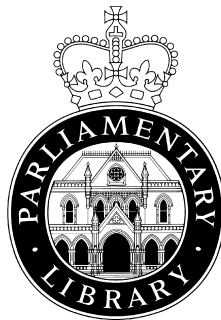


# **BILLS DIGEST**

**CLIMATE CHANGE RESPONSE AMENDMENT BILL 2005**

**Date of Introduction: 03 May 2005**

**Bills Digest No. 1259**



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Prepared by John McSoriley B A L L B, Barrister  
Legislative Analyst  
Ph. (04) 471-9626 (Ext. 9626)  
Fax (04) 471-1250

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**CLIMATE CHANGE RESPONSE AMENDMENT BILL 2005**

Date of introduction:	03 May 2005
Portfolio:	Environment
Select Committee:	As at 09 May, 1 <sup>st</sup> reading not held

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**PURPOSE**

The Bill amends the Climate Change Response Act 2002 (the Act) in respect of the function of New Zealand's Kyoto Protocol Registry to allow individuals (i.e. entities other than the Crown) to hold accounts in the Registry and to trade in emission units.

The Bill also extends the regulation-making powers of the Forests Act 1949 to enable the establishment of a mechanism to allow landowners to access the value, created under the Kyoto Protocol, of carbon from newly established permanent forest sinks.

**BACKGROUND**

“Under the Kyoto Protocol, New Zealand is required to develop and maintain a registry to ensure the accurate accounting of emission units. The purpose of the Registry is to:

- ensure the accurate accounting of units;
- ensure the accurate, transparent, and efficient exchange of information between registry systems; and
- facilitate the exchange of information between the registrar and the Minister of Finance.

“Units are defined as the various types of units specified under the Kyoto Protocol that the Crown may offset against New Zealand's greenhouse gas emissions during the first commitment period (2008-2012).

“Several domestic climate change policies and the clean development and joint implementation mechanisms under the Kyoto Protocol will require the Crown to transfer units to New Zealand businesses and individuals. The Bill will therefore allow individuals (i.e. entities other than the Crown) to hold accounts in the Registry and to trade in emission units.

“The Bill will also provide for the accounting of 2 new types of units in the Registry, which were created by international decisions taken in 2003, and will make several amendments to provide for the efficient administration of the Registry”<sup>1</sup>.

In relation to the proposed extension of the regulation-making powers of the Forests Act 1949, “the mechanism will be a contract (registered against land titles) between the Crown and a Landowner. The Crown will agree to devolve an amount of tradeable carbon emission units equal to the amount of carbon contained in new permanent forest sinks over the Kyoto Protocol’s first commitment period (2008 – 2012). Obligations under the contract will be registered against land titles and will run with and bind the land.

“The scheme will also allow for a limited timber harvest under continuous canopy management after a minimum non-harvest period of 35 years. The mechanism will allow landowners to make better economic use of their land, particularly isolated and erodible land not suitable for agriculture and forestry. The mechanism will also likely result in positive environmental outcomes for biodiversity, and soil and water conservation”<sup>2</sup>.

## MAIN PROVISIONS

### Amendments to the Climate Change Response Act 2002

#### Directions by the Minister of Finance to the Registrar

Under the Act, the Minister of Finance may give directions to the Registrar regarding accounts and units.

The Bill provides that directions may also be given with respect to long-term certified emission reduction replacement accounts, temporary certified emission reduction replacement accounts, long-term certified emission reduction units, and temporary certified emission reduction units. The Minister must publish his or her directions (*Part 1, Clauses 5 and 6, amending Section 7 inserting New Section 8A of the Act*).

#### Powers of Minister of Finance to obtain information from inventory agency

Under the Act, the Minister of Finance has power to obtain information from the inventory agency and the Registrar. Section 32 of the Act provides that the primary functions of the inventory agency are to estimate annually New Zealand’s human-induced emissions by sources and removals by sinks of greenhouse gases and to prepare certain specified reports for the purpose of discharging New Zealand’s obligations.

The Bill allows the Minister of Finance to obtain information for the purposes of discharging these reporting obligations (*Part 1, Clause 7, amending Section 9 of the Act*).

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<sup>1</sup> Climate Change Response Amendment Bill (2005 No 258-1), Explanatory Note, General policy statement, p., 1.

<sup>2</sup> Climate Change Response Amendment Bill (2005 No 258-1), Explanatory Note, General policy statement, p., 2.

**Purpose of the registry**

The Bill amends the provision of the Bill relating to the purpose of the Registry by including within the purpose the accurate accounting of the replacement of expired long-term certified emission reduction units and expired temporary certified emission reduction units (*Part 1, Clause 8 amending Section 10 of the principal Act*).

**Refusal of access to, or suspension of operation of, Registry**

Section 13 of the Act provides that the Registrar may refuse access to the Registry, or otherwise suspend the operation of the Registry (in whole or in part), if he or she considers that providing access, or any other service or services relating to the Registry, is impractical due to technical difficulties.

The Bill provides for an additional circumstance in which either course of action may be taken (i.e. “the integrity of the Registry is, or has been, or may be, compromised”) (*Part 1, Clause 9, substituting Section 13 of the Act*).

**Registrar must give effect to directions**

Section 14 of the Act provides that the Registrar must give effect to any direction relating to the operation of the Registry given by the Minister responsible for the Registry. As soon as practicable after giving the direction, the Minister responsible for the Registry must publish a copy of the direction in the Gazette.

The Bill requires the Minister responsible for the Registry to publish his or her directions on the Registry’s Internet site (*Part 1, Clause 10, amending Section 14 of the Act*).

**Carrying over of units**

Section 16 of the Act provides for the carry-over of units.

The Bill specifies the procedure with respect to the carry-over of units (*Part 1, Clause 11, substituting Section 16 of the Act*).

**Form and content of the unit register**

The Bill clarifies the matters that must be recorded in the unit register. It also provides that a unit recorded in the register is indivisible and transferable within the unit register and between the unit register and overseas registries (*Part 1, Clause 12 amending Section 18 of Act*).

**Opening holding accounts**

The Bill sets out the procedures for opening, closing, transferring and succeeding to holding accounts. Provision is also made for trusts, representatives, and assignees of bankrupts (*Part 1, Clause 13, inserting New Sections 18A to 18E into the Act*).

**Registration of transactions.**

The Bill sets out the circumstances in which the Registrar must not register a transaction on the unit register. These are where:

- the Registrar receives a notification from the independent transaction log that there is a discrepancy with the transaction; or

- the transaction is not submitted in the prescribed form; or
- 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 the Act) (*Part 1, Clause 14, amending Section 20 of the Act*).

### **Other amendments to the registration provisions**

The Bill makes numerous detailed amendments to the Act including in relation to:

- the procedures the Registrar must follow in relation to transactions required to be recorded in the unit register (*Part 1, Clause 15 amending Section 21 of the Act*);
- the electronic registration of transactions and procedures to deal with defective applications (*Part 1, Clause 16 inserting New Sections 21A and 21B*);
- priority of registration (directions, as well as applications, are to be processed in the order in which they were received) (*Part 1, Clause 18 amending Section 24 of the Act*);
- the correcting of the unit register, in particular the procedure by which an account holder who has registered a transaction or the Minister of Finance may correct any inaccuracy recorded in the unit register with respect to that transaction (*Part 1, Clause 19, substituting Section 25 of the Act*);
- clarification that searches must be possible and the specification of the type of information which must be available, through the Internet site of the Registry (*Part 1, Clauses 20 and 21, amending Sections 26 and 27 of the Act*);
- clarification that one of the inventory agency's functions is to prepare annual inventory reports that include 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 (*Part 1, Clause 24, amending Section 32 of the Act*); and
- providing that the inventory agency is under the direction of the Minister responsible for the inventory agency and clarifying that directions of the Minister responsible for the inventory agency must be accessible through the Internet site of the inventory agency (*Part 1, Clause 25 amending Section 33 of the Act*).

### **New offence**

The Bill provides that every person who knowingly provides false or misleading information to the Registrar commits an offence, and is liable to a fine not exceeding \$50,000, in the case of an individual, or \$200,000, in the case of a body corporate. It also provides that 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 (*Part 1, Clause 27, inserting New Section 48A into the Act*).

## **Regulations**

The Bill provides that regulations may be made prescribing matters in respect of the opening and closing of holding accounts and the transfer of units, and prescribing matters in respect of the carry-over, acquisition, transfer, and cancellation of units (*Part 1, Clause 28, amending Section 50 of the Act*).

## **Amendment to the Forests Act 1949**

### **Forest Sink Covenants**

The Bill provides that the purpose of new Part 3B is to provide a mechanism to allow landowners to access the value of sequestering carbon on land through the establishment of forest sink covenants.

A forest sink covenant may specify any or all of the following:

- the obligations of any landowner for monitoring and administrative costs;
- the rights of any landowner with respect to receiving units based on carbon sequestration;
- any exceptions to the covenant to control the harvesting of timber for sale, including (but not limited to) the use of plants for traditional Maori purposes;
- access to the land by the Secretary, or any of its contractors or agents, to verify carbon inventories and to monitor compliance with the forest sink covenant;
- 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;
- a requirement 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;
- a requirement to control the harvest of timber for sale;
- a requirement to include a forest sink management plan which must be expressed to:
  - have effect in perpetuity; and
  - terminate if certain circumstances arise or certain conditions are met; and
  - provide obligations if certain circumstances arise or certain conditions are met; and
  - come into effect when registered; and

- expire unless registered within 180 days of being agreed:
- be varied or cancelled by agreement between the landowner and the Minister if that agreement is registered.

A landowner intending to enter into, vary, or cancel a forest sink covenant must obtain the written consent of each person with an interest in the affected land. Forest sink covenants or agreements must be registered under the Land Transfer Act 1952. If a forest sink covenant is varied, cancelled, or terminated, the Minister must give notice to the Registrar-General of Land. The Minister must take all reasonable steps to ensure that direct and indirect costs of administering New Part 3B that are not provided for by money appropriated by Parliament are recovered and the Bill sets out the methods of cost recovery. Regulations may be made prescribing fees and charges for the purposes of new Part 3B. Levies may be imposed under levy orders and penalties are provide for failure to pay a fee, levy, or charge. An obligation of a person to pay any fee, levy, charge, or penalty is not suspended by any dispute between that person and the Secretary regarding liability to pay the fee, levy, charge, or penalty. The Bill provides for the automatic revocation of levy regulations unless they are confirmed (*Part 2, Clause 30, New Part 3B of the Forests Act 1949, New Sections 67W – 67ZQ*).

#### *Comment*

This mechanism is capable of being used by the Crown for a variety of purposes including the establishment of forests to meet New Zealand’s Kyoto obligations, the promotion of forestation for erosion control and other environmental concerns, and the promotion of forestry for economic development and employment promotion in particular regions. The Forests Act 1949 originally dealt with the Crowns freehold forestry interests. Part 3B could facilitate Crown investment in forestry, but on private land through a form of joint-venture with land-owners. However the conditions set out (e. g. no harvesting for 35 years and no clear felling) would preclude investment in quick-growing commercial species such as *pinus radiata* (usual rotation of about 28 years). Forests of such species form the bulk of New Zealand’s commercial crop. The mechanism may be more useful for hardwood species such as Douglas fir and macrocarpa which have longer rotation periods. The mechanism would be most useful for developing commercial indigenous forests (rotation periods of hundreds of years). The cost to the Crown of entering into such arrangements may be considerable.

## **Amendment to the Forestry Rights Registration Act 1983**

Section 2A(1) of the Forestry Rights Registration Act 1983 provides that a forestry right may be created by the proprietor of land by granting creating to reserving the right to establish, maintain, and harvest or just to maintain and harvest a crop of trees on specified land. Section 2A(2) provides that the forestry right may also—

- (a) “grant or reserve rights of access and rights of construction and use of tracks, culverts, bridges, buildings, and other works and facilities if those rights are ancillary to and necessary for [those] ... ”;
- (b) “provide for charges, payments, royalties, or division of the crop or the proceeds of the crop,

whether or not such rights or provisions are coupled with an obligation”.

The Bill inserts after the word “crop” in Section 2A(2)(b) the words “including units based on carbon sequestration that are received in accordance with a forest sink covenant”

The Bill also adds new terminology to the Forestry Rights Registration Act 1983 to align with the new terminology added to the Forests Act 1949 (in particular definitions of the terms “forest sink”, “Protocol”, “removal unit”, and “units”) (*Part 2, Clause 31, amending Sections 2 and 2A(2)(b) of the Forestry Rights Registration Act 1983*).