

**BELL GULLY**

# The New Zealand Petroleum Conference

Legal implications of emissions trading for the petroleum sector

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## Introduction

- How the emissions trading scheme (ETS) works
- How the ETS applies to the oil and gas sector
- Legal and commercial issues under the ETS

## Key features of ETS - sectors

- cap and trade scheme covering all sectors
- 2008 – forestry
- 2009 – liquid fossil fuels
- 2010 – stationary energy & industrial processes
- 2013 – waste & agriculture

## Key features of ETS – upstream participants

- participants upstream in fossil fuel supply chain
- participants expected to pass carbon costs downstream
- actual emissions not measured
- “emission factors” used as proxy for emissions

## Key features of ETS – obligations

- person with obligations under ETS is “participant”
- participant must monitor, record, report
- participant must hold and surrender emission units
- each unit (NZU) is a right to emit one tonne of CO<sub>2</sub>e

## Key features of ETS - activities

- “activities” determine ETS participation
- activities automatically covered (Schedule 3)
- “opt-in” activities (Schedule 4)

## ETS for oil and gas – liquid fossil fuels/stationary energy

- automatic coverage or opt-in
- liquid fossil fuels (2009)
- stationary energy (2010)

## ETS for oil and gas – liquid fossil fuel activities

- “liquid fossil fuels” targets downstream transport emissions
- automatic coverage:
  - owning fuel when removed for home consumption; or
  - removing fuel from refinery (except for export)
  - where fuel removed exceeds 50,000 litres p.a.
- opt-in if buying >10 million litres of jet fuel p.a.

# ETS for oil and gas – stationary energy activities

- “stationary energy” targets downstream electricity generation
- automatic coverage:
  - importing >10,000 litres of natural gas p.a.
  - mining natural gas (except for export)
  - refining petroleum if combusting obligation fuel or jet fuel
- opt-in if buying >2 petajoules from miner of natural gas

## ETS issues - allocation

- NZUs offered for sale by public tender
- Crown can restrict tender participants
- reserving NZUs for new entrants
- lobbying

## ETS issues – contractual pass-through

- passing carbon costs downstream
- reviewing pass-through under supply contracts
- legislative override of some contracts?
- purchaser resistance
- minimising cost/variability

## ETS – take or pay contracts

- meaning of “purchase” in take or pay context
- risk for opt-in participants if pay but don’t take
- review contracts

## ETS issues – joint activities

- section 142 – joint activities
- unincorporated joint ventures
- joint and several liability as participants
- review arrangements and risk allocation

## ETS issues – regulations

- operative detail left to regulations
- lobbying politicians and officials

## ETS issues – emission methodologies

- regulations to prescribe emission calculation methodologies
- default methodologies – unintended outcomes
- natural gas with high/low CO<sub>2</sub> content
- averaging methodology would penalise low CO<sub>2</sub> content sources

## ETS issues – trading

- NZ market likely to be short
- reliance on buying units overseas to meet obligations
- certified emission reduction (CER) units from clean development mechanism (CDM) projects
- primary and secondary CERs
- investing in projects now for cheaper primary CERs



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**Thank you**

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