Ministry for Primary Industries
Manatū Ahu Matua

Regulatory Impact Statement: Improvements to the administration of the Emissions Trading Scheme through amendments to the Climate Change Response Act 2002 (2026)

Decision sought	*Analysis produced for the purpose of informing: final Cabinet decisions*
Agency responsible	*Ministry for Primary Industries*
Proposing Ministers	*Minister of Forestry and Minister of Climate Change*
Date finalised	*18 August 2025*

The Minister of Forestry and Minister of Climate Change propose to make changes to the Climate Change Response Act 2002 (the Act) to make the following amendments to the New Zealand Emissions Trading Scheme (NZ ETS) to:

1. Create flexibility for participants following events, such as a cyclone, by:
   a) Allowing the Environmental Protection Authority (EPA) to approve applications for 60 working day extensions for emissions return, notice and industrial allocation (IA) application deadlines, and 20 working day extensions for Unique Emissions Factor (UEF) applications.
   b) Introducing a three-year extension to the timing of deforestation tests.
2. Improve how quickly transmission of interest (TOI) notices are processed when ownership or land agreements change, by:
   a) Shortening the 90 working day timeframe for resolving non-compliant TOI notices to 20 working days so that compliant parties can participate in or leave the NZ ETS more quickly.
   b) Making it explicit that new people must open holding accounts at the time of submitting the required TOI notice.
3. These proposals are part of a wider package of proposals to amend the Act through a legislative amendment Bill.

Summary: Problem definition and options

What is the policy problem?

4. Participants need flexibility following significant disruptions:
   - The North Island weather events of early 2023 (e.g. Cyclones Gabrielle and Hale) revealed gaps in the Act's provisions to provide those affected the required flexibility. Events like

severe weather may damage residences, farms, forests, production facilities or office buildings and limit participants' ability to meet the deadlines for their obligations.
- Failing to meet deadlines for emissions returns and submitting notices can result in fees, fines or penalties, and the process of determining what those should be is resource intensive for the regulator. Failing to meet deadlines for IA and UEF applications can result in financial implications for entities.
- Significant disruptions can also hinder the wider forestry sector (e.g., nurseries, clearing and planting crews), which makes it harder for participants to re-establish forest land. If land becomes deforested participants become responsible for liabilities unless complex section 60 exemptions, and/or bespoke new emergency legislation apply.
- Targeted engagement with forestry and non-forestry stakeholders and Māori foresters supported the problem definition and proposed amendments.
- Government intervention is required because flexibility for obligation deadlines and forest re-establishment can only be increased through changes to the Act.

5. When property rights change, NZ ETS responsibilities for post-1989 forest land cannot move to the new person before a TOI notice is processed. Officials have identified opportunities to increase efficiencies in processing TOI notice:

- Targeted engagement with forestry stakeholders and Māori foresters found that they recognise TOI processes hold up the operation of forestry in the NZ ETS and are unfair for the compliant party who cannot leave or enter the NZ ETS until a TOI notice is processed.
- Government intervention is required because existing legislative provisions are not driving intended outcomes and there are limited compliance options when transferees do not open a holding account.
- Non-regulatory options have been explored and increased education will be undertaken in addition to legislative change, but education alone has not achieved desired outcomes.

What is the policy objective?

6. The proposed amendments seek to:

- reduce complexity and operational burden for participants in the NZ ETS and the Crown;
- address known gaps in the regulatory framework following events that prevent persons from meeting deadlines set out in the Act; and
- maintain the integrity of the NZ ETS through continuity of participation.

7. The proposals aim to support delivery of a statutory framework that better supports participants in circumstances beyond their control and improve compliance with TOI notices to reduce adverse effects on compliant TOI parties. Success or failure will be measured through existing monitoring and reporting functions (e.g., monthly compliance reports) and operational interactions with participants.

What policy options have been considered, including any alternatives to regulation?

8. **Proposal 1A:** Extending deadlines for emissions returns, notifying the regulator, making IA and UEF applications after a significant disruption

<u>Applicability and duration of extensions</u>

- Option 1 (status quo): Participants can apply for a 20 working day extension to an emissions return deadline.
- Option 2 (preferred): Allow EPA to approve 60 working day extensions for emissions returns, notices and IA applications, and 20 working days extensions for UEF applications.
- Option 3: A new mechanism for group extensions.

Defining a significant disruption

- Option 1 (status quo): Make no changes to the Act and define it in operational policy or guidance.
- Option 2: (preferred): Define significant disruptions in the Act as occurring when a state of emergency is declared or in situations set in notices with ministerial oversight.

Providing sufficient flexibility where landownership or land agreements change

- Option 1 (status quo): Make no changes to the Act so forestry participants and transferees will only be able to receive an extension if they apply before the deadline of the TOI notice.
- Option 2: (preferred): Allow forestry participants and transferees to apply for extensions to the deadline for notifying the regulator up to 20 working days after the deadline.

9. **Proposal 1B**: Adjust the penalty for failure to surrender or repay units by the due date
    - Option 1 (status quo): Make no changes to the Act. Participants remain liable for penalties even if the failure to surrender or repay units occurred through no fault of their own.
    - Option 2 (preferred): Change the Act so that participants are not liable for a penalty if they failure occurred through no fault of the person.

10. **Proposal 1C**: Timing for forest re-establishment
    - Option 1 (status quo): Participant must surrender units or pay liabilities if they cannot re-establish forest and meet deforestation test criteria at 4, 10 or 20 years following clearance.
    - Option 2 (preferred): Allow participants to apply for a three-year extension to the deforestation tests.
    - Option 3: A new mechanism for group extensions

11. **Proposal 2A**: Transferees without a holding account
    - Option 1 (status quo): The law is not explicit about when transferees must open a holding account and compliance tools are limited for incentivising desired behaviour.
    - Option 2 (preferred): Make it explicitly clear that a transferee must open a holding account before submitting the TOI notice process and to make more compliance tools available to incentivise the desired outcome.
    - Non-regulatory options including education will be used alongside the preferred option.

12. **Proposal 2B**: Timeframes for non-compliant TOI notices
    - Option 1 (status quo): The current 90-working day timeframe for resolving non-compliant TOI notices can slow the resolution process, which may take up to six months in total.
    - Option 2 (preferred): Shorten the non-compliance notice timeframe to 20 working days, which will reduce the resolution timeframe to three months or less in total.
    - Non-feasible option: Shortening the timeframe to 60 working days as it would only speed up the resolution process by a month.

What consultation has been undertaken?

13. Targeted engagement was undertaken on the proposals outlined in this RIS. This included:
    - an email to Māori forestry stakeholders outlining the proposals invited stakeholders to participate in a hui; one hui was held with foresters from Tairawhiti;
    - a discussion with the ETS Technical Advisory Group (forestry stakeholders and consultants);
    - email questionnaires sent to post-settlement governance entities (PSGEs) and a cross-section of non-forestry participants in the NZ ETS;
    - engagement with pan-Māori groups.

14. Stakeholders support the Ministers' preferred options.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

15. The proposals have small, unquantified, potential financial implications for the Ministry for Primary Industries (MPI) and the EPA resulting from the introduction of new extensions, new ability to take compliance action when new participants do not open a holding account. The Ministers expect MPI to continue delivering their responsibilities through baseline funding (Crown or cost recovery). Non-compliant TOI parties could incur cost for non-compliance. Greater availability of compliance tools incentivises compliant behaviour.

16. The distributional impacts of the proposed intervention fall on non-compliant regulated parties. Māori stakeholders indicated that the change from 90 to 20 working days for the non-compliant TOI notice could be a challenge for trustees if the TOI notice correction cannot be turned around quickly, but that the proposal will not exacerbate the current challenges for Māori trusts with the TOI notice process.

Benefits (Core information)

17. Proposals 1A, 1B and 1C will benefit participants who are affected by events like severe weather that would otherwise negatively impact their ability to meet reporting, IA or UEF application, notice or forest re-establishment obligations. The proposals will support them to participate in the NZ ETS, remain compliant and avoid liabilities.

18. Proposals 2A and 2B will likely bring about faster resolution of TOI notices. This will benefit compliant TOI parties because they will be able to leave/join the NZ ETS in respect of the forest land involved in a timelier manner. This increases certainty for business planning and reduces the potential liability carried by the person/business. Increased continuity of participation supports the integrity of the NZ ETS.

Balance of benefits and costs (Core information)

19. The anticipated benefits outweigh the costs when considering quantitative and qualitative evidence. The proposed interventions are not anticipated to have any impact on competition.

Implementation

20. Ongoing operation and enforcement of the new arrangements will be implemented by MPI and EPA. Officials are confident arrangements can be implemented effectively and efficiently. The proposals will be progressed through the Climate Change (Market Governance and Other Efficiencies) Amendment Bill, which is intended to come into effect mid-2026. Transitional arrangements are not anticipated to be required.

