

New Zealand Emissions Trading Scheme (NZ ETS) Review 2011 — Terms of Reference

Context

The Climate Change Response Act 2002 (the Act) requires a review of the NZ ETS to be completed before the end of 2011. The Act requires the Minister for Climate Change Issues to specify the terms of reference for the review.

The review is an opportunity to assess the operation and effectiveness of the NZ ETS including how the NZ ETS should evolve beyond 2012 in the context of uncertainty over the outcome of international climate change negotiations and domestic action by key trading partners.

It is important that the outcome of the review is enduring. For the review to be successful, the review process will need to be robust, transparent and credible.

Objective

The objective of the review is to provide the government with recommendations on steps that can be taken to ensure that the ETS beyond 2012:

- a. helps New Zealand to deliver its 'fair share' of international action to reduce emissions, including meeting any international obligations;
- b. delivers emissions reductions in the most cost effective manner; and
- c. supports efforts to maximise the long term economic resilience of the New Zealand economy at least cost.

Scope

The review panel must review the operation and effectiveness of the emissions trading scheme. In carrying out its review, the review panel must consider the matters set out in section 160(5) of the Act, attached at Appendix 1.

Focus

In considering the matters set out in section 160(5), and in preparing its report, the review panel will focus on the high-level design of the NZ ETS, giving particular attention to the following issues:

- a. Priority issues and questions for key NZ ETS design settings arising from possible international frameworks post 2012, and considerations that government might apply in developing a response to these priority issues and question;
- b. whether the NZ ETS should continue to scale up to a full obligation¹ and whether new sectors should incur surrender obligations on current legislated timetables after 2012, taking into account the domestic actions of key competitors, or what conditions should be met before proceeding with further sectors entering into the ETS;
- c. the inclusion of synthetic greenhouse gases within the NZ ETS, taking into account alternative approaches to reducing such emissions.

¹ Under the current transitional period, due to end on 31 December 2012, a full obligation does not apply because a fixed price option of \$25 per unit is available, and only 1 unit needs to be surrendered in respect of each 2 tonnes of emissions.

The review panel should not focus on:

- a. whether an emissions trading scheme is the most appropriate response to climate change for New Zealand;
- b. whether New Zealand should be taking action on climate change; and
- c. climate change measures outside of the NZ ETS (except to the extent that a – c above raise broader issues about the best means of meeting New Zealand’s international obligations).

Considerations

In considering the matters set out in section 160(5) and the area of focus and issues to which particular attention is to be given, and in preparing its report, the review panel will take into account the effectiveness and efficiency of the NZ ETS giving particular attention to the following factors:

- a. short term costs, competition and competitiveness impacts - the costs for New Zealand and associated impacts on the competitiveness of its firms between now and 2020;
- b. administrative efficiency including transaction costs
- c. impacts on long-term economic resilience – the long-term risks and opportunities for New Zealand’s economic resilience;
- d. environmental integrity - the impact on New Zealand’s domestic emissions profile and international efforts to reduce greenhouse gas emissions;
- e. the need to balance the efficient design of the NZ ETS vis-à-vis our trading partners and environmental effectiveness; and
- f. equity between sectors and groups - the distribution of costs and benefits between sectors and groups (including iwi).

Relationship of the review panel to other functions of members

Members of the panel are not appointed as advocates or representatives of a particular interest or sector group. They are appointed because of their personal expertise and knowledge and are to provide independent, strategic advice.

A person’s inclusion in the panel will not prejudice that person’s right to express views in other positions held by that person.

Operation of the review panel

The review panel will conduct the review in accordance with sections 3A(d)(ii) and 161(3), (4) and (5) of the Act and will adopt a transparent approach to consultation and engagement with stakeholders. As a minimum, the panel will issue a call for written submissions on issues within the scope of the terms of reference.

The panel will have regard to the principles of the Treaty of Waitangi in conducting its review.

The review panel will publish working papers, minutes and any written advice given to Ministers in addition to the report, unless it is agreed with officials that the relevant document is confidential or sensitive. As required by section 160(7)(a) of the Act, the Minister will publish the final report of the panel on the review.

