleared land; and
- (ii) is an area that is less than 1 hectare or that is less than 30 metres wide at its widest point; and 35
- (iii) is required to be or remain cleared to implement New Zealand's best practice forest management; and

- (iv) is used only for the purpose of implementing New Zealand's best practice forest management.
- (2) However, in relation to **subsection (1)(b)**, see **section 186BD**, under which the effect of **subsection (1)(b)** may be reversed.
- (3) If **subsection (1)(c)** applies (where land is cleared for forest management), see **sections 188AB, 191AB, and 191BB**. 5
- (4) This section applies to land that was cleared before, on, or after the commencement of this section.
- (5) If regulations prescribe any meaning for New Zealand's best practice forest management, then that term has (or includes) that meaning in this section. 10

Subpart 2—Pre-1990 forest land

180 Participant in respect of pre-1990 forest land

- (1) If the activity listed in Part 1 of Schedule 3 is carried out, the landowner of the pre-1990 forest land is to be treated as the person carrying out the activity unless the EPA is satisfied that— 15
- (a) the right to decide to deforest the pre-1990 forest land was vested by the landowner in a third party, whether before or after 1 January 2008; and
- (b) the landowner had no control over the decision.
- (2) If the EPA is satisfied that the criteria specified in **subsection (1)(a) and (b)** are met, the third party is to be treated as the person carrying out the activity. 20
- (3) To avoid doubt, for the purposes of this Act, no person, other than a landowner or, in the circumstances in **subsection (2)**, a third party, is to be treated as carrying out an activity listed in Part 1 of Schedule 3.

181 When deforestation to be treated as occurring in respect of pre-1990 forest land

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- (1) This section applies to any hectare of pre-1990 forest land that is being converted to land that is not forest land.
- (2) The hectare of forest land is to be treated as being deforested on the date of the first action on it that is inconsistent with it remaining forest land.
- (3) However, **subsection (4)** applies if the hectare of forest land was cleared but not deforested prior to— 30
- (a) the forest land being transferred to the landowner; or
- (b) control of the forest land reverting to that landowner following the expiry or termination of a forestry right, Crown forestry licence, lease, or other agreement that relates to the land. 35
- (4) The hectare of forest land is to be treated as being deforested on the date of the first action on it that—

- (a) is inconsistent with the hectare remaining forest land; and
- (b) happens after the date of transfer of the land or the date of the expiry or termination of the forestry right, Crown forestry licence, lease, or other agreement relating to the land.
- (5) In any case, the liability in respect of the deforestation must be calculated by reference to the age and forest species of the trees when they were cleared, unless **section 186(2)** applies. 5
- (6) This section applies only if section 4(5) does not apply.
- (7) To avoid doubt, this section does not apply—
- (a) to land to which section 179A applies (and which therefore may not be treated as deforested); or 10
- (b) to land to which **section 186DI(3)** applies.
- 183** **Applications for exemption for land holdings of less than 50 hectares of pre-1990 forest land**
- (1) This section applies to a person who— 15
- (a) is a landowner of an area of pre-1990 forest land at the date of issue of the pre-1990 forest land allocation plan; or
- (b) was the landowner of an area of pre-1990 forest land at the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land. 20
- (2) A person to whom this section applies may apply to the EPA for the area of pre-1990 forest land to be declared exempt land if—
- (a) the area is less than 50 hectares; and
- (b) the area was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land; and 25
- (c) no allocation of units to a landowner has been made in respect of the area under the pre-1990 forest land allocation plan.
- (3) An application under **subsection (2)** must— 30
- (a) be submitted to the EPA by—
- (i) the date prescribed by regulations made under **section 168(1)(ca)**; or
- (ii) in the absence of a date prescribed by regulations made under **section 168(1)(ca)**, the date specified by public notice given by the EPA; and 35
- (b) be in the prescribed form and accompanied by the prescribed fee (if any); and

- (c) contain details of the area of pre-1990 forest land to which the application relates; and
- (d) be accompanied by evidence showing that the land is pre-1990 forest land; and
- (e) be accompanied by a statutory declaration,— 5
- (i) in the case of land owned by a sole professional trustee or owned by professional trustees only, from the trustee of the trust that is the subject of the exemption application stating that the total of pre-1990 forest land held in the trust on 1 September 2007—
- (A) was less than 50 hectares; and 10
- (B) was owned by a sole professional trustee or owned by professional trustees only;
- (ii) in any other case, from each person who owned the land on 1 September 2007 (other than a joint tenant who is a professional trustee) stating that the person, together with any persons associated with that person, owned less than a total of 50 hectares of pre-1990 forest land on 1 September 2007; and 15
- (f) be signed by the applicant; and
- (g) be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is a person to whom this section applies, the land is pre-1990 forest land, and each of the criteria specified in **subsection (2)(a) to (c)** is met, the EPA must— 20
- (a) declare the land to be exempt land; and
- (b) notify the applicant that the land has been declared exempt land.
- (5) Despite **subsection (3)(a)**, the EPA may, at its discretion, accept applications after the date specified in the public notice given under **subsection (3)(a)(ii)** or prescribed by regulations under **section 168(1)(ca)**. 25
- (6) The following rules apply for the purposes of determining, under **subsection (2)(b)**, whether an area of pre-1990 forest land was owned on 1 September 2007 by a person or persons who, along with any associated persons, owned in total less than 50 hectares of pre-1990 forest land: 30
- (a) the EPA must consider only pre-1990 forest land in respect of which the person or associated person was a landowner on 1 September 2007; and
- (b) if land was owned by persons as joint tenants,—
- (i) in the case where 1 or more of the joint tenants is a professional trustee, each of the joint tenants other than the professional trustee or trustees must individually have been a landowner of less than 50 hectares of pre-1990 forest land; or 35

- (ii) in the case where none of the joint tenants is a professional trustee, each of the joint tenants must individually have been a landowner of less than 50 hectares of pre-1990 forest land; and
- (c) if land was owned by persons as tenants in common, each tenant in common's interest in the land is to be treated as a divided interest on 1 September 2007; and 5
- (d) if land was owned by a sole professional trustee or owned by professional trustees only, the total pre-1990 forest land held in the trust on 1 September 2007 was less than 50 hectares.
- (7) For the purposes of this section and **section 183B**,— 10
own, in relation to pre-1990 forest land, means to be a landowner of the land professional trustee—
- (a) means a trustee whose profession, employment, or business is or includes acting as a trustee or investing money on behalf of others; and
- (b) includes a trustee in whom property is vested under Te Ture Whenua Maori Act 1993. 15
- 183A Certain applications not otherwise permitted by section 183**
- (1) Despite **section 183(2)(c) and (3)(a)**, a person may make an application under **section 183** by 31 December 2013 if—
- (a) the area concerned was owned, as at 1 September 2007, by a sole professional trustee or by professional trustees only; and 20
- (b) an allocation of units has been made before the commencement of the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012 in respect of the area under the pre-1990 forest land allocation plan. 25
- (2) If the EPA proposes to accept the application, the EPA must notify the applicant that—
- (a) it proposes to accept the application; but
- (b) the applicant must first, within 30 working days after receiving the notice, surrender or repay to the Crown holding account specified in the notice the number of units specified in the notice; and 30
- (c) if the units are not surrendered or repaid in accordance with **paragraph (b)**, then the application will be declined.
- (3) The units referred to in **subsection (2)** must be the same number of units that have been allocated and transferred under the pre-1990 forest land allocation plan in relation to the land concerned. 35
- (4) The EPA must,—

- (a) accept the application and declare the area concerned to be exempt land if, by the expiry of the 30 days, the units have been surrendered or repaid; or
- (b) decline the application if, by the expiry of the 30 days, the units have not been surrendered or repaid. 5
- (5) To avoid doubt,—
- (a) **section 183** (as amended by the Climate Change Response (Emissions Trading and Other Matters) Amendment Act 2012) otherwise applies to an application permitted by this section, but subject to the modifications made by this section; and 10
- (b) if an application is granted and an area is declared to be exempt land, the entitlement to units under the pre-1990 forest land allocation plan in respect of the land is cancelled.
- 183B Applications for exemption for some Maori land or land with 10 or more owners** 15
- (1) This section applies to an area of pre-1990 forest land that—
- (a) is less than 50 hectares; and
- (b) on 1 September 2007,—
- (i) was all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and 20
- (ii) was Maori land or was owned by more than 10 persons; and
- (c) was an area of pre-1990 forest land on the following date (the **qualifying date**): 25
- (i) the date of issue of the pre-1990 forest land allocation plan; or
- (ii) the date (if any), between 1 January 2008 and the date of issue of the pre-1990 forest land allocation plan, on which the area was converted to land that is not forest land; and
- (d) after the qualifying date,— 30
- (i) became owned by the trustees of a trust; or
- (ii) in the case of Maori freehold land, had an agent appointed for it under Te Ture Whenua Maori Act 1993 with the power to apply under this section; and
- (e) has not been the subject of an allocation of units to a landowner under the pre-1990 forest land allocation plan. 35
- (2) The trustees or agent described in **subsection (1)(d)** may apply to the EPA for the area of pre-1990 forest land to be declared exempt land.
- (3) The application—

- (a) may be submitted to the EPA at any time; and
 - (b) must be in the prescribed form and accompanied by the prescribed fee (if any); and
 - (c) must contain details of the area of pre-1990 forest land to which the application relates; and 5
 - (d) must be accompanied by evidence showing that the land is pre-1990 forest land; and
 - (e) must be accompanied by a statutory declaration from the applicant stating that the area of pre-1990 forest land was, on 1 September 2007, all of the pre-1990 forest land held in a document that is equivalent to a record of title under the Land Transfer Act 2017 or, if there was no such document, in another instrument of title; and 10
 - (f) must be signed by the applicant; and
 - (g) must be accompanied by any other prescribed information.
- (4) If the EPA is satisfied that the applicant is trustees or an agent described in **subsection (1)(d)**, that the land is pre-1990 forest land, and that each of the criteria specified in **subsection (1)(a) to (e)** is met, the EPA must— 15
 - (a) declare the land to be exempt land; and
 - (b) notify the applicant that the land has been declared exempt land.
- 184 Exemptions for deforestation of land with tree weeds** 20
- (1) An application may be made under this section for pre-1990 forest land to be declared exempt land (in relation to deforestation) if a prescribed type of tree weed—
 - (a) is growing on the land; or
 - (b) was cleared from the land as part of the deforestation process on or after 1 January 2008. 25
- (2) The application may be made by—
 - (a) the landowner of the pre-1990 forest land; or
 - (b) a third party to whom **section 180** applies.
- (3) The EPA must consider the application against the prescribed criteria and priorities and— 30
 - (a) may declare the land, or any part of the land, to be exempt land, if satisfied that—
 - (i) the applicant is eligible to apply for the exemption under **subsection (2)**; and 35
 - (ii) the land is pre-1990 forest land; and
 - (iii) the criteria specified in **subsection (1)** are met; and

- (b) must, if the EPA declares any land to be exempt land, notify the applicant of—
- (i) the declaration; and
 - (ii) any requirements or conditions that the EPA has decided to impose on the person whose land is exempted. 5
- (4) The EPA—
- (a) may declare that a person’s land ceases to be exempt land (under this section) if the person breaches any requirement or condition that the EPA imposed on them for the exempt land; and
 - (b) if it does so, must notify the person of the declaration. 10
- (5) If a person is convicted of an offence under section 132 or 133 in relation to an application under this section,—
- (a) the person must be treated as a person who has failed to submit an annual emissions return in respect of an activity listed in Part 1 of Schedule 3 when required to do so under this Act; and 15
 - (b) the EPA must make an assessment of the matters that should have been in the person’s annual emissions return and the number of units the person would have been liable to surrender if the land had not been exempt land; and
 - (c) the person is liable to surrender the number of units in the assessment under **paragraph (b)**; and 20
 - (d) section 123(1) to (3) and the other provisions of this Act apply as if the assessment under **paragraph (b)** were an assessment under section 121.
- 185** **Effect of exemption**
- The status of pre-1990 forest land as exempt land runs with the land and is not affected by any change in the ownership of the land. 25
- 185A** **Regulations about exemptions for deforestation of land with tree weeds**
- (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 in relation to exemptions under **section 184**: 30
- (a) prescribing the types of tree weed for which an application may be made for pre-1990 forest land to be declared exempt land;
 - (b) defining those types of tree weed based on any matter, such as the following:
- (i) the species of tree weed; 35
 - (ii) the geographical location of the tree weed;
 - (iii) whether a weed control programme applies to the tree weed;

- (c) prescribing processes for making applications to the EPA for an exemption, including fees for applications:
- (d) prescribing the information required in an application, including—
(i) information to properly describe or define the land:
(ii) evidence about the land and the forest species on the land: 5
- (e) prescribing the criteria and priorities that the EPA must consider in deciding whether to grant an exemption:
- (f) prescribing any requirements or conditions that the EPA may impose on a person whose land is exempted, including for weed control on the land: 10
- (g) specifying that 1 or more of the following is different for different types of tree weed:
(i) the process for making the application:
(ii) the information required in the application:
(iii) the criteria and priorities that the EPA must consider: 15
(iv) any requirements or conditions that the EPA may impose on a person whose land is exempted:
- (h) providing for any other matters contemplated by **sections 184 and 185**, necessary for their administration, or necessary for giving them full effect. 20
- (2) See sections 3A and **3B** for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.
- 186** **Methodology for pre-1990 forest land cleared in 8 years or less** 25
- (1) **Subsection (2)** applies where the trees cleared from pre-1990 forest land by a person carrying out the activity in Part 1 of Schedule 3 are 8 years or younger.
- (2) If this subsection applies, the participant must,—
(a) for the purposes of **sections 62(1)(b)** and 65(2)(b), apply any prescribed methodology and calculate and record the emissions from the activity as if the trees cleared from the pre-1990 forest land were trees of the age and species of the oldest trees of the predominant species (as determined by regulations made under section 163) cleared from the pre-1990 forest land during the previous 9 years (excluding any period in which the pre-1990 forest land is temporarily unstocked); and 30
(b) surrender units under this Act based on emissions calculated and recorded in accordance with **paragraph (a)**. 35

- (3) A methodology for calculating emissions from the activity in Part 1 of Schedule 3 prescribed in regulations under section 163 must relate to the trees that are cleared from the pre-1990 forest land as part of the deforestation activity.

Subpart 3—P90 offsetting land

186AA Interpretation

In this subpart,—

area 1 (approved) land means land that—

- (a) has become area 1 (approved) land under **section 186BC(2)(a)**; and
(b) has not ceased to be area 1 (approved) land under **section 186DI(2)(a) to (d)**

area 1 (damaged) land has the meaning given in **section 186DB(3)(a)(iii)**

area 1 (forested) land has the meaning given in **section 186DB(3)(a)(ii)**

area 1 (not offset) land has the meaning given in **section 186DB(3)(a)(iv)**

area 1 (offset) land has the meaning given in **section 186DB(3)(a)(i)**

area 2 (approved) land means land that—

- (a) has become area 2 (approved) land under **section 186BC(2)(c) or 186DE(2)(b)**; and
(b) has not ceased to be area 2 (approved) land under **section 186DI(2)(e) to (i)**

area 2 (damaged) land has the meaning given in **section 186DB(3)(b)(iii)**

area 2 (excess) land means land that—

- (a) has become area 2 (excess) land under **section 186DB(3)(b)(iv)**; and
(b) has not ceased to be area 2 (excess) land under **section 186DI(5)**

area 2 (forested) land has the meaning given in **section 186DB(3)(b)(i)**

area 2 (non-ETS) land has the meaning given in **section 186DB(3)(b)(v)**

area 2 (unforested) land has the meaning given in **section 186DB(3)(b)(ii)**

baseline carbon stock has the meaning given in **section 186DA(2)**

baseline date has the meaning given in **section 186DA(3)**

default P90 offset date has the meaning given in **section 186DA(5)(a)**

expected carbon stock has the meaning given in **section 186DA(4)**

P90 offset application means an application submitted to the EPA under **section 186BA**

P90 offset application date means the date on which a P90 offset application is submitted to the EPA under **section 186BA**

P90 offset date has the meaning given in **section 186DA(5)**

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P90 offset release criteria has the meaning given in **section 186DA(1)**

P90 offsetting land means land that—

- (a) has become P90 offsetting land under **section 186DI(2)(e)**; and
- (b) has not ceased to be P90 offsetting land under—
 - (i) **section 186EC(1)(a)**, for clearing before the required equivalence date; or
 - (ii) **section 186ED(1)(a)**, for deforestation before the required equivalence date; or
 - (iii) **section 186EE(1)(a)**, on the required equivalence date

P90 release criteria notice means a notice given under **section 186DB(1)**
required equivalence date has the meaning given in **section 186DA(6)**.

P90 offset application

186BA Application to offset land for pre-1990 forest land

- (1) The owner of pre-1990 forest land may apply to the EPA to offset other land for the pre-1990 forest land.
- (2) The application must—
 - (a) specify the pre-1990 forest land to which the application relates (**area 1**); and
 - (b) specify the land proposed as offsetting land for that pre-1990 forest land (**area 2**); and
 - (c) include any information prescribed in regulations made under **section 186FC**.
- (3) If area 1 and area 2 are owned by different persons, the application must be made jointly by all the owners of both areas.
- (4) The application must—
 - (a) be signed by all of the applicants; and
 - (b) be submitted—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).

186BB Criteria for P90 offset application

- (1) If a person submits a P90 offset application, the EPA—
 - (a) if satisfied that the criteria in **subsection (2)** were met on the P90 offset application date, must approve the application; or
 - (b) otherwise, may decline the application (*then see **section 186BD***).

- (2) The criteria are that—
- Area 1 criteria*
- (a) the land in area 1 is pre-1990 forest land that is one or other of the following:
- (i) land that was first planted before 1 January 1990; or 5
- (ii) land that was harvested and re-established after 1 January 1960; and
- Area 2 criteria*
- (b) the land in area 2 is 1 or more of the following:
- (i) land that is not forest land on the P90 offset application date but, if it were to become forest land,— 10
- (A) would be post-1989 forest land; and
- (B) if it were in a carbon accounting area, would meet the criteria in **section 194FD** for having a first rotation forest:
- (ii) post-1989 forest land that— 15
- (A) became post-1989 forest land less than 2 years before the P90 offset application date; and
- (B) meets the criteria in **section 194FD** for having a first rotation forest (or would do so if it were in a carbon accounting area): 20
- (iii) area 2 (excess) land, unless the re-use period prescribed in regulations made under **section 186FC** has expired:
- (iv) P89 offsetting (excess) land (as defined in **section 194GAA**), unless the re-use period prescribed in regulations made under **section 186FC** has expired; and 25
- (c) if any of the land in area 2 is in a carbon accounting area, all of the land in the carbon accounting area—
- (i) is land to which **paragraph (b)** applies; and
- (ii) is part of area 2; and
- (d) the total area (whether contiguous or not) of area 2 is equal to or greater than the total area (whether contiguous or not) of area 1; and 30
- (e) each individual parcel that makes up area 2 has an area of at least 1 hectare with an average width of at least 30 metres; and
- Participant criteria*
- (f) each person who will be a participant in respect of land in area 2 would be eligible to be a participant under section 57 if the person were carrying out an activity listed in Part 1 of Schedule 4 on that land; and 35

P90 offset release criteria

- (g) the EPA is satisfied that, if all of the land in area 1 becomes area 1 (offset) land, on the P90 offset date the P90 offset release criteria are likely to be met; and

Prescribed criteria

- (h) any other criteria prescribed in regulations made under **section 186FC** are met.

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186BC Effect of approval of P90 offset application

- (1) This section applies if the EPA approves a P90 offset application.

- (2) Starting on the P90 offset application date,—

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- (a) area 1 is **area 1 (approved) land**; and

- (b) if any of the land in area 2 is in a carbon accounting area, the participant for that land—

- (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and

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- (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and

- (c) area 2 is the **area 2 (approved) land** for area 1.

- (3) If **subsection (2)(b)** applies, the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.

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- (4) If **subsection (2)(b)(i)** applies,—

- (a) the notice requiring those units to be surrendered (referred to in **section 63(4)**) must also set out the effect of **paragraph (b)**; and

- (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.

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- (5) If an approval is revoked under **subsection (4)**, this Act applies as if the application had never been made.

- (6) However, despite **subsection (5)**, the effect of **subsection (2)(b)(ii)** is not reversed (so the person is not reinstated as a participant for the carbon accounting area).

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186BD Effect of P90 offset application being declined

- (1) This section applies if—

- (a) the EPA declines a P90 offset application; and

- (b) an activity listed in Part 1 of Schedule 3 was carried out on any of the land in area 1 (the **affected land**) on a date (**date D**) that was on or after the P90 offset application date but before the application was declined.

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- (2) The owner of the affected land on date D—
(a) is liable to surrender the number of units they would have been required to surrender when that activity was carried out if the application had not been made; and
(b) must comply with sections 56 and 65 in relation to that liability. 5
- (3) The emissions return required under **subsection (2)(b)** must cover the period starting on the P90 offset application date and ending on date D, as if that period were all part of the immediately preceding year.

Liability to surrender allocation

186CA Allocations for pre-1990 forest land to be surrendered when application approved 10

- (1) This section applies in relation to pre-1990 forest land if—
(a) the land becomes area 1 (approved) land; and
(b) an allocation was made in respect of the land as part of the second tranche (whether or not the units were actually transferred when allocated). 15
- (2) The owner of the land must—
(a) if they do not have a holding account under section 18A, open a holding account; and
(b) surrender or repay the number of units equal to the number allocated as part of the second tranche by transferring them to a Crown holding account. 20
- (3) The owner must do so within 30 working days after the EPA gives them a notice requiring them to do so.
- (4) The notice must specify—
(a) the number of units to be surrendered or repaid; and 25
(b) the Crown holding account to which the units must be transferred.
- (5) In this section, **second tranche** means the allocation of units under the pre-1990 forest land allocation plan that were transferred on or after 1 January 2013.

Offsetting on P90 offset date 30

186DA P90 offset release criteria

- (1) The **P90 offset release criteria** in respect of area 1 (approved) land and its area 2 (approved) land are that, on the P90 offset date,—
(a) the area of the area 2 (forested) land and any area 2 (damaged) land is equal to or greater than the area of the area 1 (offset) land; and 35

- (b) the expected carbon stock of the area 2 (forested) land and any area 2 (damaged) land is equal to or greater than the baseline carbon stock for the area 1 (offset) land; and
- (c) any other criteria prescribed in regulations made under **section 186FC** are met. 5
- (2) The **baseline carbon stock** for area 1 (offset) land is the carbon stock that the land had on the baseline date, determined in accordance with regulations made under **section 186FC**.
- (3) The **baseline date**, for area 1 (approved) land, is—
- (a) if, on the P90 offset application date, every hectare of land in area 1 had forest species on it that had tree crown cover of more than 30%, the P90 offset application date; or 10
- (b) if not, the date on which the clearing of area 1 started most recently before the P90 offset application date.
- (4) The **expected carbon stock**,— 15
- (a) of area 2 (forested) land, is the carbon stock that the land is expected to have achieved on the required equivalence date determined in accordance with regulations made under **section 186FC**; and
- (b) of area 2 (damaged) land, is the carbon stock that the land would have been expected to have achieved on the required equivalence date had it not been affected by the adverse natural event determined in accordance with regulations made under **section 186FC**. 20
- (5) The **P90 offset date**, in relation to area 1 (approved) land, is—
- (a) the date 4 years after the baseline date (the **default P90 offset date**); or
- (b) if a P90 release criteria notice is given before the default P90 offset date, the date on which the notice is given. 25
- (6) The **required equivalence date** is the last day of the period that—
- (a) starts when the forest species on area 2 (approved) land are first established; and
- (b) ends at the end of the usual rotation period prescribed in regulations made under **section 186FC** for the forest species that were on the area 1 (approved) land on the baseline date. 30

186DB P90 release criteria notice

- (1) The owners of the land in area 1 and area 2 must give notice (**P90 release criteria notice**) to the EPA under this section identifying the status of all land in area 1 and area 2 (including any additional land in relation to which an application is being made under **section 186DC**) on the P90 offset date. 35
- (2) The P90 release criteria notice—

- (a) may be given before the default P90 offset date (under **section 186DA(5)(a)**); but
- (b) if not given before that date, must be given within 60 working days after the default P90 offset date.
- (3) The P90 release criteria notice must— 5
- (a) identify all of the land in area 1 as one of the following:
- (i) **area 1 (offset) land**, being all the land in area 1 (other than any area 1 (damaged) land) that, on the P90 offset date,—
- (A) has ceased to be forest land; or
- (B) has been cleared with the intention that it will cease to be forest land: 10
- (ii) **area 1 (forested) land**, being all the land in area 1 that is still forest land on the P90 offset date, other than any land that is area 1 (offset) land under **subparagraph (i)(B)**:
- (iii) **area 1 (damaged) land**, being any land in area 1 that has been affected by a natural event that permanently prevents re-establishing a forest on the land: 15
- (iv) **area 1 (not offset) land**, being any land in area 1 that **section 186DG** requires to be identified as area 1 (not offset) land; and
- (b) identify all of the land in area 2 as one of the following: 20
- (i) **area 2 (forested) land**, being all the land in area 2 that is qualifying forest land on the P90 offset date, other than any land that is area 2 (excess) land or area 2 (non-ETS) land:
- (ii) **area 2 (unforested) land**, being all the land in area 2 that is not qualifying forest land on the P90 offset date, other than land that is area 2 (damaged) land: 25
- (iii) **area 2 (damaged) land**, being any land in area 2 that, before the P90 offset date, was affected by a natural event that permanently prevents establishing a forest on the land:
- (iv) **area 2 (excess) land**, being any land in area 2 that— 30
- (A) is qualifying forest land on the P90 offset date (but *see* **subsection (4)**); and
- (B) does not need to be included in the area 2 (forested) land in order for the P90 offset release criteria to be met; and
- (C) the owners want to be excluded from the area 2 (forested) land and to be available for re-use under **section 186BB(2)(b)(iii) or 194GB(2)(c)(iii)**: 35
- (v) **area 2 (non-ETS) land**, being any land in area 2 that—

- (A) is qualifying forest land on the P90 offset date (but see **sub-section (4)**); and
 - (B) does not need to be included in the area 2 (forested) land in order for the P90 offset release criteria to be met; and
 - (C) the owners want to be excluded from the area 2 (forested) land but not to be available for re-use under **section 186BB(2)(b)(iii) or 194GB(2)(c)(iii)**; and
- (c) specify—
- (i) the baseline carbon stock for the area 1 (offset) land; and
 - (ii) the expected carbon stock of the area 2 (forested) land; and
- (d) include any information prescribed in regulations made under **section 186FC**.
- (4) If an application is made under **section 186DC** to add additional land, the additional land must be identified as area 2 (forested) land.
- (5) The P90 release criteria notice must—
- (a) be made jointly by all of the persons who, on the P90 offset date, own land in area 1 or area 2 (including any additional land in relation to which an application is made under **section 186DC**); and
 - (b) be signed by all of the owners; and
 - (c) be given within 60 working days after the P90 offset date; and
 - (d) be given—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
- (6) Land is **qualifying forest land** if—
- (a) each hectare of the land has forest species on it that have, or are likely to have, tree crown cover of more than 30%; and
 - (b) those forest species were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and
 - (c) each individual parcel that makes up the land has an area of at least 1 hectare and has an average width of at least 30 metres.

186DC Application to add area 2 (approved) land

- (1) An application to add more land (**additional land**) to the area 2 (approved) land may be made when the P90 release criteria notice is given to the EPA.
- (2) The application must—
- (a) be made jointly by all of the persons who own land in area 1, area 2, or the additional land; and

- (b) be signed by all of the applicants; and
- (c) be given—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).

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186DD Criteria for adding area 2 (approved) land

- (1) If an application is made under **section 186DC**, the EPA,—
 - (a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or
 - (b) otherwise, may decline the application.
- (2) The criteria are that—
 - (a) the additional land—
 - (i) is land of a kind specified in **section 186BB(2)(b)(ii), (iii), or (iv)**; and
 - (ii) is qualifying forest land (as defined in **section 186DB(6)**); and
 - (b) if the application is not approved, on the P90 offset date the P90 offset release criteria in **section 186DA(1)(a) or (b)** (or both) will not be met; and
 - (c) the area of the additional land is not more than is necessary to enable the P90 offset release criteria to be met; and
 - (d) any other criteria prescribed in regulations made under **section 186FC** are met.

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186DE Effect of approval of application to add area 2 (approved) land

- (1) This section applies if the EPA approves an application under **section 186DC** to add land to the area 2 (approved) land.
- (2) On the P90 offset date (but before **section 186DI** takes effect),—
 - (a) if any of the additional land is a carbon accounting area, the participant for that land—
 - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
 - (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and
 - (b) the additional land becomes part of the area 2 (approved) land (and is therefore part of area 2 and becomes area 2 (forested) land (see **section 186DB(3)(b)(i) and (4)**).

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- (3) If **subsection (2)(a)** applies, the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this section.
- (4) If **subsection (2)(a)(i)** applies,—
- (a) the notice requiring those units to be surrendered (referred to in **section 63(4)**) must also set out the effect of **paragraph (b)**; and
 - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.
- (5) If an approval is revoked under **subsection (4)**, this Act applies as if the application had never been made, except that—
- (a) the effect of **subsection (2)(a)(ii)** is not reversed (so the person is not reinstated as a participant for the carbon accounting area); and
 - (b) **section 186DH** does not apply.
- 186DF Effect of application to add area 2 (approved) land being declined**
- (1) This section applies if the EPA declines an application under **section 186DC** to add land to the area 2 (approved) land.
- (2) The EPA must notify the applicants of—
- (a) the decision and the reasons for it; and
 - (b) the owners' right under section 144 to seek a review of that decision; and
 - (c) the effect of **subsection (3)** and **section 128A**.
- (3) If the EPA gives a notice under **subsection (2)**,—
- (a) the P90 release criteria notice that was accompanied by the application is taken not to have been given; and
 - (b) the owners must give the EPA—
 - (i) a revised P90 release criteria notice for area 1 and area 2; and
 - (ii) if they wish to do so, another application under **section 186DC** to add additional land; and
 - (c) the deadline for giving the P90 release criteria notice under **section 186DB(2)(b)** is extended to 60 working days after the notice was given under **subsection (2)**.
- (4) However, if the owners have previously given a revised notice under **subsection (3)(b)(i)** that was accompanied by an application under **section 186DC**,—
- (a) **subsection (3)(b)(ii)** does not apply and the owners cannot make another application under **section 186DC**; and
 - (b) **section 186DH** does not apply.

186DG Land that must be identified as area 1 (not offset) land

- (1) Land in area 1 must be identified as area 1 (not offset) land if, in the absence of this section,—
- (a) the land would be identified as area 1 (offset) land; and
 - (b) either or both of the following would apply:
 - (i) the area of the area 1 (offset) land would be greater than the area of the area 2 (forested) land and any area 2 (damaged) land;
 - (ii) the baseline carbon stock for the area 1 (offset) land would be greater than the expected carbon stock of the area 2 (forested) land and any area 2 (damaged) land.
- (2) The area of any land identified as area 1 (not offset) land must be the minimum area necessary to result in the P90 offset release criteria being met.

