

# BILLS DIGEST

**CLIMATE CHANGE (EMISSIONS TRADING AND RENEWABLE  
PREFERENCE) BILL 2007**

**Date of Introduction: 04 December 2007**

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**CLIMATE CHANGE (EMISSIONS TRADING AND RENEWABLE PREFERENCE) BILL 2007**

Date of introduction: 04 December 2007  
Portfolio: Environment  
Select Committee: As at 11 December, 1st reading not held

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**PURPOSE**

The aim of the Bill is to amend the Climate Change Response Act 2002 (the Act) to introduce a greenhouse gas Emissions Trading Scheme in New Zealand (NZ ETS).

**BACKGROUND**

"Climate change, and how we deal with it, is one of the most important issues of our time. The introduction of this Bill is a critical step toward New Zealand playing its part to address climate change.

"The Bill's principal purpose is to amend the Climate Change Response Act 2002 to introduce a greenhouse gas Emissions Trading Scheme in New Zealand (NZ ETS). The Bill also amends the Electricity Act 1992 to create a preference for renewable electricity generation by implementing a moratorium on new fossil-fuelled thermal electricity generation, except to the extent necessary to ensure the security of New Zealand's electricity supply.

"Emissions trading schemes are increasingly being established in a number of countries and regions around the globe. Over time, the NZ ETS will cover all gases and all sectors, in order to minimise overall costs to the economy and operate with efficiency and equity. The scheme will apply an economy-wide price signal to activities that contribute to climate change.

"Climate change is a global problem and New Zealand is reliant on international action to mitigate the risks associated with increased concentrations of greenhouse gases in the atmosphere. The design of the NZ ETS is compatible with the United Nations Framework Convention on Climate Change (the Convention) and the Kyoto Protocol (the Protocol), but is designed to endure under a range of possible future scenarios for international climate change agreements.

"The objective that guided the design of the NZ ETS is:

"That a New Zealand Emissions Trading Scheme support and encourage global efforts to reduce greenhouse gas emissions by:

- reducing New Zealand's net emissions below business-as-usual levels; and

- complying with our international obligations, including our Kyoto Protocol obligations;

while maintaining economic flexibility, equity, and environmental integrity at least cost in the long term.

"The NZ ETS is designed to operate as an integral part of the government's broader climate change, sustainable development, and economic transformation agendas.

"The preference for renewable electricity generation augments the NZ ETS goal of reducing New Zealand's net greenhouse gas emissions below business-as-usual levels. It does this by implementing a moratorium on investment in new fossil-fuelled thermal generation, except to the extent required to ensure security of supply. This will reduce the potential for fossil-fuelled thermal electricity generation to increase the level of New Zealand's greenhouse gas emissions"<sup>1</sup>.

"The primary unit of trade in the NZ ETS is a New Zealand unit (NZU), issued by the government. For the first commitment period of the Protocol (2008-2012), each NZU issued by the government will be backed by a Kyoto unit held in a Crown holding account in the Registry.

"Participants may surrender Kyoto units to meet their NZ ETS obligations (subject to some restrictions). Kyoto units can be acquired overseas or domestically. The Bill itself does not contain a provision to limit the volume of Kyoto units that can enter the NZ ETS, but gives the responsible Minister the ability to place restrictions on which classes or subclasses of Kyoto units may enter the NZ ETS and what transactions may or may not be registered in respect of those units.

"The government has already decided to exclude certain units (eg, Certified Emission Reduction units from nuclear projects). The government is still seeking feedback on the need for other restrictions. The Bill places no restriction on the entry of AAUs into the NZ ETS; this has been welcomed by some and criticised by other domestic stakeholders, who have expressed concerns about potentially damaging the integrity of the NZ ETS, and reducing New Zealand's prospects of linking with other countries' schemes. Consideration of these views needs to be weighed against the costs of compliance without AAUs entering the NZ ETS and recognition of the fact that all Parties have agreed to the provisions of the Protocol. Maintaining the spirit of the Protocol is critical to negotiating future inclusive agreements"<sup>2</sup>.

"In terms of trading, the NZ ETS is designed to allow flexibility in how participants trade units in the market, whether trading occurs via trading platforms, or via direct exchange. Any person eligible to open a holding account in the Registry (not just participants) will be able to hold and trade emission units)"<sup>3</sup>.

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<sup>1</sup> Climate Change (Emissions Trading and Renewable Preference) Bill, 2007 No 187-1, Explanatory note, General policy statement, pp. 1 and 2.

<sup>2</sup> Climate Change (Emissions Trading and Renewable Preference) Bill, 2007 No 187-1, Explanatory note, General policy statement, pp. 6 and 7.

<sup>3</sup> Ibid., p. 7.

**MAIN PROVISIONS**

*This Bill is a very complex measure. The following analysis deals with the aspects of the scheme and some provisions relating to forestry, which will be the sector soonest affected.*

**New Zealand greenhouse gas emissions trading scheme****Participants and scheme**

There are two classes of "participants" referred to in the Bill. For convenience, in this Bills Digest, these are referred to as "Schedule 3 participants" and "Schedule 4 participants"

A Schedule 3 participant is, in relation to certain activities, a person who "carries out the activity" or "is required under this [Bill] to be treated as carrying out the activity". A Schedule 4 participant is a participant if the person carries out the activity listed in that schedule and who is registered as a participant under Section 57 in relation to the activity (*Part 1, Clause 43, inserting New Part 4 into the Act, New Clauses 54 - 59*).

