

New Zealand Government



## The New Zealand Emissions Trading Scheme

# ❖ New Zealand Emissions Trading Scheme Review 2015/16

OPERATIONAL MATTERS TECHNICAL NOTE

MARCH 2016



Ministry for the  
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*Manatū Mo Te Taiao*

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# 1 Introduction

The Government launched a review of the New Zealand Emissions Trading Scheme (NZ ETS) in November 2015. The review is broad, and its objectives are to assess the operation and effectiveness of the NZ ETS to 2020 and beyond to:

- ensure that the NZ ETS helps New Zealand to meet its international obligations cost effectively
- ensure the New Zealand economy is well-prepared for a strengthening international response to climate change, and potentially higher carbon prices
- allow the NZ ETS to evolve with these changing circumstances, and particularly with respect to the framework provided by the Paris Agreement.

This technical note is focused on identifying and better understanding NZ ETS operational matters to advance the above objectives. The Government is interested in understanding how stakeholders view the existing operation of the NZ ETS, and this note provides detail on operational matters that is not included in the NZ ETS review discussion document. It seeks views on matters that have been identified by government agencies administering the NZ ETS.

A technical note on NZ ETS forestry matters, which is focused on better understanding the NZ ETS forestry settings and how they may evolve, has also been released.<sup>1</sup> A copy of the forestry technical note can be found on the Ministry for the Environment's website, [www.mfe.govt.nz](http://www.mfe.govt.nz).

We are keen to hear from a range of stakeholders, including NZ ETS participants across all sectors as well as other interested parties.

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<sup>1</sup> Ministry for the Environment. 2016. *New Zealand Emissions Trading Scheme Review 2015/16: Forestry Technical Note*. Wellington: Ministry for the Environment.

## 2 Operational matters

The New Zealand Emissions Trading Scheme (NZ ETS) review includes an assessment of operational and technical changes that could improve the effectiveness of the scheme. We are seeking feedback on the matters identified in this note, including whether you agree with our assessment of these matters.

### Operational matters not addressed in this note

The Government also welcomes views on any other operational matters that are not included in this technical note, and is examining other operational settings that could be improved.

For example, the Government is looking at the intent of some provisions of the Climate Change Response Act 2002 (the Act), such as when emissions returns are due for deforestation of pre-1990 forest land, and ensuring that the carbon accounting area (CAA) reconfiguration process helps participants to efficiently update their CAAs.

The Government is also considering how mandatory emissions reporting periods for post-1989 forestry align with international agreements, including any implications of the Doha Amendment to the Kyoto Protocol.

To submit on any operational matters not addressed in this technical note, see the NZ ETS review discussion document,<sup>2</sup> available at [www.mfe.govt.nz](http://www.mfe.govt.nz). The discussion document asks stakeholders to give their views on how the operational and administrative efficiency of the NZ ETS could be improved.

### 2.1 Encouraging compliance with NZ ETS requirements

#### What is the problem?

Compliance with NZ ETS obligations is generally high, but some participants do not meet their obligations. The Environmental Protection Authority (EPA) and the Ministry for Primary Industries (MPI) (referred to as the administering agencies) administer the NZ ETS, and their experience has shown that each year some participants do not meet their mandatory registration, emissions reporting, surrender, or repayment requirements.

Types of non-compliance include:

- participants failing to register or deregister for mandatory activities
- failing to notify the relevant agency after ceasing an activity for which an allocation is received
- submitting emissions returns that contain incomplete or incorrect information.
- missing due dates for submitting a return, surrendering or repaying units
- failing to comply with field measurement approach regulations for forestry

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<sup>2</sup> Ministry for the Environment. 2015. *New Zealand Emissions Trading Scheme Review 2015/16: Discussion document and call for written submissions*. Wellington: Ministry for the Environment.

As a general indicator of rates of compliance, Table 1 shows cases where participants failed to comply with their obligation to submit an emissions return, or surrender or repay units, by the specified date in the Act.

**Table 1: Emissions reporting, surrender and repayment compliance trends 2013 - 15<sup>3</sup>**

Financial year end	Total number of registered participants	Number of compliance incidents identified
2013	2,880	249
2014	2,490	298
2015	2,536	158

These figures include cases where participants missed the relevant deadline, but ultimately complied. In most cases, the late surrenders were completed within two weeks of their due date. Incidents of non-compliance are addressed in various ways, including penalty assessments and legal enforcement actions.