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186DH Extension of time to add area 2 (approved) land

- (1) This section applies if—
- (a) a P90 release criteria notice is given to the EPA within the time required by **section 186DB(2)**; and
 - (b) an application under **section 186DC** was not made when the P90 release criteria notice was given; and
 - (c) the P90 release criteria notice is not a revised notice given under **section 186DF(3)(b)**; and
 - (d) the EPA is not satisfied that the P90 release criteria notice identifies the land in a way that results in the P90 offset release criteria being met.
- (2) The EPA may, by giving a notice to the owners of area 1 and area 2, offer them an opportunity to submit a revised P90 release criteria notice with an application under **section 186DC**.
- (3) The EPA's notice must set out—
- (a) the reasons for the EPA's decision that the P90 release criteria notice is not correct; and
 - (b) the owners' right under section 144 to seek a review of that decision; and
 - (c) the effect of **subsection (4)** and **section 128A**.
- (4) If the EPA gives a notice under **subsection (2)**,—
- (a) the P90 release criteria notice referred to in **subsection (1)(a)** is taken not to have been given; and
 - (b) the owners must give the EPA—
 - (i) a revised P90 release criteria notice for area 1 and area 2; and
 - (ii) if they wish to do so, an application under **section 186DC** to add additional land; and

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- (c) the deadline for giving the P90 release criteria notice under **section 186DB(2)(b)** is extended to 60 working days after the notice was given under **subsection (2)**.

186DI Effect on P90 offset date

- (1) This section applies if a P90 release criteria notice is given to the EPA in accordance with **section 186DB**. 5
- (2) With effect on the P90 offset date,—
- (a) the area 1 (offset) land—
- (i) ceases to be area 1 (approved) land; and
- (ii) is the land against which the area 2 (forested) land and area 2 (damaged) land are compared to determine whether the P90 offset release criteria are met; and 10
- (b) the area 1 (forested) land—
- (i) ceases to be area 1 (approved) land; and
- (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and 15
- (c) the area 1 (damaged) land—
- (i) ceases to be area 1 (approved) land; and
- (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and 20
- (d) the area 1 (not offset) land—
- (i) ceases to be area 1 (approved) land; and
- (ii) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (e) the area 2 (forested) land— 25
- (i) is part of the land used to determine whether the P90 offset release criteria are met; and
- (ii) becomes **P90 offsetting land** (*then see sections 186EA to 186EE* and Part 1A of Schedule 3); and
- (iii) ceases to be area 2 (approved) land; and 30
- (f) the area 2 (unforested) land—
- (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (ii) ceases to be area 2 (approved) land; and
- (g) the area 2 (damaged) land— 35
- (i) is part of the land used to determine whether the P90 offset release criteria are met; and

- (ii) ceases to be area 2 (approved) land; and
- (h) the area 2 (excess) land—
- (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (ii) ceases to be area 2 (approved) land, but remains area 2 (excess) land subject to **subsection (5)**; and 5
- (i) the area 2 (non-ETS) land—
- (i) is not part of the land used to determine whether the P90 offset release criteria are met; and
- (ii) ceases to be area 2 (approved) land and area 2 (non-ETS) land. 10
- (3) Starting on the P90 offset date, the owner of the area 1 (not offset) land on the P90 offset date—
- (a) is liable to surrender units as a result of the deforestation of the land as if that deforestation had occurred on the P90 offset date (*see also* **section 181(7)(b)**); and 15
- (b) must comply with sections 56 and 65 in relation to that liability.
- (4) To avoid doubt,—
- (a) the owner of the area 1 (offset) land, incurs no liability under section 63 for the deforestation (because of **section 179A(1)(b)**); and
- (b) the owner of the area 1 (forested) land is not liable to surrender any units (because the land has not been deforested); and 20
- (c) the owner of the area 1 (damaged) land, is not liable to surrender any units (because the land is excluded from Part 1 of Schedule 3).
- (5) Land ceases to be area 2 (excess) land if the land—
- (a) becomes area 2 (approved) land as a result of being included in a P90 offset application under **section 186BB(2)(b)(iii)**; or 25
- (b) becomes P89 offsetting (approved) land as a result of being included in a P89 offset application under **section 194GB(2)(c)(iii)**; or
- (c) becomes part of a carbon accounting area as a result of an application under **section 188(1) or (3)**. 30
- (6) The EPA must update the register kept under **section 186FA** to record the effect of this section.
- 186DJ Reimbursement of surrendered allocation**
- (1) This section applies if—
- (a) a person surrendered units in respect of area 1 (approved) land in accordance with **section 186CA(2)**; and 35
- (b) on the P90 offset date, any of that land is area 1 (forested) land or area 1 (damaged) land.

(2) Starting on the P90 offset date, the EPA is liable to reimburse to that person (whether or not they still own the land) the number of units surrendered under **section 186CA(2)** in respect of that area 1 (forested) land or area 1 (damaged) land.

P90 offsetting land

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186EA Participant in respect of P90 offsetting land

If an activity listed in Part 1A of Schedule 3 is carried out on P90 offsetting land, the landowner is to be treated as the person carrying out the activity.

186EB Clearing or deforestation before required equivalence date

- (1) This section applies if—
- (a) a P90 offset application was approved; and
 - (b) on the P90 offset date, the area 2 (approved) land became P90 offsetting land for the area 1 (offset) land; and
 - (c) before the required equivalence date, either or both of the following occur on some or all of the P90 offsetting land (the **affected land**):
 - (i) the land is cleared;
 - (ii) an activity listed in Part 1A of Schedule 3 (a **Part 1A activity**) is carried out on the land.
- (2) If the affected land is cleared, **section 186EC** applies in relation to the clearing of the land.
- (3) If a Part 1A activity is carried out on the affected land, **section 186ED** applies in relation to that activity.
- (4) If the affected land is cleared and later (but still before the required equivalence date) a Part 1A activity is carried out on the affected land—
- (a) if, before the Part 1A activity is carried out, the owner submits an emissions return as required by **section 186EC(1)(b)(ii)**—
 - (i) **section 186EC** applies in relation to the clearing of the land; and
 - (ii) **section 186ED** does not apply in relation to the Part 1A activity;
or
 - (b) if the owner does not submit an emissions return as required by **section 186EC(1)(b)(ii)** before the Part 1A activity is carried out—
 - (i) **section 186EC** does not apply in relation to the clearing of the land; and
 - (ii) **section 186ED** applies in relation to the Part 1A activity.
- (5) For the purposes of this section and **section 186EC**, a hectare of P90 offsetting land is to be treated as being cleared on the first date on which any part of that hectare is cleared.

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186EC Clearing before required equivalence date

- (1) If this section applies in relation to the clearing of affected land, starting on the date on which the clearing occurred,—
- (a) the affected land ceases to be P90 offsetting land; and
 - (b) the owner of the affected land—
 - (i) is liable to surrender the units as if the affected land were deforested on the date on which it was cleared; and
 - (ii) must submit an emissions return as required by section 65 in relation to that deemed deforestation; and
 - (iii) if they do not have a holding account under section 18A, must open a holding account.
- (2) However, the number of units the owner is liable to surrender under **subsection (1)(b)(i)** is the number calculated under **subsection (3)** instead of the number of units they would otherwise be liable to surrender under section 63.
- (3) The number of units to be surrendered (s) is calculated as follows:
- $$s = (d \div a) \times n$$
- where—
- d is the area of the affected land (in hectares)
 - a is the total area of all of the area 1 (approved) land for the area 1 (offset) land (in hectares)
 - n is the baseline carbon stock of the area 1 (offset) land, as recorded under **section 186FA(2)(b)** (in tonnes).
- (4) In the emissions return required under **subsection (1)(b)(ii)**, the relevant portion of the emissions from the area 1 (offset) land is to be recorded as if it were the emissions from deforestation of the affected land.
- (5) The liability under **subsection (1)(b)(i)** is to be treated as a liability to surrender units for emissions from the deemed deforestation on the P90 offsetting land.
- (6) The EPA must update the register under **section 186FA** to record the effect of this section.
- (7) To avoid doubt, the affected land is not to be treated as having been deforested other than as required by this section.

186ED Deforestation before required equivalence date

- (1) If this section applies in relation to the carrying out of a Part 1A activity on affected land, starting on the date on which the activity was carried out,—
- (a) the affected land ceases to be P90 offsetting land; and
 - (b) the owner of the affected land—

- (i) must submit an emissions return as required by section 65 as a result of the carrying out of the activity; but
- (ii) is liable to surrender the number of units calculated under **subsection (2)** instead of the number of units they would otherwise be liable to surrender under section 63 for the emissions from the carrying out of the activity. 5
- (2) The number of units to be surrendered (s) is calculated as follows:
- $$s = (d \div a) \times n$$
- where—
- d is the area of the affected land (in hectares) 10
- a is the total area of all of area 1 (approved) land for the area 1 (offset) land (in hectares)
- n is the baseline carbon stock of the area 1 (offset) land, as recorded under **section 186FA(2)(b)** (in tonnes).
- (3) In the emissions return required under **subsection (1)(b)(i)**, the relevant portion of the emissions from the area 1 (offset) land is to be recorded as if it were the emissions from the carrying out of the activity. 15
- (4) The liability under **subsection (1)(b)(ii)** is to be treated as a liability to surrender units for emissions from the carrying out of the activity on the P90 offsetting land. 20
- (5) The EPA must update the register under **section 186FA** to record the effect of this section.

186EE P90 offsetting land becomes pre-1990 forest land

- (1) On the required equivalence date, the P90 offsetting land—
- (a) ceases to be P90 offsetting land; and 25
- (b) becomes pre-1990 forest land.
- (2) The EPA must update the register under **section 186FA** to record the effect of this section.

Administrative matters

186FA P90 offsetting land register 30

- (1) The EPA must keep a register of the following:
- (a) P90 offsetting land;
- (b) land that has become pre-1990 land under **section 186EE** and has not been recorded in the register under section 56;
- (c) area 2 (excess) land. 35
- (2) The register must include the following information about the registered land:

- (a) whether it is P90 offsetting land, pre-1990 forest land, or area 2 (excess) land:
- (b) a description of the land:
- (c) the area of the land (in hectares):
- (d) for P90 offsetting land, the baseline carbon stock of the relevant area 1 (offset) land (in tonnes): 5
- (e) for pre-1990 forest land, the date on which it became pre-1990 forest land:
- (f) for area 2 (excess) land, the date on which it became area 2 (excess) land. 10

186FB EPA to give information on request

- (1) The EPA must, on request, give a copy of the information on the register under **section 186FA** about P90 offsetting land to the owner of that land or the relevant area 1 (offset) land.
- (2) The EPA must, on request, give the owner of pre-1990 forest land a statement of the number of units (if any) the owner would be liable to surrender under **section 186CA** if that section were to apply in relation to the land. 15
- (3) In this section,—
owner, in relation to land, means a person who owns the land, or has previously owned it, or is a prospective transferee of it 20
request means a written request from the person to whom the information is to be given.

186FC Regulations for P90 offsetting

- (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: 25
 - (a) prescribing the information to be included in, and other requirements for,—
 - (i) P90 offset applications (**section 186BA**):
 - (ii) P90 release criteria notices (**section 186DB**):
 - (iii) applications to add land to the area 2 (approved) land (**section 186DD**): 30
 - (b) prescribing re-use periods for area 2 (excess) land or P89 offsetting (excess) land (**section 186BB(2)(b)(iii) and (iv)**):
 - (c) prescribing additional criteria for approval of—
 - (i) P90 offset applications (**section 186BB(2)(h)**): 35
 - (ii) applications to add land to the area 2 (approved) land (**section 186DD**):

- (d) prescribing additional P90 offset release criteria (**section 186DA(1)(c)**):
- (e) prescribing the methodology for determining—
(i) baseline carbon stock (**section 186DA(2)**):
(ii) expected carbon stock (**section 186DA(4)**):
- (f) prescribing usual rotation periods for forest species (**section 186DA(6)**):
- (g) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) See sections 3A and **3B** for consultation requirements that apply to the making of the regulations.
- (3) The regulations come into force 3 months after the date of their notification in the *Gazette* or on any later date specified in the regulations.
- Subpart 4—Post-1989 forest land (standard and permanent forestry)
- 186K Standard and permanent forestry on post-1989 forest land**
- (1) In this subpart,—
final forestry emissions return means an emissions return that is prepared under **section 189BA** and is not a provisional forestry emissions return
permanent forestry means an activity listed in **Part 1A** of Schedule 4
provisional forestry emissions return means an emissions return submitted under **section 189AA**
standard forestry means an activity listed in **Part 1** of Schedule 4.
- (2) To avoid doubt, standard forestry and permanent forestry comprise the same list of activities carried out in respect of post-1989 forest land, but the difference is that the relevant Part of Schedule 4 has been chosen to apply to the land.
- 187 Conditions on registration as participant in certain activities of standard or permanent forestry in respect of post-1989 forest land**
- (1) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry that relates to—
(a) owning any post-1989 forest land, unless the person is the landowner of the post-1989 forest land and—
(i) there is no forestry right or lease registered in respect of that land;
or
(ii) the person has the written agreement of any holder of a registered forestry right or registered lease in respect of that land to the person registering as a participant; or

- (b) holding a registered forestry right or being the leaseholder under a registered lease in respect of any post-1989 forest land, unless the person,—
- (i) is the holder of the registered forestry right or the leaseholder of the registered lease; and
 - (ii) has the written agreement of the landowner of the land to the forestry right holder or leaseholder, as the case may be, registering as a participant. 5
- (2) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to exempt land that has been deforested 8 or less years ago unless the person— 10
- (a) has submitted an emissions return to the EPA that—
 - (i) records the emissions from the deforestation of the land—
 - (A) that would have been required to have been recorded in an annual emissions return under section 65, had the land not been declared to be exempt land; and 15
 - (B) calculated in accordance with the methodology or methodologies prescribed for the deforestation activity listed in Part 1 of Schedule 3 that were applicable when the land was deforested; and
 - (ii) contains an assessment of the liability to surrender units that would have arisen in relation to the deforestation had the land not been declared to be exempt land; and 20
 - (iii) is accompanied by the prescribed fee (if any) and any other prescribed information; and
 - (iv) is signed by the person submitting the application; and 25
 - (b) has surrendered, within 60 working days after the EPA gives the person a notice requiring the surrender, the number of units listed in the assessment under **paragraph (a)(ii)**; and
 - (c) complies with **subsection (1)**, if applicable.
- (3) To avoid doubt, if any person is registered as a participant carrying out an activity of standard forestry or permanent forestry in respect of any post-1989 forest land, no person (including that person) can be registered as a participant carrying out a different activity of standard forestry or permanent forestry in respect of that land. 30
- (4) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to post-1989 forest land unless— 35
- (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 40

- 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 plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the person has— 5
- (i) complied with the requirements; or
- (ii) verified that any other person required to comply with the requirements has done so.
- (5) A person may not be registered as a participant under section 57 in respect of an activity of standard forestry or permanent forestry in relation to post-1989 forest land where the forest species on the land is predominantly naturally regenerated tree weeds unless the EPA is satisfied that the risk of tree weed spread from the land that is the subject of the application for registration is low. 10
- (6) **Subsection (5)** does not apply to any person who has registered as a participant before 1 January 2013. 15
- 187A EPA to give public notice of criteria for assessing risk of tree weed spread**
- The EPA must give public notice of the criteria for assessing the risk of tree weed spread from land that is the subject of an application for registration under section 57. 20
- 188 Registration as participant in standard or permanent forestry**
- (1) An application under section 57 to be registered as a participant in respect of an activity of standard forestry or permanent forestry—
- (a) may be submitted for all post-1989 forest land in respect of which the applicant carries out the activity, or any part of the land in respect of which the applicant carries out the activity; and 25
- (b) must define the carbon accounting area or areas in respect of which the applicant wishes to be a participant; and
- (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 30
- (ii) if the post-1989 forest land is subject to a pest management plan under the Biosecurity Act 1993 that imposes requirements in respect of any forest species on the land, the applicant has— 35

- (A) complied with the requirements; or
- (B) verified that any other person required to comply with the requirements has done so; and
- (d) must be accompanied by any information prescribed by regulations made under this Act. 5
- (2) The EPA must keep the following records for the activity of standard forestry or permanent forestry for which a person is a participant (whether by registration under section 57 or otherwise):
- (a) the carbon accounting area or areas in respect of which the person is a participant; and 10
- (b) for each carbon accounting area used for an activity of standard forestry, whether or not it is a carbon accounting area (averaging); and
- (c) the unit balance of each carbon accounting area in respect of which the person is a participant, as calculated under the last emissions return submitted for the area. 15
- (3) A person who is a participant in standard forestry or permanent forestry (whether by registration under section 57 or otherwise) may apply to the EPA to add any carbon accounting area or areas to the post-1989 forest land in respect of which the person is recorded as a participant.
- (4) An application under **subsection (3)** must be— 20
- (a) in the prescribed form; and
- (b) accompanied by any prescribed fee and any prescribed information.
- (5) The EPA may (under this section) add a carbon accounting area to the post-1989 forest land in respect of which a person is recorded as a participant only if— 25
- (a) the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of that land under **section 187**; and
- (b) where the forest species on that land is predominantly naturally regenerated tree weeds, the EPA is satisfied that the risk of tree weed spread from the land is low. 30
- (6) If the EPA—
- (a) registers a person as a participant under section 57 in relation to an activity of standard forestry or permanent forestry, the EPA must notify the person under **section 57(6)**; 35
- (b) receives an application to add a carbon accounting area and **subsection (5)** is satisfied, the EPA must—
- (i) update the participant's record to reflect the addition of the carbon accounting area; and

- (ii) notify the participant accordingly.
- (7) The addition of a carbon accounting area under **subsection (6)(b)(i)** has effect on and after the date of the notice given under **subsection (6)(b)(ii).**
- (8) See also **sections 188AC and 188AD** (which require notice to the participant and notice to interested parties, if any). 5

188AC Notice to forestry participant if their registration added or removed

The EPA must give written or electronic notice to a participant, or former participant, of the following matters as soon as practicable after the EPA carries them out under any of **Parts 5 to 5D**:

- (a) the participant's registration or removal from registration in respect of an activity, and the date on which this took or takes effect: 10
- (b) the addition or removal of any area or land for which the participant is registered, and the date on which this took or takes effect.

188AD Notice to interested party if forestry participant's registration added or removed 15

(1) A participant must notify the interested party (if any) of the following matters under this section, in writing or electronically, as soon as practicable after receiving the EPA's notice about, or becoming aware of, the matter:

- (a) the participant's registration, or removal from registration, in respect of an activity, and the date that this took or takes effect: 20
- (b) the addition or removal of any area or land for which the participant is registered, and the date that this took or takes effect.

(2) The EPA must provide the participant with any address that it has recorded for the interested party.

(3) In this section, **interested party** means— 25

- (a) the landowner, in relation to a participant who is registered for an activity relating to—
- (i) holding a registered forestry right or registered lease over land; or
- (ii) being a party to a Crown conservation contract over land; or
- (b) any person with a registered forestry right or registered lease in respect of the land, in relation to a participant who is registered for an activity relating to owning post-1989 forest land. 30

188AA Removing registration as participant in standard or permanent forestry

(1) This section sets out some situations in which **section 191AA or 191BA** applies (which relate to ceasing participation for whole or part carbon accounting areas). 35

(2) **Section 191AA** applies if the EPA—

- (a) receives an application under section 58 for the removal of a person's name from the register as a participant in standard forestry; or
- (b) is satisfied under section 59(2) that the person has ceased to carry out standard forestry or permanent forestry.
- (3) **Section 191AA** applies if the EPA decides to remove the name of a person from the register in respect of an activity of standard forestry under **section 59A** (for persistent non-compliance), or in respect of an activity of standard forestry or permanent forestry under **section 59B** (because the person never carried out the activity). 5
- (4) A person who is a participant in standard forestry or permanent forestry— 10
- (a) may apply to the EPA to—
- (i) remove any carbon accounting area or areas from the post-1989 forest land in respect of which the person is recorded as a participant; or
- (ii) remove post-1989 forest land from any carbon accounting area or areas in respect of which the person is recorded as a participant; and 15
- (b) must, as soon as practicable, notify the EPA if the person ceases to carry out the activity in respect of—
- (i) a carbon accounting area in respect of which the person is recorded as a participant; or 20
- (ii) any land in a carbon accounting area in respect of which the person is recorded as a participant.
- (5) An application or a notice under **subsection (4)** must be—
- (a) in the prescribed form; and 25
- (b) accompanied by any prescribed fee and any prescribed information.
- (6) **Section 191AA** applies if the EPA—
- (a) receives and approves an application to remove a carbon accounting area for which a person is recorded as a participant; or
- (b) receives a notice that a person has ceased to carry out standard forestry or permanent forestry on all of a carbon accounting area; or 30
- (c) is satisfied that a person has ceased to carry out standard forestry or permanent forestry on all of a carbon accounting area.
- (7) **Section 191BA** applies if the EPA—
- (a) receives and approves an application to remove land from a carbon accounting area for which a person is recorded as a participant; or 35
- (b) receives a notice that a person has ceased to carry out standard forestry or permanent forestry on part of a carbon accounting area; or

- (c) is satisfied that a person has ceased to carry out standard forestry or permanent forestry on part of a carbon accounting area.
- (8) This section is subject to **section 194EB** (which restricts the removal of land relating to permanent forestry).

188AB Removing registration as participant in standard or permanent forestry in certain natural events or clearance for forest management 5

- (1) A person who is a participant in standard forestry or permanent forestry may, as soon as practicable, notify the EPA if all or part of the post-1989 forest land on which the person carries out the activity—
- (a) is affected by a natural event that permanently prevents re-establishing a forest on that land; or 10
- (b) is cleared land to which **section 179A(1)(c)** applies (which is land cleared for best practice forest management that may not be treated as deforested).
- (2) The notice must— 15
- (a) include the prescribed information (if any); and
- (b) be signed by the person; and
- (c) be given—
- (i) in the prescribed manner and format; and
- (ii) together with the prescribed fee (if any); and 20
- (iii) together with the prescribed information (if any).
- (3) If the EPA is satisfied that the post-1989 forest land is land to which **subsection (1)(a) or (b)** applies, then whichever of **section 191AA or 191BA** is relevant applies (so that the person is not liable to surrender units equal to the unit balance of the affected land). 25

Provisional and final forestry emissions returns

189AA Provisional forestry emissions return in any year

- (1) This section applies to a person who is a participant in an activity of standard forestry or permanent forestry.
- (2) The person may, once before 1 July in each year, submit a provisional forestry emissions return prepared under **section 189BA** for the activity— 30
- (a) that covers 1 or more of the carbon accounting areas for which the person is a participant in the activity (each a CAA1); and
- (b) that uses the last day of the previous calendar year as the **relevant date**.

189AB Final forestry emissions return at end of mandatory emissions return period

- (1) This section applies to a person who is a participant in an activity of standard forestry or permanent forestry on the last day of a mandatory emissions return period. 5
- (2) The person must submit a final forestry emissions return prepared under **section 189BA** for the activity—
- (a) that covers each carbon accounting area for which the person was a participant in the activity on the last day of the mandatory emissions return period (each a **CAA1**); and 10
- (b) that uses the last day of the mandatory emissions return period as the **relevant date**.
- (3) The deadline for submitting the emissions return is 6 months after the end of the mandatory emissions return period.
- (4) However, **subsection (2)** does not apply in relation to a carbon accounting area in relation to which a participant is not required to submit an emissions return under— 15
- (a) **section 194FC(2)(b)(ii)**, relating to carbon accounting areas (averaging); or
- (b) **section 194PC(3)(b)**, relating to temporary adverse event land. 20

189BA Preparing provisional or final forestry emissions return

- (1) An emissions return prepared under this section must—
- (a) specify the **CAA1s** that the emissions return covers; and
- (b) specify the activity for which the person was a participant on the **CAA1s**; and 25
- (c) for each **CAA1**,—
- (i) specify the emissions return period that applies, by using **subsection (4)** and the relevant date from the provision that requires the return; and
- (ii) specify the emissions and removals during the emissions return period; and 30
- (iii) set out the calculation under **section 189CA** of the person's gross liability or entitlement for emissions and removals during the emissions return period; and
- (iv) specify the person's net liability or entitlement for emissions and removals during the emissions return period by,— 35
- (A) for a provisional forestry emissions return, specifying the same value as the person's gross liability or entitlement; or

- (B) for a final forestry emissions return, setting out the calculation of that value under **section 189CB** (which takes into account the liability or entitlement under each provisional forestry emissions return for an overlapping period, if any); and 5
- (v) set out the calculation under **section 189CC** of the unit balance; and
- (d) set out the calculation under **section 189CD** of the person's total liability or entitlement for all the CAA1s.
- (2) The emissions return must— 10
- (a) include the prescribed information (if any); and
- (b) be signed by the participant; and
- (c) when submitted under the relevant provision, be submitted—
- (i) in the prescribed manner and format; and
- (ii) together with the prescribed fee (if any); and 15
- (iii) together with the prescribed information (if any).
- (3) See **section 62(1)(b) and (c)** for the requirements to calculate (and potentially verify) emissions and removals.
- (4) In this section, **emissions return period**, for a CAA1, means the period that—
- (a) starts on the latest of the following: 20
- (i) the first day of the mandatory emissions return period in which the relevant date falls;
- (ii) if the CAA1 was constituted by registration under **section 188**, the date on or before registration on which any of the land in the CAA1 became post-1989 forest land; 25
- (iii) if the CAA1 was constituted in another way, the constitution date of the CAA1;
- (iv) the day after the last day of the emissions return period for the CAA1 under,—
- (A) for a provisional forestry emissions return, the last provisional or final forestry emissions return submitted for the CAA1; and 30
- (B) for a final forestry emissions return, the last final forestry emissions return submitted for the CAA1; and
- (b) ends on the relevant date. 35
- (5) If **subsection (4)(a)(ii)** applies, the person must be treated as if they became a participant in respect of the CAA1 on the date under that subparagraph (before the CAA1 was actually constituted) for the purposes of calculating—

- (a) emissions and removals from the CAA1; and
- (b) the unit balance of the CAA1.

Calculations for provisional and final forestry emissions returns

189CA Gross liability or entitlement for each CAA1 in emissions return

- (1) A person's gross liability or entitlement for a CAA1 over an emissions return period (g) is calculated as follows: 5

$$g = r - e$$

where—

- r is the number of units required for removals from the CAA1 during the emissions return period 10
- e is the number of units required for emissions from the CAA1 during the emissions return period.

Recalculation based on unit balance (section 190)

- (2) However, if—
- (a) the g calculated under subsection (1) is a negative number, giving a gross liability; and 15
 - (b) that gross liability is greater than the CAA1's previous unit balance (meaning p in the calculation under section 189CC),—
- then g is recalculated as the negative of the previous unit balance.

189CB Net liability or entitlement for each CAA1 in final forestry emissions return 20

- (1) A person's net liability or entitlement for a CAA1 over an emissions return period (h) is calculated as follows:

$$h = g - g_n$$

where— 25

- g is the person's gross liability or entitlement for the CAA1 (under that same final forestry emissions return)
- g_n is the sum of the person's gross liability or entitlement for the CAA1 under each overlapping provisional forestry emissions return (if any).

- (2) To avoid doubt, if there is no overlapping provisional forestry emissions return, a person's net liability or entitlement is the same as their gross liability or entitlement for a CAA1. 30

- (3) However, if section 194DC applies, the person's net liability or entitlement (h_r) is recalculated as follows:

$$h_r = h_a - s$$
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where—

h_a is the person's net liability or entitlement calculated under **subsection (1)**

s is the number of units the person is liable to surrender under **section 194DC**.

Definition

(4) In this section, **overlapping provisional forestry emissions return** means each provisional forestry emissions return (if any) submitted for a period that overlaps with the emissions return period of the final forestry emissions return.

189CC Unit balance calculation for each CAA1 in emissions return

The **unit balance** of a CAA1 (u) is calculated for an emissions return as follows:

$$u = p + h$$

where—

p is—

(a) the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or

(b) zero, if there is no such return

h is the person's net liability or entitlement for the CAA1 under the emissions return for which u is calculated.

189CD Total liability or entitlement for all CAA1s in emissions return

A person's **total liability or entitlement** for all the CAA1s covered by an emissions return is the sum of the person's net liability or entitlement for each CAA1.

Total liability or entitlement and unit balance has effect for all emissions returns

189DA Total liability or entitlement has effect, and unit balance updated, when emissions return submitted

(1) This section applies when a person submits a provisional or final forestry emissions return.

(2) If the person's total liability or entitlement for the CAA1s covered by the emissions return is—

(a) a positive number, the person is entitled to receive (or be reimbursed) that number of New Zealand units; or

(b) a negative number, the person is liable to surrender (or repay) that number of units.

(3) For a final forestry emissions return, the person—

(a) is entitled to be reimbursed (instead of to receive) units; or
(b) is liable to repay (instead of to surrender) units—
to the extent that they surrendered, or received, more units for a CAA1 under
provisional forestry emissions returns than required to satisfy their net liability
or entitlement for the CAA1 under the final forestry emissions return.

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(4) The unit balance of each CAA1 covered by the emissions return is updated to
the unit balance calculated under the return.

New unit balance report for certain applications or notices

189EA New unit balance report

(1) A new unit balance report prepared under this section must—
(a) specify the CAA2s that the report covers and, for each CAA2 whose
boundaries are not the same as a CAA1, define the CAA2; and
(b) specify the CAA1s (that are replaced by the CAA2s); and
(c) set out the calculation under this section of the opening unit balance of
each CAA2; and
(d) if any CAA1 forms a notional CAA2 and a remainder CAA2 (because
participation ceases for part of the CAA1 under **section 191BA**), set
out the calculation under this section of the person's final liability or
entitlement.

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(2) However, **subsection (1)** is subject to the following provisions (which limit
reconfiguration):
(a) **section 194FC(5)** (carbon accounting areas (averaging));
(b) **section 194HD** (P89 offsetting (approved) land);
(c) **section 194PE** (temporary adverse event land).

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Opening unit balance if CAA2 has same boundaries as CAA1

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(3) If a CAA2 has the same boundaries as a CAA1, the **opening unit balance** of
the CAA2 (v) is calculated as follows:

$$v = u$$

where—

u is the unit balance of the CAA1 (under the emissions return for the
CAA1 that includes the report).

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Opening unit balance if CAA2 formed from land in 1 or more CAAs

(4) If a CAA2 is formed from land in 1 or more CAAs, the **opening unit balance**
of the CAA2 (v) is calculated by summing the result of the following calcula-
tion for each CAA1 that overlaps with the CAA2 (because any land in the
CAA1 becomes land in the CAA2):

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$$u_n \times (a_n \div b_n)$$

where—

u_n is the unit balance of the overlapping CAA1 (under the emissions return for the CAA1 that includes the report)

a_n is the area of overlap between the CAA2 and the overlapping CAA1 (in hectares)

b_n is the area of the overlapping CAA1 (in hectares).