Limitations and Constraints on Analysis

21. The tightly constrained timeline for policy development and limits on consultation means stakeholder engagement on the options discussed is not exhaustive. Some of the proposals were informed by MPI's operational experience of administering forestry in the NZ ETS and developing the Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023 and Order (No. 2) 2023 and communications with participants.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Bronwyn Kropp
Manager (Acting) Operational Policy - Forestry Incentives
Te Uru Rākau – New Zealand Forest Service
Ministry for Primary Industries
15 August 2025

Quality Assurance Statement	***[Note this isn't included in the four-page limit]***
Reviewing Agency: Ministry for Primary Industries and Department of Corrections	**QA rating:** Partially meets
Panel Comment: A quality assurance panel with members from MPI and the Department of Corrections has reviewed the Regulatory Impact Statement: Improvements to the administration of the Emissions Trading Scheme through amendments to the Climate Change Response Act 2002 (2026), produced by MPI and dated 18 August 2025. The panel considers that it partially meets the Quality Assurance criteria. This rating is attributable to the limited consultation undertaken on the recommended option. This limits the availability of information to support cost/benefit analysis, and fully informed comparison between the options.	

Terms used in this impact statement

Clearance means to clear the forest species that are on the land, for example by felling, harvesting, burning, removing by mechanical means, killing (including spraying with a herbicide), uprooting, or destroying by a natural cause or event.

Deforestation means to either convert forest land to other land uses such as pasture or housing, or failing to adequately re-establish forest at 4-, 10- and 20- years following a clearance event.

Disruption preventing forest land re-establishment means an event that prevents a person from re-establishing their forest land. This event may clear the forest, or damage the forest so that it requires clearing, or interrupt the forester in re-establishing the forest.

Emissions return means a report that outlines a participant's emission of greenhouse gasses into (emissions), or removal of greenhouse gasses (removals) from the atmosphere during a set period.

ETS TAG, means the technical advisory group (TAG) who support MPI in the development of NZ ETS policy through technical input from the perspective of experienced practitioners of forestry in the NZ ETS.

Holding account means an account in the Register for the purpose of holding and trading units.

Industrial Allocations (IAs): Allocations are units that are given free of charge to certain emissions intensive and trade exposed eligible persons by the government. This is to mitigate the financial effect of the New Zealand Emissions Trading Scheme (NZ ETS) on these participants. Participants can choose to receive their allocation either in advance (provisional) or in arrears (final allocation). Provisional allocations are checked at the end of the year to align with actual industrial activity during that year.

New Zealand Units (NZUs) are the primary domestic unit of trade in respect of the NZ ETS.

Participant means a legal person (e.g. an individual, business, or unincorporated body) who carries out an activity covered by the NZ ETS.[1]

Notice means a form the participant is required to submit to the regulator in specific situations, such as when landownership changes, or when a person deforests forest land.

Register means the New Zealand Emissions Trading Register established in New Zealand for the accounting of the issue, holding, transfer, surrender, and cancellation of New Zealand Units and approved overseas units.[2]

Significant disruption means an event that prevents a person from meeting the deadline to submit an emissions return, apply for an IA or UEF, or notify the regulator.

SWERLA means the Severe Weather Emergency Recovery Legislation Act 2023, emergency legislation with the purpose of assisting communities and local authorities affected by the severe weather events to respond to, and recover from, the impacts of the severe weather events Cyclone Hale, (8-12 January 2023), heavy rainfall in the Northland, Auckland, Waikato, and Bay of Plenty regions (26 January - 3 February 2023) and Cyclone Gabrielle (12-16 February 2023).

[1] Section 54 of the Act. For the avoidance of doubt, the terms participant and person are used interchangeably in this RIS for ease of understanding.

[2] Section 10 of the Act.

Transmission of interest (TOI) means forest land in the NZ ETS transfers from one person or party to another person or party because the land, a forestry right, or a forestry lease, or a Crown conservation contract is granted, expires or is sold.

Unique Emissions Factors (UEFs) some activities in the NZ ETS have been assigned a Default Emissions Factor (DEF), based on an industry-wide average. However, participants in some sectors have an option of either using this DEF, or obtaining a Unique Emissions Factor (UEF) if they believe their emissions are lower than the industry average. Using a UEF will usually mean that a participant's emissions total is lowered.

Unincorporated body includes (but is not limited to) a partnership, a joint venture, or the trustees of a trust.

Section 1: Diagnosing the policy problem

22. This section introduces the package of proposed technical amendments to the Climate Change Response Act 2002 (the Act). For each of the specific proposals that require a Regulatory Impact Statement (RIS), detailed problem statements are provided in Section 2.

23. The package of proposals in this RIS are part of a wider collection of proposed changes through the Climate Change Response Amendment (Market Governance and Other Integrity and Efficiency Changes) Amendment Bill (the Bill). The Bill is intended to make the administration of the Act easier and to support the New Zealand Emissions Trading Scheme (NZ ETS) to function as intended. The wider collection of changes includes annual updates to wider NZ ETS settings and an efficiency review of the Act.[3]

24. The other RISs prepared for the wider collection of proposed changes to the Act are:

    a) Technical amendments to the NZ ETS.
    b) Adjusting the penalty calculation for incorrect emissions returns through amendments to the Climate Change Response Act 2002 (2026).

What is the context behind the policy problem and how is the status quo expected to develop?

The New Zealand Emissions Trading Scheme

25. The NZ ETS is a market-based tool to encourage a reduction in emissions of greenhouse gasses. The purpose of the NZ ETS is to assist New Zealand in meeting its international climate change obligations and 2050 target and emissions budgets. The Act and Climate Change (Forestry) Regulations 2022 (Forestry Regulations) provide the statutory framework for NZ ETS.

26. The NZ ETS is a unique emissions trading scheme because it not only includes participants that emit carbon (non-forestry participants) but also includes participants that are able to remove carbon from the atmosphere (forestry participants). Including forestry in the scheme provides financial incentives to establish new forests, and to replace older forests if they are cleared.

27. The Ministry for Primary Industries (MPI) is the regulator for forestry in the NZ ETS under delegation from the EPA. Te Uru Rākau – New Zealand Forest Service is the branch within MPI responsible for carrying out operational regulation for forestry in the NZ ETS.

Forestry participants in the NZ ETS

28. In New Zealand, the baseline date for greenhouse gas emissions is 1990. This has resulted in two categories of forest land in the NZ ETS: pre-1990 and post-1989. A forester may choose to voluntarily register in the scheme with post-1989 forest land to earn NZUs. Subsequent owners or leaseholder of that land are required to participate in the scheme in relation to that land. Owners of pre-1990 forest land can harvest and re-establish their forests without registering. However, if they deforest the land, they are required to participate in the scheme and surrender units to the Crown. The differences are summarised in **Table 1**.

[3] The wider review does not include the cost recovery and efficiencies review for forestry with the Minister of Forestry's Registry Group.

Table 1: Summary of differences amongst types of forest land involved in the NZ ETS

Forest type	What forestry activities are allowed?	When must foresters become participants in the NZ ETS?
Post-1989 standard	Clearing (harvesting) and re-establishing (replanting)	When the land is first entered in the NZ ETS or when ownership* for land already entered in the NZ ETS changes
Post-1989 permanent	Must not be fully cleared for 50 years	When the land is first entered in the NZ ETS or when ownership* for land already entered in the NZ ETS changes
Pre-1990	Clearing (harvesting) and re-establishing (replanting)	When exotic forest is cleared and not replanted (deforestation) occurs. Units must be surrendered to the Crown.

* If land or a forestry right or a forestry lease is purchased

29. Forestry participants in the NZ ETS are required to report the amount of carbon their forest removed or emitted through emissions returns. These emissions returns are usually required to be submitted at intervals set out in the Act, when changes occur on the forest land, such as changes to landownership, rights and leases, or when participants wish to remove land from the NZ ETS. Participants obligations can differ by forest type, these are outlined in **Table 2**.

Table 2: Summary of obligations for different types of forest land involved in the NZ ETS

	Forest type		
Obligations for participants in forestry in the NZ ETS	**Post-1989 standard**	**Post-1989 permanent**	**Pre-1990**
Submit an emissions return at set intervals	☑	☑	
Emissions returns must report removals (when trees are growing) and emissions (when trees are cleared)	☑	☑	
Notify the regulator and submit an emissions return when landownership, rights or leases change	☑	☑	
Surrender units equal to the carbon emitted when trees are cleared[4]	☑	☑	
Surrender units equal to the carbon emitted when trees are deforested	☑	☑	☑
Foresters must not fully clear their forest		☑	

30. If a participant's emissions return reports removal of carbon during the relevant period, they will receive NZUs. Removals occur when a participant's forest absorbs carbon from the atmosphere while the trees are growing. Participants are required to surrender units if the emissions return reports that carbon was emitted due to forest land being cleared or deforested during the relevant period. The amount of NZUs the participant receives or is required to surrender is equal to the tonnes of carbon removed or emitted during the relevant period.

