

## **Climate Change Response Amendment Act 2006 059**

The Parliament of New Zealand enacts as follows:

### **1 Title**

This Act is the Climate Change Response Amendment Act 2006.

### **2 Commencement**

(1) Section 6 comes into force on the date that section 7 of the principal Act comes into force.

(2) Sections 13, 16, 20, and 22 come into force on the date that section 10 of the principal Act comes into force.

(3) Each provision of sections 5, 7 to 12, 14, 15, 17 to 19, 21, 27, and 28 comes into force on the date that the provision of the principal Act that it amends comes into force.

(4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

### **3 Principal Act amended**

This Act amends the Climate Change Response Act 2002.

#### **Part 1**

##### **Amendments to principal Act**

#### **4 Purpose**

Section 3(1)(a) is amended by inserting "first" after "New Zealand in the".

#### **5 Interpretation**

(1) Section 4(1) is amended by---

(a) inserting in the definition of carry over "relevant" after "unit from the"; and

(b) omitting from the definition of clean development mechanism project "that results in certified emission reductions"; and

(c) omitting from the definition of holding account "on behalf of the Crown"; and

(d) omitting from the definition of independent transaction log ", transfer, and acquisition" and substituting "and transfer".

(2) Section 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

"designated operational entity means an operational entity designated under Article 12(5) of the Protocol

"executive board means the board established under Article 12(4) of the Protocol

"expire or expiry, in relation to a long-term certified emission reduction unit or a temporary certified emission reduction unit, means a unit that is no longer capable of being---

"(a) transferred to any account other than the general cancellation account; or

"(b) retired

"long-term certified emission reduction replacement account means an account in the Registry---

"(a) for the purpose of---

"(i) replacing long-term certified emission reduction units in that account or the retirement account, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

"(ii) replacing long-term certified emission reduction units, no more than 30 days before they are due to expire as a result of a reversal of sinks or non-receipt of a certification report, with---

"(A) assigned amount units, certified emission reduction units, emission reduction units, or removal units; or

"(B) long-term certified emission reduction units from the same clean development mechanism project; and

"(b) that is limited to the relevant commitment period

"long-term certified emission reduction unit means a unit derived from a clean development mechanism project, issued by the CDM registry, and designated as a long-term certified emission reduction unit (or ICER) by the CDM registry

"previous commitment period means a commitment period, including (but not limited to) the first commitment period, that---

"(a) is specified or determined under the Protocol; and

"(b) begins and ends before a subsequent commitment period

"relevant commitment period means a commitment period that is specified or determined under the Protocol, and---

"(a) in which a particular activity or transaction occurs; or

"(b) to which an account or unit is associated

"subsequent commitment period means a commitment period that---

"(a) is specified or determined under the Protocol; and

"(b) begins and ends after a previous commitment period

"temporary certified emission reduction replacement account means an account in the Registry---

"(a) for the purpose of replacing temporary certified emission reduction units, before they are due to expire, with assigned amount units, certified emission reduction units, emission reduction units, removal units, or temporary certified emission reduction units that are due to expire in a subsequent commitment period; and

"(b) that is limited to the relevant commitment period

"temporary certified emission reduction unit means a unit derived from a clean development mechanism project issued by the CDM registry, and designated as a temporary certified emission reduction unit (or tCER) by the CDM registry".

(3) Section 4(1) is amended by repealing the definition of commitment period and substituting the following definition in its appropriate alphabetical order:

"first commitment period means the commitment period from 1 January 2008 to 31 December 2012 (inclusive)".

(4) Section 4(1) is amended by repealing the definition of units and substituting the following definition:

"units means all of the unit types specified in, or in accordance with, the Protocol (namely, assigned amount units, certified emission reduction units, emission reduction units, long-term certified emission reduction units, removal units, and temporary certified emission reduction units)."

6 Minister of Finance may give directions to Registrar regarding accounts and units

(1) Section 7(a) is amended by adding the following subparagraphs:

"(v) a long-term certified emission reduction replacement account:

"(vi) a temporary certified emission reduction replacement account:".

(2) Section 7 is amended by repealing paragraph (b) and substituting the following paragraph:

"(b) issue assigned amount units in the Registry:".

(3) Section 7 is amended by repealing paragraph (d) and substituting the following paragraphs:

"(d) transfer units (other than long-term certified emission reduction units or temporary certified emission reduction units) from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the non-compliance cancellation account, the retirement account, the temporary certified emission reduction replacement account, or the sink cancellation account:

"(da) transfer long-term certified emission reduction units or temporary certified emission reduction units from holding accounts to the general cancellation account, the long-term certified emission reduction replacement account, the temporary certified emission reduction replacement account, or the retirement account:".

(4) Section 7 is amended by repealing paragraph (e) and substituting the following paragraph:

"(e) carry over assigned amount units, certified emission reduction units, and emission reduction units held in holding accounts:"

(5) Section 7 is amended by adding, as subsections (2) and (3), the following subsections:

"(2) Despite subsection (1), or any regulations made under this Act, the Minister of Finance may not give a direction to transfer units from an account held by an account holder other than the Crown to another account in the Registry, unless---

"(a) the Minister of Finance has the written consent of the account holder; or

"(b) where written consent is not given,---

"(i) the Minister of Finance gives the account holder reasonable notice; and

"(ii) the transfer is required to comply with New Zealand's obligations under the Protocol.

"(3) For the purposes of subsection (2)(b)(i), reasonable notice means sufficient opportunity in the circumstances for the relevant account holder to make a written submission to the Minister of Finance on the transfer of the units before the units are transferred."

7 New section 8A inserted

The following section is inserted after section 8:

"8A Minister of Finance must publish directions  
As soon as practicable after giving a direction under section 6 or 7, the Minister of Finance must publish a copy of the direction on the Registry's Internet site."

8 Minister of Finance may obtain information from inventory agency and Registrar

(1) Section 9 is amended by inserting "and discharging New Zealand's obligations under section 32(1)(b)" after "holding of units".