Final liability or entitlement if CAA1 forms notional CAA2 and remainder CAA2

(5) A person's **final liability or entitlement** (f) is calculated as follows:

$$\underline{f = t - u_n}$$

where—

t is the person's total liability or entitlement for the CAA1s (under the emissions return for the CAA1s that includes the report)

u_n is the sum of the opening unit balance of each notional CAA2 formed from a CAA1.

Maximum liability is unit balance of carbon accounting area

190 Maximum liability is unit balance of carbon accounting area

Despite section 63, a person who is or was a participant in respect of an activity of standard forestry or permanent forestry 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.

Ceasing participation in standard or permanent forestry

191AA Ceasing participation for whole carbon accounting areas

(1) This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the **end date**) on 1 or more whole carbon accounting areas (each a **CAA1**).

(2) However, this section does not apply if another provision of this Act requires an emissions return to be prepared for the situation.

(3) To avoid doubt, this section applies whether—

(a) the person is ceasing to be a participant in the activity on a CAA1, or is removing a CAA1 for which the person is recorded as a participant; or

(b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act;
or

(c) the CAA1s are some or all of the carbon accounting areas on which the person participates in the activity.

191AB Effect of ceasing participation for whole carbon accounting areas

- (1) If **section 191AA** applies, then, starting on the end date,—
- (a) the person ceases to be a participant in the activity on the CAA1s; and
 - (b) the person is liable to surrender the number of units equal to the unit balance of each CAA1 (calculated under the last emissions return submitted for the CAA1). 5
- (2) However, **subsection (1)(b)** does not apply if the person has ceased to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management). 10
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.
- (4) See **sections 188AC and 188AD**, which require notice to the participant and notice to interested parties, if any. 15

191BA Ceasing participation for part carbon accounting areas

- (1) This section applies if a person ceases, or is to cease, participation in an activity of standard forestry or permanent forestry (on the **end date**) on only part of 1 or more carbon accounting areas (each a **CAA1**).
- (2) To avoid doubt, this section applies whether— 20
- (a) the person ceases to be a participant in the activity on part of a CAA1, or is removed from being recorded as a participant in respect of part of a CAA1; or
 - (b) the person is giving notice to the EPA, the EPA has approved an application from the person, or the EPA is acting under a provision of this Act. 25
- (3) However, this section does not apply to a situation for which another provision of this Act already requires an emissions return to be prepared.
- (4) The person must—
- (a) prepare a final forestry emissions return under **section 189BA** for the activity— 30
 - (i) that covers each CAA1; and
 - (ii) that uses the end date as the **relevant date**; and
 - (b) include in that return a new unit balance report under **section 189EA** for the activity that covers the following carbon accounting areas (each a **CAA2**) formed from each CAA1: 35
 - (i) a **notional CAA2** for the part of the CAA1 where participation ceases;
 - (ii) a **remainder CAA2** for the rest of the land in the CAA1.

- (5) The person must—
- (a) include the emissions return with the application or notice when it is made or given; or
 - (b) if there is no application or notice, provide the emissions return when required by the EPA.
- (6) The land in a notional CAA2 must be treated as forest land if the person has ceased to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).

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191BB Effect of ceasing participation for part carbon accounting areas

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- (1) This section applies if a final forestry emissions return (for the CAA1s) is provided to the EPA in accordance with **section 191BA**, including a new unit balance report (for the CAA2s).
- (2) Starting on the end date,—
- (a) the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and
 - (b) the person ceases to be a participant in the activity on the notional CAA2s; and
 - (c) the person is liable to surrender the number of units equal to the opening unit balance calculated for each notional CAA2 in the new unit balance report; and
 - (d) the person is a participant in the activity on the remainder CAA2s (instead of the CAA1s); and
 - (e) the unit balance of each remainder CAA2 is the opening unit balance calculated for it in the new unit balance report; but
 - (f) any entitlement to receive units because of **paragraph (a)** is offset against any liability to surrender units under **paragraph (c)**, so that the person's final liability or entitlement is as calculated in the new unit balance report.
- (3) However, **subsection (2)(c) and (f)** does not apply if the person has ceased to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management).
- (4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.
- (5) See **sections 188AC and 188AD**, which require notice to the participant and notice to interested parties, if any.

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191CA If participant has never carried out activity in carbon accounting area

- (1) This section applies if the EPA is satisfied that the person is not carrying out, and has never carried out, the activity of standard or permanent forestry on a carbon accounting area, or part of an accounting area, for which they are registered. 5
- (2) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area.
- (3) The person must surrender the unit balance that relates to the carbon accounting area (or part area). 10
- (4) At least 60 days before amending the register, the EPA must notify the person—
- (a) that the EPA proposes to remove the person's registration in respect of the carbon accounting area, or part carbon accounting area; and 15
- (b) of the reason for the proposed removal; and
- (c) of the actions that the person may take to prevent the removal (for example, provide evidence that the person carries out the activity on the carbon accounting area).
- (5) The EPA may still take action under this section if it is unable to notify the person of its proposal to do so because it is not reasonably practicable to locate them or their address. 20

Transmission of interest relating to standard or permanent forestry

192 Transmission of interest in post-1989 forest land

- (1) This section applies— 25
- (a) if, subject to section 157A(4), a person registered as a participant in respect of an activity of standard forestry or permanent forestry 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; 30
- (b) if a person registered as a participant in respect of an activity of standard forestry or permanent forestry 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; 35
- (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

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participant in respect of an activity of standard forestry or permanent forestry:

Part A

| <u>Existing participant</u> | <u>Interest transferred</u> | <u>New participant</u> | <u>New activity of standard or permanent forestry</u> |
|---|---|---|--|
| <u>Landowner of post-1989 forest land</u> | <u>Post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>New land owner</u> | <u>Owning post-1989 forest land</u> |
| <u>Holder of a registered forestry right over post-1989 forest land</u> | <u>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>New forestry right holder</u> | <u>Holding a registered forestry right over post-1989 forest land</u> |
| <u>Leaseholder under a registered lease of post-1989 forest land</u> | <u>Registered lease over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>New lessee</u> | <u>Being the leaseholder under a registered lease of post-1989 forest land</u> |
| <u>Party to a Crown conservation contract</u> | <u>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>New party to the Crown conservation contract</u> | <u>Being a party to a Crown conservation contract</u> |

Part B

| <u>Existing participant</u> | <u>Interest entered into</u> | <u>New participant</u> | <u>New activity of standard or permanent forestry</u> |
|--|---|--|--|
| <u>Landowner of post-1989 forest land</u> | <u>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Holder of a registered forestry right over post-1989 forest land (only if agreed under <u>subsection (1A)</u>)</u> | <u>Being the holder of a registered forestry right over post-1989 forest land (only if agreed under <u>subsection (1A)</u>)</u> |
| <u>Landowner of post-1989 forest land</u> | <u>Registered lease of post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Lessee under a registered lease of post-1989 forest land (only if agreed under <u>subsection (1A)</u>)</u> | <u>Being a lessee under a registered lease of post-1989 forest land (only if agreed under <u>subsection (1A)</u>)</u> |
| <u>Landowner of Crown land that is post-1989 forest land</u> | <u>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Party to the Crown conservation contract</u> | <u>Being a party to a Crown conservation contract</u> |

| <u>Part C</u> | | | |
|---|---|---|---|
| <u>Existing participant</u> | <u>Interest expired or terminated</u> | <u>New participant</u> | <u>New activity of standard or permanent forestry</u> |
| <u>Holder of a registered forestry right over post-1989 forest land</u> | <u>Registered forestry right over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Landowner of the post-1989 forest land</u> | <u>Owning post-1989 forest land</u> |
| <u>Leaseholder under a registered lease of post-1989 forest land</u> | <u>Registered lease over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Landowner of the post-1989 forest land</u> | <u>Owning post-1989 forest land</u> |
| <u>Party to a Crown conservation contract</u> | <u>Crown conservation contract over post-1989 forest land in respect of which the person is recorded as a participant</u> | <u>Landowner of the post-1989 forest land</u> | <u>Owning post-1989 forest land.</u> |

(1A) Despite **subsection (1)(b)**, if a transferor covered by that paragraph grants a registered forestry right or registered lease described in the second column of **Part B** of the table in that subsection, this section applies only if, before the date of transmission,—

(a) the transferor and the transferee have agreed in writing that the transferee is to become the participant in relation to the post-1989 forest land to which the transmitted interest relates; and

(b) the transferor has given written notice of the agreement to the EPA.

(2) In **subsections (1), (1A), and (3) to (7) and section 193,—**

(a) CAA1—

(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 for-

- est 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: 5
 - (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: 10
- (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: 15
 - (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: 20
 - (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. 25
- (3) The transferor and transferee must give notice of the transmission to the EPA—
- (a) within 20 working days of the date of transmission; or
 - (b) if the transmission occurred by operation of law, as soon as practicable after the date of transmission. 30
- (4) The notice must—
- (a) include a final forestry emissions return prepared by the transferor under **section 189BA** for the activity—
 - (i) that covers each CAA1; and
 - (ii) that uses the date of transmission as the **relevant date**; and 35
 - (b) include in that return a new unit balance report prepared by the transferor under **section 189EA** for the activity that covers the following carbon accounting areas (each a **CAA2**):

- (i) for each CAA1 where the transmitted interest applies to its entire area, a transferee CAA2 with the same boundaries as the CAA1;
 - (ii) for each other CAA1,—
 - (A) a transferee CAA2 for the part of the CAA1 to which the transmitted interest relates; and
 - (B) a transferor CAA2 for the rest of the CAA1.
- (5) The notice 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) However, if the transmitted interest is part of a deceased participant's estate,—
 - (a) for the transfer to the executor or administrator,—
 - (i) subsections (3) to (5) do not apply (so that no notice, final forestry emissions return, or new unit balance report is required); but
 - (ii) section 193(2)(b) and (c) and (3) still applies; and
 - (b) for the transfer from the executor or administrator to a successor,—
 - (i) the transferee (not the transferor) must prepare the final forestry emissions return and new unit balance report required by subsection (4); and
 - (ii) for the purposes of those documents, the CAA1s are the CAA1s from the transfer to the executor or administrator; and
 - (c) in every case, the executor or administrator of more than 1 deceased participant's estate is treated under this Act as if they were a separate participant for each of those estates.
- (7) To avoid doubt,—
 - (a) for the purposes of section 54(4), but subject to section 194AC, a transferor continues to be liable in respect of any obligations that arose in relation to the CAA1 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); and
 - (b) a transferor is not required to notify the EPA separately under section 59 if the result of the transfer is that the transferor is ceasing to carry out the activity; and
 - (c) the EPA 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 Effect of transmission of interest in post-1989 forest land

- (1) This section applies if notice of a transmission is given to the EPA in accordance with **section 192**, including a final forestry emissions return (for the CAA1s) and new unit balance report (for the CAA2s).
- (2) Starting on the date of transmission,—
- (a) the emissions return is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and
- (b) the transferee becomes a participant on the transferee CAA2s in the relevant activity referred to in the fourth column of the table in **section 192(1)**; and
- (c) the transferor,—
- (i) if there is 1 or more transferor CAA2s, is a participant in the relevant activity described in **section 192(1)** on the transferor CAA2s (instead of the CAA1s); or
- (ii) otherwise, ceases to be a participant in that activity on the CAA1s; and
- (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

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Information about status of forest land

194 Information about status of forest land

- (1) Despite anything in this Act, the EPA must, on receipt of a written request for information about the carbon accounting area or areas to which it relates, provide a statement containing the information in **subsection (2)** to—
- (a) the landowner of any post-1989 forest land in respect of which the holder of a registered forestry right or registered lease or party to a Crown conservation contract is a participant; or
- (b) a prospective transferee, holder of a registered forestry right or registered lease, or party to a Crown conservation contract who has the written consent of the participant in respect of any post-1989 forest land.
- (2) A statement under **subsection (1)** must set out—
- (a) the emissions returns (if any) that have been submitted in respect of the carbon accounting area or areas covered by the information request since the carbon accounting area or areas were constituted, and the period covered by those returns; and

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- (b) the unit balance of the carbon accounting area or areas covered by the information request.

Non-compliance for transmitted interests

194AA EPA may act if person fails to give notice of transmitted interest

- (1) This section applies if— 5
- (a) the EPA is satisfied that a notice has not been given in accordance with section 192(3) (for a transmission of interest); and
- (b) **section 194AC** (for 1 or more transmissions of interest after that first one) does not apply to the transmission.
- (2) In particular, this section applies to whichever of the following notices (forming part of that overall notice required by section 192(3)) has not been given in accordance with that provision (each a **failed notice**): 10
- (a) the part that requires information from the transferor (the **transferor notice**):
- (b) the part that requires information from the transferee (the **transferee notice**). 15

EPA may correct matters

- (3) The EPA may act under **section 194AB(2) and (3)** in relation to a failed notice if—
- (a) the EPA notifies the transferor or transferee of its intention to do so; and 20
- (b) the EPA specifies the following deadline for them to give or correct the required notice: the end of the 90th working day after the EPA gives its notice; and
- (c) they do not give or correct the required notice by the deadline.

EPA may correct matters, remove relevant registration after transmission registered, or do both 25

- (4) The EPA may act under 1 or both of **section 194AB(2) and (3)** and **section 194AB(4) and (5)** in relation to a failed notice if—
- (a) these requirements are met:
- (i) the EPA notifies the transferor or transferee of its intention to do so; and 30
- (ii) the EPA specifies the following deadline for them to give or correct the required notice:
- (A) 6 months after the end of the mandatory emissions return period in which the date of transmission falls; or 35
- (B) if the EPA gives its notice after the deadline in subparagraph (A), the end of the 90th working day after the EPA gives its notice; and

- (iii) they do not give or correct the required notice by the deadline; or
- (b) the EPA is unable to notify the transferor or transferee of its intention to do so because it is not reasonably practicable to identify or locate them or their address.
- EPA may remove relevant registration where transmission not registered* 5
- (5) The EPA may act under **section 194AB(6) and (7)** in relation to a failed notice if—
- (a) these requirements are met:
- (i) the EPA notifies the transferor or transferee of its intention to do so; and 10
- (ii) the EPA specifies the following deadline for them to give or correct the required notice:
- (A) 6 months after the end of the mandatory emissions return period in which the date of transmission falls; or
- (B) if the EPA gives its notice after the deadline in subparagraph (A), the end of the 90th working day after the EPA gives its notice; and 15
- (iii) they do not give or correct the required notice by the deadline; or
- (b) the EPA is unable to notify the transferor or transferee of its intention to do so because it is not reasonably practicable to identify or locate them or their address. 20
- (6) However, where this section also applies to 1 or more other transmissions of interest for different parts of the same CAA1, the EPA must not act under **section 194AB(6) and (7)** unless it is authorised to do so (by satisfying **subsection (5)** of this section) in respect of both the transferor and transferee of all of the transmissions. 25
- Transferor or transferee gives or corrects notice*
- (7) If the transferor or transferee gives or corrects the required notice by the deadline specified in a notice given by the EPA under this section, their notice must be treated as having been given to the EPA— 30
- (a) in accordance with section 192(3); and
- (b) on the last day on which it could have been given under that provision.

194AB How EPA may act

- (1) In acting under this section in relation to a failed notice, the EPA may—
- (a) use **subsections (2) and (3)** to correct matters; 35
- (b) use **subsections (4) and (5)** to remove registration in relation to relevant CAA2s (after the transmission is registered);

(c) use **subsections (6) and (7)** to remove registration in relation to relevant CAA1s (where the transmission is not registered).

Correcting matters

(2) The EPA may,—

(a) if the failed notice has not been given, prepare the notice that ought to have been given; or 5

(b) if the failed notice has been given but is not complete, complete the notice.

(3) The EPA may do the following when preparing or completing the notice:

(a) if the notice must include an emissions return (including any new unit balance report), the EPA may apply— 10

(i) section 120 to amend an emissions return that was included; or

(ii) section 121 to assess the matters that should have been in an emissions return that was not included; and

(b) if the notice must include any other information, the EPA may prepare or complete that information by making any required assumptions or estimates. 15

Removing registration for relevant areas after transmission registered

(4) If the transmission of interest has had effect in accordance with section 193, the EPA may amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record that— 20

(a) the transferee ceased to be a participant in the relevant activity on each transferee CAA2 immediately after becoming a participant for those, if the transferee notice is a failed notice:

(b) the transferor ceased to be a participant in the relevant activity on the transferor CAA2s immediately after becoming a participant for those, if— 25

(i) there are 1 or more transferor CAA2s; and

(ii) the transferor notice is a failed notice.

(5) If the EPA acts under **subsection (4)**,— 30

(a) the person who ceases to be a participant on certain CAA2s is liable to surrender the number of New Zealand units equal to the unit balance of each of those CAA2s (calculated under the last emissions return submitted for the CAA2); and

(b) see **sections 188AC and 188AD**, which require notice to the participant and notice to interested parties, if any. 35

Removing registration for relevant areas where transmission not registered

(6) If the transmission of interest has not had effect in accordance with **section 193**, the EPA may amend the register kept under section 57, and the records of

- carbon accounting areas kept under **section 188(2)**, to record that the transferor ceased to be a participant in the relevant activity on the CAA1s on the date of transmission.
- (7) If the EPA acts under **subsection (6)**,—
- (a) the transferor is liable to surrender the number of New Zealand units equal to the unit balance of each of those CAA1s (calculated under the last emissions return submitted for the CAA1); and 5
 - (b) see **sections 188AC and 188AD**, which require notice to the participant and notice to interested parties, if any.
- 194AC EPA may attribute liability and entitlement to final transferee after earlier non-compliant transmission** 10
- (1) This section applies if a person would have been a transferee of a transmitted interest (the **final transmission**) under **section 192** had it not been for—
- (a) the failure of any person to give notice in accordance with section 192(3) for an earlier transmission of interest (the **first transmission**); and 15
 - (b) if there were 1 or more other transmissions of interest between the first and final transmissions, those other transmissions not becoming subject to (and compliant with) the requirements of section 192 after that failure.
- (2) The EPA must treat the transferee of the final transmission as if they were liable to surrender units for all emissions, and entitled to receive units for all removals, from the land in their transferee CAA2s in the period that— 20
- (a) starts immediately after the emissions return period of the last emissions return submitted for the CAA1s of the first transmission; and
 - (b) ends on the date of transmission of the final transmission.
- (3) The EPA must do so by acting under **section 194AB(2) to (5)**, which applies with any required modifications, to the extent required to— 25
- (a) calculate that liability and entitlement; and
 - (b) amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record that the transferee is a participant in the relevant activity on the transferee CAA2s. 30
- (4) The EPA must also act under **section 194AB(2) to (5)**, which applies with any required modifications, to the extent required to do 1 or both of the following for any transferor CAA2s that derive, during the first or any other transmission, from the land in the CAA1s of the first transmission:
- (a) calculate the liability and entitlement of the transferor of the transferor CAA2; and 35
 - (b) amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record that the transferor is a participant in the relevant activity on the transferor CAA2.

Application to reconfigure carbon accounting areas for standard or permanent forestry

194CA Application to reconfigure carbon accounting areas for standard or permanent forestry

- (1) A participant in an activity of standard forestry or permanent forestry may apply to reconfigure any of the carbon accounting areas for the activity. 5
- (2) The application must—
- (a) specify the activity; and
 - (b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the activity (each a CAA1); and 10
 - (c) include a final forestry emissions return prepared under **section 189BA** for the activity—
 - (i) that covers the CAA1s; and
 - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and 15
 - (d) include in that return a new unit balance report prepared under **section 189EA** for the activity that covers 1 or more carbon accounting areas (CAA2s) consisting of all the same land in the CAA1s.
- (3) The application must also—
- (a) be signed by the applicant; and 20
 - (b) be submitted—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
- (4) However, **subsection (1)** is subject to the following provisions (which limit reconfiguration): 25
- (a) **section 194FC(5)** (carbon accounting areas (averaging));
 - (b) **section 194HD** (P89 offsetting (approved) land);
 - (c) **section 194PE** (temporary adverse event land).

194CB Criteria to reconfigure carbon accounting areas for standard or permanent forestry 30

- (1) If a person submits an application under **section 194CA** (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity), the EPA,—
- (a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or 35
 - (b) otherwise, may decline the application.

- (2) The criteria are—
- (a) that the application complies with **section 194CA**; and
 - (b) that the applicant has paid any prescribed fees or charges; and
 - (c) that any other criteria prescribed in regulations made under **section 168(1)(na)** are met.
- (3) In considering the application, the EPA must treat the land to which it relates as post-1989 forest land.

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194CC Approval of application to reconfigure carbon accounting areas for standard or permanent forestry

- (1) This section applies if the EPA approves a person's application under **section 194CA** (for a participant in an activity of standard forestry or permanent forestry to reconfigure carbon accounting areas for the activity).
- (2) Starting on the day on which the application was submitted to the EPA,—
- (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and
 - (b) the person is a participant in the activity on the CAA2s (instead of the CAA1s); and
 - (c) the person is not liable to surrender the unit balance of each CAA1; and
 - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

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194CD Restriction start date of reconfigured carbon accounting area for permanent forestry

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- (1) This section applies if a person reconfigures carbon accounting areas for permanent forestry by approval of an application under **section 194CA**.
- (2) For the purposes of **section 194EA**, the restriction start date of a CAA2 is the latest restriction start date of the CAA1s that overlap with the CAA2 (because any land in the CAA1 became land in the CAA2).

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Application to change activity on post-1989 forest land

194DA Application to change activity on post-1989 forest land

- (1) A participant in an initial activity on any post-1989 forest land may apply to become a participant in a final activity on any of the land (to carry over the unit balances of carbon accounting areas from the initial activity to the final activity).

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Change from standard or permanent forestry

- (2) If the initial activity is standard forestry or permanent forestry, the application must—
- (a) specify the initial activity and the final activity; and
 - (b) specify the land to which the application relates, which must be 1 or more whole carbon accounting areas for the initial activity (each a CAA1); and 5
 - (c) include a final forestry emissions return prepared under **section 189BA** for the initial activity—
 - (i) that covers the CAA1s; and 10
 - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and
 - (iii) that includes any liability or entitlement required to be included by **section 194DF(4) or 194DG(4)**; and
 - (d) include in that return a new unit balance report prepared under **section 189EA** for the final activity that covers the following 1 or more carbon accounting areas (each a CAA2): 15
 - (i) CAA2s that have the same boundaries as the CAA1s, to the extent that **subparagraph (ii)** does not apply; or
 - (ii) if the clear-fell exception applies and any land that is now in 1 or more CAA1s was clear-felled after the forest sink covenant was terminated,— 20
 - (A) a CAA2 for all of the land that was clear-felled; and
 - (B) a CAA2 for each CAA1 to the extent it was not clear-felled.

Change from PFSI activity 25

- (3) If the initial activity is PFSI activity, the application must—
- (a) specify the initial activity and the final activity for each CAA2 under **paragraph (d)**; and
 - (b) specify the land to which the application relates (the **PFSI land**), which must be all of the forest land that a forest sink covenant is registered against; and 30
 - (c) include an emissions return prepared under **section 194DD** for the initial activity that covers the PFSI land (including any liability required to be included by **section 194DEA(5)**); and
 - (d) include in that return a new unit balance report prepared under **section 194DE** for each final activity that covers the following carbon accounting areas (each a CAA2): 35
 - (i) if the final activity for any of the land is standard forestry, one CAA2 for all of that land;

- (ii) if the final activity for any of the land is permanent forestry, one CAA2 for all of that land, unless **subparagraph (iii)** applies:
- (iii) if the final activity for any of the land is permanent forestry (the **PF land**) and any of the PF land was clear-felled after the forest sink covenant was terminated,— 5
- (A) one CAA2 for all of the PF land that was clear-felled; and
- (B) one CAA2 for the rest of the PF land.
- General provisions*
- (4) The application must also— 10
- (a) be signed by the applicant; and
- (b) be submitted—
- (i) in the prescribed manner and format; and
- (ii) together with the prescribed fee (if any); and
- (iii) together with the prescribed information (if any).
- (5) The following table specifies the matters referred to in this section (under the relevant headings): 15
- | <u>Previous activity</u> | <u>Initial activity</u> | <u>Final activity</u> | <u>Clear-fell exception</u> |
|--------------------------|---------------------------|---------------------------|-----------------------------|
| | <u>PFSI activity</u> | <u>Standard forestry</u> | |
| | <u>PFSI activity</u> | <u>Permanent forestry</u> | <u>Exception applies</u> |
| | <u>Standard forestry</u> | <u>Permanent forestry</u> | |
| <u>PFSI activity</u> | <u>Standard forestry</u> | <u>Permanent forestry</u> | <u>Exception applies</u> |
| | <u>Permanent forestry</u> | <u>Standard forestry</u> | |
- (6) As indicated in the table, **the clear-fell exception applies to—**
- (a) a change from PFSI activity (initial activity) to permanent forestry (final activity):
- (b) a change from standard forestry (initial activity) to permanent forestry (final activity), if the activity on the land was previously changed from PFSI activity (previous activity) to standard forestry under this section. 20
- 194DB Criteria to change activity on post-1989 forest land**
- (1) If a person submits an application under **section 194DA** (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land), the EPA,— 25
- (a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or
- (b) otherwise, may decline the application.
- (2) The criteria are— 30
- (a) that the application complies with **section 194DA**; and
- (b) that the applicant has paid any prescribed fees or charges; and

- (c) if the initial activity is PFSI activity, that the EPA is satisfied that the person would (if appropriate) qualify to be registered as a participant in respect of the land under **section 187**; and
 - (d) that any other criteria prescribed in regulations made under **section 168(1)(na)** are met.
- (3) In considering the application,—
 - (a) if the initial activity is standard forestry or permanent forestry, the EPA must treat the land to which the application relates as post-1989 forest land; or
 - (b) if the initial activity is PFSI activity, the EPA must treat the forest land to which the application relates as post-1989 forest land.

194DC Approval of application to change activity on post-1989 forest land

- (1) This section applies if the EPA approves a person's application under **section 194DA** (for a participant in an initial activity on post-1989 forest land to become a participant in a final activity on the land).
- (2) If the initial activity is standard forestry or permanent forestry, then, starting on the day on which the application was submitted to the EPA,—
 - (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and
 - (b) the person ceases to be a participant in the initial activity on the CAA1s; and
 - (c) the person becomes a participant in the final activity on the CAA2s; and
 - (d) the person is not liable to surrender the unit balance of each CAA1; and
 - (e) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (3) If the initial activity is PFSI activity, then, starting on the day on which the application was submitted to the EPA,—
 - (a) the forest sink covenant registered against the PFSI land is terminated; and
 - (b) for each CAA2, the person becomes a participant in the final activity specified for that CAA2 in the application; and
 - (c) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report.
- (4) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

194DD Emissions return for application to change from PFSI activity

- (1) An emissions return prepared under this section must—
- (a) specify the PFSI land that the return covers; and
 - (b) specify that the person carried out PFSI activity on the PFSI land; and
 - (c) set out the calculation under **subsection (2)** of the person’s liability or entitlement for emissions and removals from the PFSI land while the forest sink covenant was registered against it.

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- (2) A person’s **liability or entitlement** for the PFSI land (g) is calculated as follows:

$$g = (r - e) - s$$

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where—

r is the number of units transferred by the Crown in respect of the PFSI land while the forest sink covenant was registered against it

e is the number of units transferred to the Crown in respect of the PFSI land while the forest sink covenant was registered against it

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s is the number of units the person is liable to surrender under **section 194DEA**.

- (3) The emissions return must—

- (a) include the prescribed information (if any); and
- (b) be signed by the participant; and
- (c) when submitted under the relevant provision, be submitted—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).

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194DE New unit balance report for application to change from PFSI activity

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- (1) A new unit balance report prepared under this section must—
- (a) specify the CAA2 that the report covers (if there is only 1), or specify and define each CAA2 that the report covers; and
 - (b) specify the PFSI land (which will form the CAA2 or CAA2s); and
 - (c) set out the calculation under this section of the opening unit balance of the CAA2 or each CAA2.

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- (2) If there is only one CAA2 (formed from all the PFSI land), the **opening unit balance** of the CAA2 (v) is calculated as the person’s liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report).

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- (3) If there are two CAA2s, the **opening unit balance** of a CAA2 (v) is calculated as follows:

$$v = g \times (a \div b)$$

where—

- g is the person's liability or entitlement for the PFSI land (under the emissions return for the PFSI land that includes the report)
- a is the area of the CAA2 (in hectares)
- b is the area of the PFSI land (in hectares).

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194DEA Liability to surrender units on transfer from PFSI activity to standard forestry in carbon accounting area (averaging)

- (1) This section applies if—
 - (a) a person submits an application under **section 194DA**; and
 - (b) the initial activity is PFSI activity and the final activity is standard forestry; and
 - (c) on the constitution date for any CAA2, any land in it (**area A**) will have a determined carbon stock greater than its nominal average carbon stock.

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- (2) If the EPA accepts the application, the person is liable to surrender the number of units (s) calculated as follows:

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$$s = (d - n) \times a$$

where—

- d is the determined carbon stock of area A, determined as if it were in a carbon accounting area (averaging) (in tonnes per hectare)
- n is what the nominal average carbon stock for area A will be when CAA2 is constituted (in tonnes per hectare)
- a is the area (in hectares) of area A.

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- (3) If CAA2 will have 2 or more areas of land that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), **subsection (2)** applies separately in respect of each area.

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- (4) However, if the s calculated under **subsection (2)**, or the sum of each s where **subsection (3)** applies, is greater than the result of deducting e from r in the calculation under **section 194DD(2)**, then s is recalculated as that result (r - e).

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- (5) The liability to surrender units under this section—
 - (a) is to be treated as a liability for emissions for the PFSI land; and
 - (b) must be included in the emissions return under **section 194DA(3)(c)** as part of the calculation under **section 194DD** of the person's liability or entitlement for the land.

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- (6) In this section, terms defined in **section 194FA** have the meanings given in that section.

194DF Liability to surrender units on transfer from permanent forestry to standard forestry in carbon accounting area (averaging)

- (1) This section applies if—
- (a) a person submits an application under **section 194DA**; and
 - (b) the initial activity is permanent forestry and the final activity is standard forestry; and
 - (c) on the constitution date for any CAA2, any land in it (**area A**) will have a determined carbon stock greater than its nominal average carbon stock.

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- (2) If the EPA accepts the application, the person is liable to surrender the number of units (s) calculated as follows:

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$$s = (d - n) \times a$$

where—

d is the determined carbon stock of area A, determined as if it were in a carbon accounting area (averaging) (in tonnes per hectare)

n is what the nominal average carbon stock for area A will be when CAA2 is constituted (in tonnes per hectare)

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a is the area (in hectares) of area A.

- (3) If CAA2 will have 2 or more areas of land that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), **subsection (2)** applies separately in respect of each area.

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- (4) The liability to surrender units under **subsection (2)**—

(a) is to be treated as a liability for emissions for the CAA1 that includes area A during the emissions return period for the emissions return under **section 194DA(2)(c)**; and

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(b) must be included in that emissions return as part of the calculation under **section 189CA** of the person's gross liability or entitlement required by **section 189BA(1)(c)(iii)**.

- (5) In this section, terms defined in **section 194FA** have the meanings given in that section.