The panel will have regard to the process being led by the Australian Multi-Party Committee on Climate Change. The panel may seek to engage with this process directly or via officials.

The review panel may publish an issues statement prior to launching any written consultation. Any issues statement will provide a summary of the key issues, within the scope of the review, which the panel intends to address and any initial views of the panel on these key issues. Any issues statement will be released publicly.

Officials from the Ministry for the Environment and other agencies will provide secretariat support to the review panel. The secretariat will provide background analysis required by the panel, support engagement by the panel with stakeholders, and support the panel as it frames its recommendations and report.

To the extent agreed in advance between the Chair and the relevant agencies, the panel may request additional advice and analysis direct from the Ministry for the Environment and other agencies.

The Chair of the panel will determine the meeting processes, including how many meetings are required and the dates and time allocated for each meeting. The Chair will also be responsible for any public statements on behalf of the panel.

The review panel will keep the Minister for Climate Change Issues (and other Ministers as appropriate) informed and updated through monthly updates as the review progresses.

Timing

The review panel will start work in February 2011.

The review panel is to provide a draft report to the Minister for Climate Change Issues by 3 June 2011. The review panel is to provide the final report to the Minister by 30 June 2011.

The review panel may be asked to provide further oral advice to the Minister for Climate Change Issues or to officials from the Ministry for the Environment until December 2011.

Outputs from the review panel

The review panel will provide a report on the NZ ETS review 2011 in accordance with sections 160 and 161 of the Act.

Appendix 1

Review provisions from the Climate Change Response Act 2002

Section 160: Reviews of operation of emissions trading scheme

(1) The Minister responsible for the administration of this Act must initiate a review of the operation and effectiveness of the emissions trading scheme established by this Act in each of the following periods:

- (a) the first commitment period and each subsequent commitment period (if any); and
- (b) if there is no subsequent commitment period,—
 - (i) the 5-year period commencing on 1 January 2013; and
 - (ii) each subsequent 5-year period after the period specified in subparagraph (i).

(2) Each review initiated under subsection (1) must be completed no later than 12 months before the end of the period in which the review is initiated.

(3) Despite anything in subsections (1) and (2),—

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

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

(5) Without limiting the scope of the review, a review under subsection (1) must consider—

- (a) whether an amendment to this Act in relation to the emissions trading scheme is necessary or desirable; and
- (b) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from or additional to any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and

- (c) the stringency of any of the international obligations specified in paragraph (b); and
- (d) the contribution of the emissions trading scheme established under this Act towards any targets that are in effect in accordance with [section 224](#) or [225](#) at the time the review is initiated; and
- (e) the types of Kyoto units and overseas units that may be surrendered for compliance with the emissions trading scheme established by this Act; and
- (f) the operation of the commitment period reserve (if any); and
- (g) the potential for linkage of the emissions trading scheme established under this Act to other greenhouse gas emissions trading schemes, including (but not limited to) Australia's carbon pollution reduction scheme; and
- (h) the appropriateness of any methodologies that are prescribed for calculating emissions and removals; and
- (i) whether it is necessary or desirable to—
 - (i) omit any of the activities from [Schedule 3](#) or [4](#); and
 - (ii) add any additional removal activities to [Part 2](#) of Schedule 4; and
 - (iii) amend the level of participant opt-in thresholds in [Schedule 4](#); and
- (j) whether changes to the provision of any allocation to industry or agriculture under [subpart 2](#) are necessary or desirable, having regard to—
 - (i) whether New Zealand has undertaken, or is expected to undertake, any international obligations with respect to its emissions and removals that are different from, or additional to, any international obligations that New Zealand had undertaken when this section came into force, or since the last review under this section; and
 - (ii) the stringency of any of the international obligations specified in subparagraph (i); and
 - (iii) any change proposed to the activities listed in [Schedule 3](#) or [4](#) following consideration of the matters specified in paragraph (i); and
 - (iv) the relative climate change obligations and emissions policies of New Zealand's trade competitors and trading partners; and
 - (v) any significant changes in emissions mitigation technology; and
 - (vi) the cost to the taxpayer and the economy of providing free allocation under [subpart 2](#); and
- (k) the appropriateness of the penalties in [subpart 4](#) of this Part; and
- (l) the implications (if any) of the following matters for the notification of intention under [section 69](#):
 - (i) New Zealand's annual emissions for the 5 years before notification; and
 - (ii) the average price of units for the 2 years before notification; and
- (m) the impacts of the forestry sector elements of the emissions trading scheme established under this Act on biodiversity within New Zealand; and
- (n) the costs and benefits of establishing an independent or quasi-independent government body to carry out the allocation process, or any part of the allocation process, contained in [subpart 2](#); and