(2) Section 9(b)(ii) is amended by---

(a) omitting "acquired" and substituting "issued or acquired"; and

(b) inserting "replaced," after "retired,".

## 9 Purpose of Registry

- (1) Section 10(a) is amended by inserting "first" after "for the".
- (2) Section 10(a)(i) is amended by omitting "acquisition,".
- (3) Section 10(a) is amended by adding the following subparagraph after subparagraph (ii):

"(iii) the replacement of expired long-term certified emission reduction units and expired temporary certified emission reduction units; and".

## 10 New section 13 substituted

Section 13 is repealed and the following section substituted:

"13 Registrar may refuse access to, or suspend operation of, Registry  
The Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part),---

- "(a) for maintenance; or
- "(b) in response to technical difficulties; or
- "(c) to ensure the security or integrity of the Registry; or
- "(d) to give effect to New Zealand's international obligations."

## 11 Registrar must give effect to directions

Section 14(2) is amended by omitting "in the Gazette" and substituting "on the Registry's Internet site".

## 12 New section 16 substituted

Section 16 is repealed and the following section substituted:

"16 Carry-over of units

"(1) An account holder may, subject to regulations made under this Act, apply to the Registrar to carry over assigned amount units, certified emission reduction units, or emission reduction units held in that account holder's holding account.

"(2) Long-term certified emission reduction units, removal units, and temporary certified emission reduction units may not be carried over."

## 13 Form and content of unit register

- (1) Section 18(1)(b) is amended by omitting "Internet" and substituting "Registry's Internet site".
- (2) Section 18(2)(b)(i) is amended by omitting "acquisition" and substituting "issue".
- (3) Section 18(2)(b) is amended by inserting the following subparagraph after subparagraph (ii):"

(iii) the replacement of long-term certified emission reduction units and temporary certified emission reduction units; and".

(4) Section 18 is amended by adding the following subsection:"

(3) A unit recorded in the unit register is---

(a) indivisible; and

(b) transferable, subject to any regulations made under this Act,---

(i) within the unit register; or

(ii) between the unit register and overseas registries."

14 New sections 18A to 18E inserted

The following sections are inserted after section 18:

"18A Opening holding accounts

"(1) Any person may submit an application to the Registrar to open 1 or more holding accounts in the unit register by using the form and paying the fees (if any) prescribed in regulations made under this Act.

"(2) The Registrar may approve the opening of a holding account subject to any regulations made under this Act.

"(3) If the Registrar approves an application to open a holding account, the Registrar must, as soon as practicable,---

"(a) open a holding account in the applicant's name; and

"(b) provide the applicant with a representative identifier.

"(4) If the application is incomplete, the Registrar must, as soon as practicable, ask the applicant to provide the information or fee (if any) that is required to make the application complete.

"(5) The Registrar may refuse to provide a holding account to any applicant who provides an incomplete application.

"(6) A holding account is subject to any regulations made under this Act.

"18B Closing holding accounts

"(1) An account holder may submit a request to the Registrar to close 1 or more of that account holder's holding accounts in the unit register by using the form and paying the fee (if any) prescribed in regulations made under this Act.

"(2) The Minister responsible for the Registry may give a direction to the Registrar to close an account holder's holding account---

"(a) if the Minister responsible for the Registry has the written consent

of the account holder; or

"(b) where written consent is not given,---

"(i) if the Minister responsible for the Registry has given the account holder reasonable notice; and

"(ii) if---

"(A) the closure is required to comply with New Zealand's obligations under the Protocol; or

"(B) the account holder has failed to comply with this Act or any regulations made under this Act; or

"(C) the Minister responsible for the Registry is satisfied that the account holder no longer requires the account.

"(3) If there are any units remaining in a holding account when it is closed,---

"(a) the units are forfeited to the Crown; and

"(b) the Registrar must, as soon as practicable, transfer the units to a Crown holding account.

"(4) If a request is incomplete, the Registrar must, as soon as practicable, ask the account holder to provide the information or fee (if any) that is required to make the request complete.

"(5) The Registrar may not close a holding account if the account holder provides an incomplete request.

"(6) For the purposes of subsection (2)(b)(i), reasonable notice means sufficient opportunity in the circumstances to transfer the units to another account before the holding account that is the subject of the closure direction is closed.

#### "18C Transfer of units

"(1) An account holder may, by using the form and paying the fees (if any) prescribed in regulations made under this Act, apply to the Registrar to transfer units from that account holder's holding account to another account in---

"(a) the unit register; or

"(b) an overseas registry.

"(2) The Registrar must transfer the specified units as requested, subject to any regulations made under this Act.

"(3) Despite subsection (2), if the Registrar is asked to transfer units held in an account holder's holding account to the general cancellation account, the Registrar must---

"(a) seek a direction from the Minister of Finance as to whether the units may be transferred to the general cancellation account; and

"(b) transfer the units to the general cancellation account if the Minister of Finance so directs.

"(4) An account holder who receives units is under no obligation to initiate any registration process.

#### "18D Succession

"(1) This section applies if an account holder---

"(a) is a natural person and dies; or

"(b) is not a natural person and is wound up, liquidated, dissolved, or otherwise ceases to exist.

"(2) If this section applies, the person listed on the holding account as the account holder's representative may operate the holding account until---

"(a) a successor is determined; and

"(b) the Registrar is informed of that determination in writing.

"(3) If a successor is determined, and the Registrar is informed of that determination in writing, the Registrar must register the successor as the account holder.

#### "18E Trusts, representatives, and assignees of bankrupts

"(1) Notice of a trust, whether expressed, implied, or constructive, may not be entered on the unit register.

"(2) Despite anything in section 18D, the existence of a representative that may operate the holding account of an account holder who has died, or that has been wound up, liquidated, or dissolved, or otherwise has ceased to exist, does not constitute notice of a trust.

"(3) The assignee of the property of a bankrupt may be entered on the unit register as the assignee of the bankrupt's units."