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194DG Liability to surrender units on transfer from standard forestry in carbon accounting area (averaging) to permanent forestry

- (1) This section applies if—
- (a) a person submits an application under **section 194DA**; and
 - (b) the initial activity is standard forestry and the final activity is permanent forestry; and
 - (c) any land (**area A**) in a CAA1 that is a carbon accounting area (averaging)—

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- (i) has a subsequent rotation forest; and
- (ii) has a determined carbon stock that is less than the nominal average carbon stock for area A.
- (2) If the EPA accepts the application, the person is liable to surrender the number of units (s) calculated as follows: 5
- $$s = (n - d) \times a$$
- where—
- n is the nominal average carbon stock for area A (in tonnes per hectare)
- d is the determined carbon stock of area A (in tonnes per hectare)
- a is the area (in hectares) of area A. 10
- (3) If a CAA1 has 2 or more areas of subsequent rotation forest that the regulations require to be treated separately for the purpose of determining their nominal average carbon stock or determined carbon stock (or both), **subsection (2)** applies separately in respect of each area.
- (4) The liability to surrender units under **subsection (2)**— 15
- (a) is to be treated as a liability for emissions for CAA1 during the emissions return period for the emissions return under **section 194DA(2)(c)**; and
- (b) must be included in that emissions return as part of the calculation under **section 189CA** of the person's gross liability or entitlement required by **section 189BA(1)(c)(iii)**. 20
- (5) In this section, terms defined in **section 194FA** have the meanings given in that section.
- Restrictions for permanent forestry land*
- 194EA Permanent forestry period for land** 25
- (1) If a person becomes registered as a participant carrying out permanent forestry in respect of any land, the **permanent forestry period** for the land is—
- (a) an initial period of 50 years starting on the restriction start date; and
- (b) any 1 or more consecutive periods of a further 25 years for which a participant chooses the option under **section 194EK(1)(a)**. 30
- (2) The **restriction start date** for the land is specified by column 4 of the table, which applies to a situation as follows:
- (a) if no initial activity is specified (in column 2), it means the person became registered for the permanent forestry without reference to any initial activity on the land: 35
- (b) if an initial activity is specified (in column 2) and no previous activity is specified (in column 1), it means—

- (i) the person became registered for the permanent forestry by acceptance of an application under **section 194DA** to change from the initial activity; and
- (ii) the person previously became registered for the initial activity without reference to any previous activity: 5
- (c) if an initial activity is specified (in column 2) and a previous activity is specified (in column 1), it means—
- (i) the person became registered for the permanent forestry by acceptance of an application under **section 194DA** to change from the initial activity; and 10
- (ii) the person previously became registered for the initial activity by acceptance of an application under **section 194DA** to change from the previous activity.
- (3) However, as indicated in column 5 of the table, the **restriction start date** is the registration date for the CAA2 formed from clear-felled land if— 15
- (a) the clear-fell exception applied in the application under **section 194DA** to change from the initial activity; and
- (b) any of the land in the application was clear-felled after the forest sink covenant was terminated.
- (4) After any land’s permanent forestry period has started, its permanent forestry period— 20
- (a) may change under **section 194CD** (if carbon accounting areas are reconfigured); but
- (b) does not change if the land becomes part of a new carbon accounting area when— 25
- (i) a person ceases to be a participant on other land because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
- (ii) an interest is transmitted under **section 192**; or 30
- (iii) other land is removed in accordance with **section 194EC** (an exception requiring the Minister’s approval); or
- (iv) any of the land in the carbon accounting area becomes temporary adverse event land under **section 194NC**.
- (5) In this section,— 35
- covenant date** means the date of registration of the forest sink covenant on land
- registration date** means the date on which the person became registered as a participant in permanent forestry on the land.

(6) The following table contains the columns referred to in this section:

| <u>Column 1</u> | <u>Column 2</u> | <u>Column 3</u> | <u>Column 4</u> | <u>Column 5</u> |
|--------------------------|--------------------------|---------------------------|-------------------------------|---|
| <u>Previous activity</u> | <u>Initial activity</u> | <u>Final activity</u> | <u>Restriction start date</u> | <u>Later restriction start date (for clear-felled land)</u> |
| | | <u>Permanent forestry</u> | <u>Registration date</u> | |
| | <u>PFSI activity</u> | <u>Permanent forestry</u> | <u>Covenant date</u> | <u>Registration date</u> |
| | <u>Standard forestry</u> | <u>Permanent forestry</u> | <u>Registration date</u> | |
| <u>PFSI activity</u> | <u>Standard forestry</u> | <u>Permanent forestry</u> | <u>Covenant date</u> | <u>Registration date</u> |

194EB Restriction on ceasing to be registered for permanent forestry

(1) The only ways in which a person may cease to be registered as a participant carrying out permanent forestry in respect of any land are as follows:

- (a) the person is exempted from this section by an Order in Council under **section 60A**:
- (b) a person ceases to be a participant because of—
 - (i) **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
 - (ii) **section 194QC(2)(e)** (for temporary adverse event land that becomes permanently affected land):
- (c) the land becomes land for which a transferee under **section 192** is instead registered as carrying out permanent forestry (if there is a transmitted interest):
- (d) the registration is removed in accordance with **section 194EC** (an exception requiring the Minister’s approval):
- (e) the registration for the whole carbon accounting area that includes the land is removed because of **section 194EH** (after land is deforested):
- (f) after the permanent forestry period ends,—
 - (i) the EPA removes the registration under **section 194EL** (because the person chooses that option, for example):
 - (ii) the person changes from permanent forestry to standard forestry on the land by application under **section 194DA**.

(2) This section overrides any other provision of this Act.

194EC Minister may approve removal of land from permanent forestry

(1) This section sets out an exception by which a person can cease to be registered as a participant carrying out permanent forestry in respect of any land (the **removal of land**), whether all or part of a carbon accounting area.

- (2) The person must—
- (a) first obtain the Minister’s approval in writing to the removal of land; and
 - (b) then apply for the removal of land under **section 188AA(4)(a)(i) or (ii)** and comply with **sections 191AA and 191AB** or **sections 191BA and 191BB** (whichever apply). 5
- (3) The provisions referred to in **subsection (2)(b)**, and the provisions applied by them, apply as if the land subject to the removal of land were forest land.
- (4) The Minister may approve the removal of land only to the extent that the Minister is satisfied that—
- (a) it would be unreasonable in the circumstances to require the person to remain registered in respect of the land; and 10
 - (b) the removal will not materially undermine the environmental integrity of 1 or both of the following:
 - (i) the activity of permanent forestry as a whole (not just by that person); 15
 - (ii) the emissions trading scheme.
- (5) In considering those matters, the Minister must have regard to—
- (a) the desirability of minimising any compliance and administrative costs associated with the emissions trading scheme; and
 - (b) the relative costs of approving or not approving the removal of land, and who bears the costs; and 20
 - (c) any other matters the Minister considers relevant.

194ED Exception from prohibition on clear-felling and deforestation

- (1) **Sections 194EE to 194EI** do not apply to—
- (a) land for which a person ceases to be a participant because of— 25
 - (i) **section 188AB** (for a natural event that permanently prevents re-establishing a forest or land cleared for best practice forest management); or
 - (ii) **section 194QC(2)(e)** (for temporary adverse event land that becomes permanently affected land); or 30
 - (b) temporary adverse event land.
- (2) However, if land ceases to be temporary adverse event land and **section 194SC** applies, **sections 194EE to 194EI** do apply to the land.
- (3) For that purpose,—
- (a) any clear-felling or deforestation that occurred while the land was temporary adverse event land is to be treated as having occurred on the date the land ceased to be temporary adverse event land; but 35

- (b) any penalty must be calculated by reference to the pre-event carbon stock rate for the land under **section 194NA(3)(d)(i)**.

194EE Permanent forestry land must not be clear-felled

- (1) A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not clear-felled. 5
- (2) If any of the land is clear-felled (the **clear-felled land**),—
- (a) the person must, as soon as practicable, notify the EPA of the clear-felling; and
- (b) the EPA must apply **section 194EF** (pecuniary penalty for clear-felling) when required by that section. 10

194EF Pecuniary penalty for clear-felling of permanent forestry land

- (1) This section applies after—
- (a) a person has notified the EPA of clear-felling under **section 194EE(2)**; and
- (b) a final forestry emissions return has been submitted that covers the 1 or more carbon accounting areas that include the clear-felled land. 15
- (2) The EPA must apply to the court for a pecuniary penalty order against the person for contravening **section 194EE(1)** unless the EPA is satisfied that the defence applies.
- (3) The court— 20
- (a) must determine whether the person has contravened **section 194EE(1)**; and
- (b) must determine whether the defence applies; and
- (c) if it is satisfied that the person has contravened the provision without a defence,— 25
- (i) must make a declaration of contravention; and
- (ii) must order the person to pay a pecuniary penalty to the Crown.
- (4) The amount of the pecuniary penalty—
- (a) must be the deemed value of the part of the forest on the clear-felled land that was cleared or killed beyond the requirement for tree crown cover from forest species of 30% or less in each hectare, as determined in accordance with regulations; but 30
- (b) may be reduced, at the court's discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.
- (5) In this section, **defence** means that— 35
- (a) the clear-felling was beyond the person's control; and
- (b) the person could not reasonably have foreseen the clear-felling; and

- (c) the person could not reasonably have taken steps to prevent the clear-felling.

194EG Regulations for pecuniary penalty for clear-felling

- (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 in relation to a pecuniary penalty under **section 194EF**: 5
- (a) setting out how to calculate the deemed value of the part of the forest on clear-felled land that was cleared or killed beyond the requirement for tree crown cover from forest species of 30% or less in each hectare:
- (b) specifying different factors that affect the calculation of the deemed value, for example,— 10
- (i) the area of the clear-felled land, in hectares:
- (ii) the geographic region of the clear-felled land:
- (iii) the forest species, or the type of forest, that was on the clear-felled land: 15
- (iv) the age or size of the forest that was on the clear-felled land:
- (c) providing for any other matters contemplated by **section 194EF**, necessary for its administration, or necessary for giving it full effect.
- (2) Before recommending the making of regulations under this section, the Minister must— 20
- (a) consider—
- (i) the differences in value between forests of different types or ages or with trees of different forest species or sizes; and
- (ii) the market value of the wood and other products removed from forests, and the historic variation in the market value; and 25
- (iii) the need to assign an appropriate value for forests with no market, or for which no market price is available, so as to deter clear-felling on all land in permanent forestry; and
- (iv) any need to deem the volume of the harvest from a forest; and
- (b) comply with the consultation requirements in sections 3A and **3B**. 30
- (3) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.

194EH Permanent forestry land must not be deforested

- (1) A person who is registered as a participant carrying out permanent forestry on any land must ensure that the land is not deforested. 35
- (2) If any of the land is deforested (the **deforested land**),—

- (a) the person ceases to be a participant in permanent forestry in respect of each carbon accounting area that includes any deforested land (each a CAA1); and
- (b) accordingly,—
 - (i) the person must notify the EPA under **section 188AA(4)(b)** that they have ceased to carry out the activity on the CAA1s; and
 - (ii) **sections 191AA and 191AB** apply in respect of the CAA1s; and
- (c) the EPA must apply **section 194EI** (pecuniary penalty for deforestation).

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194EI Pecuniary penalty for deforestation of permanent forestry land

- (1) If this section applies, the EPA must apply to the court for a pecuniary penalty order against the person for contravening **section 194EH(1)** unless the EPA is satisfied that the defence applies.
- (2) The court—
 - (a) must determine whether the person has contravened **section 194EH(1)**; and
 - (b) must determine whether the defence applies; and
 - (c) if it is satisfied that the person has contravened the provision without a defence,—
 - (i) must make a declaration of contravention; and
 - (ii) must order the person to pay a pecuniary penalty to the Crown.
- (3) The amount of the pecuniary penalty, in dollars (a), must be calculated as follows:
$$a = b \times c$$

where—

 - b is the number of units equal to the sum of the unit balance of each CAA1 that was calculated under the last emissions return submitted for the CAA1 before the clearing that caused the deforestation
 - c is the price, in dollars, of carbon per tonne on the final date on which deforestation occurred, as set by or in accordance with regulations made under **section 30W**.
- (4) However, the amount may be reduced, at the court's discretion, if the court is satisfied that the person has a reasonable excuse for the contravention.
- (5) In this section, **defence** means that—
 - (a) the deforestation was beyond the person's control; and
 - (b) the person could not reasonably have foreseen the deforestation; and

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(c) the person could not reasonably have taken steps to prevent the deforestation.

194EJ Due dates for payment of penalties and recovery of EPA's costs

(1) This section applies if the court orders that a person pay a pecuniary penalty under **section 194EF or 194EI**.

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(2) The court must also order that the penalty must be applied first to pay the EPA's actual costs in bringing the proceedings.

(3) The person must pay the penalty—

(a) within 20 working days after the date on which the order is made, or by any later date specified by the order; or

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(b) by the date or dates agreed under a deferred payment arrangement under **section 135A**.

194EK Option must be chosen at end of permanent forestry period

(1) After the permanent forestry period ends, the participant carrying out permanent forestry on post-1989 forest land must **choose an option** for each carbon accounting area (each a **CAA1**) by doing 1 of the following:

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(a) giving notice to the EPA that they will carry out permanent forestry on the CAA1 for a further 25 years; or

(b) removing the CAA1 from permanent forestry by any means available under this Act.

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(2) The participant must choose an option before or when the first of the following documents is submitted for the CAA1:

(a) a provisional forestry emissions return; or

(b) a final forestry emissions return under **section 189AB** for the mandatory emissions return period in which the permanent forestry period ended.

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(3) If the participant does not choose an option before or when submitting an emissions return described by **subsection (2)**, or does not submit the final forestry emissions return described by **subsection (2)**, the EPA must give notice to the participant.

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(4) The EPA's notice must state—

(a) that the participant must choose an option for each CAA1 within 30 working days after the EPA gave its notice; and

(b) that a CAA1 will be removed from permanent forestry if the participant does not choose an option for it by then.

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194EL Removal of carbon accounting area from permanent forestry

(1) This section applies to a **CAA1** if the participant does not choose an option for the CAA1 by the deadline in the EPA's notice given under **section 194EK(3)**.

- (2) As a result,—
- (a) the participant ceases to be a participant in permanent forestry on the CAA1; and
 - (b) the participant is liable to surrender the number of units equal to the unit balance of the CAA1 (calculated under the last emissions return submitted for the CAA1).
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

Subpart 5—Averaging accounting methodology

194FA Interpretation

In this subpart,—

average carbon equality, in relation to land in a carbon accounting area (averaging), means that the determined carbon stock of the land is equal to the nominal average carbon stock for the land

carbon accounting area (averaging) has the meaning given in **section 194FC(3)**

determined carbon stock, for land in a carbon accounting area (averaging), means the carbon stock of the land determined in accordance with regulations made under **section 194FE**

first rotation forest has the meaning given in **section 194FD(1) and (2)**

nominal average carbon stock, for land in a carbon accounting area (averaging), means the expected long-term average level of carbon stock of the land over multiple forest rotations determined in accordance with regulations made under **section 194FE**

subsequent rotation forest has the meaning given in **section 194FD(4)**.

194FB Averaging accounting methodology

- (1) The object of averaging accounting methodology is to account for emissions and removals from an activity of standard forestry—
- (a) by reference to the expected long-term average level of carbon stock of the land over multiple forest rotations, rather than by reference to short-term changes in the actual carbon stock of the land (as required by sections 63 and 64); and
 - (b) in a way that achieves approximately the same result in the long term as would have been achieved using carbon stock change accounting but without the repeated receipt and surrender of units for each forest rotation.

(2) The number of units that a participant for a carbon accounting area (averaging) is entitled to receive, or is liable to surrender, is determined by reference to the expected long-term average carbon stock of the land over multiple forest rotations and changes in that average.

(3) In general terms, the participant—

(a) is entitled to receive New Zealand units for removals—

(i) for land that has a first rotation forest, if—

(A) it has not reached average carbon equality; or

(B) after it reaches average carbon equality, its nominal average carbon stock increases;

(ii) for land that has a subsequent rotation forest, if its nominal average carbon stock increases; and

(b) is liable to surrender units for emissions—

(i) for land that has first rotation forest and has reached average carbon equality, if its nominal average carbon stock decreases; or

(ii) for land that has subsequent rotation forest, if its nominal average carbon stock decreases; or

(iii) in any case, if the land is deforested.

194FC Averaging accounting applies to carbon accounting areas (averaging)

(1) Averaging accounting methodology applies in respect of emissions and removals from an activity of standard forestry on a carbon accounting area (averaging).

(2) The participant in respect of a carbon accounting area (averaging)—

(a) is entitled to receive New Zealand units, and liable to surrender units, for the emissions and removals from the activity in accordance with regulations made under **section 194FE**; and

(b) if provided in the regulations, is not required to—

(i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units; or

(ii) submit emissions returns covering a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units.

(3) A carbon accounting area in respect of which a participant is registered in respect of an activity of standard forestry is a **carbon accounting area (averaging)** if—

(a) its constitution date is after 31 December 2021; and

(b) it was constituted—

- (i) under **section 188** from land that was not part of a previous carbon accounting area; or
 - (ii) under **section 194DC** from land on which the initial activity was permanent forestry or PFSI activity; or
 - (iii) from a reconfiguration of 1 or more carbon accounting areas (averaging) (and no other land).
 - (4) See also **clause 32** of Schedule 1AA, which allows some other carbon accounting areas to be converted into carbon accounting areas (averaging).
Limit on reconfiguration
 - (5) Carbon accounting areas cannot be reconfigured (whether by application under **section 194CA** or by any other process that requires the submission of a new unit balance report) so as to combine in a CAA2 land from a CAA1 that is a carbon accounting area (averaging) and land from a CAA1 that is not.
- 194FD First rotation forest and subsequent rotation forest**
- (1) Land in a carbon accounting area (averaging) has a **first rotation forest** if—
 - (a) the land has not been cleared since it became forest land; or
 - (b) the land,—
 - (i) having been forest land, was deforested; and
 - (ii) remained deforested for at least the stand-down period prescribed in regulations made under **section 194FE** (but see **subsection (3)**); and
 - (iii) was re-established as forest land; and
 - (iv) has not been cleared since that re-establishment; or
 - (c) the land—
 - (i) is post-1989 forest land because of **paragraph (a)(iii) to (vii) of the definition of post-1989 forest land** in section 4; and
 - (ii) has not been cleared since it became post-1989 forest land; or
 - (d) the land is declared by regulations made under **section 194FE** to have a first rotation forest.
 - (2) However, land that would otherwise have a first rotation forest under **subsection (1)** does not have a first rotation forest if it is declared by regulations made under **section 194FE** to have a subsequent rotation forest.
 - (3) **Subsection (1)(b)(ii)** does not apply if the deforestation referred to in **subsection (1)(b)(i)** occurred before 1 January 2021.
 - (4) Land in a carbon accounting area (averaging) has a **subsequent rotation forest** if it does not have a first rotation forest.

194FE Regulations for averaging

- (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—
 - (i) how emissions and removals from an activity of standard forestry on a carbon accounting area (averaging) must be calculated and reported: 5
 - (ii) the circumstances in which a participant is or is not liable to surrender units, or entitled to receive New Zealand units, for those emissions and removals: 10
 - (iii) the methodology for determining the number of units the participant is entitled to receive or liable to surrender in those circumstances:
 - (b) providing that a participant for a carbon accounting area (averaging) is not required to— 15
 - (i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units:
 - (ii) submit emissions returns for a carbon accounting area (averaging) in relation to which they are not liable to surrender, or entitled to receive, units: 20
 - (c) prescribing the methodology for determining—
 - (i) determined carbon stock (**section 194FA**):
 - (ii) nominal average carbon stock (**section 194FA**):
 - (d) for the purposes of the definition of first rotation forest (**section 194FD**),— 25
 - (i) prescribing the stand-down period:
 - (ii) declaring land to have a first rotation forest or a subsequent rotation forest:
 - (e) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect. 30
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
- (a) for different forest species:
 - (b) for forest species of different ages:
 - (c) for different rotation periods: 35
 - (d) for different parts of New Zealand.
- (3) Regulations made under this section may have retrospective effect as follows:

- (a) regulations may apply from the commencement of the mandatory emissions return period in which they are made or from a later date in that period:
- (b) regulations made under subsection (1)(d)(i) may prescribe a stand-down period that begins before the regulations are made. 5
- (4) However, regulations cannot be made under **subsection (1)(d)(i)** that would increase the length of the stand-down period for a carbon accounting area whose constitution date is before those regulations come into force.
- (5) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA. 10
- (6) Regulations made under **subsection (1)(b)** may relate to emissions or removals that—
- (a) stem directly from an activity; or
- (b) are associated with a product or other thing that is the subject of an activity. 15
- (7) See sections 3A and **3B** for consultation requirements that apply to the making of regulations under this section.
- (8) See also sections 169 to 175 (incorporation by reference).
- (9) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations. 20

Subpart 6—P89 offsetting

194GAA Interpretation

In this subpart,—

expected carbon stock, for P89 offsetting (forested) land, has the meaning given in **section 194JA** 25

P89 offset application means an application to the EPA submitted under **section 194GA**

P89 offset application date means the date on which a P89 offset application is submitted to the EPA under **section 194GA** 30

P89 offset date, for P89 offsetting (approved) land, has the meaning given in **section 194GC(2)(g)**

P89 offset release criteria has the meaning given in **section 194JA**

P89 offsetting (approved) land means land that—

(a) has become P89 offsetting (approved) land under **section 194GC(2)(f) or 194KE(2)(c)**; and 35

(b) has not ceased to be P89 offsetting (approved) land under a provision referred to in **section 194HA**

P89 offsetting (excess) land has the meaning given in **section 194JB**
P89 offsetting (forested) land has the meaning given in **section 194JB**
P89 offsetting (unforested) land has the meaning given in **section 194JB**
P89 release criteria notice means a notice given under **section 194JB(1)**
qualifying forest land has the meaning given in **section 194JB(3)**
reference carbon stock, for a CAA1, has the meaning given in **section 194GA(2)(e)**
subsequent rotation forest has the meaning given in **section 194FD(4)**.

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P89 offset applications

194GA Application to offset land for land in carbon accounting area (averaging)

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- (1) **A participant in an activity of standard forestry on 1 or more carbon accounting areas (averaging) may apply to the EPA to offset other land for those areas (to transfer the unit balance from the carbon accounting areas (averaging) to the new land).**
- (2) **The application must—**
- (a) **specify the carbon accounting areas (averaging) to which the application relates (each a CAA1); and**
- (b) **specify the land proposed to be offset for each CAA1; and**
- (c) **include a final forestry emissions return prepared under section 189BA for the activity—**
- (i) **that covers the CAA1s; and**
- (ii) **that uses the date on which the application is submitted to the EPA as the relevant date; and**
- (d) **include in that return a new unit balance report prepared under section 189EA that covers 1 or more carbon accounting areas (each a CAA2) for each CAA1 consisting of the land specified under paragraph (b); and**
- (e) **include—**
- (i) **the carbon stock of each CAA1 on the P89 offset application date determined in accordance with regulations made under section 194LA (the reference carbon stock for the CAA1); and**
- (ii) **if the person proposed as the participant in respect of any of the CAA2s is not already registered as a participant, the information necessary for that person to become registered; and**
- (iii) **any other information prescribed in regulations made under section 194LA.**

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(3) If the person proposed as the participant in respect of any of the CAA2s is not the participant in respect of the CAA1s, the application must be made jointly with that other person.

(4) The application must—

(a) be signed by all of the applicants; and

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(b) be submitted—

(i) in the prescribed manner and format; and

(ii) together with the prescribed fee (if any); and

(iii) together with the prescribed information (if any).

194GB Criteria for P89 offset application

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(1) If a person submits a P89 offset application, the EPA,—

(a) if satisfied that the criteria in **subsection (2)** were met on the P89 offset application date, must approve the application; or

(b) otherwise, may decline the application.

(2) The criteria are that—

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CAA1 criteria

(a) the land in each CAA1 is 1 or both of the following:

(i) land that has a first rotation forest and has reached average carbon equality (as defined in **section 194FA**):

(ii) land that has a subsequent rotation forest; and

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(b) the forest species on each CAA1 were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and

CAA2 criteria

(c) the land in each CAA2 is 1 or more of the following:

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(i) land that is not forest land on the P89 offset application date, but if it were to become forest land—

(A) would be post-1989 forest land; and

(B) if it were in a carbon accounting area, would meet the criteria in **section 194FD** for having a first rotation forest:

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(ii) post-1989 forest land that—

(A) became post-1989 forest land less than 2 years before the P89 offset application date; and

(B) meets the criteria in **section 194FD** for having a first rotation forest (or would do so if it were in a carbon accounting area):

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- (iii) area 2 (excess) land (as defined in **section 186AA**), unless the re-use period prescribed in regulations made under **section 194LA** has expired;
- (iv) P89 offsetting (excess) land, unless the re-use period prescribed in regulations made under **section 194LA** has expired; and 5
- (d) the total area (whether or not contiguous) of the CAA2s for a CAA1 is equal to or greater than the area of that CAA1; and
- (e) each individual parcel that makes up the CAA2 has an area of at least 1 hectare and has an average width of at least 30 metres; and
- Participant criteria* 10
- (f) the participant in respect of each CAA2 would, if the land in the CAA2 were forest land,—

 - (i) if they are not already registered as a participant in the activity, qualify to be registered under section 57; and
 - (ii) qualify under **section 187** to be registered as a participant in respect of the CAA2; and 15
- P89 offset release criteria*
- (g) the EPA is satisfied that, on the P89 offset date, the P89 offset release criteria are likely to be met in respect of each CAA1 and the CAA2s proposed in respect of it; and 20
- Prescribed criteria*
- (h) any other criteria prescribed in regulations made under **section 194LA** are met.

194GC Effect of approval of P89 offset application 25

- (1) This section applies if the EPA approves a P89 offset application. 25
- (2) Starting on the P89 offset application date,—

 - (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and
 - (b) if any of the land proposed to be included in a CAA2 is already in a carbon accounting area, the participant for that land— 30

 - (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and
 - (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and 35
 - (c) the persons proposed as participants for CAA2s are participants in the activity on the CAA2s; and
 - (d) the participant in respect of the CAA1s—

- (i) ceases to be a participant in the activity on the CAA1s; and
 - (ii) is not liable to surrender the unit balances of the CAA1s; and
 - (e) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and
 - (f) the land in the CAA2s for a CAA1 is the **P89 offsetting (approved) land** for that CAA1; and 5
 - (g) the **P89 offset date** for the P89 offsetting (approved) land for a CAA1 is—
 - (i) if, on the P89 offset application date, every hectare of land in the CAA1 had forest species on it that had tree crown cover of more than 30%, 4 years after the P89 offset application date; or 10
 - (ii) if not, 4 years after the clearing of the CAA1 started most recently before the P89 offset application date.
 - (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section. 15
 - (4) If **subsection (2)(b)(i)** applies—
 - (a) the notice requiring those units to be surrendered (referred to in **section 63(4)**) must also set out the effect of **paragraph (b)**; and
 - (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant. 20
 - (5) If an approval is revoked under **subsection (4)**, this Act applies as if the application had never been made.
 - (6) However, despite **subsection (5)**, the effect of **subsection (2)(b)(ii)** is not reversed (so the person is not reinstated as a participant for the carbon accounting area). 25

P89 offsetting (approved) land

194HA Duration of P89 offsetting (approved) land status

- (1) Land that becomes P89 offsetting (approved) land for a CAA1 under **section 194GC(2)(f)** remains P89 offsetting (approved) land until one of the following occurs: 30
 - (a) the land meets the P89 offset release criteria and is released from being P89 offsetting (approved) land on the P89 offset date under **section 194JF(2)(c)**:
 - (b) the person ceases to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest): 35
 - (c) the land becomes temporary adverse event land under **section 194NC**:

- (d) the land is P89 offsetting (unforested) land and ceases to be P89 offsetting (approved) land under **section 194JF(2)(d)**:
 - (e) the land is P89 offsetting (excess) land and ceases to be P89 offsetting (approved) land under **section 194JF(2)(e)**:
 - (f) the land is declared to not be P89 offsetting (approved) land under **section 194KA(3)** and ceases to be so under **section 194KB(2)(a)**: 5
 - (g) the land is removed land and ceases to be P89 offsetting (approved) land under **section 194KE(2)(d)**.
- (2) To avoid doubt, the land continues to be P89 offsetting (approved) land even if the carbon accounting areas containing the land are reconfigured (whether under **section 194CC** or by any other process that requires the submission of a new unit balance report). 10

194HB Effect of being P89 offsetting (approved) land

All of the provisions of this Act that apply to post-1989 forest land that is in a carbon accounting area (averaging) apply to P89 offsetting (approved) land as if it were post-1989 forest land, subject to **sections 194HC and 194HD**. 15

194HC Subsequent rotation forest

- (1) P89 offsetting (approved) land is to be treated as having a subsequent rotation forest (despite **section 194FD(1)**).
- (2) **Subsection (1)** continues to apply to P89 offsetting (forested) land (identified under **section 194JB**) until— 20
- (a) it is first cleared after the P89 offset date (even though it ceases to be P89 offsetting (approved) land on the P89 offset date); or
 - (b) the participant becomes registered for an activity of permanent forestry on the land. 25
- (3) To avoid doubt, when **subsection (1)** ceases to apply to any land, **section 194FD** applies.

194HD Reconfiguration restrictions

- (1) A carbon accounting area containing P89 offsetting (approved) land cannot be reconfigured (whether by application under **section 194CA** or by any other process that requires the submission of a new unit balance report) except as permitted by **subsection (2)**. 30
- (2) Reconfiguration is permitted—
- (a) to reconfigure the carbon accounting areas that contain the P89 offsetting (approved) land for the same CAA1 without including any other land: 35

- (b) to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with **sections 188AB and 191BA**:
- (c) to remove land that becomes temporary adverse event land under **section 194NC**:
- (d) on the P89 offset date as required under **section 194JB**:
- (e) to substitute land under **sections 194KC to 194KE**.

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194HE No transfers to permanent forestry

A participant for a carbon accounting area containing P89 offsetting (approved) land cannot apply under **section 194DA** to become a participant in an activity of permanent forestry on that land.

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Offsetting on P89 offset date

194JA P89 offset release criteria

- (1) The **P89 offset release criteria** in respect of a CAA1 and its P89 offsetting (approved) land that is P89 offsetting (forested) land are that, on the P89 offset date,—
 - (a) the area of the P89 offsetting (forested) land is equal to or greater than the area of CAA1; and
 - (b) the expected carbon stock of the P89 offsetting (forested) land is equal to or greater than the reference carbon stock of the CAA1; and
 - (c) any other criteria prescribed in regulations made under **section 194LA** are met.
- (2) The **expected carbon stock** of land is the carbon stock (determined in accordance with regulations made under **section 194LA**) that the land is expected to have achieved at the end of the period prescribed in regulations made under that section.

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Adjustment if adverse event

- (3) If any of the P89 offsetting (approved) land ceases to be P89 offsetting (approved) land under **section 194HA(1)(b) or (c)** (because of adverse events) on or before the P89 offset date,—
 - (a) for **subsection (1)(a)**, the area of the CAA1 on the P89 offset application date is to be treated as reduced in accordance with **subsection (4)**; and
 - (b) for **subsection (1)(b)**, the reference carbon stock for the CAA1 is to be treated as reduced in accordance with **subsection (5)**.