[4] This is only true for forests on stock change accounting, for which trees earn NZUs as they grow until the trees are harvested. For forests under averaging accounting, first rotation trees earn carbon credits up to the "average age" for their species. These carbon credits do not have to be surrendered when the trees are harvested, provided the forest is replanted within four years of harvesting.

Non-forestry participants in the NZ ETS

31. Non-forestry participants in the NZ ETS report on the greenhouse gasses they emitted during the previous year through emissions returns.[5] They are required to surrender an amount of units equivalent to the emissions reported in the emissions return. Some participants can also receive units for their removal activities or may be eligible to apply for an allocation of units if they are emissions intensive and trade exposed. Some participants also have the option of applying for a UEF if their emissions are lower than the industry average. **Table 2** outlines obligations for non-forestry and forestry participants.

Table 3: Summary of obligations for different types of participants in the NZ ETS

Obligations for participants in the NZ ETS	**Participant type**	
	Forestry	**Non-forestry**
Submit an emissions return to report on emissions of the previous year	☑	☑
Submit an emissions return to report on emissions or removals (depending on whether forest is growing or cleared)[6]	☑	☑
Surrender units equal to the greenhouse gas emissions in the emissions return	☑	☑
Submit an industrial allocation application to receive units from the government		☑
Submit an application to use a unique emissions factor		☑
Submit an adjustment which reports on the difference between the units received ahead of the year, and the actual units required based on emissions of the year.		☑

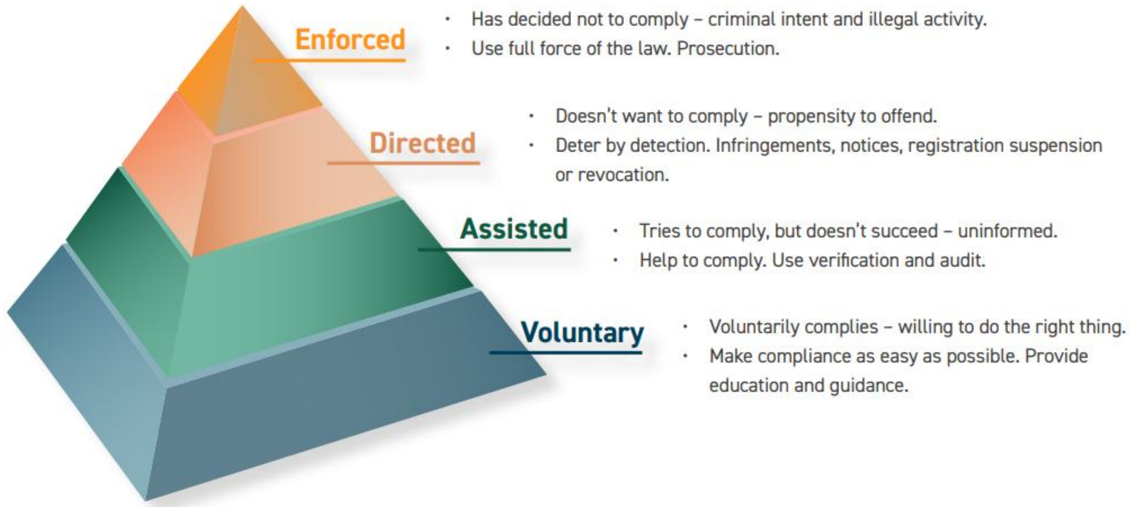
Non-compliance and administrative penalties in the NZ ETS

32. The NZ ETS relies on "self-assessment" for reporting emissions and removals through emissions returns, allocation applications and adjustments. The objectives of the NZ ETS are undermined by participants reporting incorrect amounts of emissions and removals, as well as by incorrect allocation applications or adjustments.

33. MPI uses the VADE model for education and compliance for forestry in the NZ ETS. VADE is an acronym: voluntary, assisted, directed, enforced (outlined in **Figure 1**). The VADE model spans the full range of compliance interventions and is based on the principle that enforcement action acts as the incentive for voluntary compliance. The model allows MPI to exercise discretion and upholds the principle that any compliance intervention is proportionate to the level of non-compliance.[7]

[5] Non-forestry participants are made up of the following sectors: liquid fossil fuels, stationary energy, industrial processes, waste, and other removal activities.
[6] This also applies for some non-forestry participants if they have voluntarily registered.
[7] [Forestry in the Emissions Trading Scheme: Education and compliance strategy]

Figure 1: VADE model showing scale of cases in comparison to severity of the intervention



Source: Ministry for Primary Industries (2023), *Forestry in the ETS – Education and Compliance Strategy*, p.6.

Recent amendments to the Act

34. The Climate Change Response (Emission Trading Reform) Amendment Act 2020 made several changes to the Act. The aim of the Amendment Act was to better enable the NZ ETS to drive emissions reductions and help New Zealand reach its domestic and international climate change targets. It also intended to improve certainty for businesses, make the scheme more accessible, and improve its administration.

35. Changes that are relevant to this RIS are:

    a) The introduction of compliance powers in relation to non-compliant transmissions of interest notices. This provides MPI with the option to process non-compliant transmissions of interest after giving participants a 90 working day notice.
    b) The introduction of temporary adverse event suspensions. This allows post-1989 forestry participants to apply to pause the carbon accounting for forest land damaged by an adverse event until the forest is re-established and carbon levels have recovered.

36. In 2023 a new online system was introduced to administer forestry in the NZ ETS called Tupu-ake. One of the objectives of this system was to provide more assistance for participants to encourage voluntary compliance. This is achieved through functions like input returns, which allow for emissions returns to be calculated by the system instead of manually. The system also provides for better data capturing to inform where improvements could be made.

What is the policy problem or opportunity?

37. Opportunities for technical administrative improvements to the NZ ETS were identified through operational data, operational experience following severe weather events, and MPI's experience in operating forestry in the NZ ETS since the last changes went live on 1 January 2023.[8]

38. The package of proposals in this RIS are part of a wider collection of changes intended to make the administration of the Act easier and ensure the NZ ETS is fit for purpose and functioning as intended. Many of the proposals are minor and technical, some relate only to a specific part of the

[8] Specifically, Cyclone Gabrielle and Cyclone Hale.

Act or NZ ETS, and others are more wide-ranging. The wider collection of changes includes annual updates to wider NZ ETS settings and efficiency review of the Act.[9]

39. This RIS covers five proposals to amend the Act, which are listed in **Table 3**.

40. The Ministry for Regulation has determined that the proposal to make input returns for all forestry emissions returns is exempt from the requirement to provide a RIS on the grounds that it has no or only minor economic, social, or environmental impacts.

Table 4: Summary of proposals

Topic	Proposal	Exempt from RIS
Responding with flexibility to significant disruptions	1A: Extending deadlines for emissions return, notices and making applications for IAs and UEFs.	No
	1B: Adjust the penalty for failure to surrender or repay units by the due date	
	1C: Delaying forest re-establishment tests	No
Improving how quickly transmissions of interest (TOI) notices are processed	2A: Shortening timeframes for non-compliant TOI notices	No
	2B: Clarifying that transferees need a holding account	No
Improving availability of input return functionality through the online carbon calculator	3: Making input returns available for all forestry emissions returns, including overdue returns	Yes

What objectives are sought in relation to the policy problem?

41. The broad policy objectives for this package of proposals are to:

    a) Reduce complexity and operational burden for participants in the NZ ETS and the Crown.
    b) Address known gaps in the regulatory framework following events that prevent persons from meeting deadlines set out in the Act.
    c) Maintain the integrity of the NZ ETS in support of New Zealand's domestic and international targets and emissions budgets.

What consultation has been undertaken?

42. Targeted engagement was undertaken on earlier iterations of these proposals specifically, and alongside other proposals to amend the Act. Specific feedback for each proposal is described in Section 2.

Engagement with Māori forestry stakeholders

43. A large portion of participants in forestry in the NZ ETS are Māori or Māori entities.

44. As part of targeted engagement, Māori forestry stakeholders were contacted via email with a summary of the proposals and invited to meet with officials via online hui to discuss the proposals. Those contacted included Māori forestry landowners (trusts, rūnanga, iwi authorities and incorporations) representing 90% of all Māori forest land, as well as Māori forestry

[9] The wider review does not include the cost recovery and efficiencies review for forestry with the Minister of Forestry's Registry Group.

stakeholders such as Ngā Pou a Tāne. No feedback was received via email, but one group indicated they would like to meet to discuss the proposals. An online hui was held with the Māori forestry representatives from Tairawhiti who expressed interest. Those who attended the hui were supportive of the proposals.

45. The proposals outlined in this RIS were circulated, alongside other proposals to amend the Act, to pan-Māori groups representative of experts in Treaty of Waitangi and Te Ao Māori and Post-Settlement Governance Entities (PSGEs) via email for feedback, but no feedback was received.