As a result of participants failing to meet their requirements, emissions and removals reported under the NZ ETS may be incorrect or incomplete. It is also likely to result in errors in units transferred to the Crown to account for emissions or New Zealand Units (NZUs) transferred to participants for forestry and other removal activities.

The tools currently available to the administering agencies to address these sorts of non-compliance incidents include:

- prosecution, for a participant who fails to submit mandatory emissions returns on time
- surrender or repayment of the outstanding units, and payment of a penalty of \$30 per unit for each unit that was not surrendered or repaid on time, when a participant has late surrenders or repayments. The administering agency has the discretion to reduce the penalty by up to 100 per cent in certain circumstances, including where a voluntary disclosure is made.

There are likely to be a number of reasons for the non-compliance of some participants. This could range from a lack of understanding or uncertainty around requirements under the NZ ETS, to opportunistic or deliberate non-compliance. It is also possible that a lack of clarity around the outcomes of non-compliance means participants are unaware of the consequences of not meeting NZ ETS requirements, or that the current compliance tools available to administering agencies are not driving appropriate behaviour.

Experience administering the scheme and engagement with participants has shown that when errors are identified it can be a time consuming process for administering agencies to correct the information and apply the legislative tools currently available. This is frustrating for participants and administratively burdensome for administering agencies.

<sup>3</sup> Data aggregated from applicable annual reports published under section 89 of the Act, and available at [www.epa.govt.nz/e-m-t/reports/ets\\_reports/annual/Pages/default.aspx](http://www.epa.govt.nz/e-m-t/reports/ets_reports/annual/Pages/default.aspx).

Additionally, some participants consider the penalties associated with non-compliance are sometimes disproportionate to the nature and scale of the non-compliance, particularly in relation to the \$30 per unit penalty.

### What outcomes are being sought?

Meeting NZ ETS requirements is important because the integrity of the NZ ETS is supported by participants reporting their emissions and removals accurately.

The Government wants to ensure participants understand their emissions reporting and surrender requirements, and are meeting these requirements. We also want to reduce the administrative burden for participants and the administering agencies in instances where reporting contains errors, or units are not surrendered by the due date.

In cases of non-compliance, the tools available to the administering agency should allow non-compliance to be addressed in an efficient and proportionate way that is fair to all participants.

There are likely to be several possible options to encourage participants to meet their emissions reporting and surrender requirements, including:

- continuing to work with participants, providing guidance to improve their understanding of requirements
- improving the administering agency's ability to deal with incorrect NZ ETS information, for example, by providing the agency with tools to return an emissions return to the participant when it contains incorrect information, to allow them to amend the return
- ensuring compliance tools appropriately incentivise compliance, and where used, reflect and address the varying levels of non-compliance

We want to better understand why some participants are having issues with meeting their reporting, surrender, and other requirements. Once we understand the issues faced by participants in more detail, we intend to develop options for addressing these issues.

### Questions

- OM1. Do you encounter challenges when completing NZ ETS requirements, such as meeting your emissions reporting or surrender requirements? What are these? What would help overcome these challenges?
- OM2. What is your opinion of the tools available to regulators to correct errors and address non-compliance? What would help improve these tools?
- OM3. Are there other options, not already included here, for improving compliance with emissions reporting and surrenders? What are they?

## 2.2 Disclosure of NZ ETS information

### What is the problem?

MPI and EPA hold information about the NZ ETS and the activities that occur within the scheme, and the New Zealand Emission Unit Register. Some of this information is currently published publicly. For example, the EPA publishes activity-level emissions data annually as

part of its *Annual ETS Report*. It also publishes other information such as monthly aggregate transaction trends from the registry.

There may be other information that would be useful to the market if it was published. Some of this information is withheld for good reasons, such as to protect commercial interests or because it is unable to be shared under the Act. Other information may be currently published, but difficult for market participants to access or understand.

### What outcomes are being sought?

The Government wants to ensure information of a confidential or sensitive nature remains protected. We also want to ensure the scheme is transparent, however, and ensure that where there is a strong case for disclosing information, the information can be made available and is easy to understand.