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- (4) The reduced area of the CAA1 (in hectares) (y) is calculated as follows:

$$y = a \times (j \div k)$$

where—

- a is the area of the CAA1 on the P89 offset application date (in hectares)
- j is the area of the land that ceased to be P89 offsetting (approved) land under **section 194HA(1)(b) or (c)** (in hectares)
- k is the area of the P89 offsetting (approved) land on the P89 offset application date (being all of the CAA2s under **section 194GA**) (in hectares).

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- (5) The reduced reference carbon stock for the CAA1 (in tonnes) (w) is calculated as follows:

$$w = c \times (j \div k)$$

where—

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- c is the reference carbon stock for the CAA1 (in tonnes)
- j is the area of the land that ceased to be P89 offsetting (approved) land under **section 194HA(1)(b) or (c)** (in hectares)
- k is the area of the P89 offsetting (approved) land on the P89 offset application date (being all of the CAA2s under **section 194GA**) (in hectares).

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194JB P89 release criteria notice

- (1) The participants in an activity of standard forestry on the P89 offsetting (approved) land for a CAA1 on the P89 offset date must give notice (**P89 release criteria notice**) to the EPA of the extent of compliance with the P89 offset release criteria on the P89 offset date.

20

- (2) The P89 release criteria notice must—

- (a) identify all of the P89 offsetting (approved) land that is each of the following:

(i) **P89 offsetting (forested) land**, being all the P89 offsetting (approved) land that is qualifying forest land on the P89 offset date, other than P89 offsetting (excess) land:

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(ii) **P89 offsetting (unforested) land**, being all the P89 offsetting (approved) land that is not qualifying forest land on the P89 offset date:

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(iii) **P89 offsetting (excess) land**, being any P89 offsetting (approved) land that—

(A) is qualifying forest land on the P89 offset date; and

(B) does not need to be part of the P89 offsetting (forested) land in order for the P89 offset release criteria to be met; and

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(C) the participants want to be excluded from the P89 offsetting (forested) land and to be available for re-use under **section 186BB(2)(b)(iv) or 194GB(2)(c)(iv)**; and

- (b) include final forestry emissions returns under **section 189BA** for each participant and activity—
- (i) that covers each carbon accounting area that contains the P89 offsetting (approved) land (each a **CAA3**); and
 - (ii) that uses the P89 offset date as the **relevant date**; and 5
- (c) include in each return a P89 offset date unit balance report under **section 194JE** that covers the following carbon accounting areas (each a **CAA4**) formed from each CAA3:
- (i) 1 or more **forested CAA4s** for the P89 offsetting (forested) land in the CAA3; 10
 - (ii) an **unforested CAA4** for any P89 offsetting (unforested) land in the CAA3;
 - (iii) 1 or more **excess CAA4s** for any P89 offsetting (excess) land in the CAA3; and
- (d) include any information prescribed in regulations made under **section 194LA**. 15
- (3) Land is **qualifying forest land** if—
- (a) each hectare of land has forest species on it that have, or are likely to have, tree crown cover of more than 30%; and
 - (b) those forest species were established by direct planting activities, including direct seeding but excluding natural forest regeneration; and 20
 - (c) each individual parcel that makes up the land has an area of at least 1 hectare and has an average width of at least 30 metres; and
 - (d) the land has not been declared not to be qualifying forest land under **section 194KA(2)**. 25
- (4) The P89 release criteria notice must—
- (a) be made jointly by the participants in respect of all of the P89 offsetting (approved) land for the CAA1; and
 - (b) be signed by all of the participants; and
 - (c) be given within 60 working days after the P89 offset date; and 30
 - (d) be given—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
- (5) In relation to a final forestry emissions return required by **subsection (2)(b)**, **sections 189BA to 189DA** apply as if the references in those sections to CAA1 were references to CAA3. 35

194JC Liability to surrender units if P89 offset release criteria not met

(1) This section applies in relation to the CAA3s for a CAA1 if the P89 offset release criteria under either or both of **paragraphs (a) and (b) of section 194JA(1)** are not met.

(2) The participants for the CAA3 are liable to surrender the number of units determined under **subsections (4) to (6)**. 5

(3) That liability is apportioned between the CAA3s under **section 194JD**.

Liability for area insufficiency

(4) If the criterion in **section 194JA(1)(a)** is not met, the number of units to be surrendered (s_a) is calculated as follows: 10

$$s_a = [(c - d) \div c] \times u$$

where—

c is the area of the CAA1 on the P89 offset application date (reduced under **section 194JA(3)** if applicable) (in hectares)

d is the total area of all of the P89 offsetting (forested) land for the CAA1 (in hectares) 15

u is the unit balance of the CAA1 in the emissions return that accompanied the application under **section 194GA**.

Liability for carbon insufficiency

(5) If the criterion in **section 194JA(1)(b)** is not met, the number of units to be surrendered (s_c) is calculated as follows: 20

$$s_c = (e - f)$$

where—

e is the reference carbon stock for the CAA1 (reduced under **section 194JA(3)** if applicable) (in tonnes) 25

f is the total expected carbon stock of all of the P89 offsetting (forested) land for the CAA1 (in tonnes).

Total liability

(6) The total liability under this section (t) is calculated as follows:

$$t = s_a + s_c$$
 30

194JD Maximum liability and apportionment

(1) This section applies if the participants for the CAA3s for a CAA1 have a liability under **section 194JC**.

One CAA3

(2) If there is only one CAA3,— 35

(a) **section 190** applies; and

(b) the liability for that CAA3 is equal to t under **section 194JC(6)**.

Two or more CAA3s: maximum liability

- (3) If there are 2 or more CAA3s,—
- (a) **section 190** does not apply; but
 - (b) if the total liability calculated under **section 194JC(6)** (t) is greater than the total of the unit balances of all of the CAA3s, t is reduced to be equal to that total unit balance.

5

Two or more CAA3s: apportionment

- (4) If there are 2 or more CAA3s, the liability for each CAA3 (k) is calculated as follows:

$$k = t \times (a_3 \div b_3)$$

10

where—

t is the total liability under **section 194JC(6)**, reduced under **subsection (3)** if applicable

a₃ is the area of the CAA3 (in hectares)

b₃ is the total area of all of the CAA3s (in hectares).

15

194JE P89 offset date unit balance report

- (1) A P89 offset date unit balance report required by **section 194JB(2)(c)** must—

- (a) specify the CAA4s that the report covers and, for each CAA4 whose boundaries are not the same as a CAA3, define the CAA4; and
- (b) specify the CAA3s (whose land will form the CAA4s); and
- (c) specify the opening unit balance of each unforested CAA4 and each excess CAA4 (if any) as zero; and
- (d) set out the calculation under **subsection (2)** of the opening unit balance of each forested CAA4.

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- (2) The opening unit balance of a forested CAA4 (v) is calculated as follows:

$$v = (u - k) \times (a_4 \div b_4)$$

where—

u is the unit balance of the CAA3 in the emissions return under **section 194JB(2)(b)**

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k is,—

(a) if there is only one CAA4, zero; or

(b) if there are 2 or more CAA4s, the liability of the CAA3 under **section 194JD**

a₄ is the area of the forested CAA4 (in hectares)

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b₄ is the total area of all of the P89 offsetting (forested) land for the CAA1 (in hectares).

194JF Effect on P89 offset date

- (1) This section applies if a P89 release criteria notice is given to the EPA in accordance with **section 194JB**, including a final forestry emissions return (for the CAA3s) and P89 offset date unit balance report (for the CAA4s).
- (2) Starting on the P89 offset date,—
- (a) the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under **section 189DA**); and
- (b) the participants are not liable to surrender the unit balances of each CAA3 (although they may be liable to surrender units under **section 194JC**); and
- (c) for each forested CAA4,—
- (i) the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the forested CAA4 (instead of the CAA3); and
- (ii) the land in the forested CAA4 is released from being P89 offsetting (approved) land; and
- (iii) the unit balance of each forested CAA4 is the opening unit balance calculated for it in the P89 offset date unit balance report; and
- (d) for each unforested CAA4,—
- (i) the person who was the participant in respect of the CAA3 from which it was formed ceases to be a participant in respect of the unforested CAA4; and
- (ii) the land in the unforested CAA4 ceases to be P89 offsetting (approved) land; and
- (iii) the unit balance of each unforested CAA4 is zero; and
- (e) for each excess CAA4,—
- (i) the person who was the participant in respect of the CAA3 from which it was formed is the participant in respect of the excess CAA4; and
- (ii) the land in the excess CAA4 ceases to be P89 offsetting (approved) land; and
- (iii) the unit balance of each unforested CAA4 is zero.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

- (4) After the P89 offset date, **section 179(1)** (except **subsection (1)(a)**) applies to the P89 offsetting (forested) land as if it had been cleared on the P89 offset application date.
- (5) **Subsection (4)** ceases to apply when that land is next cleared (after which **section 179** will apply). 5

Action if criteria for initial P89 offset application not met

194KA EPA may take action if original criteria not met

- (1) This section applies if the EPA—
- (a) approved a P89 offset application; but
- (b) is now satisfied that the application should not have been approved because some or all of the P89 offsetting (approved) land did not meet the criteria in **section 194GB(2)(c) or (e)** or any applicable criteria prescribed for **section 194GB(2)(h)**. 10

Action on or before P89 offset date

- (2) If this section applies to land on or before the P89 offset date, the EPA may declare that the land that did not meet those criteria is not qualifying forest land for the purposes of **section 194JB**. 15

Action after P89 offset date

- (3) If this section applies to land after the P89 offset date, the EPA may declare that the whole of the carbon accounting area that now contains the land that did not meet those criteria is not P89 offsetting (approved) land. 20

Procedure

- (4) The EPA cannot make a declaration under this section more than 7 years after the P89 offset application date.
- (5) Before making a declaration, the EPA must— 25
- (a) notify the participant of its intention to do so and the grounds for doing so; and
- (b) give the participant at least 60 working days to—
- (i) show cause as to why the EPA should not do so; or
- (ii) take other remedial action specified in the notice (see **section 194KC**). 30

- (6) If the EPA makes a declaration under this section, it must give the participant notice of—
- (a) the declaration and the date on which it was made; and
- (b) the participant's liability under **section 194KB**; and 35
- (c) the participant's right under section 144 to seek a review of the decision to make the declaration.

194KB Effect of declaration after P89 offset date

- (1) This section applies if the EPA makes a declaration under **section 194KA(3)** that a carbon accounting area is not P89 offsetting (approved) land (the CAA).
- (2) Starting on the date on which the declaration is made,—
- (a) the land ceases to be P89 offsetting (approved) land; and 5
 - (b) the person ceases to be a participant in the activity on the CAA; and
 - (c) the person is liable to surrender the number of units equal to the unit balance of the CAA.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section. 10

194KC Remedial action: land substitution

- (1) In a notice under **section 194KA(5)**, the EPA may give the participant the option to take remedial action by substituting other land for land that did not meet the criteria (the **non-compliant land**). 15
- (2) A participant given that option may apply to the EPA to do so.
- (3) The application must—
- (a) specify the carbon accounting areas (each a **CAA5**) that include the non-compliant land for which other land is to be substituted; and
 - (b) identify all the land in each CAA5 as either— 20
 - (i) **removed land**, being the non-compliant land for which other land is to be substituted; or
 - (ii) **remaining land**, being all the land in the CAA5 that is not removed land; and
 - (c) identify the land that is proposed to be substituted for the removed land (**substitute land**); and 25
 - (d) include a final forestry emissions return prepared under **section 189BA** for the relevant activity—
 - (i) that covers the CAA5s; and
 - (ii) that uses the date on which the application is submitted to the EPA as the **relevant date**; and 30
 - (e) include in that return a new unit balance report that—
 - (i) relates to the following carbon accounting areas (each a **CAA6**):
 - (A) a **removed CAA6** for the removed land;
 - (B) a **remaining CAA6** for the remaining land; 35
 - (C) a **substitute CAA6** for the substitute land; and

- (ii) if the substitution date is on or after the P89 offset date, the expected carbon stock of the new P89 offsetting (approved) land as at the substitution date was equal to or greater than the reference carbon stock of the CAA1; and
- (d) any other criteria prescribed in regulations made under **section 194LA** are met. 5
- (3) In this section,—
- new P89 offsetting (approved) land** means all of the land that will be P89 offsetting (approved) land for the CAA1 if the application is approved
- substitution date** means the date on which the application under **section 194KC** was submitted. 10
- 194KE Effect of approval of land substitution**
- (1) This section applies if the EPA approves an application under **section 194KD**.
- (2) Starting on the date on which the application was submitted,—
- (a) the emissions return for the CAA5s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA5s under **section 189DA**); and 15
- (b) if any of the land in a substitute CAA6 is already in a carbon accounting area, the participant for that land—
- (i) is liable to surrender the number of units equal to the unit balance of that carbon accounting area; and 20
- (ii) ceases to be a participant in the relevant activity on that carbon accounting area; and
- (c) in respect of the remainder CAA6s and substitute CAA6s,—
- (i) the person becomes a participant in the activity on those CAA6s (instead of the CAA5s); and 25
- (ii) the unit balance of each of those CAA6s is the opening unit balance calculated for it in the new unit balance report; and
- (iii) the land in those CAA6s is P89 offsetting (approved) land for the original CAA1 (together with any P89 offsetting (approved) land for the CAA1 that was not included in this application); and 30
- (d) in respect of each removed CAA6,—
- (i) the person ceases to be a participant in the activity of the removed CAA6; and
- (ii) the land ceases to be P89 offsetting (approved) land; and 35
- (iii) the person is not liable to surrender units (because the unit balance is zero).
- (3) If **subsection (2)(b)(i)** applies—

- (a) the notice requiring those units to be surrendered (referred to in **section 63(4)**) must also set out the effect of **paragraph (b)**; and
- (b) if the units are not surrendered by the due date, the EPA may revoke the approval by giving written notice to the participant.
- (4) If an approval is revoked under **subsection (4)**, this Act applies as if the application had never been made. 5
- (5) However, despite **subsection (5)**, the effect of **subsection (2)(b)(ii)** is not reversed (so the person is not reinstated as a participant for the carbon accounting area).
- (6) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section. 10
- (7) To avoid doubt, the substitution of land under this section does not affect the P89 offset date for the CAA1.

194KF Effect of application to add area 2 (approved) land being declined 15

- (1) This section applies if the EPA declines an application under **section 194KD**.
- (2) The participant cannot make another application under **section 194KC**.
- (3) The EPA—

 - (a) may make the declaration under **section 194KA**; and
 - (b) if it does so, the notice under **section 194KA(6)** must also notify the participants of— 20

 - (i) the decision to decline the application under **section 194KD**, and the reasons for it; and
 - (ii) the participants' right under section 144 to seek a review of that decision. 25

Regulations

194LA Regulations for P89 offsetting

- (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 the methodology for determining— 30

 - (i) reference carbon stock (**section 194GA**):
 - (ii) expected carbon stock (**section 194JA(2)**):
 - (b) prescribing the information to be included in, and other requirements for,—

 - (i) P89 offset applications (**section 194GA**): 35
 - (ii) P89 release criteria notices (**section 194JB**):

- (iii) applications to substitute land under (section 194KC):
 - (c) prescribing re-use periods for area 2 (excess) land or P89 offsetting (excess) land (section 194GB(2)(c)(iii) and (iv)):
 - (d) prescribing additional criteria for the approval of—
 - (i) P89 offset applications (section 194GB(2)(h)): 5
 - (ii) land substitution applications (section 194KD(2)(d)):
 - (e) prescribing additional P89 offset release criteria (section 194JA(1)(c)):
 - (f) prescribing the period for the purposes of the definition of expected carbon stock (section 194JA(2)): 10
 - (g) providing for any other matters contemplated by this subpart, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
 - (a) for different forest species: 15
 - (b) for forest species of different ages:
 - (c) for different rotation periods:
 - (d) for different parts of New Zealand.
- (3) Regulations made under this section may have retrospective effect to the extent that they may apply from the commencement of the mandatory emissions return period in which they are made or from a later date in that period. 20
- (4) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (5) See sections 3A and 3B for consultation requirements that apply to the making of regulations under this section. 25
- (6) See also sections 169 to 175 (incorporation by reference).

Subpart 7—Temporary adverse events

194MA Interpretation for this subpart

- (1) In this subpart,—
 - adverse event, in relation to temporary adverse event land, means the event referred to in **section 194NA(1)(b)** as a result of which the land became temporary adverse event land 30
 - affected land has the meaning given in **section 194NA(1)**
 - carbon recovery has the meaning given in **section 194RA**
 - event date, in relation to an adverse event, means the later of,— 35
 - (a) if the event occurs—

- (i) on only 1 day, that day; or
- (ii) over 2 or more days, the first of those days (even if land in a particular carbon accounting area is not affected until the second or a later day of the event); and

(b) if the event occurs in circumstances specified in regulations made under **section 194TA**, the date provided for in the regulations 5

non-established land has the meaning given in **section 194QB**

permanently affected land has the meaning given in **section 194QB**

pre-event carbon stock rate, for temporary adverse event land from a CAA1, means the average carbon stock per hectare of the affected land in the CAA1 on the day before the event date, determined in accordance with regulations made under **section 194TA**, unless **subsection (2)** applies 10

re-established land has the meaning given in **section 194QB**

re-establishment has the meaning given in **section 194QA**

re-establishment date, in relation to an adverse event, means the later of— 15

(a) the date 4 years after the event date; and

(b) in circumstances specified in regulations made under **section 194TA**, the date provided for in the regulations

temporary adverse event land means land that has become temporary adverse event land under **section 194NC(2)(e)** and has not ceased to be so under a provision referred to in **section 194PA**. 20

(2) For the purposes of the definition of **pre-event carbon stock rate**,—

(a) if land that is temporary adverse event land in relation to an adverse event (**event 1**) becomes temporary adverse event land in relation to a later adverse event (**event 2**), the pre-event carbon stock rate for the land in relation to event 2 is the same as the pre-event carbon stock rate it had in relation to event 1; and 25

(b) if P89 offsetting (approved) land becomes temporary adverse event land, the pre-event carbon stock rate for the land is the reference carbon stock (under **section 194GA**) per hectare of the CAA1 for which the land is P89 offsetting (approved) land. 30

Application

194NA Application for temporary adverse event suspension

(1) Post-1989 forest land is **affected land** if—

(a) the land is in a carbon accounting area (a CAA1)— 35

(i) that is a carbon accounting area (averaging); or

(ii) for which a person is a participant in an activity of permanent forestry; and

- (b) the land is affected by an event of a kind prescribed in regulations made under **section 194TA** (the **adverse event**); and
- (c) the event results in each hectare of land ceasing to have forest species on it that have, or are likely to have, tree crown cover of more than 30%; and 5
- (d) the area of affected land in each CAA1 is equal to or greater than any minimum prescribed in regulations made under **section 194TA**; and
- (e) the extent of carbon stock lost from each CAA1 is equal to or greater than any minimum prescribed in regulations made under **section 194TA**. 10
- (2) A participant in an activity of standard forestry or permanent forestry on a CAA1 may apply for a temporary adverse event suspension for the affected land in that CAA1.
- (3) The application must—
- (a) specify the CAA1s to which the application relates; and 15
- (b) include a final forestry emissions return prepared under **section 189BA** for the activity—
- (i) that covers the CAA1s; and
- (ii) that uses the day before the event date as the **relevant date**; and
- (c) include in that return a new unit balance report prepared under **section 189EA** for the activity that covers the following carbon accounting areas (CAA2s) formed from each CAA1: 20
- (i) an **affected CAA2** for the affected land in the CAA1;
- (ii) a **remainder CAA2** for the rest of the land in the CAA1; and
- (d) include— 25
- (i) the pre-event carbon stock rate for the affected land; and
- (ii) any other information prescribed in regulations made under **section 194TA**.
- (4) The application must—
- (a) be signed by the participant; and 30
- (b) be submitted by the deadline prescribed in regulations made under **section 194TA**; and
- (c) be submitted—
- (i) in the prescribed manner and format; and
- (ii) together with the prescribed fee (if any); and 35
- (iii) together with the prescribed information (if any).

194NB Criteria of temporary adverse event suspension

- (1) If a person submits an application under **section 194NA** for a temporary adverse event suspension, the EPA,—
- (a) if satisfied that the criteria in **subsection (2)** are met, must approve the application; or 5
 - (b) otherwise, may decline the application.
- (2) The criteria are that—
- (a) the land in the affected CAA2s is affected land; and
 - (b) the participant notified the EPA of the occurrence of the adverse event in accordance with regulations made under **section 194TA**; and 10
 - (c) the EPA is satisfied that the land in the affected CAA2s—
 - (i) is likely to achieve re-establishment under **section 194QA**; and
 - (ii) is likely to achieve carbon recovery under **section 194RA**; and
 - (d) any other criteria prescribed in regulations made under **section 194TA** are met. 15

194NC Approval of temporary adverse event suspension

- (1) This section applies if the EPA approves an application for a temporary adverse event suspension under **section 194NB**.
- (2) Starting on the day before the event date,—
- (a) the emissions return for the CAA1s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA1s under **section 189DA**); and 20
 - (b) the person is a participant in the activity on the CAA2s (instead of the CAA1s); and
 - (c) the person is not liable to surrender the unit balance of each CAA1; and 25
 - (d) the unit balance of each CAA2 is the opening unit balance calculated for it in the new unit balance report; and
 - (e) the land in the affected CAA2s formed from a CAA1 is the **temporary adverse event land** from that CAA1 in relation to the adverse event.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section. 30

Temporary adverse event land

194PA Duration of temporary adverse event land status

- (1) Land that becomes temporary adverse event land under **section 194NC(2)(e)** remains temporary adverse event land until one of the following occurs: 35

- (a) the land achieves carbon recovery and is released from being temporary adverse event land under **section 194RB**:
 - (b) the person ceases to be a participant because of **section 188AB** (for a natural event that permanently prevents re-establishing a forest), whether as a result of the adverse event or a different event: 5
 - (c) the land is affected by another event and becomes temporary adverse event land under **section 194NC(2)(e)** in relation to that later event:
 - (d) the land is non-established land and ceases to be temporary adverse event land under **section 194QC(2)(d)**:
 - (e) the land is permanently affected land and ceases to be temporary adverse event land under **section 194QC(2)(e)**: 10
 - (f) the land ceases to be temporary adverse event land under **section 194SA** because of a breach of condition:
 - (g) the land ceases to be temporary adverse event land under **section 194SB** because it is intentionally converted, cleared before it achieves carbon recovery, or is to be treated as deforested. 15
- (2) To avoid doubt, the land continues to be temporary adverse event land even if the carbon accounting areas containing the land—
- (a) are reconfigured (whether under **section 194CC** or by any other process that requires the submission of a new unit balance report); or 20
 - (b) change activity from standard forestry to permanent forestry or vice versa.

194PB Effect of being temporary adverse event land

- (1) All of the provisions of this Act that apply to post-1989 forest land continue to apply to temporary adverse event land as if it remained forest land, subject to **sections 194PC to 194PF**. 25
- (2) The temporary adverse event land is also subject to any conditions prescribed in regulations made under **section 194TA**.

194PC No liability or entitlement

- (1) A participant in respect of temporary adverse event land is not liable to surrender units, or entitled to receive New Zealand units, for emissions and removals for the land (including emissions resulting from the adverse event). 30
- (2) However, **subsection (1)** is subject to **sections 194DF and 194DG**, and the participant is liable to surrender units under those sections if they apply.
- (3) If provided in regulations made under **section 194TA**, the participant is not required to— 35
 - (a) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units; or

- (b) submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units.

194PD First rotation forest

- (1) If temporary adverse event land is in a carbon accounting area (averaging), and on the day before the event date the land had a first rotation forest, then the land is to be treated as continuing to have a first rotation forest. 5
- (2) **Subsection (1)** continues to apply in relation to re-established land until it is first cleared after the re-establishment date (even though it ceases to be temporary adverse event land on the re-establishment date).
- (3) To avoid doubt, when **subsection (1)** ceases to apply to land, **section 194FD** applies. 10

194PE Reconfiguration restrictions

- (1) A carbon accounting area containing temporary adverse event land cannot be reconfigured (whether by application under **section 194CA** or by any other process that requires the submission of a new unit balance report) except as permitted by **subsection (2)**. 15
- (2) Reconfiguration is permitted—
- (a) to reconfigure the carbon accounting areas that contain the temporary adverse event land from the same CAA1 without including any other land; 20
- (b) to remove land that is affected by a natural event that permanently prevents re-establishing a forest in accordance with **sections 188AB and 191BA** (whether that is the adverse event or a different event);
- (c) to remove land that becomes temporary adverse event land in relation to a different event; 25
- (d) on the re-establishment date as required under **section 194QB**;
- (e) to remove land that has ceased to be temporary adverse event land when **section 194SC(5)** applies.

194PF Damage to land turns out to be permanent

- (1) If the adverse event was a natural event and it becomes apparent that it permanently prevents the re-establishing of a forest on the land,— 30
- (a) if that becomes apparent before the re-establishment date, the participant may notify the EPA under **section 188AB** (then see **section 194PA(1)(b)**); or
- (b) if that is apparent at the re-establishment date and the participant has not notified the EPA under **section 188AB**, the participant must identify the land as permanently affected land under **section 194QB** (then see **section 194QC(2)(e)**); or 35

(c) if that becomes apparent after the re-establishment date, the participant may notify the EPA under **section 188AB** (then see **section 194PA(1)(b)**).

(2) To avoid doubt, if P89 offsetting (approved) land is affected by another event that permanently prevents re-establishing a forest on that land, the participant may comply with **section 188AB** in relation to that event.

Re-establishment

194QA Re-establishment criteria

A hectare of temporary adverse event land achieves **re-establishment** if, on the re-establishment date, the hectare has forest species on it that have, or are likely to have, tree crown cover of more than 30%.

194QB Notice of achievement of re-establishment

(1) A participant in an activity of standard forestry or permanent forestry on 1 or more carbon accounting areas that contain temporary adverse event land from a CAA1 (each a **CAA3**) must give notice to the EPA of the extent to which the temporary adverse event land has achieved re-establishment.

(2) The notice must,—

(a) for each **CAA3**, identify all of the land in the **CAA3** that is each of the following:

(i) **re-established land**, being all of the land in the **CAA3** that, on the re-establishment date, has achieved re-establishment;

(ii) **non-established land**, being all of the land in the **CAA3** that, on the re-establishment date, has not achieved re-establishment and is not permanently affected land;

(iii) if the adverse event was a natural event, **permanently affected land**, being all of the land in the **CAA3**—

(A) that, on the re-establishment date, has not achieved re-establishment; and

(B) on which the adverse event has permanently prevented re-establishing a forest; and

(b) include a final forestry emissions return under **section 189BA** for the activity—

(i) that covers each **CAA3**; and

(ii) that uses the re-establishment date as the **relevant date**; and

(c) include in that return a new unit balance report under **section 189EA** that covers the following carbon accounting areas (each a **CAA4**) formed from each **CAA3**:

- (i) 1 or more re-established CAA4s for any re-established land in the CAA3;
 - (ii) a non-established CAA4 for any non-established land in the CAA3;
 - (iii) a permanently affected CAA4 for any permanently affected land in the CAA3; and
 - (d) include any information prescribed in regulations made under **section 194TA**.
 - (3) The notice must—
 - (a) be signed by the participant; and
 - (b) be given within 60 working days after the re-establishment date; and
 - (c) be given—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
 - (4) In relation to the final forestry emissions return and new unit balance report required by **subsection (2)(b) and (c), sections 189BA to 189EA** apply as if—
 - (a) the references in those sections to CAA1 were references to CAA3; and
 - (b) the references in those sections to CAA2 were references to CAA4.
- 194QC Effect on re-establishment date**
- (1) This section applies if a person gives the EPA a notice in accordance with **section 194QB**, including a final forestry emissions return (for the CAA3s) and new unit balance report (for the CAA4s).
 - (2) Starting on the re-establishment date,—
 - (a) the emissions return for the CAA3s is treated as being submitted (so that the total liability or entitlement has effect, and the unit balance is updated, for the CAA3s under **section 189DA**); and
 - (b) the person is not liable to surrender the unit balance of each CAA3; and
 - (c) for each re-established CAA4,—
 - (i) the person is the participant in respect of the re-established CAA4 (instead of the CAA3); and
 - (ii) the land in the re-established CAA4 remains temporary adverse event land; and
 - (iii) the unit balance of the re-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and
 - (d) for each non-established CAA4,—

- (i) the person is a participant in respect of the non-established CAA4; and
 - (ii) the land in the non-established CAA4 ceases to be temporary adverse event land; and
 - (iii) the unit balance of the non-established CAA4 is the opening unit balance calculated for it in the new unit balance report; and
 - (iv) **section 194SC** applies to the land; and
- (e) for each permanently affected CAA4,—
 - (i) the person ceases to be a participant in respect of the permanently affected CAA4; and
 - (ii) the land in the permanently affected CAA4 ceases to be temporary adverse event land; and
 - (iii) the person is not liable to surrender the unit balance of each permanently affected CAA4.
- (3) The EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under **section 188(2)**, to record the effects of this section.

Carbon recovery

194RA Carbon recovery criteria

A hectare of temporary adverse event land achieves **carbon recovery** when the carbon stock of the hectare (determined in accordance with regulations made under **section 194TA**) is equal to the pre-event carbon stock rate.

194RB Notice when land achieves carbon recovery

- (1) When temporary adverse event land achieves carbon recovery, the participant in respect of the land must give notice to the EPA that the land has achieved carbon recovery.
- (2) The notice must—
 - (a) be signed by the participant; and
 - (b) be given when the next emissions return that covers the land is submitted; and
 - (c) be given—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
- (3) If a participant gives the EPA notice in accordance with this section, the land is taken to have recovered and is released from being temporary adverse event land with effect from when carbon recovery was achieved.

Ceasing to be temporary adverse event land before recovery

194SA Cancellation for breach of conditions

(1) If the EPA is satisfied that a condition applying under **section 194PB(2)** has not been met in respect of temporary adverse event land in a carbon accounting area, the EPA may cancel the approval in respect of all of the land in the carbon accounting area. 5

(2) If the approval is cancelled,—

(a) the land ceases to be temporary adverse event land; and

(b) **section 194SC** applies to the land.

Procedure 10

(3) Before cancelling an approval, the EPA must—

(a) notify the participant of its intention to do so and the grounds for doing so; and

(b) give the participant at least 60 working days to—

(i) rectify the non-compliance; or 15

(ii) show cause as to why the EPA should not cancel the approval.

(4) If the EPA cancels an approval, it must give the participant notice of—

(a) its decision and the reasons for it; and

(b) the date on which the cancellation occurred; and

(c) the person's right to seek a review of the decision under section 144. 20

194SB Other circumstances causing land to cease to be temporary adverse event land

Intentional conversion to non-forest land

(1) Temporary adverse event land is **intentionally converted** if the participant—

(a) takes any action that is inconsistent with the land achieving re-establishment; or 25

(b) otherwise takes any action for the purpose of converting the land to land that is not forest land.

