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## CLIMATE CHANGE

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## ETS DELAY LIKELY FOR ENERGY AND INDUSTRIAL SECTORS

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*Chambers Global 2009* named Bell Gully as one of the top 12 climate change legal practices worldwide. Of only 18 individuals recognised globally, Simon is ranked in the top tier of advisers and Kate identified as an "up and coming" expert.

The government is likely to push out the 2010 deadline for entry of the energy and industrial sectors into the New Zealand Emissions Trading Scheme.

This latest development follows on the heels of the Climate Change Response (Emissions Trading Forestry Sector) Amendment Act, which was passed on 30 June and delays several of pre-1990 foresters' deadlines and obligations under the New Zealand Emissions Trading Scheme (ETS).

Speaking to the Local Government and Environment Select Committee in June, Climate Change Minister Nick Smith was reported as stating that the current timetable for the energy and industrial sectors (which would see those sectors entering the ETS from 1 January 2010) was "always unachievable, even without a select committee review" and that "there is going to have to be some modification".

The allocation plan for the energy and industrial sectors is yet to be finalised, and the Minister reportedly stated that it would be untenable for those sectors to be introduced into the ETS when the allocation details are unknown.

While no official announcement on the treatment of the energy and industrial sectors is likely until the ETS review committee has reported back (which is

expected to be in August), the Minister's comments leave little doubt that the planned 1 January 2010 entry of these sectors into the ETS will be delayed.

While the delay may be effected through provisions in the substantive Amendment Act likely to follow from the ETS review committee's report, it could be that a specific piece of expedited legislation (similar to the forestry amendment Act) is used to provide certainty to the energy and industrial sectors in the short term around the date their compliance obligations come into effect.

The National Party will be hoping to have ACT's support in getting any such legislation through the House. If ACT's support is not forthcoming, it would need to seek support from the Greens, the Maori Party, or even Labour – with whom it has been in talks in recent weeks to seek compromise on an amended ETS.

### The effect of delayed entry

Any delay to the entry of the energy and industrial sectors would be good news for firms in those sectors who would otherwise have faced uncertainty over the impact of the ETS on their costs of production (given that no allocation plan has been released). However, it would not be welcomed by foresters (and other prospective vendors of

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emission units), who would have expected energy and industrial sector participants to be strong early purchasers of their emission units and who may now face a decrease in demand at least in the short term.

### **Further draft regulations**

A second draft of regulations setting out the methods for participants to monitor and calculate their emissions for energy and industrial activities has recently been consulted on. The latest draft is an update to regulations released in October 2008 and incorporates amendments made following consultation on the earlier draft. The regulations do not deal with or affect the timing of the entry into the ETS of the energy and industrial sectors.

Further draft regulations released at the same time provide a process to enable certain participants in the energy and industrial and liquid fossil fuels sectors to apply for approval to use a unique emissions factor when calculating emissions. Both these sets of regulations are due to be finalised by 1 October 2009.

More detail on the regulations can be found at the Government's Climate Change Information website:  
[www.climatechange.govt.nz](http://www.climatechange.govt.nz).

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