Both the Government and market participants share a common interest in helping the traded NZU price be a fair reflection of the market's fundamental supply and demand position. It is easier for market participants to determine a fair price when they have sufficient information and data on which to make this determination. The Government wants to understand if market participants think the information currently available is sufficient and, if not, what other information they would find useful.

### Questions

- OM4. Does the current level of information available allow you to make informed decisions about your participation in the NZ ETS? If not, please give examples of information you think would be useful, and how it would help you.
- OM5. Are there any other forms of information that would assist with your understanding of, or participation in, the market?

## 2.3 Transfer of participation for post-1989 forestry

### What is the problem?

Post-1989 forestry participants can voluntarily join the NZ ETS if they own post-1989 forest land, hold registered forestry rights, or are the registered leaseholder over post-1989 land. Post-1989 forest land registered under the NZ ETS is considered to be 'transferred' under the Act if it has a change in ownership. Examples of this include if the land is sold or if there is a change in interest in the land such as when a forestry right or lease is created or expires. An NZ ETS transfer is also considered to have occurred if the forest land is held by an unincorporated body, such as a trust or joint venture, and has a change in membership of more than 40 per cent.

A 'transfer' results in the NZ ETS participation also transferring. It means there are certain obligations on both the original and new participant. These obligations include the new and original participants jointly submitting a 'transmission of interest' form and the original participant submitting a 'transmission of interest' emissions return within 20 working days of the date of transfer. In addition, the NZ ETS 'unit balance' will remain with the land, regardless of who owns the land, or holds a forestry right or lease over the land. The net 'unit balance' is recorded for a post-1989 forest land CAA as NZUs are transferred or surrendered in relation to the CAA.

When land or an interest in land transfers, the new land owners or new holders of a right or lease should know that the NZ ETS participation must transfer. The onus is on them to understand these obligations and any implications of NZ ETS participation. There are some participants, however, who will be unaware that a transfer process has been triggered for their land, or who lack a proper understanding of the process, and so do not complete the required processes. Because of this, a number of participants have not met their requirements under the Act with regards to NZ ETS transfers.

This creates complications for future emissions reporting obligations, and in some cases adds legal uncertainty about who is liable to submit a mandatory emissions return if the transfer was not completed accurately and on time. In this situation, both the administering agencies and the participant have to follow complex processes to correct any errors relating to NZ ETS transfers.

### What outcomes are being sought?

The Government wants to ensure that people with an interest in post-1989 forest land, including prospective participants, understand and meet any of their current or potential obligations regarding post-1989 forestry participation and NZ ETS transfer rules.

We would like to hear from you about your experiences with post-1989 land transfers to help identify ways to improve the land transfer process. It may be that there is a lack of awareness and understanding of the process or it may be that the transfer provisions in the Act are complex and could be simplified to improve decision-making as well as NZ ETS compliance.

### Questions

- OM6. Have you undertaken, or expect to undertake in the future, an NZ ETS transfer process? If so, how well do you understand the transfer provisions?
- OM7. Have you encountered issues with NZ ETS land transfer requirements? If so, what issues did you have?
- OM8. Do you think the NZ ETS transfer requirements should be changed or simplified? If so, how?

## 2.4 Tree weed exemption provisions under the Act

### What is the problem?

The NZ ETS currently allows the Government to grant exemptions from emissions liabilities for deforesting pre-1990 forest land with a cover of 'tree weeds'. This exemption allows the landowner to deforest pre-1990 tree weed areas without incurring deforestation liabilities under the NZ ETS.

Tree weeds are defined as forest species that are undesirable in a particular location because they can spread. An example of uncontrolled tree weeds that have an impact on natural values is wilding pines and other conifers growing in high country tussock grassland in the South Island.

The NZ ETS includes this exemption to ensure the clearance of tree weeds is not discouraged. When granting tree weed exemptions, the Government limits the amount of emissions that

will be covered by exemptions each application round. This is to ensure the Government can budget for emissions liabilities that will be generated by deforesting tree weeds.

The current application process for tree weed exemptions is prescribed by the Act, and a public notice must be issued with details of an application round. The notice must also include details on the availability of the tree weed exemptions, the quantity of emissions that will be covered by all exemptions granted, and the criteria and priorities that will be used to assess applications. The criteria are used to prioritise applications to ensure exemptions are granted to the highest priority applications. Ensuring exemptions are provided for tree weed deforestation is important and means there are some complexities in the application process.