(2) If temporary adverse event land is intentionally converted,—

(a) the land ceases to be temporary adverse event land; and 30

(b) the land is to be treated as deforested (despite **section 179A**); and

(c) the reversion date for **section 194SC** is the date on which the first action referred to in **subsection (1)(a) or (b)** occurred.

Re-established land cleared before carbon recovery

(3) If re-established land is cleared after its re-establishment date but before it achieves carbon recovery,— 35

- (a) the land ceases to be temporary adverse event land; and
(b) the land is to be treated as deforested; and
(c) the reversion date for **section 194SC** is the date the clearing commenced.
- Re-established land treated as deforested* 5
- (4) If re-established land becomes land that is to be treated as deforested under **section 179(1)(b) or (c)** before it achieves carbon recovery,—
(a) the land ceases to be temporary adverse event land; and
(b) the reversion date for **section 194SC** is the 10- or 20-year date under **section 179**. 10
- 194SC Consequences if land ceases to be temporary adverse event land**
- (1) This section applies to the following land:
(a) non-established land that ceases to be temporary adverse event land under **section 194QC(2)(d)**, for which the **reversion date** is the re-establishment date: 15
(b) land in a carbon accounting area in respect of which the approval is cancelled under **section 194SA**, for which the **reversion date** is the date of the cancellation:
(c) land that ceases to be temporary adverse event land under **section 194SB**, for which the **reversion date** is the date specified in that section. 20
- Act reapplies*
- (2) Starting on the reversion date, the provisions of this Act apply to the land as if the land had never become temporary adverse event land.
- Liability or entitlement* 25
- (3) As a result, the participant must include all the emissions and removals for the land on and after the event date (including as a result of the adverse event) in the next emissions return the participant is required to submit.
- (4) For that purpose,—
(a) all of those emissions and removals are to be treated as having occurred on the re-establishment date; but 30
(b) the emissions resulting from the adverse event are to be determined by reference to the pre-event carbon stock rate for the land.
- Reconfiguration*
- (5) **Section 194PE(2)(e)** applies to a reconfiguration if— 35
(a) the land to which this section applies is only part of a carbon accounting area; and

(b) as a result of **subsection (2)**, the participant is required to reconfigure that carbon accounting area to remove that land.

Permanent forestry

(6) If the activity on the land is permanent forestry, *see also* **section 194ED(2)**.

Regulations

5

194TA Regulations for temporary adverse events

(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 circumstances and dates for the definitions of event date and re-establishment date in **section 194MA**:

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(b) prescribing the methodology for determining—

(i) the pre-event carbon stock rate (**section 194MA**):

(ii) carbon stock loss (**section 194NA**):

(iii) carbon stock for the purpose of determining carbon recovery (**section 194RA**):

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(c) prescribing the kinds of events that are adverse events (**section 194NA**):

(d) prescribing—

(i) the minimum affected area (**section 194NA(1)(d)**):

(ii) the minimum carbon stock loss (**section 194NA(1)(e)**):

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(e) prescribing other information to be included in, and the submission date and other requirements for, applications made under **section 194NA**:

(f) prescribing notification requirements and other criteria for approval under **section 194NB**:

(g) prescribing conditions for the purposes of **section 194PB(2)**:

25

(h) providing that a participant for temporary adverse event land is not required to—

(i) calculate emissions and removals for which they are not liable to surrender, or entitled to receive, units:

(ii) submit emissions returns covering a carbon accounting area in relation to which they are not liable to surrender, or entitled to receive, units (**section 194PC(3)**):

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(i) prescribing other information to be included in, and other requirements for, notices under **section 194QB**:

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

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- (2) Regulations under this section may make different provision for different cases on any differential basis.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA.
- (4) Regulations made under **subsection (1)(g)** may relate to emissions or removals that— 5
(a) stem directly from an activity; or
(b) are associated with a product or other thing that is the subject of an activity.
- (5) See sections 3A and **3B** for consultation requirements that apply to the making of regulations under this section. 10
- (6) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.
- (7) See also sections 169 to 175 (incorporation by reference). 15

Subpart 8—General

Input returns may be submitted before actual emissions returns

194UA Input returns may be submitted for certain emissions returns for forestry activities

- (1) This section applies before a person submits an emissions return (for a forestry activity) of a type specified in the regulations. 20
- (2) The person may first submit, for the activity and 1 or more of the areas or carbon accounting areas covered by the emissions return, an input return that contains the data or information required by the regulations.
- (3) The input return must be submitted by— 25
(a) the deadline specified in the regulations; or
(b) any extended deadline granted by the EPA under the regulations.
- (4) In this section, **regulations** means regulations made under **section 194UC**.

194UB EPA may do calculations based on input return

- (1) This section applies if the EPA receives an input return in accordance with **section 194UA**. 30
- (2) As soon as practicable after receipt, the EPA must—
(a) calculate for each area or carbon accounting area covered by the input return, as required for the relevant emissions return,—
(i) the participant's emissions and removals; and 35

- (ii) the participant's liability to surrender units for their emissions or entitlement to receive New Zealand units for their removals; and
- (b) give a notice to the participant that includes—
- (i) the calculations and the calculated amounts; and
- (ii) the data, information, or other matters on which the calculations are based; and 5
- (iii) a statement that the participant may choose to include the calculations and the calculated amounts in the relevant emissions return; and
- (iv) a statement about the effect of **subsection (3)**. 10
- (3) The EPA is not liable for anything that results from its calculations under this section, and the EPA's calculations and notice do not affect any obligation of the participant under this Act (such as the obligation to submit an accurate emissions return).
- 194UC Regulations for input returns** 15
- (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) specifying the 1 or more types of emissions return for a forestry activity for which input returns may be submitted, which may be specified by reference to 1 or more of the following: 20
- (i) the type of forestry activity;
- (ii) any feature of the forest or land to which the activity relates;
- (iii) any other matter:
- (b) specifying the data or information that must be contained in any input return or the input return for each type of emissions return: 25
- (c) specifying the deadline for submitting the input return for each type of emissions return, which must be a reasonable period before the deadline for submitting the emissions return:
- (d) providing for how, and for how long, the EPA may extend a deadline for submitting the input return for any emissions return or for each type of emissions return: 30
- (e) authorising the EPA to issue guidelines or standards by notice in the *Gazette* in relation to the matters specified under **paragraphs (b) to (d)**.
- (2) See sections 3A and **3B** for consultation requirements that apply to the making of the regulations. 35
- (3) Any guidelines or standards issued by the EPA under regulations made under **subsection (1)(e)** are a disallowable instrument, but not a legislative instru-

ment, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

- (4) A person who has complied with guidelines or standards issued by the EPA under regulations made under **subsection (1)(e)** is, in the absence of proof to the contrary, presumed to have complied with the relevant requirements specified in regulations corresponding to those guidelines or standards.

Notification of status of forest land

195 Notification of status of forest land

- (1) The EPA must, if required by regulations made under section 168, notify the following persons of the details of the land that the EPA is satisfied is a type of land described by **subsection (1A)**:

- (a) the Registrar of the Maori Land Court in whose jurisdiction the land is situated in relation to Maori land; and
(b) the Registrar-General of Land in relation to land that is registered under the Land Transfer Act 2017; and
(c) the Registrar of Deeds in relation to land that is registered under the Deeds Registration Act 1908.

- (1A) The types of land are—

- (a) the following types of land in respect of which a person is registered as a participant:
(i) pre-1990 forest land;
(ii) P90 offsetting land;
(iii) post-1989 forest land;
(b) the following types of post-1989 forest land:
(i) P89 offsetting (approved) land (as defined by **section 194GAA**);
(ii) temporary adverse event land;
(iii) land for which a person is registered as a participant in permanent forestry;
(c) land that the EPA has declared to be exempt land.

- (2) On receipt of a notice under **subsection (1)**, the Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must record the notice on the appropriate register under the Land Transfer Act 2017, record of the Maori Land Court, or deeds index under the Deeds Registration Act 1908.

- (3) The Registrar-General of Land or the Registrar of the Maori Land Court or the Registrar of Deeds must cancel any notices recorded under **subsection (2)** if required under regulations made under section 168.

Forestry classifications of land

196A Meaning of forestry classification

In this Act, **forestry classification** means 1 or more classifications of an area of land that—

- (a) classifies the area by whether or how— 5
 - (i) a definition or matter in this Act that relates to forestry applies to the area; or
 - (ii) the area is eligible to have a definition or matter in this Act apply to it if certain requirements are satisfied; and
- (b) is given— 10
 - (i) by the EPA under **section 196B** (initial classification), **196D** (change of classification to correct error), **196E** (change of classification to update for changes), or 144 (review of classification); or
 - (ii) by the decision of the District Court or High Court under section 145 or 146. 15

Examples

If specified by regulations, an area of land might be classified as—

- pre-1990 forest land:
- post-1989 forest land: 20
- land that is eligible to become post-1989 forest land (if it becomes forest land):
- P90 offsetting land:
- land that has been deforested, or deforested on specified dates:
- land that is eligible to be declared exempt land under **section 184** (because of tree weeds): 25
- post-1989 forest land for which a participant is registered for standard forestry that is or is not a carbon accounting area (averaging):
- post-1989 forest land for which a participant is registered for permanent forestry: 30
- land that was forest land on 31 December 1989:
- exempt land:
- pre-1990 forest land to which the pre-1990 forest land allocation plan applies:
- something else. 35

196B EPA may give forestry classifications to areas of land

The EPA may give 1 or more forestry classifications to an area of land in accordance with regulations made under **section 196G**.

196C Effect of forestry classifications

- (1) The forestry classification of an area of land is conclusive evidence of how the relevant definition or matter in this Act applies to the area.
- (2) The EPA must apply this Act to the area in accordance with the forestry classification. 5
- (3) If a person's application, notice, emissions return, or other document under this Act specifies the forestry classification of an area of land, the document—
- (a) need not include any information that is covered by the forestry classification; but
- (b) for a forestry classification that an area of land is eligible for something if certain requirements are satisfied, must include information about whether the requirements are satisfied. 10
- (4) The EPA, or any person carrying out its powers, duties, or functions,—
- (a) does not warrant that any forestry classification is correct and not based on, or affected by, something that is incorrect or that has materially changed; and 15
- (b) is not liable for anything that results from a forestry classification being incorrect or based on, or affected by, something that is incorrect or that has materially changed.

196D Change of forestry classification to correct error 20

- (1) The EPA may change the forestry classification of an area of land to correct any error that the EPA is satisfied is contained in the classification, including where the classification was based on incorrect information.
- (2) The EPA must make the change in accordance with regulations made under **section 196G**. 25

196E Change of forestry classification to update for changes

- (1) The EPA may change the forestry classification of an area of land if—
- (a) there is a material change in any of the information or facts on which the classification is based; or
- (b) there is a material change to this Act, or to any regulations made under this Act, that affects the classification. 30
- (2) The EPA must make the change in accordance with regulations made under **section 196G**.

196F Forestry classification with effect before date classification given

- (1) This section applies if a forestry classification has effect before the date on which the classification is given, whether— 35
- (a) by the EPA under **section 196B, 196D, or 196E** or on review under section 144; or

- (b) by the decision of a court on appeal under section 145 or 146.
- (2) The forestry classification must be ignored in respect of the period before the date on which the classification is given—
- (a) to the extent that it would increase the number of units that a person is required to surrender, or decrease the number of New Zealand units that a person is entitled to receive, in respect of that period; and 5
- (b) in respect of any other matter specified by regulations made under **section 196G**.
- (3) In all other respects, the forestry classification must be applied to that period.
- (4) To avoid doubt, where the forestry classification is ignored under **subsection (2)**, the earlier forestry classification (if any) applies instead. 10

196G Regulations for forestry classifications

- (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) specifying the forestry classifications that the EPA may give to areas of land; 15
- (b) prescribing 1 or more methods or processes by which the EPA may give a new or changed forestry classification to an area, and those methods or processes—
- (i) may or may not provide for a person to apply for a classification; and 20
- (ii) may prescribe the fees or charges payable by an applicant for a classification to enable the recovery of all or part of the direct and indirect costs of the EPA in—
- (A) receiving and processing the application; and 25
- (B) considering, granting, or declining the application; and
- (iii) must require the EPA to first consult the persons that the regulations specify are likely to be substantially affected by the classification, unless the only persons likely to be substantially affected have applied for, or agreed to, the classification; 30
- (c) providing for when a forestry classification comes into effect, which may, for example,—
- (i) subject to **section 196F**, be before the date of which the classification is given if the classification is changed under **section 196D or 196E**, on review by the EPA under section 144, or on appeal to the court under section 145 or 146; 35
- (ii) differ for different forestry classifications or circumstances, such as whether a person is responsible for a material change described in **section 196E(1)(a)**:

- (d) specifying matters for the purposes of **section 196F(2)(b)** (in respect of which a forestry classification is ignored for the period before the date on which it is given):
- (e) providing for the publication of the following in 1 or more notices, instruments, maps, or tools, which may be electronic: 5
- (i) any decision to give a forestry classification to an area of land:
- (ii) the current forestry classifications of all areas of land, and any related matters.
- (2) Examples of the costs that may be recovered under regulations made under **subsection (1)(b)(ii)** include (but are not limited to)— 10
- (a) the costs of providing, operating, and maintaining systems, databases, and other processes in connection with the application:
- (b) the costs of services provided by third parties.
- (3) Section 167(4) also applies to regulations made under **subsection (1)(b)(ii)**.
- (4) See sections 3A and **3B** for consultation requirements that apply to the making of regulations under this section. 15
- (5) Regulations made under this section come into force 3 months after the date of their notification in the *Gazette*, or on any later date specified in the regulations.
- Grant-funded forests* 20
- 197 Entitlement to units for removals from grant-funded forests**
- A participant in an activity of standard forestry or permanent forestry on a carbon accounting area is not entitled to receive New Zealand units for removals that—
- (a) are attributable to forest species in relation to which the participant has received a grant from the Crown under a grant scheme relating to forestry that is prescribed in regulations made under **section 197A** (a **grant-funded forest**); and 25
- (b) occur during the stand-down period for that forest prescribed in regulations made under **section 197A**. 30
- 197A Regulations for grant-funded forests**
- (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 Crown grant schemes relating to forestry:
- (b) prescribing stand-down periods for grant-funded forests: 35
- (c) prescribing methodologies for attributing removals to grant-funded forests:

- (d) providing for any other matters contemplated by **section 197**, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may make different provision for different cases on any differential basis, including—
- (a) for different grant schemes: 5
 - (b) for different periods of time:
 - (c) for different forest species:
 - (d) for different parts of New Zealand.
- (3) Regulations made under this section may require the use of a computer programme available via the Internet site of the EPA. 10
- (4) Regulations made under **subsection (1)(c)** may relate to emissions or removals that—
- (a) stem directly from the relevant activity; or
 - (b) are associated with a product or other thing that is the subject of the relevant activity. 15

223ZZ Schedule 1AA amended

- (1) In Schedule 1AA, replace **clause 10(3)** with:
- (3) **Section 89A—**
- (a) applies in respect of emissions returns for an activity of standard forestry or permanent forestry for emissions or removals on or after 1 January 2022; but 20
 - (b) does not apply in respect of any other emissions returns in relation to post-1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.
- (2) In Schedule 1AA, replace **clause 12(3)(a)** with: 25
- (a) may submit a single emissions return under **section 189AA** in respect of 1 or more of the activities of standard forestry carried out by a member of the group in a year; and
- (3) In Schedule 1AA, after **clause 15**, insert: 30
- Subpart 4—Provisions that commence on 1 January 2022
- Persistent non-compliance*
- 16 Deregistering participants for persistent non-compliance**
- The EPA must not remove the name of a person from the register in respect of an activity under **section 59A** if the failure on which the EPA relies occurred before the commencement of this clause. 35

*Time bar for amendment of emissions returns***17 Time bar for amendment of emissions returns**

If an emissions return was required or permitted by a section to which section 127(1) applied immediately before the commencement of this clause, section 127 continues to apply, as it was immediately before the commencement of this clause, in relation to that emissions return.

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*Tree weeds***18 Existing exemptions for deforestation of land with tree weeds**

(1) This clause applies to land for which, immediately before the commencement of this clause, there is an exemption under section 184.

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(2) The exemption applies as if it had been granted under this Act as amended by the amendment Act, so that the conditions in former section 184(6) no longer apply.

19 Carbon accounting areas with tree weeds already added to post-1989 forest land

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Section 188(5)(b) does not affect a carbon accounting area added to any post-1989 forest land before the commencement of that provision.

*Existing emissions returns***20 Emissions returns already submitted or assessed**

If an emissions return was submitted by a person, or assessed by the EPA under section 121, before the commencement of this clause, the emissions return must be dealt with in accordance with this Act as it was immediately before the commencement of this clause.

20

*P90 offsetting land***21 Interpretation**

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In **clauses 21 to 25**,—

commencement date means the date on which this clause came into force **former**, in relation to a provision, means the provision as in force before the commencement date

new offsetting provisions means **subpart 3 of Part 5** and **section 179A(1)(b)** as inserted by the amendment Act.

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22 New offsetting provisions apply to existing offsets

(1) Anything done or omitted to be done to, or in relation to, land under former sections 186A to 186J and that is of ongoing effect is to be treated, on and after

the commencement date, as having been done or omitted to be done under the new offsetting provisions.

- (2) For the purposes of **subclause (1)**, the new offsetting provisions apply with any necessary modifications.

23 Existing approved applications may be amended to include new land 5

- (1) The owners of pre-1990 forest land that is the subject of an existing approved application may apply to the EPA to substitute land of the kind referred to in **section 186BB(2)(b)(ii), (iii), or (iv)** for some or all of the area 2 (approved) land under the application.

- (2) The application must,— 10

(a) identify the existing approved offset land that is to be replaced (**area A**); and

(b) identify the land that is to be substituted for area A (**area B**); and

(c) include—

(i) any information in relation to area B that would be required in an application under **section 186BA**; and 15

(ii) any other information prescribed in regulations made under **section 186FC**.

- (3) The application must be made jointly by all of the persons who, on the date of the application, own any of the area 1 (approved) land, area 2 (approved) land, or land in area B. 20

- (4) The application must—

(a) be signed by all of the applicants; and

(b) be submitted before the P90 offset date for the existing approved application; and 25

(c) be submitted—

(i) in the prescribed manner and format; and

(ii) together with the prescribed fee (if any); and

(iii) together with the prescribed information (if any).

- (5) In this clause, **existing approved application** means an application under former section 186A— 30

(a) that was approved before the commencement date; but

(b) in relation to which a declaration under former section 186D had not been given to the EPA before the commencement date.

- (6) To avoid doubt, nothing in this clause prevents a person who submitted an application under former section 186A that has not yet been approved from withdrawing or amending the application. 35

24 Approval of application

- (1) If a person submits an application under **clause 23**, the EPA—
- (a) if satisfied that the criteria in **subclause (2)** are met, must approve the application; or
 - (b) otherwise, may decline the application. 5
- (2) The criteria are that—
- (a) the land in area B is land that meets the criteria in **section 186BB(2)(b) (other than subparagraph (i)) and (c)**;
 - (b) the area 2 (approved) land under the existing application less area A plus area B (**revised offsetting land**) meets the criteria in **section 186BB(2)(d) and (e)**; 10
 - (c) the EPA is satisfied that if all of the revised offsetting land were to become area 1 (offset) land, the P90 offset release criteria are likely to be met on the P90 offset date;
 - (d) any other criteria prescribed in regulations made under **section 186FC** are met. 15
- (3) If the EPA approves the application,—
- (a) area A ceases to be part of the area 2 (approved) land; and
 - (b) area B becomes part of the approved offset land; and
 - (c) this Act applies as if the existing application had been approved (on its original approval date) in relation to the revised offsetting land. 20

25 Change of terminology: pre-1990 offsetting forest land to P90 offsetting land

A reference (in an enactment or other document) to pre-1990 offsetting forest land includes, in relation to a time before the commencement date, a reference to P90 offsetting land, unless the context otherwise requires. 25

Non-compliance for transmitted interests

26 Non-compliance for transmitted interests

- (1) **Section 194AA(1) to (3)**, but no other subsections of that section, applies to a transmission of interest whose date of transmission was before the commencement of this clause. 30
- (2) **Section 194AC**—
- (a) does not apply to a final transmission whose date of transmission was before the commencement of this clause; but
 - (b) applies to a final transmission whose date of transmission is on or after the commencement of this clause, even if the first transmission, and any 35

other transmission of interest between the first and final transmissions, was before that commencement.

Changing of activity on post-1989 forest land

27 Previous changing of activity on post-1989 forest land

(1) If a person satisfied former section 188(9) before the commencement of this clause, they must be treated as having had an application under **section 194DA** approved to become registered as a participant in standard forestry (the final activity) by changing from PFSI activity (the initial activity).

5

(2) See **sections 194DA(6)(b) and 194EA(2)(c)(ii)**, which are provisions to which this clause relates.

10

28 Application to change from standard to permanent forestry

(1) This clause applies to a person who, in the period starting on 1 January 2018 and ending on 31 December 2022,—

(a) becomes registered as a participant carrying out standard forestry in respect of any post-1989 forest land, whether or not registered in respect of that land before; and

15

(b) has an application under **section 194DA** approved to change from standard forestry to permanent forestry on that land.

(2) For each CAA1 covered by the emissions return that accompanied the application, the person may surrender any units that are equal in number to the unit balance of the CAA1.

20

(3) The deadline for surrendering the units is 60 working days after the person submits the application.

(4) For each unit surrendered, the person becomes entitled to a unit for removals from permanent forestry.

25

29 All PFSI activity is changed to permanent forestry in 2023

(1) This clause applies to a person's forest land that a forest sink covenant is registered against immediately before 1 January 2023 (the **PFSI land**).

(2) On 1 January 2023,—

(a) the EPA must apply **sections 194DA to 194DC** as if the person had that day submitted an application in accordance with **section 194DA** to become a participant in a final activity of permanent forestry on the PFSI land; but

30

(b) the EPA may apply section 121 for the purposes of the application.

Carbon accounting areas (averaging)

30 Emissions returns for carbon accounting area (averaging) in third mandatory emissions return period

- (1) This clause applies in relation to a carbon accounting area (CAA1) that becomes a carbon accounting area (averaging) under **section 194FC(3)** during the third mandatory emissions return period. 5
- (2) In any emissions return in respect of a period in the third mandatory emissions return period, the calculations and assessments in relation to the CAA1 must be made as if—
- (a) the CAA1 had been a carbon accounting area (averaging) since the beginning of the period covered by the emissions return; and 10
- (b) the amendment Act had come into force before that date.

31 Carbon accounting areas constituted in 2022 from applications made in 2019–2021

- (1) If— 15
- (a) a carbon accounting area is constituted by a person being registered as a participant as referred to in **section 188(1)**; and
- (b) the application to do so was made after 31 December 2018 but before 1 January 2022; and
- (c) the person’s name is entered on the register under **section 188(5)** on or after 1 January 2022 but before 1 July 2022,— 20
- the registration is to be taken to have had effect on 31 December 2021 (and the carbon accounting area’s constitution date is therefore 31 December 2021).
- (2) If—
- (a) a carbon accounting area is constituted by being added as a carbon accounting area as referred to in **section 188(3)**; and 25
- (b) the application to do so was made after 31 December 2018 but before 1 January 2022; and
- (c) the notice under **section 188(6)(b)(ii)** is given on or after 1 January 2022 but before 1 July 2022,— 30
- the notice is to be taken to have been given on 31 December 2021 (and the carbon accounting area’s constitution date is therefore 31 December 2021).

32 Carbon accounting areas constituted in 2019–2021: opting in to averaging

- (1) A participant in an activity of standard forestry on post-1989 forest land in 1 or more carbon accounting areas (each a CAA1) may give notice to the EPA to change the CAA1s into carbon accounting areas (averaging) if all of the following apply to each CAA1: 35
- (a) it was constituted—

- (i) by a person being registered as a participant in respect of the land (as referred to in **section 188(1)**); or
 - (ii) by the land being added as a carbon accounting area under **section 188(3)**;
 - (b) the application to register the participant, or add the carbon accounting area, was made after 31 December 2018 but before 1 January 2022;
 - (c) its constitution date is before 1 January 2022;
 - (d) it meets the requirements of **section 194FC(3)(b)**;
 - (e) before the notice is given under this clause, no other emissions return has been (or should have been) submitted covering the CAA1 in relation to a period after 1 January 2023.
 - (2) The notice given under this clause must—
 - (a) specify the CAA1s to which it relates; and
 - (b) include an emissions return prepared under **clause 33** for the activity that covers the CAA1s.
 - (3) The notice must—
 - (a) be signed by the participant; and
 - (b) be submitted on or before 30 June 2023; and
 - (c) be submitted—
 - (i) in the prescribed manner and format; and
 - (ii) together with the prescribed fee (if any); and
 - (iii) together with the prescribed information (if any).
- 33 Preparing emissions return for carbon accounting areas changing to averaging**
- (1) An emissions return prepared under this clause must—
 - (a) specify—
 - (i) the CAA1s that the return covers; and
 - (ii) if the land in a CAA1 has not all been in the CAA1 for the whole of the emissions return period, all of the carbon accounting areas that any of the land has been part of during the emissions return period (the **predecessor CAAs**); and
 - (b) for each CAA1,—
 - (i) specify the activity for which the person is a participant on the CAA1s; and
 - (ii) specify the emissions return period that applies under **subclause (2)**; and

- (iii) specify the emissions and removals during the emissions return period from all of the land now in CAA1 (whether they occurred when the land was part of CAA1 or part of a predecessor CAA); and
- (iv) set out the calculation under **clause 34(1)** of the person's averaging liability or entitlement for emissions and removals during the emissions return period; and 5
- (v) set out the calculation under **clause 34(2)** of the averaging unit balance; and
- (vi) set out the calculation under **clause 34(4)** of the person's actual liability or entitlement; and 10
- (c) set out the calculation under **clause 34(5)** of the person's total liability or entitlement for all the CAA1s.
- (2) The **emissions return period** for a CAA1 is the period that—
- (a) starts on the later of— 15
- (i) 1 January 2018; and
- (ii) the date on which any of the land in the CAA1 became post-1989 forest land; and
- (b) ends on 31 December 2022.
- 34** **Calculations for CAA1s changing to averaging** 20
- (1) A person's **averaging liability or entitlement** for a CAA1 (a) is calculated as follows:
- $a = r - e$
- where—
- r is the number of units required for the removals from the CAA1 during the emissions return period, determined in accordance with **subclause (3)** 25
- e is the number of units required for the emissions from the CAA1 during the emissions return period, determined in accordance with **subclause (3)**. 30
- (2) The **averaging unit balance** of a CAA1 (u) is calculated as follows:
- $u = h + a$
- where—
- h is the opening unit balance of the CAA1 determined in accordance with **subclause (3)** 35
- a is the person's averaging liability or entitlement for the CAA1.
- (3) The values of variables r, e, and h in **subclauses (1) and (2)** are to be determined as if—

- (a) all of the land now in the CAA1 had been a single carbon accounting area since the beginning of the emissions return period; and
- (b) that carbon accounting area had been a carbon accounting area (averaging) since the beginning of the emissions return period; and
- (c) the amendment Act had come into force before the beginning of the emissions return period. 5
- (4) A person's **actual liability or entitlement** for a CAA1 (h) is calculated as follows:
- $$h = a - c$$
- where— 10
- a is the averaging unit balance of the CAA1 under **subclause (3)**
- c is—
- (a) the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or
- (b) if there is no such return, zero. 15
- (5) A person's **total liability or entitlement** for all the CAA1s (t) is calculated as follows:
- $$t = h_n$$
- where— 20
- h_n is the sum of the person's actual liability or entitlement for each CAA1.
- 35** **Effect of changing to carbon accounting areas (averaging)**
- (1) This clause applies if the EPA decides that a notice under **clause 32** and the accompanying emissions return are correct.
- (2) If the person's total liability or entitlement for the CAA1s covered by the emissions return is— 25
- (a) a positive number, the person is entitled to receive that number of New Zealand units; or
- (b) a negative number, the person is liable to surrender that number of units.
- (3) The unit balance of each CAA1 covered by the emissions return is updated to the averaging unit balance calculated under the return. 30
- (4) Each CAA1 covered by the notice becomes a carbon accounting area (averaging) and is to be treated as having become so on 1 January 2023.
- (5) The person is not required to submit an emissions return under **section 189AB** covering the CAA1s covered by the notice.
- (6) For the purpose of future calculations in relation to the CAA1s, the emissions return accompanying the notice is a final forestry emissions return. 35

223ZZA Schedule 3 amended

- (1) In Schedule 3, in the Part 1A heading, replace “Pre-1990 offsetting forest land” with “P90 offsetting land”.
- (2) In Schedule 3, Part 1A, replace “pre-1990 offsetting forest land” with “P90 offsetting land” in each place.

5

223ZZB Schedule 4 amended

In Schedule 4, replace Part 1 with:

Part 1
Standard forestry removal activities
(applies on and after 1 January 2008)

Any of the following activities in respect of post-1989 forest land, having chosen this Part (instead of **Part 1A**) to apply to the land:

(a) owning the land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949:

(b) holding a registered forestry right for the land or being the leaseholder under a registered lease of the land, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949:

(c) being a party to a Crown conservation contract in respect of the land.

Part 1A
Permanent forestry removal activities
(applies on and after 1 January 2022)

Any of the activities specified in **Part 1** in respect of post-1989 forest land, having chosen this Part (instead of **Part 1**) to apply to the land.

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Subpart 4—Amendments that commence by Order in Council or on
1 January 2023

25

224 Section 2A amended (Application of Schedules 3 and 4)

In section 2A(1)(b), replace “sections 2C(3), 217 to **219**, 178A, and 178B” with “sections 2C(3) and 217 to **219**”.

225 Section 27 amended (Information accessible by search)

In section 27(2)(c), delete “or 178B”.

30

226 Section 89 amended (EPA to publish certain information)

Repeal section 89(1)(j) and (k).

227 Sections 178A and 178B repealed

Repeal sections 178A and 178B.

228 Section 233 amended (Rate of synthetic greenhouse gas levy)

In **section 233(1)**, formula, definition of variable B, delete “the lesser of \$25 and”.

5

229 Schedule 1AA amended

In **Schedule 1AA**, after ~~clause 14~~ the last clause, insert:

Subpart 5—Provisions that commence by Order in Council on
1 January 2023

1536 Paying money instead of surrendering, repaying, or reimbursing units

10

(1) **Subclause (2)** applies to any money that, before the commencement of this clause, a person had paid in accordance with section 178A(2)(a)(ii) or (iii) instead of surrendering or repaying units.

(2) The EPA may pay money to the person in accordance with section 178A(2)(b)(ii) for each of those units, instead of reimbursing the units, as if section 178A continued to apply for that purpose.

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(3) **Subclause (4)** applies to any money that, on the commencement of this clause,—

(a) had been paid into a Crown Bank Account in accordance with section 178A(2)(a)(ii) or (iii); and

20

(b) is not cleared as required by section 178A(4).