#### 15 Transactions must be registered

(1) Section 20(1) is amended by omitting "transfer, cancel, or retire" and substituting "issue, transfer, cancel, retire, or replace".

(2) Section 20 is amended by repealing subsection (2) and substituting the following subsection:

"(2) However, the Registrar may not register a transaction on the unit register if---

"(a) the Registrar receives a notification from the independent

transaction log that there is a discrepancy with the transaction; or

"(b) the transaction is not submitted in the prescribed form; or

"(c) the prescribed fees (if any) have not been paid to the Registrar (unless arrangements for payment have been made in accordance with regulations made under this Act)."

#### 16 Registration procedure

(1) Section 21 is amended by repealing subsections (1) and (2) and substituting the following subsections:

"(1) On receipt of a direction given by the Minister of Finance, or an application for the registration of a transaction by an account holder that is completed to the satisfaction of the Registrar and in accordance with any regulations made under this Act, the Registrar must---

"(a) create an unique transaction number; and

"(b) send a record of the proposed transaction to the independent transaction log if required by the independent transaction log.

"(2) On receipt of notification from the independent transaction log that there are no discrepancies in the proposed transaction, the Registrar must, as soon as practicable,---

"(a) record in the unit register the particulars set out in the direction or the application and the particulars of the transaction; and

"(b) send notification that the transaction has been recorded in the unit register to the independent transaction log; and

"(c) send electronic verification to the Minister of Finance or the account holder who has applied to register the transaction."

(2) Section 21(3)(c)(ii) is repealed.

(3) Section 21(3)(c) is amended by repealing subparagraph (iii) and substituting the following subparagraph:

"(iii) the Minister of Finance or the account holder who has applied to enter the transaction on the unit register."

#### 17 New sections 21A and 21B inserted

The following sections are inserted after section 21:

##### "21A Electronic registration

A direction by the Minister of Finance or an application by an account holder to register a transaction must be---

"(a) made electronically in the prescribed form via the Registry's Internet site, and contain the particulars specified in the form; and

"(b) accompanied by the fee (if any) prescribed in regulations made under

this Act; and

"(c) made in accordance with regulations made under this Act.

"21B Defective applications

"(1) If an application is defective, the Registrar may---

"(a) correct the defect; or

"(b) direct, in writing by electronic notification, the applicant to correct the defect within a specified period of time.

"(2) If a direction to correct a defect is not complied with within the specified period of time, the Registrar may refuse to---

"(a) proceed with the registration; or

"(b) register the transaction.

"(3) Any fees paid to the Registrar in relation to an uncorrected defective application are forfeited."

18 Receiving units from overseas registries

(1) Section 23(1)(b) is repealed.

(2) Section 23(2)(c) is amended by omitting "and the overseas registry".

(3) Section 23 is amended by adding the following subsection:

"(3) A transfer of units from an overseas registry is subject to any regulations made under this Act."

19 Priority of registration

(1) Section 24(1) is amended by omitting "Applications" and substituting "A direction or an application".

(2) Section 24(2) is amended by omitting "An" and substituting "A direction or an".

20 New section 25 substituted

Section 25 is repealed and the following section substituted:

"25 Correction of unit register

"(1) An account holder who has registered a transaction or the Minister of Finance may submit a request to the Registrar to correct any inaccuracy recorded in the unit register in relation to that transaction.

"(2) The request---

"(a) may be made at any time; and

"(b) must specify---

"(i) the inaccuracy; and

"(ii) the correction required; and

"(c) must be in the form, and accompanied by the fees (if any), prescribed in regulations made under this Act.

"(3) If the Registrar is satisfied that the unit register is inaccurate in any respect, the Registrar must---

"(a) correct the unit register accordingly; and

"(b) record on the unit register---

"(i) the nature of the correction; and

"(ii) the time that the correction was made; and

"(c) give notification of the correction, as soon as practicable, to---

"(i) any person whom the Registrar considers to be affected by the correction; and

"(ii) the independent transaction log; and

"(iii) any other persons, by posting it on the Registry's Internet site."

21 Unit register must be open for search

Section 26 is amended by omitting "Internet" and substituting "Registry's Internet site".

22 Information accessible by search

(1) Section 27 is amended by omitting "Internet" and substituting "Registry's Internet site".

(2) Section 27(a) is amended by repealing subparagraph (iii) and substituting the following subparagraph:

"(iii) the relevant commitment period of any---

"(A) general cancellation account or retirement account; and

"(B) long-term certified emission reduction replacement account or temporary certified emission reduction replacement account."

(3) Section 27(b) is amended by omitting ", by serial number,".

(4) Section 27(b)(iv) is amended by omitting "acquired" and substituting "transferred".

(5) Section 27(b) is amended by inserting the following subparagraphs after

subparagraph (xi):

"(xia) the total quantity of long-term certified emission reduction units in each account; and

"(xib) the total quantity of temporary certified emission reduction units in each account; and

"(xic) the expiry date of each long-term certified emission reduction unit and each temporary certified emission reduction unit; and".

(6) Section 27(b)(xii) is repealed.

23 New sections 28 and 29 substituted

Sections 28 and 29 are repealed and the following sections are substituted:

"28 Search of unit register

A person may, by using the form and paying the fees (if any) prescribed by regulations made under this Act, search the unit register, and obtain a printed search result, in accordance with this Act and any regulations made under this Act.

"29 Printed search result receivable as evidence

A printed search result, or a copy of a printed search result, that purports to be issued by the Registrar is receivable as evidence and is, in the absence of evidence to the contrary, proof of any matter recorded in the unit register, including (but not limited to)---

"(a) the ownership of units; and

"(b) the date and time of the registration of a transaction; and

"(c) information that the Registry holds."

24 New sections 30A to 30D and heading inserted

The following sections are inserted after section 30:

"30A Crown or Registrar not liable in relation to searches in certain cases  
No action may be brought against the Crown or the Registrar for any loss or damage resulting from---

"(a) an inaccuracy in a search of the unit register; or

"(b) an inaccurate entry or omission in the unit register if the inaccuracy or omission arises from reasonable reliance on information received by the Registrar from---

"(i) the independent transaction log; or

"(ii) an account holder.