The current process has a number of aspects that are administratively cumbersome for the administering agencies and applicants, as well as sometimes overly restrictive for participants. For example, the current process is restricted to individual applicants. This means groups, such as local councils, cannot undertake large scale tree weed clearance under one collective application. In addition, having defined application periods, or application “rounds”, restricts the time when applicants can apply to undertake the work. This may mean applicants cannot be proactive in undertaking deforestation activities when they have the time and resources.

### **What outcomes are being sought?**

The aim of tree weed exemptions is to ensure the clearance of tree weeds is not discouraged by the NZ ETS. Tree weeds should be deforested to protect the amenity, recreational, ecological and economical values of the surrounding landscape.

The Government aims to reduce complexity in the scheme where possible, and we would like to find out more about your experience with the tree weed exemption process.

There are some complexities in the application process, to make sure exemptions are provided for tree weed deforestation that will be the most beneficial. We would like to better understand if there are aspects of the process that could be simplified, however. Feedback about both the application process and the conditions of the exemption would help us identify any operational improvements to the process.

### **Questions**

OM9. Have you encountered any problems with the tree weed exemption process?

OM10. Have you encountered issues in complying with the conditions of a tree weed exemption?

OM11. Do you think the tree weed exemption provisions could be improved? If so, how?

## **2.5 The public’s limited access to information about the NZ ETS status of land**

### **What is the problem?**

Forests are classified differently under the NZ ETS depending on when they were first established, and face different obligations and opportunities within the scheme depending on whether the forest land is considered to be pre-1990 or post-1989 forest land.

MPI administers the NZ ETS for forestry related activities. MPI currently holds information on forest land and its status under the NZ ETS if the land has previously been included in an NZ ETS application. This includes if an allocation has been made under the pre-1990 forest land allocation plan, if a pre-1990 forest land exemption has been granted, or where post-1989 forest land has been registered.

Under the Act, detailed information can be released to landowners of post-1989 forest land if the forestry rights or lease holder of their land is a participant. The information includes details of the emissions returns and unit balance relating to the post-1989 forest land. This type of information can also be shared with holders of registered forestry rights or leases or prospective transferees if the registered NZ ETS participant gives written consent.

For other types of land under the NZ ETS, the administering agencies cannot provide such detailed information. The Act allows instead for any person to access information on whether any land is considered to be pre-1990 forest land, pre-1990 offsetting forest land, post-1989 forest land, or declared exempt land. This information is made available on land titles, and is likely to be valuable to people wishing to know the status of land, for example prospective purchasers of potential forest land that is subject to the NZ ETS. It is also likely that more detailed information, such as the total area and location of relevant forest, would be useful as well, in order to estimate the potential liability should the land be deforested.

Although MPI provides guidance on how to classify land under the NZ ETS, it may be difficult for some people to determine the status of the land under the NZ ETS if there has not been any application by a previous land owner to register the land or seek an allocation or exemption. For example, currently there is no mechanism in the NZ ETS for the administering agencies to provide information on the NZ ETS status of land to prospective purchasers who wish to know whether the land is eligible post-1989 forest land.

## What outcomes are being sought?

Information on NZ ETS land status can be valuable to landowners and other interested parties, including when the land is not already subject to the NZ ETS. For example, knowing the NZ ETS status of land could be useful for owners or prospective purchasers, especially for potential post-1989 forest land, or rights over this land, or land that may be eligible for a tree weed exemption.

We would like to hear from stakeholders on the level of information that is currently available regarding NZ ETS land status. We want to understand if you have had any issues classifying land for forestry in the NZ ETS, and if you think information on the status of land that is not already subject to the NZ ETS should be available from the Government.

## Questions

- OM12. What information on land status under the NZ ETS would be useful for your decision making?
- OM13. Have you faced any problems in classifying forest land under the NZ ETS or in accessing information on forest land's NZ ETS status?
- OM14. Do you think the Government should provide information on the NZ ETS status of land that is not already subject to the NZ ETS? If so, how would this help you?