Targeted engagement with other stakeholders

46. The proposals were discussed with MPI's Forestry NZ ETS Technical Advisory Group (ETS TAG) which supports the development of NZ ETS policy through technical input from the perspective of experienced practitioners of forestry in the NZ ETS.

47. Proposal 1A was circulated for feedback via an email to a selection of non-forestry participants in the NZ ETS alongside other proposals to amend the Act.

Other relevant consultation

48. Consultation on technical improvements to the Climate Change (Forestry) Regulations 2022 was held between 15 April and 16 May 2025, with late submissions accepted until 23 May. One of the items consulted on directly relates to proposal 2A, *Transferees without a holding account,* and feedback on that proposal is outlined in the analysis of Proposal 2A.[10]

[10] Summary of Submissions: Technical improvements to the Climate Change (Forestry) Regulations 2022

Section 2: Policy problems and options assessment

What criteria will be used to compare options to the status quo?

49. All options are assessed against the criteria outlined in **Table 4**. These same assessment criteria were used for all three impact statements informing policy decisions on the proposed Amendment Bill.

Table 5: Assessment criteria

Criterion	Description
Consistency with purpose of NZ ETS	The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets.
Ease of implementation and cost	The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants.
Clarity and transparency	The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied.
Consistency for participants	The extent to which the option ensures that NZ ETS participants are treated consistently.

50. A qualitative judgement is made of the effectiveness of each option using the following rubric:

++ much better than doing nothing/the status quo
+ better than doing nothing/the status quo
0 about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
-- much worse than doing nothing/the status quo

What scope will options be considered within?

51. Most of the proposed amendments are to existing provisions in the Act based on operational observations and suggestions for improvement from forestry in the NZ ETS participants. Following targeted engagement, some of the proposals under proposal 1 are also applied to non-forestry participants. The proposed changes are anticipated to increase compliance rates and make administration of the NZ ETS clearer for participants and more efficient for the regulator. This will improve the experience of participants and other stakeholders in the NZ ETS. Th e changes are anticipated to have minimal negative effects for participants, other stakeholders, and the New Zealand public.

1: Creating flexibility for participants following events that prevent participants from meeting deadlines set in the Act

What is the context for the policy problems?

52. Participants in the NZ ETS have obligations that need to be met by the deadlines set out in the Act. Obligations include reporting on emissions and removals, notifying the regulator, repaying or surrendering units, and meeting timeframes for re-establishing forest land after trees are cleared. Additionally, there are statutory deadlines for making IA and UEF applications. Some non-forestry participants may also be entitled to receive units for their removal activities or apply for an allocation of units if they are affected by the rules of the NZ ETS.

Reporting on emissions and removals, notifying the regulator and surrendering or repaying units

53. There are several deadlines related to reporting emissions and removals, notifying the regulator and surrendering or repaying units. Examples of these deadlines are:
    a) submission of an emissions return to report on emissions or removals at intervals set in the Act
        - for post-1989 forestry participants the deadline is six months after the end of the period covered in the emissions return;
        - for pre-1990 forestry and non-forestry participants the deadline is 31 March in the year following the activity;
    b) notifying the regulator within 20 working days of a transmission of interest (e.g. a landownership change, or change in rights or leases);
    c) surrendering units equal to the carbon emissions reported in the emissions return
        - for post-1989 forestry participants the deadline is 60 working days after the submission of the emissions return;
        - for pre-1990 forestry and non-forestry participants the deadline is 31 May in the year the emissions return was submitted.

54. Failure to meet these deadlines may result in significant financial penalties, including:
    a) Penalties for failing to submit emissions returns, which are linked to:
        - the amount of emissions or removals the regulator determined should have been reported in the emissions return;
        - the carbon price; and
        - the culpability level.[11]
    b) Penalties for failing to surrender or repay units, which are linked to:
        - the amount of emissions; and
        - the carbon price.

Meeting timeframes for re-establishing forest land after clearing

55. The NZ ETS disincentivises deforestation through the obligation to surrender a unit liability when forest land is deforested. Forest land in the NZ ETS is considered deforested if it:
    a) is converted to a non-forest land use (e.g. into pasture or housing);[12] or

[11] If a person fails to take reasonable care, the person's behaviour is categorised in three levels of culpability: the person did not take reasonable care, the person was grossly careless, and the person knowingly failed.
[12] Sections 4(1) and 180A of the Act.

b) fails to re-establish into forest species at 4, 10 or 20 years of clearance[13] (e.g. harvesting).

56. The re-establishment timeframes to determine whether forest land is re-established into forest species are outlined in **Table 5**. These apply in the same way, regardless of how the forest was cleared, and whether the approach to re-establishing the forest involves planting or allowing natural regeneration. Longer timeframes apply for indigenous forest to get to the same 'state' as exotic forest species.

Table 6: Deforestation tests and their application (section 179 of the Act)

Year after clearance	Exotic species	Indigenous species
4	Either: • at least 500 stems per hectare of exotic forest species, or • replanted with at least 100 stems of willow or poplar species for managing soil erosion, where the local authority has determined the risk of erosion is at least moderate.	Predominantly indigenous forest species, growing in a way that the land is likely to be forest within 10 years of clearance.
10	Predominantly exotic species growing, with a tree crown cover of more than 30% from trees that are at least 5 metres high.	Predominantly indigenous forest species, growing in a way that meets the definition of forest land in the NZ ETS.
20	Not applicable	Predominantly indigenous forest species; each hectare of forest must have more than 30% crown cover from trees that are at least 5 metres high.

57. Deforestation liabilities arise differently for pre-1990 forest land and post-1989 forest land:

a) Pre-1990 forest land does not earn units. Units equal to the amount of carbon stock in the forest upon clearing must be surrendered if it is deforested. The cost can exceed $48,000 per hectare.[14]

b) Pre-1989 forest land that is registered must be removed from the NZ ETS if it is deforested and any units earned on that land must be surrendered.

Events that prevent meeting of deadlines and implications for participants in the NZ ETS

58. Since the NZ ETS was introduced, several events, such as severe weather and a pandemic, have affected participants' ability to meet their NZ ETS obligations by the relevant deadline. Currently, the effects of these events are addressed through the use of:

a) Existing operational flexibility in the Act,

b) Emergency legislation to vary obligations in the Act

[13] Sections 4(1) and 179 of the Act.

[14] Based on the 2025 carbon price of $68 set in the Climate Change (Auctions, Limits, and Price Controls for Units) Regulations 2020 and 704 tonnes per hectare, which is the carbon stock at age 28 years for pre-1990 forest in the Bay of Plenty (the median yield in the default tables in the Climate Change (Forestry) Regulations 2022).

59. In response to the damage from the North Island severe weather events in early 2023, emergency legislation called the Severe Weather Emergency Recovery Legislation Act 2023 (SWERLA) was passed. Two orders were made under SWERLA relating to forestry in the NZ ETS:[15]

a) The Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023 provided:
   - An extension for deadlines such as for the submission of an emissions return at the end of a reporting cycle, or notifying the regulator of a transmission of interest.[16] Approximately 770 participants (from a nationwide total of 3,900) used the extension to reporting deadlines provided by emergency legislation.
   - An extension for the deadline to surrender units in relation to emissions returns or because of error.[17]

b) The Severe Weather Emergency Recovery (Climate Change—Forestry) Order (No 2) 2023 provided for the deferral of dates on which forest land is treated as deforested and pre-1990 offsetting dates. Participants received three extra years for the test 4 years after the forest is cleared, and 10 years after the forest is cleared.

60. Relying on emergency legislation presents high risk to the regulator because:

a) The passing of emergency legislation is quite rare. For example, storms in the Tasman area in 2022 did not lead to emergency legislation;

b) Creating emergency legislation is complex and slow – depending on when an event occurs in the reporting cycle, it may not be timely enough to assist with ETS obligations;

c) It is unlikely to capture all situations where participants require assistance due to restraints on scope. For example, a forestry participant with 4,400 hectares of forest damaged by Cyclone Gabrielle was not able to use extensions provided by SWERLA Order 2 because they were not in the regions covered by the Order.

61. Events that prevent persons from meeting their obligations by the deadline interact differently with different obligations in the Act. Because of this they will be defined separately for the purpose of proposal 1A, 1B, and 1C.

a) For the purpose of proposal 1A and 1B events that prevent persons are defined as 'significant disruptions'.

b) For the purpose of proposal 1C events that prevent persons from re-establishing forest land are defined as 'disruptions preventing forest re-establishment'

[15] Severe Weather Emergency Recovery (Climate Change—Forestry) Order 2023, and Severe Weather Emergency Recovery (Climate Change—Forestry) Order (No 2) 2023 were passed under the Severe Weather Emergency Response Legislation Act 2023.
[16] These deadlines were extended to the earlier of 100 working days after the deadline under the Act, or 20 November 2023.
[17] These emissions returns cover deforestation of pre-1990 forest land, pre-1990 offsetting land, post-1989 forest land, amendment or assessments (compliance action).