(4) The money—

(a) can never be treated as cleared (and so cannot satisfy the person’s obligation to surrender, repay, or reimburse units under section 178A); and

(b) must be reimbursed to the person.

25

(5) For any other payment made in accordance with section 178A(2)(a)(ii) or (iii) (by a person) or (b)(ii) or (iii) (by the EPA) before the commencement of this clause, section 178B continues to apply for the purposes of completing a matter in relation to that payment.

(6) Sections 27(2)(c) and 89(1)(j) and (k) continue to apply after the commencement of this clause for the purposes of anything done under the clause.

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(7) For the purposes of this clause, any section of the principal Act to which it refers must be read as it was immediately before the commencement of the clause.

Subpart 5—Amendments that commence on 1 January 2023

229A Schedule 4 amended

In Schedule 4, **Part 1, paragraphs (a) and (b)**, delete “, other than post-1989 forest land that is subject to a forest sink covenant registered under section 67ZD of the Forests Act 1949”.

5

Part 2

Consequential amendments to other enactments

Subpart 1—Consequential amendments that commence on day after
Royal assent

230 Climate Change (Fishing Allocation Plan) Order 2010 revoked 10

The Climate Change (Fishing Allocation Plan) Order 2010 (SR 2010/134) is revoked.

231 Consequential amendments

The enactments specified in **Schedule 3** are amended as set out in that schedule.

15

Subpart 2—Consequential amendments that commence on
30 November 2020

232 Consequential amendments

The enactments specified in **Schedule 4** are amended as set out in that schedule.

20

Subpart 3—Consequential amendments that commence on
1 January ~~2021~~ 2022

233 Consequential amendments

The enactments specified in **Schedule 5** are amended as set out in that schedule.

25

Subpart 4—~~Consequential Revocation and consequential~~ amendments
that commence on 1 January ~~2022~~ 2023

233A Forests (Permanent Forest Sink) Regulations 2007 revoked

The Forests (Permanent Forest Sink) Regulations 2007 (SR 2007/354) are revoked.

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234 Consequential amendments

The enactments specified in **Schedule 6** are amended as set out in that schedule.

Schedule 1
~~New Schedule 1AA inserted~~

s-202

Schedule 1AA
~~Transitional, savings, and related provisions~~

5

s-4A

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Part 1

Provisions relating to Climate Change Response (Emissions Trading Reform) Amendment Act 2019

| | | |
|----------|--|----|
| 1 | Interpretation | |
| | In this Part,— | 5 |
| | amendment Act means the Climate Change Response Amendment Act 2019 | |
| | third mandatory emissions return period means the 5-year period starting on 1 January 2018 and ending on 31 December 2022. | |
| 2 | Satisfying requirements for making regulations | |
| (1) | This clause applies to any requirement for the making of any regulations under this Act as amended by the amendment Act. | 10 |
| (2) | Anything done before the commencement of this clause satisfies the requirement as long as it would have satisfied the requirement if it had been done after the commencement. | |
| 3 | New regulations may commence on or after commencement of clause | 15 |
| | Any regulations made under this Act before the commencement of this clause may come into force on, or at any time after, that commencement, despite anything in this Act. | |
| 4 | Making first regulations about overall limits and price controls for units | |
| (1) | If regulations are to be made under section 30GB before there is an emissions budget, section 30GG(2)(a) applies as if it instead referred to any provisional budget for the emission of greenhouse gases that is set by the Crown. | 20 |
| (2) | When an emissions budget is first set,— | |
| (a) | the Minister must recommend the making of regulations under section 30GB to prescribe new overall limits or price control settings as required to comply with section 30GG(2); and | 25 |

| | | |
|----------|---|----------------------|
| | <p>(b) the Minister may recommend prescribing a new overall limit or price control settings for 1 or both of the 2 calendar years after the year in which the amendment is made, despite section 30GB(5).</p> | |
| 5 | <p>Existing accounts continue</p> <p>If any account established in the Registry (under section 7(1)(a), for example) existed immediately before the commencement of this clause, it continues to exist after the commencement.</p> | 5 |
| 6 | <p>Deregistering participants for persistent non-compliance</p> <p>The EPA must not remove the name of a person from the register in respect of an activity under section 59A if the failure on which the EPA relies occurred before the commencement of this clause.</p> | 10 |
| 7 | <p>Information to be published by EPA</p> <p>(1) Section 89(1A) and (1B) does not apply in respect of failures or errors made by a person before 1 January 2021.</p> <p>(2) For a reporting year beginning before 1 January 2023, the EPA is not required to publish the information required under section 89(1)(e) in respect of an activity or the information required under section 89(1)(i) if the EPA is satisfied that publishing the information would result in the disclosure of a participant's individual emissions or an eligible person's own allocation, unless —</p> <p>(a) the participant or eligible person to whom the information relates has consented to the publication of the information; or</p> <p>(b) the information is already in the public domain.</p> <p>(3) Section 89A does not apply in respect of an emissions return for emissions or removals before 1 January 2020, unless —</p> <p>(a) the return also relates to a period after 1 January 2020; and</p> <p>(b) it is possible for emissions or removals occurring before 1 January 2020 to be excluded from the published information.</p> <p>(4) Section 89A —</p> <p>(a) applies in respect of emissions returns submitted under section 189AA or 189AB for emissions or removals on or after 1 January 2020; but</p> <p>(b) does not apply in respect of any other emissions returns in relation to post 1989 forest land during a mandatory emissions returns period commencing before 1 January 2023.</p> | 15 20 25 30 |
| 8 | <p>Penalties</p> <p>(1) This clause applies in respect of a person who, before the commencement of this clause, —</p> <p>(a) fails to surrender or repay units by the due date; or</p> | 35 |

- (b) ~~fails to submit an emissions return or annual or closing allocation adjustment; or~~
- (c) ~~submits an incorrect emissions return, allocation application, or allocation adjustment.~~
- (2) ~~**Sections 134 to 134D**, as inserted by the amendment Act, do not apply in respect of the person for the failure or error.~~ 5
- (3) ~~This Act, as in force immediately before the commencement of this clause, applies in respect of the person for the failure or error.~~
- 9 Consolidated group for activity relating to forestry**
- (1) ~~In this clause, an existing forestry consolidated group means a consolidated group that—~~ 10
- (a) ~~was formed in respect of an activity or activities listed in Part 1 or 1A of Schedule 3 or Part 1 or 1A of Schedule 4; and~~
- (b) ~~exists immediately before the commencement of this clause.~~
- (2) ~~Sections 150 and 151A do not apply to an existing forestry consolidated group (so that no members or activities may be added to the group).~~ 15
- (3) ~~The nominated entity of an existing forestry consolidated group—~~
- (a) ~~may submit a single emissions return under **section 189AA** in respect of 1 or more of the activities of standard forestry carried out by a member of the group in a year; and~~ 20
- (b) ~~must submit any emissions return required under a provision of **Part 5** on behalf of any member of the group when the member is required to do so; and~~
- (c) ~~must sign any emissions return submitted by the nominated entity in accordance with section 65(2)(f) on behalf of the group.~~ 25
- (4) ~~In relation to an existing forestry consolidated group, **section 153(2) to (4)** applies to the liability to surrender units or entitlement to be transferred units in relation to an emissions return referred to in **subclause (2)** as if the references in that section to a year were references to the period covered by the emissions return.~~ 30
- (5) ~~To avoid doubt, only the nominated entity for an existing forestry consolidated group may submit an emissions return for the group.~~
- 10 Pending offsetting forest land applications may be amended to include new land**
- (1) ~~This clause applies to an offsetting forest land application (an existing application) submitted under section 186A if, as at the commencement date, it has not been accepted or declined under section 186B.~~ 35

Climate Change Response (Emissions Trading Reform)
Amendment Bill

Schedule 1

- (2) ~~The applicants may, on request to the EPA, amend the application to include land of the kind referred to in **section 186B(1)(a)(ii)(F), (G), or (H)** as well as, or instead of, the originally proposed offsetting forest land.~~
- (3) ~~An application amended under this clause is to be treated as if it had originally been submitted as amended.~~ 5
- (4) ~~In this clause, **commencement date** means the date on which this clause came into force.~~
- 11 Approved offsetting forest land applications may be amended to include new land**
- (1) ~~This clause applies to an offsetting forest land application (an **existing application**) submitted under section 186A if—~~ 10
- (a) ~~it was approved before the commencement date; but~~
 - (b) ~~as at the commencement date, no declaration under section 186D had been submitted.~~
- (2) ~~The owner of pre-1990 forest land that is the subject of the existing application may apply to the EPA (a **variation application**) to substitute land of the kind referred to in **section 186B(1)(a)(ii)(F), (G), or (H)** for some or all of the offsetting forest land.~~ 15
- (3) ~~The variation application must—~~
- (a) ~~identify the existing offsetting forest land that is to be replaced (**area A**); and~~ 20
 - (b) ~~identify the land that is to be substituted for area A (**area B**); and~~
 - (c) ~~include—~~
 - (i) ~~any information in relation to area B that would be required in an application under **section 186A**; and~~ 25
 - (ii) ~~any other information prescribed in the regulations made under **section 186F**.~~
- (4) ~~The variation application must be made jointly by all of the owners of the pre-1990 forest land and the offsetting forest land under the existing application and the owner of area B.~~ 30
- (5) ~~The variation application must—~~
- (a) ~~be signed by all of the applicants; and~~
 - (b) ~~be submitted before the date on which the declaration under section 186D is required to be made in relation to the existing application; and~~
 - (c) ~~be submitted—~~ 35
 - (i) ~~in the prescribed manner and format; and~~
 - (ii) ~~together with the prescribed fee (if any); and~~
 - (iii) ~~together with the prescribed information (if any).~~

- (6) ~~In this clause, commencement date means the date on which this clause came into force.~~
- 12 Approval of variation application**
- (1) ~~If a person submits an application under clause 11, the EPA —~~
- (a) ~~if satisfied that the criteria in subclause (2) are met, must approve the application; or~~ 5
 - (b) ~~otherwise, may decline the application.~~
- (2) ~~The criteria are that —~~
- (a) ~~the land in area B is land that meets the criteria in section 186B(1)(a)(ii)(F), (G), or (H); and~~ 10
 - (b) ~~if any of the land in area B is land that is in a carbon accounting area, all of the land in the carbon accounting area is in part of area B; and~~
 - (c) ~~the land that will be the offsetting forest land under the existing application if the variation is approved (so excluding area A and including area B) (the revised offset land) meets the criteria in section 186B(1)(b) and (d); and~~ 15
 - (d) ~~the EPA is satisfied that the revised offset land is likely to meet the criteria in section 186B(1)(c)(i) and (ii); and~~
 - (e) ~~any other criteria prescribed in regulations made under section 186F are met.~~ 20
- (3) ~~If the EPA approves the application, —~~
- (a) ~~area A ceases to be part of the approved offset land; and~~
 - (b) ~~area B becomes part of the approved offset land; and~~
 - (c) ~~if area B includes any land in a carbon accounting area, —~~ 25
 - (i) ~~the participant for that carbon accounting area —~~ 25
 - (A) ~~is liable to surrender the number of New Zealand units equal to the unit balance of that carbon accounting area; and~~
 - (B) ~~ceases to be a participant in the relevant activity on that carbon accounting area; and~~ 30
 - (ii) ~~the EPA must amend the register kept under section 57, and the records of carbon accounting areas kept under section 188(2), to record the effects of this paragraph; and~~
 - (d) ~~this Act applies as if the existing application had been approved (on its original approval date) in relation to the revised offset land.~~ 35

| | | |
|-----------|--|----|
| 13 | Surrender of units relating to permanent forestry | |
| | If, before 30 November 2020, a participant in permanent forestry becomes liable to surrender New Zealand units under a provision of this Act, the participant may satisfy that liability by surrendering— | |
| | (a) New Zealand units; or | 5 |
| | (b) New Zealand assigned amount units (as defined by regulation 3 of the Climate Change (Unit Register) Regulations 2008); or | |
| | (c) a combination of those types of units. | |
| | [Clauses 14 and 15 intentionally left blank] | 10 |
| | Tree weeds | |
| 16 | Existing exemptions for deforestation of land with tree weeds | |
| (1) | This clause applies to land for which, immediately before the commencement of this clause, there is an exemption under section 184. | |
| (2) | The exemption applies as if it had been granted under this Act as amended by the amendment Act, so that the conditions in former section 184(6) no longer apply. | 15 |
| 17 | Carbon accounting areas with tree weeds already added to post-1989 forest land | |
| | Section 188(5)(b) does not affect a carbon accounting area added to any post-1989 forest land before the commencement of that provision. | 20 |
| | Changing of activity on post-1989 forest land | |
| 18 | Previous changing of activity on post-1989 forest land | |
| (1) | If a person satisfied section 188(9) before the commencement of this clause, they must be treated as having had an application under section 194DA approved to become registered as a participant in standard forestry (the final activity) by changing from PFSI activity (the initial activity). | 25 |
| (2) | See sections 194DA(6)(b) and 194EA(2)(c)(ii) for provisions to which this clause relates. | |
| 19 | Application to change from standard to permanent forestry | 30 |
| (1) | This clause applies to a person who, in the period starting on 1 January 2018 and ending on 31 December 2022,— | |
| (a) | becomes registered as a participant carrying out standard forestry in respect of any post-1989 forest land, whether or not registered in respect of that land before; and | 35 |

- (b) ~~has an application under **section 194DA** approved to change from standard forestry to permanent forestry on that land.~~
- (2) ~~For each CAA1 covered by the emissions return that accompanied the application, the person may surrender any units that are equal in number to the unit balance of the CAA1.~~ 5
- (3) ~~The deadline for surrendering the units is 60 working days after the person submits the application.~~
- (4) ~~For each unit surrendered, the person becomes entitled to a unit for removals from permanent forestry.~~
- 20 Changing activity from PFSI activity prevented until 2021** 10
A participant in an initial activity of PFSI activity cannot apply under **section 194DA** to change to a final activity before 1 January 2021.
- 21 All PFSI activity is changed to permanent forestry in 2022**
(1) ~~This clause applies to a person's forest land that a forest sink covenant is registered against immediately before 1 January 2022 (the **PFSI land**).~~ 15
- (2) ~~On 1 January 2022,~~
- (a) ~~the EPA must apply **sections 194DA to 194DG** as if the person had that day submitted an application in accordance with **section 194DA** to become a participant in a final activity of permanent forestry on the PFSI land; but~~ 20
- (b) ~~the EPA may apply section 121 for the purposes of the application.~~
- Carbon accounting areas (averaging)*
- 22 Emissions returns for carbon accounting area (averaging) in third mandatory emissions return period**
(1) ~~This clause applies in relation to a carbon accounting area (CAA1) that becomes a carbon accounting area (averaging) under **section 194FG(3)** during the third mandatory emissions return period.~~ 25
- (2) ~~In any emissions return in respect of a period in the third mandatory emissions return period, the calculations and assessments in relation to CAA1 must be made as if—~~ 30
- (a) ~~CAA1 had been a carbon accounting area (averaging) since the beginning of the period covered by the emissions return; and~~
- (b) ~~the amendment Act had come into force before that date.~~
- 23 Option to use averaging accounting for carbon accounting areas constituted in 2019 and 2020** 35
- (1) ~~A participant in an activity of standard forestry on post 1989 forest land in 1 or more carbon accounting areas (each a CAA1) that are covered by **subclause**~~

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- ~~(2) may give notice to the EPA to change the CAAs into carbon accounting areas (averaging).~~
- (2) ~~A carbon accounting area may be changed to averaging if —~~
- ~~(a) it is not a carbon accounting area (averaging) under **section 194FG(3)**; and~~
 - ~~(b) its constitution date is after 31 December 2018 but before 1 January 2021; and~~
 - ~~(c) it meets the requirements of **section 194FG(3)(b)**; and~~
 - ~~(d) before the notice is given under this clause, no other emissions return has been (or should have been) submitted covering the carbon accounting area in relation to a period after 1 January 2023.~~
- (3) ~~The notice must —~~
- ~~(a) specify the CAAs to which it relates; and~~
 - ~~(b) include an emissions return prepared under **clause 24** for the activity that covers the CAAs.~~
- (4) ~~The notice must —~~
- ~~(a) be signed by the participant; and~~
 - ~~(b) be submitted on or before 30 June 2023; and~~
 - ~~(c) be submitted —~~
 - ~~(i) in the prescribed manner and format; and~~
 - ~~(ii) together with the prescribed fee (if any); and~~
 - ~~(iii) together with the prescribed information (if any).~~
- 24 Preparing emissions return for carbon accounting areas changing to averaging**
- (1) ~~An emissions return prepared under this clause must —~~
- ~~(a) specify —~~
 - ~~(i) the CAAs that the return covers; and~~
 - ~~(ii) if the land in a CAA has not all been in CAA for the whole of the emissions return period, all of the carbon accounting areas that any of the land has been part of during the emissions return period (the predecessor CAAs); and~~
 - ~~(b) for each CAA, —~~
 - ~~(i) specify the activity for which the person is a participant on the CAAs; and~~
 - ~~(ii) specify the emissions return period that applies under **subclause (2)**; and~~

- (iii) ~~specify the emissions and removals during the emissions return period from all of the land now in CAA1 (whether they occurred when the land was part of CAA1 or part of a predecessor CAA); and~~
- (iv) ~~set out the calculation under **clause 25(1)** of the person's averaging liability or entitlement for emissions and removals during the emissions return period; and~~ 5
- (v) ~~set out the calculation under **clause 25(2)** of the averaging unit balance; and~~
- (vi) ~~set out the calculation under **clause 25(4)** of the person's actual liability or entitlement; and~~ 10
- (e) ~~set out the calculation under **clause 25(5)** of the person's total liability or entitlement for all the CAAs.~~
- (2) ~~The **emissions return period** for a CAA1 is the period that —~~
- (a) ~~starts on the later of —~~ 15
- (i) ~~1 January 2018; and~~
- (ii) ~~the date on which any of the land in the CAA1 became post-1989 forest land; and~~
- (b) ~~ends on 31 December 2022.~~
- 25 Calculations for CAAs changing to averaging** 20
- (1) ~~A person's **averaging liability or entitlement** for a CAA1 (a) is calculated as follows:~~
- ~~$a = r - e$~~
- ~~where —~~
- r ~~is the number of units required for the removals from the CAA1 during the emissions return period, determined in accordance with **subclause (3)**~~ 25
- e ~~is the number of units required for the emissions from the CAA1 during the emissions return period, determined in accordance with **subclause (3)**.~~ 30
- (2) ~~The **averaging unit balance** of a CAA1 (u) is calculated as follows:~~
- ~~$u = h + a$~~
- ~~where —~~
- h ~~is the opening unit balance of the CAA1 determined in accordance with **subclause (3)**~~ 35
- a ~~is the person's averaging liability or entitlement for the CAA1.~~
- (3) ~~The values of variables r, e, and h in **subclauses (1) and (2)** are to be determined as if —~~

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- (a) ~~all of the land now in the CAA1 had been a single carbon accounting area since the beginning of the emissions return period; and~~
- (b) ~~that carbon accounting area had been a carbon accounting area (averaging) since the beginning of the emissions return period; and~~
- (e) ~~the amendment Act had come into in force before the beginning of the emissions return period.~~ 5
- (4) A person's ~~actual liability or entitlement~~ for a CAA1 (h) is calculated as follows:
- $$h = a - e$$
- where — 10
- a is the averaging unit balance of the CAA1 under ~~subclause (3)~~
- e is —
- (a) ~~the previous unit balance of the CAA1 calculated under the last emissions return submitted for the CAA1; or~~
- (b) ~~if there is no such return, zero.~~ 15
- (5) A person's ~~total liability or entitlement~~ for all the CAA1s (t) is calculated as follows:
- $$t = h_n$$
- where —
- h_n is the sum of the person's actual liability or entitlement for each CAA1. 20
- 26 Effect of changing to carbon accounting areas (averaging)**
- (1) ~~This clause applies if the EPA decides that a notice under **clause 23** and the accompanying emissions return are correct.~~
- (2) ~~If the person's total liability or entitlement for the CAA1s covered by the emissions return is —~~ 25
- (a) ~~a positive number, the person is entitled to receive that number of New Zealand units; or~~
- (b) ~~a negative number, the person is liable to surrender that number of New Zealand units.~~
- (3) ~~The unit balance of each CAA1 covered by the emissions return is updated to the averaging unit balance calculated under the return.~~ 30
- (4) ~~Each CAA1 covered by the notice becomes a carbon accounting area (averaging) and is to be treated as having done so on 1 January 2023.~~
- (5) ~~The person is not required to submit an emissions return under **section 489AB** covering the CAA1s covered by the notice.~~ 35
- (6) ~~For the purpose of future calculations in relation to the CAA1s, the emissions return accompanying the notice is a final forestry emissions return.~~

Schedule 2
New Schedule 2A inserted

s 203

Schedule 2A
Paris Agreement

5

s 4

The Parties to this Agreement,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”,

Pursuant to the Durban Platform for Enhanced Action established by decision 1/CP.17 of the Conference of the Parties to the Convention at its seventeenth session, 10

In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge, 15

Also recognizing the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, as provided for in the Convention,

Taking full account of the specific needs and special situations of the least developed countries with regard to funding and transfer of technology, 20

Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,

Emphasizing the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty, 25

Recognizing the fundamental priority of safeguarding food security and ending hunger, and the particular vulnerabilities of food production systems to the adverse impacts of climate change,

Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities, 30

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity, 35

Recognizing the importance of the conservation and enhancement, as appropriate, of sinks and reservoirs of the greenhouse gases referred to in the Convention,

Noting the importance of ensuring the integrity of all ecosystems, including oceans, and the protection of biodiversity, recognized by some cultures as Mother Earth, and noting the importance for some of the concept of “climate justice”, when taking action to address climate change, 5

Affirming the importance of education, training, public awareness, public participation, public access to information and cooperation at all levels on the matters addressed in this Agreement,

Recognizing the importance of the engagements of all levels of government and various actors, in accordance with respective national legislations of Parties, in addressing climate change, 10

Also recognizing that sustainable lifestyles and sustainable patterns of consumption and production, with developed country Parties taking the lead, play an important role in addressing climate change, 15

Have agreed as follows:

Article 1

For the purpose of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

- (a) “Convention” means the United Nations Framework Convention on Climate Change, adopted in New York on 9 May 1992; 20
- (b) “Conference of the Parties” means the Conference of the Parties to the Convention;
- (c) “Party” means a Party to this Agreement.

Article 2 25

1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- (a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change; 30
- (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and 35
- (c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.

2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.

Article 3

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in Articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in Article 2. The efforts of all Parties will represent a progression over time, while recognizing the need to support developing country Parties for the effective implementation of this Agreement.

Article 4

1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.
2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.
3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.
4. Developed country Parties should continue taking the lead by undertaking economy-wide absolute emission reduction targets. Developing country Parties should continue enhancing their mitigation efforts, and are encouraged to move over time towards economy-wide emission reduction or limitation targets in the light of different national circumstances.
5. Support shall be provided to developing country Parties for the implementation of this Article, in accordance with Articles 9, 10 and 11, recognizing that enhanced support for developing country Parties will allow for higher ambition in their actions.
6. The least developed countries and small island developing States may prepare and communicate strategies, plans and actions for low greenhouse gas emissions development reflecting their special circumstances.

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Schedule 2

7. Mitigation co-benefits resulting from Parties' adaptation actions and/or economic diversification plans can contribute to mitigation outcomes under this Article.
8. In communicating their nationally determined contributions, all Parties shall provide the information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement. 5
9. Each Party shall communicate a nationally determined contribution every five years in accordance with decision 1/CP.21 and any relevant decisions of the Conference of the Parties serving as the meeting of the Parties to this Agreement and be informed by the outcomes of the global stocktake referred to in Article 14. 10
10. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall consider common time frames for nationally determined contributions at its first session. 15
11. A Party may at any time adjust its existing nationally determined contribution with a view to enhancing its level of ambition, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
12. Nationally determined contributions communicated by Parties shall be recorded in a public registry maintained by the secretariat. 20
13. Parties shall account for their nationally determined contributions. In accounting for anthropogenic emissions and removals corresponding to their nationally determined contributions, Parties shall promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in accordance with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement. 25
14. In the context of their nationally determined contributions, when recognizing and implementing mitigation actions with respect to anthropogenic emissions and removals, Parties should take into account, as appropriate, existing methods and guidance under the Convention, in the light of the provisions of paragraph 13 of this Article. 30
15. Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties. 35
16. Parties, including regional economic integration organizations and their member States, that have reached an agreement to act jointly under paragraph 2 of this Article shall notify the secretariat of the terms of that agreement, including the emission level allocated to each Party within the relevant time period, when they communicate their nationally determined contributions. The secretariat 40

shall in turn inform the Parties and signatories to the Convention of the terms of that agreement.

17. Each party to such an agreement shall be responsible for its emission level as set out in the agreement referred to in paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15. 5
18. If Parties acting jointly do so in the framework of, and together with, a regional economic integration organization which is itself a Party to this Agreement, each member State of that regional economic integration organization individually, and together with the regional economic integration organization, shall be responsible for its emission level as set out in the agreement communicated under paragraph 16 of this Article in accordance with paragraphs 13 and 14 of this Article and Articles 13 and 15. 10
19. All Parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of Article 2 taking into account their common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. 15

Article 5

1. Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases as referred to in Article 4, paragraph 1(d), of the Convention, including forests. 20
2. Parties are encouraged to take action to implement and support, including through results-based payments, the existing framework as set out in related guidance and decisions already agreed under the Convention for: policy approaches and positive incentives for activities relating to reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries; and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests, while reaffirming the importance of incentivizing, as appropriate, non-carbon benefits associated with such approaches. 25 30

Article 6

1. Parties recognize that some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity. 35
2. Parties shall, where engaging on a voluntary basis in cooperative approaches that involve the use of internationally transferred mitigation outcomes towards nationally determined contributions, promote sustainable development and ensure environmental integrity and transparency, including in governance, and shall apply robust accounting to ensure, inter alia, the avoidance of double 40

- counting, consistent with guidance adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement.
3. The use of internationally transferred mitigation outcomes to achieve nationally determined contributions under this Agreement shall be voluntary and authorized by participating Parties. 5
4. A mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development is hereby established under the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement for use by Parties on a voluntary basis. It shall be supervised by a body designated by the Conference of the Parties serving as the meeting of the Parties to this Agreement, and shall aim: 10
- (a) To promote the mitigation of greenhouse gas emissions while fostering sustainable development;
 - (b) To incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities authorized by a Party; 15
 - (c) To contribute to the reduction of emission levels in the host Party, which will benefit from mitigation activities resulting in emission reductions that can also be used by another Party to fulfil its nationally determined contribution; and
 - (d) To deliver an overall mitigation in global emissions. 20
5. Emission reductions resulting from the mechanism referred to in paragraph 4 of this Article shall not be used to demonstrate achievement of the host Party's nationally determined contribution if used by another Party to demonstrate achievement of its nationally determined contribution.
6. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall ensure that a share of the proceeds from activities under the mechanism referred to in paragraph 4 of this Article is used to cover administrative expenses as well as to assist developing country Parties that are particularly vulnerable to the adverse effects of climate change to meet the costs of adaptation. 25 30
7. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall adopt rules, modalities and procedures for the mechanism referred to in paragraph 4 of this Article at its first session.
8. Parties recognize the importance of integrated, holistic and balanced non-market approaches being available to Parties to assist in the implementation of their nationally determined contributions, in the context of sustainable development and poverty eradication, in a coordinated and effective manner, including through, inter alia, mitigation, adaptation, finance, technology transfer and capacity-building, as appropriate. These approaches shall aim to: 35
- (a) Promote mitigation and adaptation ambition; 40

- (b) Enhance public and private sector participation in the implementation of nationally determined contributions; and
 - (c) Enable opportunities for coordination across instruments and relevant institutional arrangements.
9. A framework for non-market approaches to sustainable development is hereby defined to promote the non-market approaches referred to in paragraph 8 of this Article. 5

Article 7

1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2. 10
2. Parties recognize that adaptation is a global challenge faced by all with local, subnational, national, regional and international dimensions, and that it is a key component of and makes a contribution to the long-term global response to climate change to protect people, livelihoods and ecosystems, taking into account the urgent and immediate needs of those developing country Parties that are particularly vulnerable to the adverse effects of climate change. 15
3. The adaptation efforts of developing country Parties shall be recognized, in accordance with the modalities to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session. 20
4. Parties recognize that the current need for adaptation is significant and that greater levels of mitigation can reduce the need for additional adaptation efforts, and that greater adaptation needs can involve greater adaptation costs. 25
5. Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions, where appropriate. 30
6. Parties recognize the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change. 35
7. Parties should strengthen their cooperation on enhancing action on adaptation, taking into account the Cancun Adaptation Framework, including with regard to:

- (a) Sharing information, good practices, experiences and lessons learned, including, as appropriate, as these relate to science, planning, policies and implementation in relation to adaptation actions;
- (b) Strengthening institutional arrangements, including those under the Convention that serve this Agreement, to support the synthesis of relevant information and knowledge, and the provision of technical support and guidance to Parties; 5
- (c) Strengthening scientific knowledge on climate, including research, systematic observation of the climate system and early warning systems, in a manner that informs climate services and supports decision-making; 10
- (d) Assisting developing country Parties in identifying effective adaptation practices, adaptation needs, priorities, support provided and received for adaptation actions and efforts, and challenges and gaps, in a manner consistent with encouraging good practices; and
- (e) Improving the effectiveness and durability of adaptation actions. 15
8. United Nations specialized organizations and agencies are encouraged to support the efforts of Parties to implement the actions referred to in paragraph 7 of this Article, taking into account the provisions of paragraph 5 of this Article.
9. Each Party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include: 20
- (a) The implementation of adaptation actions, undertakings and/or efforts;
- (b) The process to formulate and implement national adaptation plans;
- (c) The assessment of climate change impacts and vulnerability, with a view to formulating nationally determined prioritized actions, taking into account vulnerable people, places and ecosystems; 25
- (d) Monitoring and evaluating and learning from adaptation plans, policies, programmes and actions; and
- (e) Building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources. 30
10. Each Party should, as appropriate, submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions, without creating any additional burden for developing country Parties. 35
11. The adaptation communication referred to in paragraph 10 of this Article shall be, as appropriate, submitted and updated periodically, as a component of or in conjunction with other communications or documents, including a national adaptation plan, a nationally determined contribution as referred to in Article 4, paragraph 2, and/or a national communication. 40

- | | | |
|-----|---|----|
| 12. | The adaptation communications referred to in paragraph 10 of this Article shall be recorded in a public registry maintained by the secretariat. | |
| 13. | Continuous and enhanced international support shall be provided to developing country Parties for the implementation of paragraphs 7, 9, 10 and 11 of this Article, in accordance with the provisions of Articles 9, 10 and 11. | 5 |
| 14. | The global stocktake referred to in Article 14 shall, inter alia: | |
| | (a) Recognize adaptation efforts of developing country Parties; | |
| | (b) Enhance the implementation of adaptation action taking into account the adaptation communication referred to in paragraph 10 of this Article; | |
| | (c) Review the adequacy and effectiveness of adaptation and support provided for adaptation; and | 10 |
| | (d) Review the overall progress made in achieving the global goal on adaptation referred to in paragraph 1 of this Article. | |

Article 8

- | | | |
|----|---|----|
| 1. | Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage. | 15 |
| 2. | The Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Agreement and may be enhanced and strengthened, as determined by the Conference of the Parties serving as the meeting of the Parties to this Agreement. | 20 |
| 3. | Parties should enhance understanding, action and support, including through the Warsaw International Mechanism, as appropriate, on a cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change. | 25 |
| 4. | Accordingly, areas of cooperation and facilitation to enhance understanding, action and support may include: | |
| | (a) Early warning systems; | 30 |
| | (b) Emergency preparedness; | |
| | (c) Slow onset events; | |
| | (d) Events that may involve irreversible and permanent loss and damage; | |
| | (e) Comprehensive risk assessment and management; | |
| | (f) Risk insurance facilities, climate risk pooling and other insurance solutions; | 35 |
| | (g) Non-economic losses; and | |
| | (h) Resilience of communities, livelihoods and ecosystems. | |

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5. The Warsaw International Mechanism shall collaborate with existing bodies and expert groups under the Agreement, as well as relevant organizations and expert bodies outside the Agreement.