"Expiry of long-term certified emission reduction units and temporary certified emission reduction units

"30B Expiry of long-term certified emission reduction units

"(1) A long-term certified emission reduction unit expires at the end of the last crediting period for the clean development mechanism project to which it relates.

"(2) A person who holds a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account must replace that unit before it expires by transferring 1 of the following units to the long-term certified emission reduction replacement account:

- "(a) an assigned amount unit; or
- "(b) a certified emission reduction unit; or
- "(c) an emission reduction unit; or
- "(d) a removal unit.

"(3) Thirty days before a long-term certified emission reduction unit in a retirement account or a long-term certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

"(4) If a long-term certified emission reduction unit is not held in a retirement account or a long-term certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

"(5) If subsection (4) applies, then section 18C(3) does not apply.

#### "30C Replacement of certain long-term certified emission reduction units

"(1) A person who holds a long-term certified emission reduction unit must replace that unit in accordance with this section if the designated operating entity of the relevant clean development mechanism project---

"(a) provides a certification report that indicates a reversal of net anthropogenic greenhouse gas removals by sinks since the previous certification; or

"(b) does not provide a certification report.

"(2) If subsection (1) applies,---

"(a) each identified long-term certified emission reduction unit, as notified by the executive board, must be replaced by 1 of the following units:

- "(i) assigned amount units; or
- "(ii) certified emission reduction units; or
- "(iii) emission reduction units; or
- "(iv) removal units; or

"(v) long-term certified emission reduction units from the same clean development mechanism project; and

"(b) the Registrar must notify in writing the person who holds the affected long-term certified emission reduction unit.

"(3) A person notified under subsection (2)(b) must replace the affected long-term certified emission reduction unit within 30 days of receiving the notice.

"(4) Section 152 of the Property Law Act 1952 applies, with all necessary modifications, to any notice required under subsection (2)(b).

"30D Expiry of temporary certified emission reduction units

"(1) A temporary certified emission reduction unit expires at the end of the subsequent commitment period that immediately follows the relevant commitment period.

"(2) A person who holds a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account must replace that unit before it expires by transferring 1 of the following units to the temporary certified emission reduction replacement account:

"(a) an assigned amount unit; or

"(b) a certified emission reduction unit; or

"(c) an emission reduction unit; or

"(d) a removal unit; or

"(e) a temporary certified emission reduction unit that is due to expire in a subsequent commitment period.

"(3) Thirty days before a temporary certified emission reduction unit in a retirement account or a temporary certified emission reduction replacement account expires, the Registrar must notify in writing the person who holds that unit that it is due to expire and must be replaced.

"(4) If a temporary certified emission reduction unit is not held in a retirement account or a temporary certified emission reduction replacement account, the Registrar must transfer that unit to the general cancellation account when that unit expires.

"(5) If subsection (4) applies, then section 18C(3) does not apply."

25 Primary functions of inventory agency

Section 32(1)(b)(i) is amended by adding ", including (but not limited to) the quantities of long-term certified emission reduction units and temporary certified emission reduction units that have expired or have been replaced, retired, or cancelled".

26 Inventory agency under direction of Minister responsible for inventory agency

Section 33(2) is amended by omitting "publish a copy of the direction in the Gazette" and substituting "make a copy of the direction accessible via the inventory agency's Internet site".

27 New section 35 substituted

Section 35 is repealed and the following section substituted:

"35 Publication

The inventory agency must publish New Zealand's annual inventory report and its national communication (or periodic report) in electronic form by placing the report on a publicly accessible portion of the inventory agency's Internet site."

28 New section 48A inserted

The following section is inserted after section 48:

"48A Providing false or misleading information to Registrar

"(1) Every person who knowingly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding,---

"(a) in the case of an individual, \$50,000:

"(b) in the case of a body corporate, \$200,000.

"(2) Every person who recklessly provides false or misleading information to the Registrar commits an offence, and is liable on conviction to a fine not exceeding \$2,000."

29 Regulations

(1) Section 50(1) is amended by repealing paragraph (c) and substituting the following paragraphs:

"(c) prescribing matters, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, or prohibitions, in respect of---

"(i) the transfer of units, including (but not limited to)---

"(A) the transfer of units from an account holder's holding account to another account in an overseas registry:

"(B) the transfer of units within the unit register:

"(C) the transfer of units from an overseas registry:

"(D) prohibitions on the transfer of units for the purposes of holding those units in an account in the Registry:

"(ii) the opening or closing of holding accounts:

"(ca) prescribing matters in respect of the holding, cancellation, and carry-over of units, including (but not limited to) limitations, restrictions, conditions, exemptions, requirements, procedures, or thresholds:".

(2) Section 50(1)(d) is amended by adding the following subparagraph:

"(vii) the form and content of the unit register:".

(3) Section 50(1)(e) is amended by omitting "section 28(1)" and substituting "this Act".

### 30 Incorporation by reference

Section 51(3) is amended by omitting "at the Registry's head office and via the Internet" and substituting "via the Registry's Internet site".

## Part 2

### Amendments to other Acts

#### 31 Amendments to Forests Act 1949

(1) Section 2(1) of the Forests Act 1949 is amended by repealing the definition of landholding and substituting the following definition:

"landholding ,---

"(a) in the case of land subject to a forest sink covenant as defined in section 67X, means a registered---

"(i) freehold estate in that land; or

"(ii) leasehold estate in that land; or

"(iii) interest in that land that entitles a person to receive units or the value of units based on carbon sequestration by that forest sink; but does not include a registered interest by way of charge or security:

"(b) in any other case, 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 does not include an interest by way of charge or security".

(2) Section 67C(1)(g) of the Forests Act 1949 is amended by adding "; or" and also by adding the following subparagraph:

"(iii) harvested from a forest subject to a forest sink covenant established in accordance with Part 3B."