1A: Extending deadlines for reporting on emissions and removals, applying for IAs and UEFs, and notifying the regulator after a significant disruption

What is the policy problem or opportunity?

62. Significant disruptions may leave residences, farms, forests, production facilities or office buildings damaged or cause access issues to relevant information. These issues can significantly limit participants' ability to submit emissions returns, apply for an IA or UEF, or notify the regulator within the timeframes set out in the Act.

63. If participants are not able to access extensions, they may become non-compliant solely due to their being affected by a significant disruption. This non-compliance may result in them receiving infringement fees or fines, or penalties. The process of determining whether fees, fines or penalties apply is also resource intensive for the regulator.[18] Persons who are unable to submit their IA or UEF application by the deadline may experience financial impacts.

64. A lack of ability to respond to participant needs during significant disruptions presents reputational and financial risks for the regulator because it forces participants into non-compliance. Non-compliance also presents a significant financial risk for participants.

65. There are several related problems to ensuring that extensions are available to participants who experience significant disruptions.

Applicability and duration of extensions

66. Severe weather events in 2023 and targeted engagement illustrated that the current extensions available do not provide sufficient flexibility for the regulator to respond to participant needs. The application of extensions is too narrow because they are only available for certain deadlines (emissions returns). The timeframes of extensions that are available are also not long enough to support participants to meet their obligations when they are affected by a significant disruption. This is because they only provide an additional 20 working days.

67. Currently, the Act does not provide for extensions for persons submitting IA or UEF applications. This means that if a person is affected by a significant disruption, they may be unable to submit their application by the statutory deadline. The inability to extend these deadlines in response to a significant disruption can have serious consequences.

68. Applicants who miss the deadline may become ineligible to receive units or may be unable to use a site-specific emissions factor for reporting. This can result in financial costs or lost opportunities that they would not otherwise have incurred, such as having to use a default emissions factor or missing out on the allocation altogether. Allowing for extensions for significant disruption would improve fairness across the scheme and reduce the risk of inequitable outcomes.

69. **Table 6** shows an overview of situations where an extension may be required and where extensions are currently not available.

[18] Penalties are linked to the amount of emissions and carbon price.

Table 7: Gap analysis of types of extensions available for different participants

	Participants		
Types of extensions participants might need	**Forestry participants**	**Non-forestry participants**	**Comments**
Extension to the deadline for submission of an emissions return[19]	☑	☑	The maximum extension that can be granted is 20 working days
Extension to the deadline of notices			Not available
Extension to the deadline for surrenders or repayments			Not available
Extension to the deadline for IA applications			Not applicable for forestry participants, not available for other participants
Extension to the deadline for UEF applications			Not applicable for forestry participants, not available for other participants

Defining a significant disruption

70. Lack of clarity around when participants can apply for and receive extensions, would undermine the ability of extensions to aid participants in remaining compliant with their NZ ETS obligations and may cause additional stress. To provide clarity significant disruptions should be clearly defined so that participants know when they are able to apply for and receive extensions if they require them.

Providing sufficient flexibility where landownership or land agreement changes

71. Forestry participants and transferees are required to notify the regulator when landownership or land or forestry agreements change (transmissions of interest).[20] The notice provided to the regulator must include an emissions return. TOI may occur at any point in a year, and as such there is no set deadline to submit the notice, instead the deadline is 20 working days from the date of the TOI.

72. Significant disruptions may occur close to the 20 working day deadline after the transmission of interest, or may commence prior to the 20 working day deadline for notice and be enduring. This means participants and transferees may be unable to either notify the regulator or request an extension before the notice deadline. Enduring disruptions may occur where there is severe weather over a prolonged period of time as has recently occurred in the Tasman area.

[19] Under section 119 of the Act.
[20] The deadline in the Act is currently 20 working days.

Assumptions

73. For the purpose of testing the options for this problem the criterion 'consistency with purpose of NZ ETS' has been considered in the broadest sense. This statement assumes that changes that enable participants to comply with their obligations to report on emissions, removals and units positively affects the NZ ETS meeting its objectives. It also includes avoiding perverse incentives and unintended outcomes.
74. Accurate reporting of emissions and removals is a fundamental aspect of the NZ ETS. This is because persons are either entitled to units or required to surrender units based on their emissions or removals. Both receiving and surrendering units incentivise businesses to reduce emissions. Receiving units incentivises participants to remove greenhouse gasses from the atmosphere and surrendering units incentivises participants to emit less greenhouse gasses.
75. It is important that eligible participants are able to submit IA applications to help mitigate the impact of ETS costs on emissions intensive industries with trade exposures.
76. Potential cost recovery of applications will be considered as part of the periodical cost recovery review for the NZ ETS.

What options are being considered

Applicability and duration of extensions

Option 1: Make no changes to the Act (status quo)

77. Key features: extensions of up to 20 working days are only available for the deadlines for emissions returns. Extensions are not available for applications for IAs or UEFs, nor for the requirement to notify the regulator.

78. Addressing the problem: the regulator cannot provide longer extensions or provide extensions to deadlines for notifying the regulator. Emergency legislation can be passed to create more flexibility in response to large scale significant disruptions. However, emergency legislation is not able to resolve all issues due to its limited scope. The future use of emergency legislation is uncertain as it requires the event be of 'sufficient' magnitude for Parliament to make emergency legislation. It also poses a significant administrative burden on Ministers and Cabinet to implement.

Option 2: Amend the existing provisions to allow EPA to approve extensions to more deadlines for participants

79. Key features: the Act is amended to allow EPA to approve extensions for participants and transferees affected by a significant disruption of:
    a) up to 60 working days for emissions return and notice deadlines for all participants affected by a significant disruption; and
    b) up to 60 working days for industrial allocation applications; and
    c) up to 20 working days for UEF applications.

80. Addressing the problem: participants and transferees are able to access extensions for all deadlines as required when they are affected by a significant disruptions, as long as they apply before the relevant deadline has passed. Extensions can be granted for a period of up to 60 working days to ensure participants have enough time to meet their obligations.

Option 3: Introduce a new mechanism for group extensions

81. Key features: Establish a mechanism in the Act for group extensions to emissions return and notice deadlines decided by the Minister or Cabinet as and when required in the face of a significant disruption. The Minister or Cabinet decision would outline those who are part of the group and will receive an extension due to a significant disruption. For example, participants who are located in a defined area where a natural event has occurred. Participants would not need to apply for the extension as it would automatically apply to everyone in the group.

82. Addressing the problem: participants who are in the group as defined in the Minister or Cabinet decision would be able to access extensions for emissions return and notice deadlines. Participants who are not part of that group but are still affected by a significant disruption ar e not able to access the extensions.

How do the options compare to the status quo/counterfactual?

	Option One – [*Status Quo / Counterfactual*]	Option Two – Amend the existing provisions to allow EPA to approve extensions to more deadlines	Option Three - A new mechanism for extensions as a group
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Participants can only receive a 20 working day extension for emissions returns and are unable to report on emissions, removals or units if this does not provide sufficient time.	++ Participants are provided more time to meet obligations, but obligations remain the same. They can report on emissions and removals, notify the regulator as required, and submit their industrial allocation or UEF application.	+ Participants in the group as defined in the decision made by the Minister or Cabinet are provided more time to meet obligations, but obligations remain the same. Participants in the group can report on emissions and removals, apply for UEFs and IAs, notify the regulator.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 Participants become non-compliant if they cannot submit by the deadline set out in the Act which increases compliance related cost for the government.	++ Updating processes and operational policies is considered low cost and can be achieved with current resources. This option provides extensions to all participants who require it which minimises compliance costs for government and participants.	- Processes and operational policies for these extensions will have to be implemented. The process itself is time and resource intensive for Ministers and Cabinet and decisions around extensions may be low risk and highly administrative. The option would minimise compliance cost for government and some participants.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 Participants can only receive extensions for certain deadlines.	++ Provides the option for participants affected by a significant disruption to apply for an extension. Applications for extensions will likely resemble applications for the extension currently available.	- Prior to the decision being made it may not be clear to participants whether they will receive an extension. Procedures for decisions made by the Minister may take some time due to development of advice and receiving priority for decision making. Once the Minister has decided participants may need to check whether their circumstances fall within the group. This may not be sufficiently clear resulting in participants incorrectly determining they will receive an extension.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 Participants can only receive extensions for certain deadlines. Participants are also not able to submit UEF and industrial allocations applications which creates unfairness across the NZ ETS.	++ Participants, transferees and UEF and IA applicants who experience a significant disruption can apply for an extension. Decisions are made under the Act in accordance with any notices made with ministerial oversight.	- Only participants who experience a significant disruption and are in the defined group will receive extensions. Likely to only cover significant disruptions at regional or national level.
Overall assessment	0	++	-

Defining a significant disruption

Limitations, constraints, and non-feasible options

83. There are several mechanisms available to define significant disruptions. Two mechanisms were deemed non-feasible:
    a) defining significant disruptions solely in the Act; and
    b) defining significant disruptions in the Regulations.