Article 9

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention. 5
2. Other Parties are encouraged to provide or continue to provide such support voluntarily.
3. As part of a global effort, developed country Parties should continue to take the lead in mobilizing climate finance from a wide variety of sources, instruments and channels, noting the significant role of public funds, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of developing country Parties. Such mobilization of climate finance should represent a progression beyond previous efforts. 10
4. The provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change and have significant capacity constraints, such as the least developed countries and small island developing States, considering the need for public and grant-based resources for adaptation. 15
5. Developed country Parties shall biennially communicate indicative quantitative and qualitative information related to paragraphs 1 and 3 of this Article, as applicable, including, as available, projected levels of public financial resources to be provided to developing country Parties. Other Parties providing resources are encouraged to communicate biennially such information on a voluntary basis. 25
6. The global stocktake referred to in Article 14 shall take into account the relevant information provided by developed country Parties and/or Agreement bodies on efforts related to climate finance. 30
7. Developed country Parties shall provide transparent and consistent information on support for developing country Parties provided and mobilized through public interventions biennially in accordance with the modalities, procedures and guidelines to be adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement, at its first session, as stipulated in Article 13, paragraph 13. Other Parties are encouraged to do so. 35
8. The Financial Mechanism of the Convention, including its operating entities, shall serve as the financial mechanism of this Agreement.
9. The institutions serving this Agreement, including the operating entities of the Financial Mechanism of the Convention, shall aim to ensure efficient access to 40

financial resources through simplified approval procedures and enhanced readiness support for developing country Parties, in particular for the least developed countries and small island developing States, in the context of their national climate strategies and plans.

Article 10

5

1. Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.
2. Parties, noting the importance of technology for the implementation of mitigation and adaptation actions under this Agreement and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer. 10
3. The Technology Mechanism established under the Convention shall serve this Agreement.
4. A technology framework is hereby established to provide overarching guidance to the work of the Technology Mechanism in promoting and facilitating enhanced action on technology development and transfer in order to support the implementation of this Agreement, in pursuit of the long-term vision referred to in paragraph 1 of this Article. 15
5. Accelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainable development. Such effort shall be, as appropriate, supported, including by the Technology Mechanism and, through financial means, by the Financial Mechanism of the Convention, for collaborative approaches to research and development, and facilitating access to technology, in particular for early stages of the technology cycle, to developing country Parties. 20
6. Support, including financial support, shall be provided to developing country Parties for the implementation of this Article, including for strengthening cooperative action on technology development and transfer at different stages of the technology cycle, with a view to achieving a balance between support for mitigation and adaptation. The global stocktake referred to in Article 14 shall take into account available information on efforts related to support on technology development and transfer for developing country Parties. 25 30

Article 11

1. Capacity-building under this Agreement should enhance the capacity and ability of developing country Parties, in particular countries with the least capacity, such as the least developed countries, and those that are particularly vulnerable to the adverse effects of climate change, such as small island developing States, to take effective climate change action, including, inter alia, to implement adaptation and mitigation actions, and should facilitate technology develop- 35 40

| | | |
|----|---|----|
| | ment, dissemination and deployment, access to climate finance, relevant aspects of education, training and public awareness, and the transparent, timely and accurate communication of information. | |
| 2. | Capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership of Parties, in particular, for developing country Parties, including at the national, subnational and local levels. Capacity-building should be guided by lessons learned, including those from capacity-building activities under the Convention, and should be an effective, iterative process that is participatory, cross-cutting and gender-responsive. | 5 |
| 3. | All Parties should cooperate to enhance the capacity of developing country Parties to implement this Agreement. Developed country Parties should enhance support for capacity-building actions in developing country Parties. | 10 |
| 4. | All Parties enhancing the capacity of developing country Parties to implement this Agreement, including through regional, bilateral and multilateral approaches, shall regularly communicate on these actions or measures on capacity-building. Developing country Parties should regularly communicate progress made on implementing capacity-building plans, policies, actions or measures to implement this Agreement. | 15 |
| 5. | Capacity-building activities shall be enhanced through appropriate institutional arrangements to support the implementation of this Agreement, including the appropriate institutional arrangements established under the Convention that serve this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, consider and adopt a decision on the initial institutional arrangements for capacity-building. | 20 |
| | Article 12 | 25 |
| | Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement. | |
| | Article 13 | 30 |
| 1. | In order to build mutual trust and confidence and to promote effective implementation, an enhanced transparency framework for action and support, with built-in flexibility which takes into account Parties' different capacities and builds upon collective experience is hereby established. | |
| 2. | The transparency framework shall provide flexibility in the implementation of the provisions of this Article to those developing country Parties that need it in the light of their capacities. The modalities, procedures and guidelines referred to in paragraph 13 of this Article shall reflect such flexibility. | 35 |

3. The transparency framework shall build on and enhance the transparency arrangements under the Convention, recognizing the special circumstances of the least developed countries and small island developing States, and be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties. 5
4. The transparency arrangements under the Convention, including national communications, biennial reports and biennial update reports, international assessment and review and international consultation and analysis, shall form part of the experience drawn upon for the development of the modalities, procedures and guidelines under paragraph 13 of this Article. 10
5. The purpose of the framework for transparency of action is to provide a clear understanding of climate change action in the light of the objective of the Convention as set out in its Article 2, including clarity and tracking of progress towards achieving Parties' individual nationally determined contributions under Article 4, and Parties' adaptation actions under Article 7, including good practices, priorities, needs and gaps, to inform the global stocktake under Article 14. 15
6. The purpose of the framework for transparency of support is to provide clarity on support provided and received by relevant individual Parties in the context of climate change actions under Articles 4, 7, 9, 10 and 11, and, to the extent possible, to provide a full overview of aggregate financial support provided, to inform the global stocktake under Article 14. 20
7. Each Party shall regularly provide the following information:
 - (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and 25
 - (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4. 30
8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate.
9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11. 35
10. Developing country Parties should provide information on financial, technology transfer and capacity-building support needed and received under Articles 9, 10 and 11.
11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review, in accordance with decision 1/CP.21. For those developing country Parties that need it in the light of their capacities, the review process shall include assistance in identifying capacity-building 40

**Climate Change Response (Emissions Trading Reform)
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Schedule 2

- needs. In addition, each Party shall participate in a facilitative, multilateral consideration of progress with respect to efforts under Article 9, and its respective implementation and achievement of its nationally determined contribution.
12. The technical expert review under this paragraph shall consist of a consideration of the Party's support provided, as relevant, and its implementation and achievement of its nationally determined contribution. The review shall also identify areas of improvement for the Party, and include a review of the consistency of the information with the modalities, procedures and guidelines referred to in paragraph 13 of this Article, taking into account the flexibility accorded to the Party under paragraph 2 of this Article. The review shall pay particular attention to the respective national capabilities and circumstances of developing country Parties. 5 10
13. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall, at its first session, building on experience from the arrangements related to transparency under the Convention, and elaborating on the provisions in this Article, adopt common modalities, procedures and guidelines, as appropriate, for the transparency of action and support. 15
14. Support shall be provided to developing countries for the implementation of this Article.
15. Support shall also be provided for the building of transparency-related capacity of developing country Parties on a continuous basis. 20

Article 14

1. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall periodically take stock of the implementation of this Agreement to assess the collective progress towards achieving the purpose of this Agreement and its long-term goals (referred to as the "global stocktake"). It shall do so in a comprehensive and facilitative manner, considering mitigation, adaptation and the means of implementation and support, and in the light of equity and the best available science. 25
2. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall undertake its first global stocktake in 2023 and every five years thereafter unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement. 30
3. The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action. 35

Article 15

1. A mechanism to facilitate implementation of and promote compliance with the provisions of this Agreement is hereby established.
2. The mechanism referred to in paragraph 1 of this Article shall consist of a committee that shall be expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive. The committee shall pay particular attention to the respective national capabilities and circumstances of Parties. 5
3. The committee shall operate under the modalities and procedures adopted by the Conference of the Parties serving as the meeting of the Parties to this Agreement at its first session and report annually to the Conference of the Parties serving as the meeting of the Parties to this Agreement. 10

Article 16

1. The Conference of the Parties, the supreme body of the Convention, shall serve as the meeting of the Parties to this Agreement. 15
2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement. 20
3. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, any member of the Bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement. 25
4. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall keep under regular review the implementation of this Agreement and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Agreement and shall: 30
 - (a) Establish such subsidiary bodies as deemed necessary for the implementation of this Agreement; and
 - (b) Exercise such other functions as may be required for the implementation of this Agreement. 35
5. The rules of procedure of the Conference of the Parties and the financial procedures applied under the Convention shall be applied *mutatis mutandis* under this Agreement, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Agreement.

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6. The first session of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be convened by the secretariat in conjunction with the first session of the Conference of the Parties that is scheduled after the date of entry into force of this Agreement. Subsequent ordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held in conjunction with ordinary sessions of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Agreement. 5
7. Extraordinary sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Agreement or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the secretariat, it is supported by at least one third of the Parties. 10
8. The United Nations and its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented at sessions of the Conference of the Parties serving as the meeting of the Parties to this Agreement as observers. Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by this Agreement and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties serving as the meeting of the Parties to this Agreement as an observer, may be so admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure referred to in paragraph 5 of this Article. 15
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Article 17

1. The secretariat established by Article 8 of the Convention shall serve as the secretariat of this Agreement.
2. Article 8, paragraph 2, of the Convention on the functions of the secretariat, and Article 8, paragraph 3, of the Convention, on the arrangements made for the functioning of the secretariat, shall apply *mutatis mutandis* to this Agreement. The secretariat shall, in addition, exercise the functions assigned to it under this Agreement and by the Conference of the Parties serving as the meeting of the Parties to this Agreement. 30

Article 18

1. The Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation established by Articles 9 and 10 of the Convention shall serve, respectively, as the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement. The provisions of the Convention relating to the functioning of these two bod- 35
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ies shall apply *mutatis mutandis* to this Agreement. Sessions of the meetings of the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of this Agreement shall be held in conjunction with the meetings of, respectively, the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation of the Convention.

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2. Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary 14 bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.

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3. When the subsidiary bodies established by Articles 9 and 10 of the Convention exercise their functions with regard to matters concerning this Agreement, any member of the bureaux of those subsidiary bodies representing a Party to the Convention but, at that time, not a Party to this Agreement, shall be replaced by an additional member to be elected by and from amongst the Parties to this Agreement.

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Article 19

1. Subsidiary bodies or other institutional arrangements established by or under the Convention, other than those referred to in this Agreement, shall serve this Agreement upon a decision of the Conference of the Parties serving as the meeting of the Parties to this Agreement. The Conference of the Parties serving as the meeting of the Parties to this Agreement shall specify the functions to be exercised by such subsidiary bodies or arrangements.

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2. The Conference of the Parties serving as the meeting of the Parties to this Agreement may provide further guidance to such subsidiary bodies and institutional arrangements.

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Article 20

1. This Agreement shall be open for signature and subject to ratification, acceptance or approval by States and regional economic integration organizations that are Parties to the Convention. It shall be open for signature at the United Nations Headquarters in New York from 22 April 2016 to 21 April 2017. Thereafter, this Agreement shall be open for accession from the day following the date on which it is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

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2. Any regional economic integration organization that becomes a Party to this Agreement without any of its member States being a Party shall be bound by all the obligations under this Agreement. In the case of regional economic integration organizations with one or more member States that are Parties to this Agreement, the organization and its member States shall decide on their

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respective responsibilities for the performance of their obligations under this Agreement. In such cases, the organization and the member States shall not be entitled to exercise rights under this Agreement concurrently.

3. In their instruments of ratification, acceptance, approval or accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Agreement. These organizations shall also inform the Depositary, who shall in turn inform the Parties, of any substantial modification in the extent of their competence. 5

Article 21

1. This Agreement shall enter into force on the thirtieth day after the date on which at least 55 Parties to the Convention accounting in total for at least an estimated 55 per cent of the total global greenhouse gas emissions have deposited their instruments of ratification, acceptance, approval or accession. 10
2. Solely for the limited purpose of paragraph 1 of this Article, “total global greenhouse gas emissions” means the most up-to-date amount communicated on or before the date of adoption of this Agreement by the Parties to the Convention. 15
3. For each State or regional economic integration organization that ratifies, accepts or approves this Agreement or accedes thereto after the conditions set out in paragraph 1 of this Article for entry into force have been fulfilled, this Agreement shall enter into force on the thirtieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession. 20
4. For the purposes of paragraph 1 of this Article, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by its member States. 25

Article 22

The provisions of Article 15 of the Convention on the adoption of amendments to the Convention shall apply *mutatis mutandis* to this Agreement.

Article 23

1. The provisions of Article 16 of the Convention on the adoption and amendment of annexes to the Convention shall apply *mutatis mutandis* to this Agreement. 30
2. Annexes to this Agreement shall form an integral part thereof and, unless otherwise expressly provided for, a reference to this Agreement constitutes at the same time a reference to any annexes thereto. Such annexes shall be restricted to lists, forms and any other material of a descriptive nature that is of a scientific, technical, procedural or administrative character. 35

Article 24

The provisions of Article 14 of the Convention on settlement of disputes shall apply *mutatis mutandis* to this Agreement.

Article 25

1. Each Party shall have one vote, except as provided for in paragraph 2 of this Article. 5
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States that are Parties to this Agreement. Such an organization shall not exercise its right to vote if any of its member States exercises its right, and vice versa. 10

Article 26

The Secretary-General of the United Nations shall be the Depositary of this Agreement.

Article 27

No reservations may be made to this Agreement. 15

Article 28

1. At any time after three years from the date on which this Agreement has entered into force for a Party, that Party may withdraw from this Agreement by giving written notification to the Depositary. 20
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from this Agreement. 25

Article 29

The original of this Agreement, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

DONE at Paris this twelfth day of December two thousand and fifteen. 30

IN WITNESS WHEREOF, the undersigned, being duly authorized to that effect, have signed this Agreement.

Schedule 2A
New Schedule 5 inserted~~s 498~~ 205A**Schedule 5**
Primary sector climate change commitments

5

s 220**Farm emissions reporting**

- (1) For 25% of farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2021. 10
- (2) For all farms in New Zealand, a person responsible for farm management holds a documented annual total of on-farm greenhouse gas emissions, by methods and definitions accepted by the He Waka Eke Noa Steering group, by 31 December 2022. 15
- (3) A pilot of a farm-level accounting and reporting system has been completed by 1 January 2024 across a range of farm types.
- (4) A system for farm-level accounting and reporting of 2024 agricultural greenhouse gas emissions at farm level is in use by all farms by 1 January 2025.

Farm plans

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- (5) Guidance is provided to farmers on how to measure and manage greenhouse gas emissions through farm planning by 1 January 2021.
- (6) A quarter of farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2022.
- (7) All farms have a written plan in place to measure and manage their greenhouse gas emissions by 1 January 2025. 25

Schedule 3
**Consequential amendments that commence on day after Royal
assent**

s 231

Part 1
Amendments to Acts

5

**Climate Change Response (Emissions Trading) Amendment Act 2008 (2008
No 85)**

Repeal section 51.

Income Tax Act 2007 (2007 No 97)

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Replace section CB 36(6)(b) with:

(b) by a transfer to the Crown required by a permanent forestry scheme.

In section CB 36(8), replace “into a Kyoto unit as defined in section 4(1) of” with
“into something else under”.

After section CB 36(8), insert:

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*Cancellation of historic approved overseas unit and replacement with New
Zealand emissions unit*

(8B) If a person transfers an approved overseas unit as defined in section 4(1) of the
Climate Change Response Act 2002 for cancellation under schedule 1AA,
clause 13(2) of that Act and is transferred a New Zealand emissions unit
under schedule 1AA, **clause 13(3)** of that Act, the person is treated as having
sold the approved overseas unit for an amount equal to—

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(a) the unit’s value under section ED 1(7B), if that subsection applies; or

(b) the unit’s cost, otherwise.

*Surrender of forest sink emissions unit for entitlement to New Zealand
emissions unit*

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(8C) If a person surrenders a forest sink emissions unit under schedule 1AA, **clause
28(2)** of the Climate Change Response Act 2002 and receives an entitlement to
a New Zealand emissions unit under schedule 1AA, **clause 28(4)** of that Act,
the person is treated as having sold the forest sink emissions unit for an amount
equal to—

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(a) the unit’s value under section ED 1(7B), if that subsection applies; or

(b) the unit’s cost, otherwise.

In section CB 36, list of defined terms, insert in its appropriate alphabetical order
“permanent forestry scheme”.

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Replace section DB 60(1)(b) with:

Income Tax Act 2007 (2007 No 97)—continued

(b) under a permanent forestry scheme.

In section DB 60, list of defined terms, insert in its appropriate alphabetical order “permanent forestry scheme”.

Replace section DB 60B(1)(b) with:

(b) to transfer emissions units to the Crown under a permanent forestry scheme. 5

In section DB 60B, list of defined terms, insert in its appropriate alphabetical order “permanent forestry scheme”.

Replace section EH 34(1)(b) with:

(b) includes permanent forestry income. 10

In section EH 34, list of defined terms,—

(a) delete “PFSI forestry income”:

(b) insert in its appropriate alphabetical order “permanent forestry income”.

In section GC 3B(2)(b), replace “forest sink covenant under section 67Y of the Forests Act 1949” with “permanent forestry scheme”. 15

In section YA 1, definition of **convert**, replace “section 4(1) of” with “regulations made under section 30G of”.

In section YA 1, insert in their appropriate alphabetical order:

permanent forestry business means the forestry activities, as defined in the Climate Change Response Act 2002, carried on in relation to land by a person having entitlements and obligations relating to the land under a permanent forestry scheme 20

permanent forestry income, for a person, means the income for a permanent forestry business—

(a) relating to a permanent forestry scheme; and 25

(b) derived by the person from—

(i) receiving an emissions unit under the permanent forestry scheme;
or

(ii) entering into a transaction in relation to an emissions unit received under the permanent forestry scheme 30

permanent forestry scheme means—

(a) the permanent forest sink initiative under which an owner of post-1989 forest land who entered into a forest sink covenant that was registered under section 67ZD of the Forests Act 1949 in relation to the land was entitled under the covenant to receive emissions units, other than under section 64 of the Climate Change Response Act 2002, for the land and 35

Income Tax Act 2007 (2007 No 97)—continued

was liable under the covenant to surrender emissions units to the Crown when required:

- (b) the scheme under which a person who is registered under the Climate Change Response Act 2002 as a participant in permanent forestry relating to post-1989 forest land is entitled to receive emissions units for the land and is liable to surrender emissions units to the Crown when required by that Act

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In section YA 1, repeal the definitions of **PFSI forestry business** and **PFSI forestry income**.

Summary Proceedings Act 1957 (1957 No 87)

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In section 2(1), definition of **infringement notice**, after paragraph (je), insert:

- (jf) ~~section 30O of the Climate Change Response Act 2002; or~~
(if) **section 30Q** of the Climate Change Response Act 2002; or

Part 2

Amendments to legislative instruments

15

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

In regulation 4(1), definition of **mandatory emissions return period**, replace “section 189(9)” with “section 4(1)”.

Climate Change (Pre-1990 Forest Land Allocation Plan) Order 2010 (SR 2010/190)

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In clause 3(1), definition of **body corporate**, paragraph (a), delete “(as specified in section 72(6)(b)(ii) of the Act)”.

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

In regulation 9(1), delete “where the volume of coal mined exceeds 2 000 tonnes in a year”.

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

In regulation 3, insert in their appropriate alphabetical order:

CDM registry means the registry established and maintained as the clean development mechanism registry under Article 12 of the Protocol

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certified emission reduction unit means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a certified emission reduction unit by the CDM registry

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

clean development mechanism project means a project undertaken under Article 12 of the Protocol for the benefit of a Party not listed in Annex I of the Convention

conversion account means an account in the Registry used for the purpose of converting New Zealand units into New Zealand assigned amount units

convert, in relation to a New Zealand unit, means the transfer of the unit to a conversion account in the Registry with the effect specified in regulation 11E

emission reduction unit means a unit that—

- (a) is derived from a joint implementation project, meaning a project aimed at reducing the human-induced emissions of greenhouse gases by sources or enhancing the human-induced removals by sink activities of a Party listed in Annex I of the Convention that is undertaken under Article 6 of the Protocol; and
- (b) is issued by converting a New Zealand assigned amount unit, an imported assigned amount unit, or a removal unit, and is designated as an emission reduction unit by—
 - (i) the Registry; or
 - (ii) a registry of a Party listed in Annex B of the Protocol (other than New Zealand)

imported assigned amount unit means an assigned amount unit that is issued out of the initial assigned amount of a Party other than New Zealand

New Zealand assigned amount unit means a unit that is—

- (a) issued out of New Zealand's allowance of emissions of greenhouse gas, measured in tonnes of carbon dioxide equivalent and calculated under Articles 3.7 and 3.8 of the Protocol; and
- (b) designated as an assigned amount unit by the Registry

Party means a Party to the Protocol

removal unit means a unit that is—

- (a) derived from a Party's sink activities that result in a net removal of greenhouse gases; and
- (b) designated as a removal unit by—
 - (i) the Registry; or
 - (ii) a registry of a Party listed in Annex B of the Protocol (other than New Zealand)

After regulation 3, insert:

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

Approved overseas units, overseas registries, and international transaction body

3A Approved overseas units prescribed

Each of the following units that is issued as defined by section 4 of the Act may be transferred to accounts in the Registry (and is therefore an approved overseas unit under section 4 of the Act): 5

- (a) a New Zealand assigned amount unit:
- (b) an imported assigned amount unit:
- (c) a certified emission reduction unit:
- (d) an emission reduction unit: 10
- (e) a removal unit.

3B Overseas registry prescribed

The overseas registry, for the purposes of section 4 of the Act, is the CDM registry.

3C International transaction body prescribed 15

The international transaction body, for the purposes of section 4 of the Act, is the international log established and maintained by the Secretariat to confirm the validity of transactions, including the issue of units and the transfer of units between registries and between accounts in the Registry.

Before regulation 8, insert: 20

8AA Prohibition on ability to export New Zealand units

- (1) An account holder may not apply to the Registrar to convert a New Zealand unit held by that person into a unit for the purposes of transferring that unit to an account in an overseas registry or international transaction body.
- (2) The Registrar must not transfer to an account in an overseas registry or international transaction body under section 18C of the Act— 25
 - (i) New Zealand units; or
 - (ii) units that have been converted from New Zealand units before the commencement of this regulation.

Replace regulation 11 with: 30

11 Effect of retirement

A unit that is transferred to a retirement account may not be further transferred, retired, surrendered, or cancelled.

Climate Change (Unit Register) Regulations 2008 (SR 2008/357)—continued**11AA New Zealand units may not be retired**

New Zealand units may not be retired.

11AB Retirement of approved overseas units

- (1) This regulation applies if the Registrar receives an application to transfer approved overseas units held in an account holder's holding account to a retirement account. 5
- (2) The Registrar must—
- (a) seek a direction from the Minister of Finance as to whether the units may be transferred to the retirement account; and
 - (b) transfer the units only if directed to do so. 10

11AC Imported assigned amount units not to be surrendered

No participant may surrender, or permit to be surrendered, an imported assigned amount unit to meet the participant's obligations under section 63 of the Act.

After regulation 11C, insert: 15

*Conversion of New Zealand units into certain units***11D Conversion of New Zealand units into New Zealand assigned amount units for cancellation**

- (1) An account holder may apply to the Registrar to convert a New Zealand unit held by that person into a New Zealand assigned amount unit held for the purposes of transferring that assigned amount unit to the general cancellation account. 20
- (2) The account holder must—
- (a) submit the prescribed form to the Registrar specifying the New Zealand units that the account holder wishes to convert; and 25
 - (b) submit an application under section 18C of the Act for the transfer of an equivalent number of New Zealand assigned amount units (into which the account holder is converting the New Zealand units) to the general cancellation account.
- (3) On receipt of the application, the Registrar must, as soon as practicable,— 30
- (a) transfer the New Zealand units specified in the application from the account holder's account to the conversion account; and
 - (b) transfer to the account holder's account an equivalent number of New Zealand assigned amount units; and
 - (c) subject to section 21AA(3) of the Act, register the transaction applied for under subclause (2)(b). 35

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

(4) The Registrar’s obligations under subclause (3) apply only if, and to the extent that, there are sufficient New Zealand assigned amount units to meet a request under subclause (2) to convert New Zealand units.

(5) If the Registrar receives notification from an overseas registry or international transaction body under section 21AA(3) of the Act that there is a discrepancy in the transaction relating to the application submitted under subclause (2)(b), the Registrar must— 5

- (a) comply with section 21AA(3) of the Act; and
- (b) reverse the transfers in subclause (3)(a) and (b).

Effect of conversion or surrender of certain units 10

11E Effect of conversion of unit

A unit that is transferred to a conversion account may not be surrendered, cancelled, or otherwise further transferred except as required by regulation 11D(5)(b).

11F Effect of surrendering imported assigned amount units despite prohibition 15

(1) This regulation applies if at any time the Registrar discovers that an imported assigned amount unit has been transferred to a surrender account.

- (2) The Registrar must—
- (a) reverse the transfer; and
 - (b) notify the participant and the EPA that the transfer has been reversed. 20

- (3) If the transfer is reversed,—
- (a) the EPA must treat the transfer as if it never took place for the purpose of assessing whether a participant has surrendered the required number of units by the due date as required under any section of the Act; and
 - (b) if the EPA considers that the person has not surrendered the required number of units by the due date, give a notice to the participant under **section 134(3)** of the Act. 25

Forests (Permanent Forest Sink) Regulations 2007 (SR 2007/354)

In regulation 3, replace the definition of **assigned amount unit** with:

assigned amount unit has the meaning given to New Zealand assigned amount unit in regulation 3 of the Climate Change (Unit Register) Regulations 30

Schedule 4
Consequential amendments that commence on 30 November 2020

s 232

Part 1
Amendments to Act

5

Income Tax Act 2007 (2007 No 97)

Replace section EB 2(3)(j) with:

- (j) a greenhouse gas unit that is not an emissions unit.

In section EB 2, list of defined terms,—

- (a) delete “non-Kyoto greenhouse gas unit”:
(b) insert in its appropriate alphabetical order “greenhouse gas unit”.

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Replace section EW 5(3C) and the heading above that subsection with:

Greenhouse gas unit

- (3C) A greenhouse gas unit that is not an emissions unit is an excepted financial arrangement.

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In section EW 5, list of defined terms,—

- (a) delete “non-Kyoto greenhouse gas unit”:
(b) insert in its appropriate alphabetical order “greenhouse gas unit”.

In section YA 1, insert in its appropriate alphabetical order:

greenhouse gas unit means a unit that is—

- (a) issued by reference to the sequestration, reduction, or avoidance of emission, of human-induced greenhouse gases; and
(b) verified to an internationally recognised standard

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In section YA 1, repeal the definition of **non-Kyoto greenhouse gas unit**.In section YA 1, definition of **revenue account property**, replace paragraph (d) with:

- (d) is a greenhouse gas unit that is not an emissions unit

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Part 2
Amendments to legislative instrument

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

Replace regulations 8 to 10 with:

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

8 Approved overseas units cannot be held or transferred except by the Crown

- (1) No account holder, other than an account holder of a Crown holding account, may hold any approved overseas unit.
- (2) No person, other than the Registrar as administrator of a Crown holding account, may transfer any approved overseas unit into or within the unit register. 5
- (3) See ~~clause 14~~ **clause 13** of Schedule 1AA of the Act (cancellation of historic approved overseas units).

Revoke **regulations 11AB and 11AC**, 11B, and 11C and the Schedule.

10

Schedule 5
Consequential amendments that commence on 1 January ~~2021~~ 2022

s 233

Forests Act 1949 (1949 No 19)

After section 67C(1)(g)(iii), insert:

5

- (iv) harvested from a forest on land in respect of which a person is registered as a participant in permanent forestry under the Climate Change Response Act 2002.

After section 67D(1)(b)(i)(D), insert:

- (E) a forest on land in respect of which a person is registered as a participant in permanent forestry under the Climate Change Response Act 2002; or
- 10

Schedule 6
Consequential amendments that commence on 1 January ~~2022~~ 2023

s 234

Forests Act 1949 (1949 No 19)

In section 2(1), replace the definition of **landholding** with: 5

landholding—

- (a) means an estate, right, title, or interest of any kind in or over an area of land by or under which indigenous timber may be harvested; but
- (b) does not include an interest by way of charge or security

After section 2, insert: 10

2A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

Repeal section 67C(1)(g)(iii).

Repeal section 67D(1)(b)(i)(D). 15

Repeal Part 3B.

Before Schedule 1, insert the **Schedule 1AA** set out in **Schedule 7** of this Act.

~~**Forests (Permanent Forest Sink) Regulations 2007 (SR 2007/354)**~~

~~Revoke.~~

Schedule 7
New Schedule 1AA inserted in Forests Act 1949

Schedule 6

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
**Provisions relating to Climate Change Response (Emissions Trading
Reform) Amendment Act 2019**

- 1 Removal of forest sink covenants from register and records** 10
- (1) The EPA (as defined by section 4 of the Climate Change Response Act 2002) must, as soon as is reasonably practicable after the commencement of this clause, give notice that the clause has commenced to—
- (a) the Registrar-General of Land; and
- (b) the Registrar of the Maori Land Court. 15
- (2) As soon as is reasonably practicable after receiving the notice,—
- (a) the Registrar-General of Land must record, on each record of title on which a forest sink covenant is registered, that the covenant is terminated; and
- (b) the Registrar of the Maori Land Court must remove any notification of a forest sink covenant from the court's records of Maori land. 20
- 2 Crown charges continue against land subject to forest sink covenants**
- For the purposes of any charge registered against land in accordance with section 67ZE immediately before the commencement of this clause, the charge and that section continue to apply as if the section had not been repealed. 25

Legislative history

24 October 2019
5 November 2019

Introduction (Bill 186–1)
First reading and referral to Environment Committee