

In Confidence

Office of the Minister for Climate Change

Chair, Cabinet Environment, Energy and Climate Change Committee

New Zealand Emissions Trading Scheme tranche two: Improving transparency

Proposal

1. This paper seeks decisions to amend the Climate Change Response Act 2002 (CCRA). It is part of tranche two of amendments designed to improve the New Zealand Emissions Trading Scheme (NZ ETS).
2. I propose that Government agree to require the publication of participant level emissions and removal data to improve the transparency of the scheme to the public and participants, from 2021 onwards.

Executive summary

3. The Government is reforming the NZ ETS to ensure the scheme is effective in assisting to meet emission reduction targets and in supporting the transition to a low-emission and climate-resilient New Zealand. This requires amending the CCRA to provide:
 - 3.1. certainty to the market of the long-term credibility and effectiveness of the NZ ETS by signalling the trajectory of our transition to a low-emissions economy
 - 3.2. flexibility for the government to manage the NZ ETS in changing circumstances.
4. I am in the process of bringing the tranche two amendments to Cabinet via a series of separate papers [CAB-19-MIN-0089 refers]. These decisions will combine with tranche one to form a single bill amending the CCRA, to be introduced to the House in mid-2019 and to enter into force in 2020.
5. This paper is part of tranche two, and seeks agreement to amend the CCRA to require publication of participant level emissions and removals data, from 2021 onwards.
6. The need for greater transparency has been a strong and consistent theme from stakeholders. However, the CCRA only allows for publication of emissions and removals at an aggregated level due to an obligation to maintain confidentiality.
7. Publication of individual level participant emissions and removals data would provide greater transparency of the scheme and allow for greater understanding by the public and participants.
8. Some participants have concerns that releasing emissions data would allow inferences to be made which businesses consider to be commercially sensitive. .
9. While recognising that this could create a legitimate risk, on balance I am confident that publication is in the overall public interest and will align with international

practice. Publication of emissions data is common practice in overseas emissions trading schemes, and businesses in countries that require the publication of similar information do not report significant negative impacts on their businesses.

10. I note that if this concern continues to be raised by stakeholders during select committee we may need to adjust our approach and consider withholding commercially sensitive in specific circumstances.

Context

Reform of the NZ ETS is underway

11. As part of the Government's programme of action on climate change, the NZ ETS is being reformed to ensure it is an effective tool to assist New Zealand in meeting emissions reduction targets, increasing emissions removals, and transitioning to a low-emission future.
12. Decisions about the design and operation should be considered in light of their potential impact on New Zealand's ability to access international carbon markets with environmental integrity in the future. Cabinet has agreed to retain the option to use international carbon markets after 2020 [CAB-18-MIN-0248 refers]. The proposed changes to the CCRA, will reduce barriers to creating such links.
13. Proposals to amend the CCRA are being progressed in two tranches, which will form a single CCRA amendment bill, to be introduced to the House in mid-2019 and to enter into force in 2020:
 - 13.1. Tranche one was agreed by Cabinet in December 2018 [CAB-18-MIN-0606.01 refers] and the Parliamentary Counsel Office (PCO) has commenced drafting.
 - 13.2. I am currently seeking tranche two decisions through a series of papers I am bringing to Cabinet in March to May 2019 (forestry papers are being co-led with Hon Shane Jones, Minister of Forestry).

Transparency in the NZ ETS

14. Market transparency is about the availability of relevant information to market participants. It is a crucial factor in ensuring the effective and efficient functioning and integrity of a market. Transparency provides all market participants with the same level of data on which to base decisions. This is particularly important for the NZ ETS which has a large number of small participants trading small volumes of NZUs, compared to a small number of large participants, involved in trading significant volumes.
15. The NZ ETS currently has approximately 300 mandatory and 2,150 voluntary participants. All mandatory and voluntary participants must be registered with the scheme, and currently their names and addresses are publicly accessible on the New Zealand Emissions Trading Register.
16. To date, the majority of data has only been published at the aggregated (not an individual participant) level. The CCRA limits the release of detailed information from the NZ ETS to maintain the confidentiality of participant information, unless specifically provided for under the Act.¹

¹ Section 99 of the CCRA.