(3) Section 67D(1)(b)(i) of the Forests Act 1949 is amended by adding the following subsubparagraph:

"(D) a forest subject to a forest sink covenant established in accordance with Part 3B; or".

(4) The Forests Act 1949 is amended by inserting the following Part after Part 3A:

"Part 3B

"Mechanism allowing landowners to access value created by Kyoto Protocol of carbon sequestration on land through establishment of forest sink covenants

"67W Purpose of Part

The purpose of this Part is to provide a mechanism to allow landowners to access the value of carbon sequestration on land through the establishment of forest sink covenants.

"67X Interpretation of Part

In this Part, unless the context otherwise requires,---

"carbon sequestration means the removal of greenhouse gases from the atmosphere by a forest sink

"forest sink means a forest prescribed in regulations made under section 67Y

"forest sink covenant means any covenant established under regulations made under section 67Y, or any variation of that covenant, for the purpose of establishing and maintaining a forest sink; including, but not limited to, controlling the harvesting of timber from the forest sink

"greenhouse gas has the same meaning as in section 4(1) of the Climate Change Response Act 2002

"landowner means the owner of a freehold estate

"Protocol has the same meaning as in section 4(1) of the Climate Change Response Act 2002

"units has the same meaning as in section 4(1) of the Climate Change Response Act 2002.

"Subpart 1---Forest sink covenants

"67Y Regulation-making powers for forest sink covenants

"(1) The Governor-General may make regulations to---

"(a) establish a framework to facilitate the establishment and ongoing administration of forest sink covenants that allow landowners to access the value of carbon sequestration on land, including (but not limited to) Crown land:

"(b) prescribe and update methodologies or mechanisms for measuring carbon sequestration or emissions of greenhouse gases from a forest sink:

"(c) prescribe the manner, quantity, type, and timing of units that may be transferred to or by a landowner:

"(d) prescribe requirements that a forest must meet to be a forest sink:

"(e) establish a dispute resolution process for disputes arising in relation to a forest sink or a forest sink covenant:

"(f) prescribe reporting and verification requirements in relation to a forest sink or forest sink covenant:

"(g) prescribe harvesting restrictions in relation to a forest sink:

"(h) establish penalties for breaches of a forest sink covenant:

"(i) prescribe any forms required to facilitate the framework specified in paragraph (a):

"(j) prescribe procedures and requirements relating to the selection, appointment, and performance of persons who carry out functions in relation to a forest sink covenant:

"(k) prescribe records, returns, or information in relation to a forest sink covenant that a person or class of persons must keep or provide to the Minister:

"(l) prescribe requirements, including (but not limited to) ongoing obligations, or criteria for a landowner to provide a guarantor or insurer, or any other risk management arrangement that the Minister considers appropriate, to meet any obligations of the landowner under the Act or the forest sink covenant in the event of the landowner's default.

"(2) Without limiting subsection (1)(a), the framework may permit the Minister, on behalf of the Crown, to negotiate, and enter into, a forest sink covenant.

"(3) Despite subsection (1)(h), a penalty---

"(a) may only be imposed in respect of the proportion of forest on land subject to a forest sink covenant that is harvested in breach of the covenant; and

"(b) may not exceed the sum of---

"(i) all units received in respect of that proportion of the forest (or their monetary equivalent); and

"(ii) any additional units calculated on the basis of an annual compounding rate of 10% applied to each year's carbon sequestration from that proportion of the forest for the period beginning on the date that the covenant came into force and ending on the date that the breach occurred (or their monetary equivalent).

"(4) However, nothing in this Part requires the Minister to negotiate, enter into, or enforce any provisions of, any forest sink covenant.

"67Z Content of forest sink covenants  
Without limiting the content of forest sink covenants, a forest sink covenant may---

"(a) specify any or all of the following:

"(i) the obligations of any landowner for monitoring and

administrative costs:

"(ii) the rights of any landowner with respect to receiving units based on carbon sequestration:

"(iii) any exceptions to the covenant to control the harvesting of timber, including (but not limited to) the use of plants for traditional Maori purposes:

"(iv) access to the land by the Secretary, or any of its contractors or agents, to---

"(A) verify carbon inventories; and

"(B) monitor compliance with the forest sink covenant:

"(v) the obligations of any landowner to meet any liabilities to the Crown arising if there is a loss of carbon from the landowner's forest sink:

"(vi) a requirement, including (but not limited to) an ongoing obligation, for the landowner to provide a guarantor or insurer, or any other risk management arrangement that the Minister considers appropriate, to meet any obligations of the landowner under the Act or the forest sink covenant in the event of the landowner's default:

"(vii) a requirement to control the harvesting of timber:

"(viii) a requirement to include a forest sink management plan:

"(b) be expressed to---

"(i) have effect in perpetuity; and

"(ii) terminate if certain circumstances arise or certain conditions are met; and

"(iii) provide obligations if certain circumstances arise or certain conditions are met; and

"(iv) come into effect when registered; and

"(v) expire unless registered within 180 days of being agreed:

"(c) be varied or cancelled by agreement between the landowner and the Minister if that agreement is registered under section 67ZD.

"67ZA Landowner must obtain written consent of interested persons to enter into, vary, or cancel forest sink covenants

A landowner intending to enter into, vary, or cancel a forest sink covenant must obtain the written consent of each person with a registered interest in the affected land to enter into, vary, or cancel that forest sink covenant.

"67ZB Nothing in Part makes Crown liable

"(1) Provided the Crown has acted in good faith and with reasonable care, nothing in this Part makes the Crown liable to any person for compensation or damages in respect of any matter arising from a forest sink covenant.

"(2) However, the Crown and the other party (or parties) to a forest sink covenant may agree to a different liability regime in that forest sink covenant.

"67ZC Section 126G of Property Law Act 1952 does not apply to forest sink covenants

Nothing in section 126G of the Property Law Act 1952 applies to any forest sink covenant entered into in accordance with this Act.