## 3 How to make a submission

### Preparing your submission

The Government welcomes your feedback on how the New Zealand Emissions Trading Scheme (NZ ETS) is working, and how it might work better in future. Your submissions may address any aspect of the questions outlined in this document, and you may answer some or all of the questions. To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

There are three ways you can make a submission:

- use our online submission tool, available at [www.mfe.govt.nz/more/consultations](http://www.mfe.govt.nz/more/consultations).
- download a copy of the submission form to complete and return to us. This is available at [www.mfe.govt.nz](http://www.mfe.govt.nz). If you do not have access to a computer we can post a copy of the submission form to you.
- type up or write out your own submission. With this option, we would appreciate you paying attention to the questions posed throughout this document, and clearly indicate which questions your response addresses.

Please ensure your submission addresses the questions from this document that are relevant to you, and that it contains the following contact details:

- a) the title of the consultation (NZ ETS Review Consultation)
- b) your name or organisation name
- c) your postal address
- d) your telephone number
- e) your email address.

If you are emailing your submission, please send it to [nzetsreview@mfe.govt.nz](mailto:nzetsreview@mfe.govt.nz) as a:

- PDF or
- Microsoft Word document (2003 or later version).

If you are posting your submission, please send it to NZ ETS Review Consultation, Ministry for the Environment, PO Box 10362, Wellington 6143.

Submissions close at 5.00pm on 30 April 2016.

### Request for evidence-based submissions

Advice to the Government on any policy change will be based on the evidence available. Please provide evidence, analysis or data to support the points made in your submission. More weight is likely to be given to submissions that provide evidence.

### Contact for queries

Please direct any queries to:

Phone: +64 4 4397400

Email: [nzetsreview@mfe.govt.nz](mailto:nzetsreview@mfe.govt.nz)

Post: NZ ETS Review Consultation, Ministry for the Environment, PO Box 10362, Wellington 6143

## **Publishing and releasing submissions**

All or part of any written submission (including names of submitters), may be published on the Ministry for the Environment's website, [www.mfe.govt.nz](http://www.mfe.govt.nz). Unless you clearly specify otherwise in your submission, the Ministry will consider that you have consented to website posting of both your submission and your name.

Contents of submissions may be released to the public under the Official Information Act 1982 following requests to the Ministry for the Environment (including via email). Please advise if you have any objection to the release of any information contained in a submission, including commercially sensitive information, and in particular which part(s) you consider should be withheld, together with the reason(s) for withholding the information.

We will take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 1993 applies certain principles about the collection, use and disclosure of information about individuals by various agencies, including the Ministry for the Environment. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in relation to the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

## **What happens next?**

After receiving submissions, the Ministry will evaluate them and may, where necessary, seek further comment. Your submission will contribute to advice to Ministers.

## 4 Summary of consultation questions

### **Encouraging compliance with New Zealand Emissions Trading Scheme requirements**

- OM1. Do you encounter challenges when completing New Zealand Emissions Trading Scheme (NZ ETS) requirements, such as meeting your emissions reporting or surrender requirements? What are these? What would help overcome these challenges?
- OM2. What is your opinion of the tools available to regulators to correct errors and address non-compliance? What would help improve these tools?
- OM3. Are there options, not already included here, for improving compliance with emissions reporting and surrenders? What are they?

### **Disclosure of NZ ETS information**

- OM4. Does the current level of information available allow you to make informed decisions about your participation in the NZ ETS? If not, please give examples of information you think would be useful, and how it would help you.
- OM5. Are there any additional forms of information that would assist with your understanding of, or participation in, the market?

### **Transfer of participation for post-1989 forestry**

- OM6. Have you undertaken, or expect to undertake in the future, an NZ ETS transfer process? If so, how well do you understand the transfer provisions?
- OM7. Have you encountered issues with NZ ETS land transfer requirements? If so, what issues did you have?
- OM8. Do you think the NZ ETS transfer requirements should be changed or simplified? If so, how?

### **Tree weed exemption provisions under the Climate Change Response Act 2002**

- OM9. Have you encountered any problems with the tree weed exemption process?
- OM10. Have you encountered issues in complying with the conditions of a tree weed exemption?
- OM11. Do you think the tree weed exemption provisions could be improved? If so, how?

### **The public's limited access to information about the NZ ETS status of land**

- OM12. What information on land status under the NZ ETS would be useful for your decision making?
- OM13. Have you faced any problems in classifying forest land under the NZ ETS or in accessing information on forest land's NZ ETS status?
- OM14. Do you think the Government should provide information on the NZ ETS status of land that is not already subject to the NZ ETS? If so, how would this help you?