84. These options were deemed non-feasible as they are not flexible enough to allow the regulator to respond to unpredictable significant disruptions. If significant disruptions are defined in the Act or Regulations it would take too long to update these definitions if required due to an unpredicted significant disruption. This may mean that the regulator has to rely on emergency legislation, or that participants become non-compliant due to reasons outside of their control.

Option 1: Make no changes to the Act (status quo)

85. Key features: If no changes are made to the Act, significant disruptions would be defined in operational policy or guidance developed to support implementation of the changes to extensions in the Act.

86. Addressing the problem: This would mean the term is defined by the regulator, but the definition could be subject to change causing a lack of clarity for participants.

Option 2: Define significant disruptions as occurring when a state of emergency is declared or in situations set in notices with ministerial oversight

87. Key features: A significant disruption would be defined as occurring:
    a) when a state of emergency is declared and a person's home, business or forest land is located in a directly affected area; or
    b) in situations set out in a notice with Ministerial oversight.

88. Addressing the problem: participants in areas where a state of emergency has been declared would be able to access extensions for emissions return, notice, and surrender and repayment deadlines. Participants who are affected by a significant disruption where no state of emergency is declared may still be eligible for an extension in situations set out under a notice with Ministerial oversight. This will increase clarity on when a significant disruption occurs, and extensions would apply.

	Option One – [*Status Quo / Counterfactual*]	Option Two – Define significant disruptions as occurring when a state of emergency is declared or in situations set in notices with ministerial oversight
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Introducing extensions without defining what qualifies as a significant disruption may mean that it is unclear for participants whether they are able to access an extension. This would mean that they are not enabled to report on emissions, removals or units as required for the NZ ETS to drive emissions reductions.	++ Participants are provided more time to meet obligations if they are affected by a state of emergency or a situation as set out in a notice, but obligations remain the same. They can report on emissions and removals and notify the regulator as required as required for the NZ ETS to drive emissions reductions.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 There is currently no definition of significant disruption. Without emergency legislation participants who experience significant disruptions are not able to access sufficient extensions. This leads to non-compliance and associated costs for the government and NZ ETS participants.	++ Updating processes and operational policies is considered low cost and can be achieved with current resources. This option provides extensions to most participants who require it which minimises compliance costs for government and participants.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 It is unclear for participants whether they will be able to receive support when they experience a significant disruption. Situations where participants may receive extensions are currently mostly dependent on emergency legislation.	++ Provides the option for all participants affected by a significant disruption to apply for an extension. Applications for extensions will likely resemble applications for the extension currently available. Participants can identify whether a state of emergency applies to their area, or look up what situations are covered in a notice with ministerial oversight.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 Operational policy and guidance are easier to update meaning that they are more likely to change, leading to less consistency.	++ Most participants who experience a significant disruption can apply for an extension. Decisions are made based on the Act in accordance with any operational policy or guidance developed to support implementation of the Act.
Overall assessment	0	++

Providing sufficient flexibility where landownership or land agreement changes

Option 1: Make no changes to the Act (status quo)

89. Key features: forestry participants will only be able to receive an extension if they apply before the deadline of the TOI notice.

90. Addressing the problem: forestry participants who are affected by a significant disruption close to the deadline, or who are experiencing an ongoing significant disruption may not be able to access an extension. This means they may become non-compliant solely due to being affected by a significant disruption.

Option 2: Allow forestry participants to apply for extensions to notify the regulator up to 20 working days after the deadline

91. Key features: allow forestry participants to apply for an extension to the deadline to notify the regulator of a TOI within 20 working days after the TOI date.
92. Addressing the problem: forestry participants who are affected by a significant disruption close to the deadline, or who are experiencing an ongoing significant disruption will also be able to access an extension.

	Option One – *Status Quo / Counterfactual*	Option Two - Allow forestry participants to apply for extensions to notify the regulator up to 20 working days after the TOI date
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Participants may not be able to request an extension on time and may not be able to notify the regulator of a TOI.	+ Participants that are affected by a significant disruption close to the deadline are also able to report on emissions and removals, notify the regulator and surrender and repay units as required.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 If participants are not able to request an extension, they will become non-compliant which will increase compliance costs for government and NZ ETS participants.	- More difficult to implement as allowing participants to apply for an extension after the deadline for the notice may complicate compliance processes making them more resource intensive. However, it will help participants remain compliant and so would minimise total compliance cost for government and some participants.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 The regulator does not have the option to be flexible in allowing participants to request extensions.	- Participants may request an extension until 20 working days have passed since the notice deadline which provides clarity for when the extension must be submitted by. Allowing extensions may lead to less clarity regarding compliance actions as the action will be taken at least 20 working days after the non-compliance has occurred.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 No participant receives flexibility to allow participants to request extensions. However, it is harder for participants required to notify of a TOI occurring to comply if the disruption occurs close to the deadline or is ongoing.	++ Participants who experience a significant disruption close to the deadline or who experience a significant disruption that is enduring would also be able to apply for an extension.
Overall assessment	0	+

Targeted engagement

93. This proposal to introduce longer extensions for more deadlines was discussed with the ETS TAG. The group was supportive of creating these longer extensions for emissions return, notice and surrender and repayment deadlines. They expressed a need for clarity around when extensions definitely apply, and flexibility to consider 'edge cases'.

94. The proposed options do not apply to surrender and repayment deadlines. This is because consequential amendments will ensure that participants have more time to meet these deadlines. Additionally, problem 1B aims to address issues around persons receiving penalties when they fail to meet surrender and repayment deadlines through no fault of the person. This may include situations where participants are affected by a significant disruption.

95. At the time of engagement, it was expected that defining significant disruptions in operational policy would best meet these requirements. Upon further analysis defining significant disruptions as occurring when a state of emergency is declared or in situations set in notices with ministerial oversight would better meet the requirements.

96. The regulator became aware of the gaps in the regulatory framework due to the experience of foresters following the 2023 Severe Weather Events. Engagement with non-forestry participants illustrated that they may also require extensions following significant disruptions. Following this feedback and to ensure fairness for participants across the NZ ETS the extensions will also apply to non-forestry participants.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Applicability and duration of extensions

97. The preferred option is *Option Two – Amend the existing provisions to allow EPA to approve extensions to more deadlines for participants* because it best addresses the policy problem and delivers the highest net benefits.

Defining a significant disruption

98. The preferred option is *Option Two – Define significant disruptions as occurring when a state of emergency is declared or in situations set in notices with ministerial oversight* because it best addresses the policy problem and delivers the highest net benefits.

Providing sufficient flexibility where landownership or land agreement changes

99. The preferred option is *Option Two – Allow forestry participants to apply for extensions to notify the regulator up to 20 working days after the deadline* because it best addresses the policy problem and delivers the highest net benefits.

100. The preferred options are most likely to meet the policy objectives because:

    a) the integrity of the NZ ETS is maintained. Participant obligations remain the same and participants are supported to meet these obligations. This means participants are able to report on emissions, removals and notify the regulator. There is a clear definition of significant disruptions which ensures that extensions are provided consistently.

b) known gaps in the regulatory framework are addressed. Participants are able to apply for the extensions they need to remain compliant following a significant disruption. This includes access to longer extensions for emissions returns, notices, industrial allocations and extensions for UEF applications. Participants submitting TOI notices are provided sufficient flexibility to access extensions where significant disruptions occur close to the TOI notice deadline, or where significant disruptions are enduring.

c) it reduces complexity and operational burden for forestry participants in the NZ ETS and the Crown.
   - Participants: all participants affected by a significant disruption can apply for an extension in a manner similar to the currently available extensions. The burden of recovery and from a significant disruption and the cost of compliance is reduced as participants have more time to meet their obligations;
   - The Crown:
     1. the preferred options are likely to minimise compliance costs the most for the regulator. Participants who require extensions can access them and meet their obligations instead of becoming non-compliant;
     2. the preferred options will reduce or avoid the need to rely on creating emergency legislation which is high risk; and
     3. the preferred options are easy to implement and operationalise due to the clear definition of significant disruptions and the existence of processes for approving existing extensions applications.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact.	Evidence Certainty
	Additional costs of the preferred option compared to taking no action		
Regulated groups	**Ongoing -** Regulated groups will bear the cost of preparing an application and any application fee (if there is one).	**Low**: Any potential cost of preparing and application and any applicable fee (if there is one) is likely to be substantively less than an instance of non-compliance.[21]	High
Regulators	**One-off -** Processes and operational policies will require updating. System may require minimal updates. Cost recovery analysis may need to be carried out for any potential fee. **Ongoing –** processing applications if these are not cost-recovered.	**Low**: Any cost from processing applications is likely to be lower than addressing non-compliance if an extensions were not available.	Medium
Others (e.g., wider govt, consumers, etc.)	Wider government is unlikely to be affected by the proposed extensions.	Low	High
Total monetised costs	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised costs	*One-off costs associated with updating existing processes and implementing operational policy. Potential ongoing cost incurred for processing extension applications if they are not cost-recovered.*	*Low to medium*	*Medium*
	Additional benefits of the preferred option compared to taking no action		
Regulated groups	**Ongoing -** Regulated groups return to compliance as quickly as possible and do not incur costs of non-compliance.	High	High
Regulators	**Ongoing –** Reduced cost of addressing low risk non-compliance which is resource intensive for the regulator. This means the regulator can focus resources on high-risk non-compliance.	High	High
Others	The integrity of the NZ ETS is protected and contributes to the Government meeting its domestic and international climate change goals.	Medium	High
Total monetised benefits	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised benefits	*Participants avoid the costs of becoming non-compliant. Regulators avoid the cost of addressing low risk non-compliance and can focus on high-risk non-compliance instead.*	*High*	*High*

[21] Low costs are expected to be under $10,000.