17. This paper only considers the impact of releasing individual NZ ETS participant level data associated with emissions and removals.
18. Releasing other types of NZ ETS information is being considered separately:
 - Information about instances of non-compliance will be considered as part of a parallel compliance paper
 - Issues relating to 'market elements' of the NZ ETS, such as information about transfers and trade of NZUs, will be considered in relation to market governance of the NZ ETS
 - Release of emissions data from all companies listed on the New Zealand stock exchange, is being considered in relation to work on Climate Related Financial Disclosure (CRFD) by the Ministry for the Environment and Ministry for Business Innovation and Employment (MBIE)

Improved transparency in the NZ ETS is a common theme from stakeholders

19. The New Zealand public are becoming increasingly interested in climate change related issues, including: our national emissions targets, how we are tracking to meet them, and how the Government and individual firms are responding.
20. The NZ ETS is one of the key policy tools for reducing New Zealand's emissions and helping to reach our emission reduction targets. However, there are limitations in public trust and understanding of how the NZ ETS operates. This includes that gross emissions have continued to increase since the scheme was introduced and policy interventions that have been unpredictable. Although the Government has already begun to address some of these, there are still issues.
21. Public understanding and research involving emissions and the NZ ETS has been constrained by limitations in the presentation and access available to information (e.g. being provided across multiple sources in a confusing format. Officials are improving the presentation of market information through the establishment of a dedicated NZ ETS information and data website. However, the level and detail of data available remains limited.
22. Stakeholders commonly express a desire for improved transparency and for greater availability and detail of carbon market data. Submitters, including several large emitters from the electricity sector, frequently discussed the role of transparency in making the market and carbon price more predictable.

Analysis

Publishing participant level emissions and removals data

23. I propose to amend the CCRA to require the publication of all NZ ETS participant data, for both emissions and removals (in tonnes of carbon dioxide equivalent (CO₂-e)), beginning with data relating to 2020. Publication for 2020 data would occur in 2021.
24. The point of obligation in the NZ ETS (i.e. the participant with the obligation to report emissions) is generally upstream in the supply chain. For example, BP is an NZ ETS participant rather than thousands of individual petrol users. This means that the majority of New Zealand businesses will not be responsible for reporting the

entire scope of their direct emissions, and therefore, not all of that emissions data will be published as a result of this proposal.

25. This would mean the total tonnes of emissions or removals, and the comprising activities, would be published for all participants – e.g.

Realman Ltd

Mining coal: 50,000 tCO₂-e

Operating a disposal facility: 1,000 CO₂-e

Total emissions: 51,000 tCO₂-e

26. Forestry returns only record the net carbon stock change (i.e the total emissions or removals for each forestry activity they have undertaken) – e.g.

Real Forestry Ltd

Post-1989 forest net carbon stock change: + 40,000 tCO₂-e (removals)

Pre-1990 forest deforestation: - 10,000 tCO₂-e (emissions)

27. To ensure the overall supply and demand dynamics can be assessed, data for all participants - mandatory and voluntary - will be published (including agriculture participants, who report in the NZ ETS, although they do not currently face a surrender obligation). This information is already reported to the Environmental Protection Authority (EPA), so will have no extra cost for participants.

28. Provisions that enable the EPA to only publish aggregate data that conflicts with this proposal will need to be removed.

Benefits of publishing participant level emissions and removals data

29. Publishing participant level emissions and removals data supports increased public trust in the NZ ETS through improved understanding of how the scheme works as an effective emissions reduction policy tool.
30. Additional data provides increased visibility of the sources of emissions and removals. In addition, continual data publication will allow the public and researchers to track emissions trends.
31. Access to participant level data will provide the public with increased visibility of the emissions of some of the businesses they engage with. Although publication of this NZ ETS data will not provide data on all businesses' emissions, due to the upstream nature of the NZ ETS, it can still provide improved information for some sectors, which may encourage competition and industry best practice.
32. Publishing participant's emissions and removals data provides visibility to all participants over where trends and volumes are originating, the impact this has on supply and demand, and how this may affect the trading price within the market. This can help to improve participants' confidence when trading in the NZ ETS, improve liquidity and provide the opportunity to improve market efficiency.
33. Publication at the participant level will also better align practice in the NZ ETS with other reputable emissions trading schemes, such as the European Union (EU). The EU recently provided comment on changes to the NZ ETS. In regards to market information, they said:

“We note that emissions data and compliance information about individual participants are not publicly available in the NZ ETS. In the EU ETS, such data is made available in a timely manner since the very start in 2005. This level of transparency is important for the efficient operation of the carbon market.”

34. While other schemes are different to the NZ ETS, (e.g., emissions are typically recorded at a downstream facility level and do not include removal participants or the forestry sector), I believe these issues can be addressed and do not pose a barrier to New Zealand adopting a similar practice.