"67ZD Registrar-General of Land to register forest sink covenants

"(1) A landowner who has entered into a forest sink covenant must, within 180 days of that covenant being agreed, submit that covenant to the Registrar-General of Land for registration under the Land Transfer Act 1952.

"(2) If a forest sink covenant relates to land for which no computer freehold register has been created, the Registrar-General of Land must create a computer interest register for the covenant if--

"(a) there is endorsed on the register a certificate by a licensed cadastral surveyor to the effect that the land to which the covenant relates is within the boundaries of an identified parcel of land; and

"(b) the Registrar-General of Land is satisfied that the certificate is correct.

"(3) If a forest sink covenant relates to Maori land (within the meaning of section 4 of Te Ture Whenua Maori Act 1993) for which no computer freehold register or provisional register has been created, the Registrar of the Maori Land Court must enter on the memorial schedule of the Title Binder relating to the Maori land a notification of the forest sink covenant.

"(4) If, in respect of a forest sink covenant, the Registrar-General of Land receives a submission under subsection (1) or a notice from the Minister under section 67ZG, the Registrar-General of Land must enter in the computer register for the district in which the affected land is located notification of--

"(a) that forest sink covenant; or

"(b) the variation, cancellation, or termination of that forest sink covenant.

"(5) For the purposes of the Land Transfer Act 1952, a forest sink covenant, or an agreement to vary a forest sink covenant, is an instrument that--

"(a) may be registered; and

"(b) if registered, creates an interest in land that runs with that land.

"(6) If a forest sink covenant is registered under the Land Transfer Act

1952, and any provision of that covenant has terminated, or has been varied or cancelled by an agreement,---

"(a) the Registrar-General of Land must, if satisfied that the provision has terminated, or has been varied or cancelled, make an entry in the computer register noting that the provision has terminated, or has been varied or cancelled; and

"(b) the forest sink covenant takes effect as varied or ceases to have effect (as the case may be).

"(7) The landowner must provide the Registrar-General of Land with---

"(a) a diagram or an aerial photo that shows the boundaries of the land to which the forest sink covenant applies; and

"(b) if required by the Registrar-General of Land, a deposit plan.

"(8) A landowner subject to a registered forest sink covenant may, at any time, deposit a plan in accordance with section 167(5) of the Land Transfer Act 1952 and any relevant regulations that,---

"(a) with the agreement of the Minister, redefines the boundaries of the land subject to the covenant; and

"(b) supercedes any previously submitted diagram or aerial photograph, or any part of any previously submitted diagram or aerial photograph.

"(9) If a plan is deposited under section 167 of the Land Transfer Act 1952 with respect to a forest sink covenant, the Registrar-General of Land must, if necessary, endorse, on any relevant computer register, a memorial that indicates that the boundaries of the land subject to the covenant, as defined, have been surveyed.

"(10) A forest sink covenant may not be treated as a subdivision of land for the purposes of the Resource Management Act 1991.

"67ZE The Crown may register charges with respect to land subject to forest sink covenants in certain circumstances

"(1) The Minister may register a charge under the Statutory Land Charges Registration Act 1928 against land subject to a forest sink covenant if---

"(a) liabilities are owed to the Crown by an owner of a landholding arising from the emission of greenhouse gases in relation to the forest sink on that land:

"(b) penalties are imposed for breaches by an owner of a landholding of the harvesting restrictions in relation to the forest sink on that land:

"(c) costs are incurred by the Crown in---

"(i) remedying a breach of the covenant; or

"(ii) enforcing its right to payment in relation to the covenant:

"(d) the covenant is breached.

"(2) If the owner of a landholding fails or refuses, within the time provided for payment in the forest sink covenant or otherwise, to make any payment for which a charge may be registered under subsection (1), the failed or refused payment is an unpaid statutory debt owed to the Crown, and the amount by which it, or any unpaid part of it, is deemed to have been increased is the sum of---

"(a) 10% of the debt (or that part of the debt that remained unpaid after the expiry of the time provided for the debt's payment); and

"(b) for every complete period of 12 months after that expiry during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10% of the debt or that part of the debt.

"(3) If the owner of a landholding pays the statutory debt (including any deemed increase) or the Crown releases the owner of the landholding from the obligation to pay the debt, the Minister must release the relevant charge on the land (if any).

"(4) For the purposes of this section, a charge that is registered by the Minister under the Statutory Land Charges Registration Act 1928 against land subject to a forest sink covenant---

"(a) has priority over any subsequently registered mortgages, charges, and encumbrances with respect to that land; but

"(b) does not have priority over any prior registered mortgages, charges, and encumbrances with respect to that land.

"67ZF Liability to the Crown of persons who have or had landholding subject to registered forest sink covenants

"(1) If a person has a landholding in land that is subject to a registered forest sink covenant,---

"(a) the person is, unless a contrary intention appears in the covenant, personally liable to the Crown for the observance of all the obligations in the covenant:

"(b) the Crown may, in the event of a breach of an obligation in the covenant, seek any appropriate remedy directly against the person as if the person were a party to the covenant.

"(2) If a person acquires a landholding in land that is subject to a registered forest sink covenant,---

"(a) the person is, unless a contrary intention appears in the covenant, personally liable to the Crown for---

"(i) the observance of all the obligations in the covenant:

"(ii) any liabilities arising from the emission of greenhouse gases

from that forest sink that are owed to the Crown by any person who was an owner of a landholding in that land before the acquisition:

"(iii) any penalties imposed for breaches of the harvesting restrictions in relation to the forest sink on that land by any person who was an owner of a landholding in that land before the acquisition:

"(iv) any costs incurred by the Crown in---

"(A) remedying a breach of the covenant by any person who was an owner of a landholding in that land before the acquisition; or

"(B) enforcing its right to payment in respect of any person who was an owner before the acquisition:

"(b) the Crown may, in relation to any matter specified in paragraph (a), seek any appropriate remedy directly against the person.

"(3) If a person ceases to have a landholding subject to a registered forest sink covenant, the person is no longer personally liable to the Crown for a breach of, or liabilities that arise under, the covenant unless the breach occurred or the liabilities arose while the person had the landholding.