- (o) the social, economic, and environmental effects of the emissions trading scheme established by this Act (other than those considered under paragraphs (a) to (n)); and
- (p) any other matter that the Minister responsible for the administration of this Act considers relevant.

(6) The Minister responsible for the administration of this Act must appoint a panel to conduct any review under subsection (1) and report in accordance with the terms of reference set by the Minister on the matters set out in this section.

(7) Following the completion of each review under subsection (1), the Minister responsible for the administration of this Act must—

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

(8) If the panel recommends any change in relation to allocation to industry or agriculture that involves amending any Act or making or amending regulations under this Act, the Minister responsible for the administration of this Act must—

- (a) prepare a report that contains a response to the panel's recommendations for legislative change; and
- (b) present a copy of his or her report to the House of Representatives.

(9) To avoid doubt, this section does not limit the ability of the Minister responsible for the administration of this Act to initiate reviews of the operation and effectiveness of the emissions trading scheme established by this Act at any time and may use any method of review (including, but not limited to, the method specified in this section).

Section 161: Appointment and conduct of review panel

(1) When appointing members to a review panel under [section 160](#), the Minister responsible for the administration of this Act must—

- (a) ensure that there are a minimum of 3 and a maximum of 7 members; and
- (b) ensure that the majority of the members are not employees under the [State Sector Act 1988](#); and
- (c) consider whether the members have, in the Minister's opinion, the appropriate knowledge, skill, and experience to conduct the review, including knowledge, skill, and experience of—
 - (i) this Act; and
 - (ii) New Zealand's international obligations under the Protocol and the Convention and any other relevant international agreement; and
 - (iii) the operation of the emissions trading scheme established under this Act, including its environmental, social, and economic effects; and
- (d) appoint 1 member as the chairperson of the panel.

- (2) The Minister must, by written notice to the panel, specify the terms of reference for the review to be conducted by the panel.
- (3) A review panel must complete a draft report on the review and provide the report to the Minister responsible for the administration of this Act at least 1 month before the date on which the review is required to be completed under [section 160](#).
- (4) The review panel must—
- (a) allow the Minister at least 10 working days within which to respond to and comment on the contents of the draft report; and
 - (b) after considering the Minister's response and comments (if any), prepare a final report and provide it to the Minister by the date on which the review is required to be completed under [section 160](#).
- (5) In conducting a review, the review panel—
- (a) must establish a procedure that is appropriate, fair in the circumstances, and in accordance with the terms of reference for the review; and
 - (b) must consult persons (or their representatives) that appear to the panel likely to have an interest in the review; and
 - (c) may call for submissions

Section 3A: Treaty of Waitangi (Te Tiriti o Waitangi)

In order to recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi,—

- (d) with respect to [section 161](#) (which relates to the appointment and conduct of a review panel),—
- (i) the Minister must, when appointing members to a review panel under [section 160\(6\)](#), ensure that the review panel has at least 1 member who, in the Minister's opinion, has the appropriate knowledge, skill, and experience relating to the principles of the Treaty of Waitangi and tikanga Māori to conduct the review; and
 - (ii) the review panel must consult with the representatives of iwi and Māori that appear to the panel likely to have an interest in the review; and
 - (iii) the terms of reference for the review panel must incorporate reference to the principles of the Treaty of Waitangi: