

PRESENTERS

Karen Price, ChanceryGreen, Auckland

In the early 1990s Karen completed her thesis on climate change and was part of the NZ delegation to the 1991 IPCC negotiations. Since then, she negotiated the only two Negotiated Greenhouse Agreements with the Crown. In 2007, Karen co-founded ChanceryGreen, NZ's first environmental boutique law firm focusing on energy and climate change. Karen advises clients on securitisation and trading in carbon credits, supply contracts and contractual opt-in, and on the risks associated with carbon neutrality exercises. She also advises a foreign government on the legal regimes for its emissions trading and geosequestration activities. Karen is recognised internationally as a leading climate change lawyer. Recognising the difficulties NZ entities face accessing international markets, in 2004 Karen formed NZCX Limited, a carbon broker which she and her co-directors operate in association with the world's largest carbon broker.

The sections written by Karen Price and the ChanceryGreen team were peer reviewed by Stuart Frazer, Director Frazer Lindstrom Ltd, a climate change and energy consultancy including emissions trading advisory services.

Kate Radka, Bell Gully, Wellington

Kate is one of Bell Gully's climate change experts, and has been ranked in the legal services directory *Chambers Global* in both 2009 and 2010 as one of the world's foremost climate change lawyers. She has advised on the development of a legal framework for trading in greenhouse gas emissions and on commercial aspects of the policy underlying the NZ ETS. She also advises businesses both domestically and internationally on carbon trading, and on all aspects of carbon issues including carbon pass-through, EITE allocation, and compliance with the NZ ETS.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

CONTENTS

1. OVERVIEW	1
THE SCIENCE OF CLIMATE CHANGE	1
POLICY	5
<i>Background</i>	5
<i>Kyoto Protocol</i>	5
<i>Signatories/Ratification</i>	6
<i>Objectives and principles</i>	6
<i>Parties to the Kyoto Protocol</i>	7
<i>Emissions targets</i>	9
<i>Commitment periods</i>	9
<i>Market mechanisms for implementation</i>	10
<i>Emission units</i>	13
<i>Sinks</i>	15
<i>Compliance</i>	16
<i>Reporting</i>	16
<i>Conference of parties</i>	17
<i>International context</i>	17
2. DOMESTIC CONTEXT	19
NEW ZEALAND'S EMISSIONS PROFILE	19
NEW ZEALAND POLICY HISTORY	20
NEW ZEALAND AND THE KYOTO PROTOCOL	20
BACKGROUND TO THE NZ ETS	21
CLIMATE CHANGE RESPONSE (MODIFIED EMISSIONS TRADING) AMENDMENT ACT 2009	21
COVERAGE	22
PARTICIPANTS	22
FORESTRY	24
LIQUID FOSSIL FUELS	24
STATIONARY ENERGY	25
<i>Industry</i>	25
<i>Agriculture</i>	26
UNIT TYPES	27
NEW ZEALAND EMISSION UNIT REGISTER	27
CURRENT CLIMATE CHANGE POLICIES	28
<i>Emissions targets</i>	28
<i>Agriculture</i>	28
<i>Permanent Forest Sinks Initiative</i>	29
POLICIES NO LONGER IN PLACE	29
<i>Projects to reduce emissions</i>	29
3. FORESTRY	31
FORESTRY UNDER THE NZ ETS	31
<i>Pre-1990 Forest land</i>	32
<i>Post-1989 Forest land</i>	33
NON-ETS SCHEMES	35
<i>The Permanent Forest Sinks Initiative ("PFSI")</i>	35
<i>Afforestation Grant Scheme</i>	37
<i>East Coast Forestry Project</i>	38
4. ENERGY/LIQUID FOSSIL FUELS	39
INTRODUCTION	39
MANDATORY PARTICIPANTS	39
<i>Who is considered to be the miner of the coal/gas?</i>	40
<i>When is a person considered to be "using" geothermal fluid for the purpose of generating electricity or industrial heat?</i>	41
<i>Which fuels attract liabilities?</i>	42

OPTING-IN TO NZ ETS.....	42
<i>The gas, coal or jet fuel must be purchased from a participant</i>	43
<i>What are the pros and cons of opting-in?</i>	43
<i>Opting-out of the NZ ETS</i>	44
WHAT DOES IT MEAN TO BE AN ENERGY OR FUEL SECTOR PARTICIPANT?.....	45
<i>Reduced obligations during the transitional period</i>	45
<i>Point of sale – gas sector</i>	46
<i>Gas storage adjustment</i>	46
<i>Coal stockpile adjustment</i>	47
DEFAULT EMISSIONS FACTORS AND UNIQUE EMISSIONS FACTORS.....	48
<i>Fixed and uncertainty thresholds</i>	48
<i>Classes and categories of fuel for which approval for a UEF may be sought</i>	48
5. INDUSTRIAL SECTOR.....	51
<i>Compliance obligations</i>	51
ALLOCATION OF UNITS TO THOSE WHO ARE EMISSIONS-INTENSIVE TRADE-EXPOSED.....	52
<i>Development of regulations</i>	52
<i>The Australian track</i>	53
<i>Allocation implemented through regulation</i>	54
<i>Requirements for eligibility</i>	54
<i>Moderately emissions-intensive or highly emissions-intensive</i>	55
<i>Calculation of emissions</i>	55
<i>Included emissions</i>	55
<i>Excluded emissions</i>	56
<i>Calculation of revenue</i>	57
<i>Trade-exposed</i>	57
<i>Allocative baselines</i>	57
<i>Allocating NZUs to EITE firms</i>	58
<i>Review of EITE allocation</i>	61
<i>Working example of provisional and final allocation</i>	61
6. SUPPLY CONTRACTS.....	63
<i>Pass-through issues arising under current contracts</i>	63
<i>Negotiating new contracts</i>	64
<i>Supplier’s and customer’s likely concerns when negotiating carbon pass-through</i>	65
<i>Carbon pass-through from customers of suppliers to downstream customers</i>	66
<i>End-users’ concerns</i>	66
7. VOLUNTARY EMISSION MARKETS.....	67
INTRODUCTION.....	67
WHERE DOES THE DEMAND COME FROM?.....	67
WHAT IS TRADED?.....	68
WHERE DO VERS COME FROM?.....	68
WHAT RISKS ARE ASSOCIATED WITH PURCHASING VERS?.....	69
HOW CAN YOU MANAGE RISKS ASSOCIATED WITH VERS?.....	70
CARBON NEUTRALITY.....	72
WHAT IS CARBON NEUTRALITY?.....	72
KEY ELEMENTS OF A CARBON NEUTRALITY EXERCISE.....	72
WHAT ARE THE RISKS?.....	73
TIPS FOR MAKING CARBON CLAIMS IN MARKETING.....	74
8. CARBON TRADING.....	77
WHAT IS CARBON TRADING, AND HOW DOES IT WORK?.....	77
CARBON MARKET PARTICIPANTS.....	77
DEVELOPING A CARBON MARKET.....	78
CARBON MARKETS UNDER THE KYOTO PROTOCOL.....	80
THE NEW ZEALAND CARBON MARKET.....	81
DEVELOPING A TRADING STRATEGY.....	82
GLOSSARY.....	85