"(4) If 2 or more persons have a landholding subject to a registered forest sink covenant, the covenant is deemed to bind each person jointly and severally.

"67ZG Minister must give notice to Registrar-General of Land if forest sink covenants are varied, cancelled, or terminated  
If a forest sink covenant is varied, cancelled, or terminated, the Minister must give notice of the variation, cancellation, or termination in the prescribed form to the Registrar-General of Land.

#### "Subpart 2---Cost recovery

##### "67ZH Principles of cost recovery

"(1) The Minister must take all reasonable steps to ensure that the direct and indirect costs of administering this Part that are not provided for by money appropriated by Parliament for the purpose are recovered under this subpart, whether by way of fees, levies, or otherwise.

"(2) In determining the most appropriate method of cost recovery under section 67ZI, the Minister must have regard, as far as is reasonably practicable, to the following criteria:

"(a) equity, in that funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant function, power, or service at a level commensurate with their use or benefit from the function, power, or service:

"(b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost:

"(c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) for the provision or exercise of the relevant function, power, or service:

"(d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided.

"(3) Costs should not be recovered under this subpart unless there has been appropriate consultation with affected persons or representatives of persons substantially affected.

"(4) Nothing in subsection (3) requires consultation in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the purview of any general consultation; and a failure to comply with subsection (3) does not affect the validity of any regulations made for the purposes of this subpart.

"(5) Nothing in this section requires a strict apportionment of the costs to be recovered for a particular function or service based on usage; and, without limiting the way in which fees or charges may be set, a fee or charge may be set at a level or in a way that---

"(a) is determined by calculations that involve an averaging of costs or potential costs:

"(b) takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee or charge but which are an indirect or potential cost arising from the delivery of the service in question to a class of persons or all persons who use the service.

Compare: 2003 No 114 s 84

"67ZI Methods of cost recovery

The methods by which costs may be recovered under this subpart are as follows:

"(a) fixed fees or charges:

"(b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:

"(c) use of a formula or other method of calculation for fixing fees and charges:

"(d) the recovery by way of fee or charge of actual and reasonable costs expended in, or associated with, the performance of a service or function:

"(e) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function:

"(f) levies:

"(g) any combination of the above.

Compare: 2003 No 114 s 85

"67ZJ Cost recovery to relate generally to financial year

"(1) Except as provided in subsection (2), any regulations under this subpart that set a fee, charge, or levy that applies in any financial year---

"(a) must have been made before the start of that financial year; but

"(b) except as the regulations may otherwise provide, apply in that year and all subsequent years until revoked or replaced.

"(2) Subsection (1) does not prevent the alteration or setting during any financial year of a fee, charge, or levy payable in that year if either---

"(a) the fee, charge, or levy is reduced, removed, or restated without substantive alteration; or

"(b) in the case of an increase or a new fee, charge, or levy,---

"(i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the alteration or setting; and

"(ii) the Minister is satisfied that those persons, or their representatives, agree or do not substantially disagree with the alteration or setting.

"(3) Subsection (1) does not prevent the amendment of any regulation setting a fee, charge, or levy if any substantive alteration effected by the amendment is for the purpose of correcting an error.

"(4) Recovery may be made in any financial year of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).  
Compare: 2003 No 114 s 86

"67ZK Minister may review levels and methods of cost recovery

"(1) The Minister may, as and when appropriate, review the levels and methods of cost recovery in relation to forest sink covenants.

"(2) A review may make provision for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years, or make allowance for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year).

"(3) To avoid doubt, all areas of cost recovery need not be reviewed at the same time, nor is there any time limit on the making of regulations to implement the results of a review.  
Compare: 2003 No 114 s 87

"67ZL Fees and charges to be prescribed by regulations

"(1) The Governor-General may, by Order in Council and on the recommendation of the Minister, make regulations prescribing fees and charges for the purposes of this Part.

"(2) The fees and charges may be prescribed using any 1 or more of the methods specified in section 67ZI, or any combination of those methods.

"(3) Different fees and charges, or different rates or types of fee or charge, may be prescribed in respect of different forest sink covenants.

"(4) Without limiting subsection (3), the fees and charges prescribed may---

"(a) differ depending on whether a special or urgent service is provided:

"(b) include more than 1 level of fee or charge for the same service provided in different ways, or provided in, or in respect of, different places:

"(c) differ for otherwise similar services provided in different ways:

"(d) differ depending on the amount of service required or the components of the service required for the particular person.

"(5) If regulations prescribe a formula for determining a fee or charge, the formula may specify the value attributed to any component of that formula.

"(6) The Minister may not recommend the making of regulations under this section unless satisfied that, to the extent appropriate in the circumstances, the requirements of sections 67ZH and 67ZJ have been met.  
Compare: 2003 No 114 s 88

#### "67ZM Levies

"(1) The Governor-General may, by Order in Council and on the recommendation of the Minister, impose a levy payable to the Secretary for the purposes of wholly or partially funding a service provided or function performed by the Ministry or the Secretary for the purposes of this Act.

"(2) Every levy order is a regulation for the purposes of the Regulations (Disallowance) Act 1989.  
Compare: 1993 No 95 s 137

#### "67ZN Contents of levy order

"(1) Every levy order under section 67ZM must specify---

"(a) the persons primarily responsible for paying the levy; and

"(b) the basis on which the amount of levy is to be calculated or ascertained; and

"(c) the persons (if any) to be exempt from paying the levy; and

"(d) the persons responsible for collecting the levy from those primarily responsible for paying it; and

"(e) the maximum rate of levy; and

"(f) how the actual rate of the levy is to be set; and

"(g) how the rates of the levy and variation of rates are to be notified;  
and

"(h) whether or not the persons collecting the levy are entitled to recover the cost of levy collection and the estimated amount.