Addressing stakeholder concerns

35. Stakeholder concerns about the publication of such information fall broadly into two categories.
36. First, some stakeholders (predominantly participants of the NZ ETS, including large industrial emitters), have concerns relating to privacy and the potential commercial sensitivity of information. This includes concern that emissions information could affect business competition and allow for competitors to calculate annual production volumes, emissions intensity and potentially operating costs. However, many of these participants would already be responsible for releasing financial and operational data if they are publicly trading companies.
37. On balance, however, I consider that the benefits of releasing this data outweigh this concern. I recognise that releasing emissions and removals data creates a legitimate risk to commercial sensitivity. However, I note that it is becoming increasingly common internationally to publish companies' emissions data, and there is limited evidence to show that publication has caused these companies any issues.
38. Nevertheless, this issue may continue to be raised by stakeholders following Cabinet consideration. There may be an opportunity to amend our approach during the select committee process, so that the EPA could withhold information where it is considered to be commercially sensitive. This would be in line with the current approach for publishing industrial allocation data. The EPA and the Ministry for Primary Industries (MPI) have noted that this could involve significant administrative costs to implement. I have considered other ways to address this concern, such as publication of information after a time delay. However, that would restrict the usefulness of the information. Acting in good faith with stakeholders is one reason why I am not considering retroactively releasing data the Government currently holds and am only proposing to release data relating to 2020 onwards.
39. Second, publishing individual emission data could paint a distorted picture of the companies responsible for New Zealand's emissions due to the 'upstream point of obligation' in the NZ ETS. This risk will be mitigated through any publication of NZ ETS emissions data being appropriately contextualised, helping the public to understand that this data is for the emissions and removals that these companies report within the scheme, not the direct emissions that they are responsible for.

Process

40. Emissions returns filed in 2021 and after, will be covered by these proposed changes, beginning with emissions relating to 2020. Officials will work with NZ ETS participants to ensure they are aware that this information will be published.

41. The data will be obtained from emissions returns submitted by NZ ETS participants, including the individual participants that form a consolidated group, and published by the EPA, collaborating with the MPI regarding forestry data, as soon as practicable.
42. As the data to be published forms part of the normal operation of the NZ ETS, no additional reporting by participants will be required. The EPA will take data submitted by participants through emissions returns, process and publish it. Any emissions or removals data that is amended or updated from an emissions return will be re-published as soon as practicable.

Consultation

Public consultation

43. The 2018 *Improvements to the NZ ETS* consultation sought feedback on the benefits and impacts of publishing participants' individual emissions data. Submitters had mixed views.
44. The majority of submitters, including several electricity companies and NGOs favoured publishing emission returns (56 percent of 97 submitters), referring to the important benefits of increasing NZ ETS understanding, the ability to track participant behaviour, and allowing visibility of the emissions of businesses they support.
45. Submissions against the proposal, mainly participants, including some large industrial emitters (33 percent) largely referred to the issue of commercial sensitivity, such as the potential ability to infer production volumes and process efficiency. However, international businesses in countries that require the publication of similar information (in some cases at a more granular level), do not report significant negative impacts on their businesses.
46. Submitters also raised concerns about the functioning of the NZ ETS as an upstream scheme, resulting in the emissions reported not necessarily being an accurate reflection of the actual emissions of individual businesses. Some companies may therefore appear over-represented, which may create confusion within the public assessment if not properly understood. However, I believe that improvement to the availability, presentation and appropriate contextualisation of NZ ETS information can help to minimise this concern.

Agency Consultation

47. This paper was prepared by the Ministry for the Environment. The Treasury, the EPA, the Ministry of Foreign Affairs and Trade, MPI, the Department of Conservation, the Ministry of Transport, the Ministry of Business, Innovation and Employment and the Ministry of Justice were consulted in the preparation of this paper. Where feedback was received it is reflected in this paper. The Department of Prime Minister and Cabinet and Te Puni Kōkiri were informed.
48. MPI is of the view that its stakeholders who are involved in the NZ ETS generally would not want to have their information published at the individual level.
49. In addition, MPI has concerns that disclosure of individual forestry removals from emissions returns could discourage post-1989 forestry activity, resulting in lower voluntary participation by foresters.

Financial implications

50. I am not seeking any additional funding in this paper. Additional funding may be required to operationalise the proposals in this paper, which will be from 2020 onwards. Additional funding, if required, will be sought through further implementation decisions or through Budget.
51. s9(2)(f)(iv)

Legislative implications

52. The policy decisions from this paper will require legislative amendments to the CCRA. The amendments were given a category 2 priority on the 2019 Legislation Programme (meaning the bill must be passed by the end of 2019). The Parliamentary Counsel Office has already commenced drafting tranche one amendments.