**The scheme**

The Bill contains detailed provisions relating to how participants are registered and how registers operate. The core provisions that implement the NZ ETS are contained in a New Part 4 of the Climate Change Response Act 2002, inserted by Clause 43.

This new part covers participants, participants' obligations, allocation of New Zealand units, compliance and enforcement, offences and penalties, review and appeals, future development and Ministerial review of the scheme. The NZ ETS is based on the concept that "participants" incur obligations by doing "activities" as listed in New Schedules 3. Persons can also elect to become participants if they do activities listed in Schedule 4. Schedule 4 covers:

- owners of, or holders of forestry rights/leases over, forests planted after 1989;
- producers who embed carbon in their products;
- major users of jet fuel used for domestic aviation; and
- major users of coal and natural gas.

The main obligation that participants have under the NZ ETS is to surrender emission units to match the emissions from their activities in each annual compliance period.

Participants are also obliged to:

- calculate their level of emissions, using prescribed methodologies;
- retain sufficient records to allow verification of emissions calculations;

- report their level of emissions;
- provide information, if required by the chief executive (NZ ETS administrator), to allow the chief executive to verify compliance.

The methodologies to calculate emissions are to be prescribed in regulations.

Participants undertaking "removal activities" will also be able to earn emission units (*Part 1(amending the Climate Change Response Act 2002) Clauses 3 - 29; Part 3 (Inventory Agency) Clauses 30 - 42; Clause 43, inserting New Part 4 (New Zealand greenhouse gas emissions trading scheme) into the Act, Clauses 54 - 157*)).

## Forestry specific provisions

### What is "forest land"?

The Bill defines the term "forest land" as an area of land of at least one hectare that has, or will at "maturity" have tree "crown cover" (or "equivalent stocking level") of more than 30% in each hectare and in which the trees are "forest species" and the "forest" consists of: "closed forest formations" where "trees" of various "storeys" and "undergrowth cover" a high proportion of the ground or "open forest" and includes an area normally forming part of a forest that is temporarily "unstocked" as a result of human intervention or natural causes but that is "expected to revert to forest".

Specifically excluded from the definition is:

- a "shelter belt" where the tree crown cover at maturity has, or is "expected to have", "an average width of less than 30 metres"; or
- an area of land where the tree crown cover at maturity has, or is "expected to have", an average width of less than 30 metres, unless the area is contiguous with other forest land" (*Part 1, Clause 6, definition of "forest land"*).

### Comment

The definition is remarkably unspecific. The term "maturity" is undefined in the Bill. The term "crown cover" or "crown" is not defined. What does "equivalent stocking level" mean? The term "forest species" is defined as "a tree species capable of reaching at least 5 metres in height at maturity in the place where it is located". The term "forest" is undefined. The term "closed forest formations" is undefined. The term "tree" is undefined but could be taken as read except that it is qualified for certain purposes so that the use of the word "tree" itself must mean that it must be given the widest meaning (whatever that is). The term "undergrowth cover" is undefined. As are the terms "open forest" and "unstocked". Who is to judge that land is "expected to revert to forest" is unstated. What are the characteristics of a "shelter belt"? Who is to make the judgment that crown cover at maturity is "expected to have", an average width of less than 30 metres"? The economic consequences of falling inside or outside this definition are going to be of tremendous significance to individuals and enterprises. The definition needs to be much more precisely expressed.

**What is pre-1990 and post 1989 forest land?**

The Bill defines the term "post-1989 forest land" as "forest land" that:

- was not forest land on 31 December 1989; or
- was forest land on that date but was "deforested" between 01 January 1990 and 31 December 2007; or
- was "pre-1990 forest land"
  - that was deforested on or after 1 January 2008; and
  - "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 (i.e. "deforesting pre-1990 land other than exempt land, if the area forested is more than 2 hectares in the 5-year period commencing on 1 January 2008, or any subsequent 5-year period after that").

The Bill defines the term "pre-1990 forest land" as forest land that was forest land on 31 December 1989, and remained as forest land on 31 December 2007 and where the forest species on the forest land consisted of exotic forest species (*Part 1, Clause 6(2), definitions of "post-1989 forest land" and "pre-1990 forest land"; Schedule 3, Part 1*).

**Participants in respect of pre-1990 forest land**

The Bill provides in detailed as to how participation is to be established in respect of an activity listed in Part 1 of Schedule 3 has been carried out (i.e. "deforesting pre-1990 land other than exempt land, if the area forested is more than 2 hectares in the 5-year period commencing on 1 January 2008, or any subsequent 5-year period after that"). The participant who must account by surrendering units is generally the person who had responsibility for the activity: a landowner of a fee simple, the grantee of a forestry right, the lessee of a forestry lease (*Part 1, Clauses 158 - 164*).

**Treatment of forestry**

The Bill provides for a free allocation of emission units equivalent to 55 million tonnes of emissions to owners of pre-1990 forests (*Part 1, Clause 43, inserting New section 69 into the Act*).