"(2) The levy order may prescribe any of the following matters:

"(a) the making of returns to the Minister for the purpose of enabling or assisting the determination of amounts of levy payable:

"(b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any levy:

"(c) the payment of additional or increased levy when amounts of levy otherwise payable have been paid late, paid in part, or not paid at all:

"(d) the holding of funds from which payments of levy are to be made, on trust in separate accounts.

Compare: 1993 No 95 s 140

"67ZO Trust accounts required to be kept by persons collecting levies

"(1) If a levy order made under section 67ZM requires the operation of a trust account for any levy money by the person responsible for collecting the levy,---

"(a) any amount held in such an account that is due to be paid to the Secretary by the levy collector is to be treated as levy money held on trust for the Secretary; and

"(b) any amount so held on trust is not available for the payment of a creditor (other than the Secretary) of the levy collector, and is not liable to be attached or taken in execution at the instance of that creditor; and

"(c) a person who ceases to be a person responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the Secretary in respect of the period during which the person was responsible for collecting the levy has been paid.

"(2) Nothing in subsection (1)(c) affects any obligation or liability under this Act of any other person who has become responsible for collecting the levy concerned.

Compare: 2003 No 114 s 90

"67ZP Exemptions, waivers, and refunds  
Regulations made under this subpart may---

"(a) provide for exemptions from, or waivers or refunds of, any fee, levy, or charge payable under this subpart, in whole or in part, in any class of case:

"(b) authorise the Secretary to grant an exemption, waiver, or refund in any particular case or class of case.  
Compare: 2003 No 114 s 92

"67ZQ Fees, levies, and charges to constitute debt due to Secretary  
Any fee, levy, or charge that has become payable is a debt due to the Secretary, and is recoverable by the Secretary as a debt in any court of competent jurisdiction. Until paid in full, it remains a debt due to the Crown.  
Compare: 2003 No 114 s 93

"67ZR Penalties for failure to pay fee, levy, or charge

"(1) If a person has failed to pay to the Secretary by the due date any fee, levy, or charge payable under this subpart,---

"(a) section 14 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 applies to increase the amount payable; and

"(b) section 15 of that Act applies to allow the Secretary, in appropriate cases, to waive the payment of all or any of the amount of any such increase; and

"(c) section 16 of that Act applies to allow the Secretary to withdraw, or refuse to provide the person in default with, any service of the kind to which the debt relates.

"(2) For the purposes of subsection (1)(c) and section 16 of the Ministries of Agriculture and Forestry (Restructuring) Act 1997, and without limiting the generality of section 16 of that Act, the references in those provisions to the refusal to provide any service are to be treated as also authorising the Secretary, in an appropriate case, to refuse to perform any function under this Act leading to the issue of units in relation to the person in default.

"(3) If the refusal requires the Secretary to provide any further service, or perform any further function involved in the refusal, the Secretary may recover any reasonable amount for the additional service, function, or costs as a debt due from the person who owns or is responsible for the operation concerned.  
Compare: 2003 No 114 s 94

"67ZS Obligation to pay fee, levy, charge, or penalty not suspended by dispute  
The obligation of a person to pay any fee, levy, charge, or penalty under this subpart, and the right of the Secretary to receive and recover the fee, levy, charge, or penalty, are not suspended by any dispute between the person and the Secretary regarding the person's liability to pay the fee, levy, charge, or penalty, or the amount of the fee, levy, charge, or penalty.  
Compare: 2003 No 114 s 95

"67ZT Levy orders to be confirmed

"(1) If a levy order imposing a levy has been made under this subpart on or after 1 January in any year and before 1 July in that year, and---

"(a) have not been revoked with effect on or before 1 July in the next

year; and

"(b) have not ceased, and will not cease, to have effect on or before 1 July in the next year by virtue of the Regulations (Disallowance) Act 1989,--- they are to be treated as having been revoked with the close of 30 June in that next year unless confirmed by an Act of Parliament passed on or before that day.

"(2) If any levy order imposing a levy has been made under this subpart after 30 June in any year and on or before 31 December in that year, and---

"(a) have not been revoked with effect on or before 1 January in the year after the next year; and

"(b) have not ceased, and will not cease, to have effect on or before 1 January in the year after the next year by virtue of the Regulations (Disallowance) Act 1989,---

they are to be treated as having been revoked with the close of 31 December in the year after the year in which they were made, unless confirmed by an Act of Parliament passed on or before that day.

Compare: 2003 No 114 s 96

"67ZU Relationship of Part with Resource Management Act 1991  
Nothing in this Part derogates from any provision of the Resource Management Act 1991."

### 32 Amendments to Forestry Rights Registration Act 1983

(1) Section 2 of the Forestry Rights Registration Act 1983 is amended by inserting the following definitions in their appropriate alphabetical order:

"carbon sequestration means the removal of greenhouse gases from the atmosphere by a forest sink

"forest sink means a forest prescribed in regulations made under section 67Y of the Forests Act 1949

"forest sink covenant means any covenant established under regulations made under section 67Y of the Forests Act 1949, or any variation of that covenant, for the purpose of establishing and maintaining a forest sink; including, but not limited to, controlling the harvesting of timber from the forest sink

"greenhouse gas has the same meaning as in section 4(1) of the Climate Change Response Act 2002

"units has the same meaning as in section 4(1) of the Climate Change Response Act 2002."

(2) Section 2A(2)(b) of the Forestry Rights Registration Act 1983 is amended by inserting "including units based on carbon sequestration that are received in accordance with a forest sink covenant" after "crop" in the second place where it appears.

### 33 Consequential amendment to Privacy Act 1993

Part 1 of Schedule 2 of the Privacy Act 1993 is amended by inserting the following item in its appropriate alphabetical order:

Climate Change Response Act 2002                      Sections 18, 20, 26, 27, and 28

Legislative history

3 May 2005	Introduction (Bill 258-1)
10 May 2005	First reading and referral to Commerce Committee
28 July 2005	Reported from Commerce Committee (Bill 258-2)
25 October 2006	Second reading
7 November 2006	Committee of the whole House (Bill 258-3)
9 November 2006	Third reading