Regulatory impact analysis

53. The Regulatory Impact Analysis requirements apply to the proposals in this paper. A Regulatory Impact Statements has been prepared and is attached to this paper.
54. A Quality Assurance Panel with representatives from the Ministry for the Environment and the Treasury Regulatory Quality Team has reviewed the “NZ ETS tranche two: improving transparency” RIA produced by the Ministry for the Environment and dated March 2019.
55. The Panel considers that the RIA **partially meets** the Quality Assurance criteria.
56. While the RIA describes the relative benefits and costs of each option well, it is hard to be confident about the size of those benefits and costs.
57. There is a clear rationale for more information being published, in particular for public companies and other large emitters. However, there may be some firms who face particular costs from disclosure (e.g. new firms opting to keep commercial information private during start-up years as they establish themselves). The RIA suggests information publication has not generated significant concern overseas, but there was limited feedback during consultation on this aspect of the ETS proposals. It will be important to explore this with submitters at Select Committee.
58. The RIA also notes that there is work underway responding to Productivity Commission recommendations in a related area. The Panel wonders whether there might be value in an enabling option – that is, information publication might be as detailed as in the RIA’s preferred option, but with the final decisions made in regulation after the Productivity Commission work is completed.

Human rights

59. The proposal in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Crown-Māori Partnership

60. Māori have a significant stake in climate change action, and a significant interest in the NZ ETS. Māori have a large economy and asset base sitting largely in the primary industries, as well as Treaty-based rights and interests in natural resource use and management. It will be critical when implementing the proposals to maintain Treaty of Waitangi principles as provided by section 3A of the CCRA.
61. A Māori Leaders' Forum was held in Wellington on 17 September 2018 as part of consultation on improvements to the NZ ETS. The Ministry for the Environment plans to further engage with iwi/Māori on a range of environmental issues through a series of hui in April. This will include discussions on the NZ ETS and seek views on how we can best support iwi/Māori ahead of consultation on regulations anticipated for the second half of this year.

International obligations

62. The proposed amendments are consistent with New Zealand's obligations under the Paris Agreement and other international commitments.

Gender implications

63. There are no gender implications arising from this paper.

Disability perspective

64. There are no disability implications arising from this paper.

Publicity

65. Announcements about the NZ ETS need to be managed carefully to avoid any inconsistencies and market risks, including sudden NZU price rises. In addition, information should not be disseminated in a way that advantages some markets participants over others and compromises NZ ETS investments.
66. I intend to make public announcements on the proposed amendments to the CCRA and the amendment bill as part of a wider climate change communications plan, in consultation with other Ministers.

Proactive Release

67. I propose to proactively release this paper on the Ministry for the Environment's website in whole, subject to redactions as appropriate equivalent to those under the Official Information Act 1982, once public announcements have been made.

Recommendations

The Minister for Climate Change recommends that the Committee:

1. **note** the New Zealand Emissions Trading Scheme (NZ ETS) is the Government's key tool to assist New Zealand to meet its climate change targets, and that:
 - 1.1. the Government is reforming the NZ ETS to ensure it can support the transition to a low-emissions and climate resilient New Zealand

- 1.2. this requires amendments to the Climate Change Response Act 2002 (CCRA)
2. **note** these amendments are being developed in tranches;
 - 2.1. in December 2018 Cabinet agreed to tranche one of amendments to the CCRA and drafting has commenced [CAB-18-MIN-0606.01]
 - 2.2. tranche two comprises of a series of papers with discrete proposals which will be considered by Cabinet over March to May 2019
 - 2.3. tranche one and two will result in a single bill amending the CCRA to be introduced to the House in mid-2019, and to enter into force in 2020
3. **note** this tranche two paper focuses on increasing transparency within the NZ ETS through the release of participant level emissions and removals data, from 2021 (for emissions data in 2020)
4. **note** that improving transparency within the NZ ETS will help to improve public trust in the scheme, increase market efficiency and better align the NZ ETS with international emissions trading schemes
5. **note** that the need for greater transparency of information has been a strong and consistent theme with stakeholders
6. **note** there are legitimate risks that publishing emissions data may allow inferences to be made about business information that may be commercially sensitive, and that select committee provides an opportunity to further consider stakeholder views
7. **note** that on balance the benefits of releasing emissions and removals data outweighs the risk outlined in recommendation 6
8. **note** that for NZ ETS forestry participants, data released will be the net emissions or removals in tonnes of carbon of dioxide equivalent (tCO₂-e) for each forestry activity undertaken at the participant level
9. **agree** to require the Environment Protection Authority (EPA) to publish all NZ ETS participant level emissions data in tCO₂-e at least annually and as soon as practicable, beginning with returns submitted to the Government in 2021
10. **agree** to require the EPA to publish all NZ ETS participant level removals data in tCO₂-e at least annually and as soon as practicable, beginning with returns submitted to the Government in 2021
11. **authorise** the Minister for Climate Change, in consultation with the Minister of Forestry as appropriate, to further clarify policy decisions relating to the amendments proposed in this paper, in a way not inconsistent with Cabinet's decisions

12. **invite** the Minister for Climate Change to issue drafting instructions to the Parliamentary Counsel Office based on the decisions in this paper

Authorised for lodgement.

Hon James Shaw

Minister for Climate Change