Assumptions

101. Data to consider the marginal impacts of these changes is limited. Total compliance costs for regulated parties and the regulator incurred by a significant disruption is difficult to predict. Analysis is also limited by the time available to progress the proposal.

The benefits of the proposal outweigh the costs.

102. The benefits of the proposed changes are expected to outweigh the costs. Participants who want to comply but are focussed on securing property and resuming business following the disruption are given the opportunity to do so.

103. Overall compliance costs for regulators and participants will be reduced because participants who are willing to comply return to compliance as soon as possible. The costs of implementation are expected to be low, although operational policies, processes and systems will require updating.

1B: Adjust the penalty for failure to surrender or repay units by the due date

What is the context for the policy problem?

105. Participants are required to submit emissions returns to report on their emissions and removals during periods set in the Act. If a participant reports that the activity they carried out resulted in emissions they must surrender units in relation to those emissions. Participants may be required to repay units if they have received too many units in their emissions return, or their industrial allocation.

106. Participants who are affected by a significant disruption, such as severe weather, may have difficulty meeting the deadline for surrender and repayment obligations. If a participant fails to surrender or repay units they are liable to pay the penalty set out in the Act.

107. The penalty for failing to surrender or repay units differs from the penalty for failing to submit an emissions return or submitting an incorrect emissions return. The Regulatory Impact Statement – NZ ETS tranche two: Improving compliance and penalties set out the reasons for the introduction of administrative penalties in the NZ ETS.[22]

108. In relation to penalties for failing to surrender or repay units it states '*Failing to surrender or repay units is a more straight-forward failure to comply than errors in reporting emissions or claiming allocations. It also carries with it a higher risk to the Crown as ultimately the Crown is responsible for New Zealand meeting its domestic and international emissions targets. A failure to surrender or repay units undermining the emissions cap*.'

109. There is no discretion in determining whether the penalty applies if a person fails to surrender or repay units. The policy decisions and drafting are silent as to whether this penalty was intended to be absolute liability. Generally, New Zealand Courts will not infer absolute liability in the absence of clear Parliamentary intent. Although administrative penalties are civil offences, guidance from LDAC on liability in criminal law is persuasive.[23]

110. Absolute liability offences are "almost never used: it is rarely justifiable to create an offence for which there is no defence. The starting point is always to consider what defences should be open to the defendant." Given that the policy decision and drafting are silent it is unlikely that there was an intention to introduce a penalty that would apply with absolute liability. It is more likely that the penalty was intended to apply with strict liability with liability avoided in certain circumstances, for example, where there was no fault.

What is the policy problem or opportunity?

111. The regulator does not have discretion in determining whether a person is liable to pay a penalty if they fail to surrender or repay units by the deadline. Most participants who are unable to surrender or repay units due to a significant disruption or otherwise through no fault of their own will receive a penalty under section 134. This means that in practice the penalty applies with absolute liability.

112. Section 134AA applies to small foresters and specifies that a person is not liable to pay a penalty if the EPA is satisfied that failure to surrender or repay units occurred through no

[22] Regulatory Impact Statement – NZ ETS tranche two: Improving compliance and penalties Impact Statement - NZ ETS Tranche two: Improving Compliance and Penalties - 16 May 2019 - Ministry for the Environment - Regulatory Impact Assessment.

[23] From LDAC: https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/compliance-and-enforcement-2/chapter-24.

fault of their own. Because this only applies to some participants, it creates inconsistencies and unfairness between participants in the NZ ETS. [24]

Assumptions

113. Surrendering and repaying units by the deadline is an important part of the NZ ETS. 'There is a risk to the Crown because the Crown is ultimately responsible for New Zealand meeting its domestic and international emissions targets. A failure to surrender or repay units risks undermining the emissions cap.'[25]

114. The application of penalties encourages participants to surrender and repay units by the deadline and change their behaviour if they fail to do so and be compliant in future. In the situations described in the problem above, the failure to meet the due date for surrender or repayment obligations has been caused through no fault of the person. This means that a penalty is unlikely to encourage a person to become compliant.

[24] The Act currently contains a 'no fault' clause for 'small forestry participants' with a surrender or repayment obligation of less than 25,000 units in section 134AA(5).

[25] Regulatory Impact Statement – NZ ETS tranche two: Improving compliance and penalties [Impact Statement - NZ ETS Tranche two: Improving Compliance and Penalties - 16 May 2019 - Ministry for the Environment - Regulatory Impact Assessment].

What options are being considered?

Option 1: Make no changes to the Act (status quo)

115. Key features: Most participants will be liable to pay a penalty for failing to surrender or repay units, even if the failure to surrender or repay units occurred through no fault of their own. Small forestry participants are not liable to pay a penalty if they failed to surrender or repay units through no fault of their own.

116. Addressing the problem: Most participants remain liable to pay a penalty if they fail to surrender or repay units even if this occurred through no fault of their own.

Option 2: Change the Act to prevent participants from being liable for a penalty if the failure occurred through no fault of the person

117. Key features: Participants are not liable to pay a penalty if they fail to surrender or repay units by the deadline if the failure occurred through no fault of the person. This means participants may not be liable to pay a penalty if they fail surrender or repay solely due to being affected by a significant disruption.

118. Addressing the problem: If a participant fails to surrender or repay units by the deadline, through no fault of their own, they will not be penalised. Extending no fault provisions to apply to all participants in the NZ ETS will increase consistency and fairness in the application of penalties.

How do the options compare to the status quo/counterfactual?

	Option One – [*Status Quo / Counterfactual*]	Option Two – Change the Act to prevent participants from being liable for a penalty if the failure occurred through no fault of the person
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Participants receive penalties even if the failure occurred through no fault of their own. This may undermine voluntary participation in the NZ ETS.	++ Participants receive penalties when they fail to surrender or repay units by the deadline due to circumstances in their control.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 The option means that ETS participants will incur compliance costs as penalties will be applied regardless of whether the offence occurred through no fault of the person.	+ Participants do not incur compliance costs if the failure to surrender or repay units by the deadline occurred through no fault of their own. This reduces compliance costs for participants. Though the overall compliance costs for government are expected to stay around the same, there will be initial costs and resources needed to update operational policies, processes and systems.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 The Act is silent, making it unclear, as to whether the penalty was intended to be an absolute liability offence.	++ Application of the penalty in general will not change. The option clarifies that the penalty is not an absolute liability penalty.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 The application of penalties for surrender and repayment obligations are not consistent for all participants, as the 'no fault' provisions are only available for small forestry participants.	++ The application of penalties is the same for all participants. All participants are not liable to pay a penalty if the failure to surrender or repay by the due date occurred through no fault of their own.
Overall assessment	0	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

119. The preferred option is *Option Two – Change the Act to prevent participants from being liable for a penalty if the failure occurred through no fault of the person* because it best addresses the policy problem and delivers the highest net benefits.

120. The preferred option addresses the problem because it ensures that persons who fail to surrender or repay units by the deadline through no fault of their own are not liable to pay a penalty.

