

# Impact Summary: NZ ETS Improvements – Repayment of Units Received

## Section 1: General information

### Purpose

The Ministry for the Environment is solely responsible for the analysis and advice set out in this Regulatory Impact Statement. This analysis and advice has been produced for the purpose of informing final decisions to proceed with a policy change to be taken by Cabinet.

### Key Limitations or Constraints on Analysis

There are no limitations or constraints on the analysis in this summary.

### Responsible Manager (signature and date):



Matthew Cowie

Manager – Climate Change Policy

Climate Change Directorate

Ministry for the Environment

Date:

22/11/18

*A Quality Assurance Panel with representatives from the Ministry for the Environment and the Treasury Regulatory Quality Team has reviewed the Regulatory Impact Assessment (RIA) "Impact Summary: NZ ETS Improvements – Repayment of Units Received" produced by the Ministry for the Environment and dated November 2018. The panel considers that it meets the Quality Assurance criteria.*

*More detail on the assessment of this and the other RIAs can be found at: [\[link to be added\]](#).*

## Section 2: Problem definition and objectives

### 2.1 What is the policy problem or opportunity?

Some participants in the New Zealand Emissions Trading Scheme (NZ ETS) receive emission units from the Crown, typically for carrying out an eligible industrial activity or a forestry activity. Sometimes those participants are required to repay units because of errors, or a subsequent calculation of a liability.

If an industrial allocation participant or a forestry participant is required to repay units they received from the Crown, the NZ ETS legislation requires the participant to repay the exact same units received, if the participant still holds them. This can cause unnecessary administration for both the participant, who has to check the origin of each emission unit they own and are required to repay, and the regulator, who has to ensure the repaid emissions units are those which were received by the participant.

If the participant does not hold the exact units they were initially allocated, they may repay units of the same type (for example, units from any industrial allocation).

### 2.2 Who is affected and how?

Three parties have been affected by this problem:

- Industrial allocation participants who are required to repay emission units to the Crown due to errors under section 125 of the Climate Change Response Act 2002 (CCRA) (Repayment of units by persons in case of error)
- Forestry participants required to repay units under CCRA section 189 (Emissions returns for post-1989 forest land activities)
- Regulators, when they check the details of the repaid emission units.

### 2.3 Are there any constraints on the scope for decision making?

There are no constraints on the scope for decision making, or interdependencies or connections, other than that resolution could require amendment to primary legislation.

## Section 3: Options identification

### 3.1 What options have been considered?

Status quo: The status quo would continue to require repayment of the exact units that had been received as outlined above.

Option 1: require repaid units to be the same type, just not exactly those units received by the participant. Units in the NZ ETS are tagged with identifiers, though they are all New Zealand Units (NZUs).

For example, consider an industrial allocation participant who had received units from an industrial allocation application (a type called NZU\_EITE), however that allocation has subsequently been found to have had an error and the participant has received more units than they are entitled to. The participant is then required to repay these units. The proposal is that the participant could repay any emission units of the same type, not limited to those

originally received from the allocation, that is, any NZU\_EITE.

This option would require the participant to source emission units of a particular type to satisfy the repayment. This option would have considerably lower administration costs than the status quo, however it would require sufficient liquidity in unit types in the market for participants to procure the required type of units to meet their repayment obligations.

Option 2: allow a participant to repay using eligible emission units of any type. NZUs are considered fungible because each unit represents the same quantum of carbon dioxide equivalent.

Using the example above, the industrial allocation recipient would be able to use any NZU to satisfy their repayment obligation. This would have lower administration costs for participants than the status quo and option 1.

From the Crown's perspective, all NZUs are the same because they represent the same measure of carbon dioxide equivalent. Although units are tagged differently, this does not alter what the unit represents. Tagging units creates an ability for participants to market their unit types when undertaking trades. This market response could in the future lead to differently tagged units having different values.

If different unit values were to eventuate, the risk of the allocation recipient receiving NZUs of a higher value, and repaying NZUs of a lower value is considered minimal. In terms of repayment of allocations, the Crown's interest is in the accuracy of carbon accounting and the market operates fairly, rather than the prices that individual participants are paying to procure NZUs. Any intentional arbitrage of this type can be addressed through the compliance and penalties regime if an offence has occurred.

### **3.2 Which of these options is the proposed approach?**

Option 2, the option to allow any emission units of any eligible type to be repaid under CCRA sections 125 and 189 is preferred to the status quo and option 1. This would provide greater flexibility for such participants and reduce administrative costs for participants and the regulator.

The arbitrage risk can be mitigated through proposed changes to penalty provisions, where deliberately inaccurate reporting will fall into more significant categories of infringements and any arbitrage value will be nullified. Knowingly providing misleading information, and doing so with intent to deceive and for the purpose of either obtaining any material benefit or avoiding any material detriment can be prosecuted under the CCRA.

## Section 4: Impact Analysis (Proposed approach)

### 4.1 Summary table of costs and benefits

Affected parties	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact
NZ ETS participants and the regulator		<i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>

#### Additional costs of proposed approach, compared to taking no action

Regulated parties		Nil
Regulators	This is an amended to approach to a function the regulators already undertake.	Nil
Wider government		Nil
Other parties		Nil
<b>Total Monetised Cost</b>		Nil
<b>Non-monetised costs</b>		<i>Nil</i>

#### Expected benefits of proposed approach, compared to taking no action

Regulated parties	Increased NZ ETS compliance flexibility Reduced NZ ETS administrative costs	Low
Regulators	Reduced NZ ETS administrative costs	Low
Wider government		Nil
Other parties		Nil
<b>Total Monetised Benefit</b>		Low
<b>Non-monetised benefits</b>		<i>Nil</i>

#### **4.2 What other impacts is this approach likely to have?**

There will be no other impacts.

## **Section 5: Stakeholder views**

#### **5.1 What do stakeholders think about the problem and the proposed solution?**

Consultation was held on this proposal within a package of planned NZ ETS improvements over August - September 2018. The consultation document sought views on the proposal to allow participants to repay units of the same type.

There was significant support for this proposal. Those who opposed, and even many of those in support, thought the solution could be even more flexible and allow any eligible emission units to be repaid, rather than just those of the same type. Consequently, this proposed policy change reconsidered the options available and agreed with submitters that an increased risks from greater flexibility are outweighed by the benefits.

## **Section 6: Implementation and operation**

#### **6.1 How will the new arrangements be given effect?**

This proposal is one of several operational changes that will be carried through to the proposed Climate Change Response Amendment Bill in 2019, and come into effect from 1 January 2021.

## **Section 7: Monitoring, evaluation and review**

#### **7.1 How will the impact of the new arrangements be monitored?**

The scheme regulator will continue to monitor the emissions returns and allocation applications of participants once the new arrangements are implemented.

#### **7.2 When and how will the new arrangements be reviewed?**

No review of the arrangements is planned.