121. The preferred option meets the policy objectives by:

    a) Reducing complexity and operational burden for participants in the NZ ETS and the Crown. There will no longer be a difference between participants because no fault provisions apply to all participants.

    b) Maintain the integrity of the NZ ETS in support of New Zealand's domestic and international targets and emissions budgets. Penalties still apply to all situations other than where the failure occurred through no fault of the person. This ensures that non-compliance is deterred.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
	Additional costs of the preferred option compared to taking no action		
Regulated groups	**Ongoing** – Regulated groups will bear the cost of showing the regulator that the offence occurred through no fault of the person.	Low, any potential cost of preparing this information is likely to be substantively less than a penalty.	High
Regulators	**One-off** – Processes and operational policies will require updating. System may require minimal updates.	Low	Low
Others	The Crown may receive less revenue through penalties if less people receive a penalty due to the failure occurring through no fault of the person. However, penalties should not be a revenue stream for the Crown they should be used to address non-compliance.	Low	Medium
Total monetised costs	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised costs	*One-off costs associated with updating existing processes and implementing operational policy and ongoing costs of assessing information to determine whether the failure occurred through no fault of the person.*	*Low*	*Medium*
Regulated groups	**Ongoing** – Regulated groups will not incur penalties if the failure occurred through no fault of the person.	High	High
Regulators	**Ongoing** - Reduced reputational risk and challenging of decisions.	Medium	Medium
Others	None.	Low	Medium
Total monetised benefits	*Not available.*	*Not available.*	*Not applicable.*
Non-monetised benefits	Regulated groups will not incur penalties if the failure occurred through no fault of the person. Reduced reputational risk and risk of challenging of decisions for the regulator.	*Medium*	*High*

Assumptions

122. Data to consider the marginal impacts of these changes is limited. Total costs incurred by participants and the regulator if penalties applied is difficult to predict. Analysis is also limited by the time available to progress the proposal.

The benefits of the proposal outweigh the costs.

123. The benefits of the proposed change are expected to outweigh the cost. Persons who fail to surrender or repay units through no fault of their own, will not receive a penalty. This will significantly reduce costs for some regulated parties and reduce reputational risk and the risk of challenge of decisions for the regulator. The costs are expected to be low.

124. Most participants receive penalties if they fail to surrender or repay units ensuring continued deterrence of non-compliant behaviour.

1C: Delaying forest re-establishment tests after certain disruptions

What is the policy problem or opportunity?

125. The 2023 Severe Weather Events have highlighted that some events make it difficult for participants to meet re-establishment timeframes. There is currently no flexibility in the Act for the regulator to extend re-establishment timeframes to avoid participants becoming responsible for deforestation liabilities due to circumstances outside of their control.

126. The regulator is currently able to provide flexibility in specific circumstances that do not always apply when foresters are affected by events such as severe weather. **Table 7** shows an overview of situations where an extension may be required following an event that prevents the forester from re-establishing forest and they are currently not available.

127. Specific challenges for foresters with regular or offsetting forest land dealing with disruptive events are that:

   a) Foresters who cleared their forest prior to the event occurring may be interrupted in the re-establishment of their forest land. Interruptions are caused by damage to the land or forest species, or impacts on the supply chain and operations.[26]
   b) Damage to forest land may directly clear the forest or require the forest to be cleared before the land is re-established. This means that it is more difficult for foresters to meet the re-establishment timeframes, because:
      - Damaged forest land may require salvaging.
      - The damaged area may be larger than areas foresters would usually harvest.
      - Future income may be lower as the damaged forests will not be available for harvest in future

128. Māori may be disproportionally affected by this problem, as nearly half of Māori freehold land is pre-1990 forest land. Targeted engagement also highlighted that some whenua

[26] Examples of impact on supply chains or operations are damage to roads prevents access to the forest, or seedlings damaged in the nursery.

Māori is landlocked or otherwise difficult to access.[27] This further complicates meeting re-establishment timeframes.

[27] In this context landlocked means that the land is surrounded my land owned by other persons or entities and there is no road access to the land.

Table 7: Gap analysis

Situation	Flexibility currently provided in the Act?	Who can use it currently?		Comments
		Post-1989	Pre-1990	
Forest is damaged by a natural event, which permanently prevents re-establishment of forest (e.g. a river changes course)	Yes, no deforestation liabilities apply	☑	☑	
Forest is damaged by a disruption, such as natural event.	Offsetting forest land by establishing another forest with equivalent area and carbon stock elsewhere	☑	☑	Offsetting application must be approved before the original forest is considered deforested. There is significant cost involved in this option because additional land is required to offset forest land.
	If forest land is affected by an adverse event as defined in the Forestry Regulations a participant can apply for a temporary adverse event suspension (TAE) so they do not have to surrender units.	☑		
Forester is not able to re-establish forest land in time to meet the timeframes for re-establishing forest land due to a disruption (e.g. a natural event).	N/A			
Forester is not able to meet deforestation liability if forest land is considered deforested	Participants can apply for an exemption from (part of) the liability for deforestation.		☑	

What scope will options be considered within?

129. This proposal aims to introduce extensions to re-establishment timeframes for forestry participants in the NZ ETS experiencing disruptions that prevent forest land re-establishment. It is largely based on the orders made under SWERLA 2023.

What options are being considered?

Option 1: Make no changes to the Act (status quo)

130. <u>Key features</u>: The participant needs to re-establish forest on their land within set timeframes 4-, 10- and/or 20-year after clearing regardless of a disruption occurring. The timeframes are set out in **Table 8.** The Act has some provisions to alleviate negative effects of deforestation that occurs due to external events. However, these provisions are narrow in their application and therefore only apply in the specific circumstances set out in the provision.

131. <u>Addressing the problem</u>: If the timeframes set out in the Act are not met the land will be treated as deforested, and the forester must surrender units. Participants can only avoid deforestation liabilities in the situations listed in **Table 7** above.

Table 8 8: Deforestation tests and their application (section 179 of the Act)

Year	Exotic species	Indigenous species
4	• at least 500 stems per hectare of exotic forest species, **or** • replanted with at least 100 stems of willow or poplar species for managing soil erosion, where the local authority has determined the risk of erosion is at least moderate.	Predominantly indigenous forest species, growing in a way that the land is likely to be forest within 10 years of clearance.
10	Predominantly exotic species growing, with a tree crown cover of more than 30% from trees that are at least 5 metres high.	Predominantly indigenous forest species, growing in a way that meets the definition of forest land in the NZ ETS.
20	Not applicable	Predominantly indigenous forest species; each hectare of forest must have more than 30% crown cover from trees that are at least 5 metres high.

Option 2: Allow EPA to approve applications for extensions re-establishment timeframes

132. Key features:

   a) participant can apply to MPI if they experience a disruption that prevents them from re-establishing their forest land by the timeframes in the Act. The application must be submitted before the next test is applicable under section 179. For example, if a significant disruption occurs after the 4-year test was met, the extension application would need to be submitted before the test at 10 years is reached.

   b) if MPI is satisfied a significant disruption has affected the participant's ability to re-establish forest within the section 179 timeframes, they can grant a three-year extension to the relevant forest re-establishment timeframe. For example, the test at 10 years, would need to be met at 13 years instead.

   c) Disruptions preventing forest land re-establishment will be defined in the Forestry Regulations.[28]

133. Addressing the problem: participants can access extensions for re-establishment timeframes as required when they are affected by a disruption that prevents them from re-re-establishing forest land.

Option 3: Introduce a new mechanism for group extensions to re-establishment timeframes

134. Key features: establish a mechanism in the Act for group extensions decided by the Minister or Cabinet as and when required in the face of a disruption. The Minister or Cabinet decision would outline those who are part of the group to receive an extension due to a disruption. For example, participants who are located in a defined area where a natural event has occurred. Participants would not need to apply for the extension as it would automatically apply to everyone in the group.

135. Addressing the problem: participants who are in the group as defined in the Minister or Cabinet decision would be able to access extensions for re-establishment timeframes. Participants who are not part of that group but still affected by a disruption are not able to access the extensions.

Targeted engagement

136. This proposal was discussed with the ETS TAG. No feedback was received regarding the options for introducing flexible timing for forest re-establishment following a significant disruption.

137. Māori forestry representatives from Tairawhiti were supportive of the proposal but noted additional difficulties regarding landlocked land and rāhui. This will be considered in a separate policy process in future.

[28] This aligns with 'adverse events' currently being defined in regulation 103.

How do the options compare to the status quo/counterfactual?

Forestry re-establishment deadlines

	Option One – [*Status Quo / Counterfactual*]	Option Two – Allow EPA to approve applications for extensions re-establishment timeframes	Option Three - Introduce a new mechanism for extensions to re-establishment timeframes as a group
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Participants are not able to meet re-establishment timeframes leading to forest land becoming deforested, which negatively impacts emission reductions.	++ Forestry participants are provided more time to meet obligations, but obligations remain the same. Participants are able to re-establish their forest land and forest continues removing carbon from the atmosphere.	+ Forestry participants in the group are provided more time to meet obligations, but obligations remain the same. Only those in the group are able to replant their forest land and enable forest to continue removing carbon from the atmosphere.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 If forest land becomes deforested participants must meet deforestation liabilities and the regulator will incur compliance costs if this is not submitted or if it is inaccurate.	++ Updating processes and operational policies is considered low cost and can be achieved with current resources. This option provides extensions to all participants who require it which minimises compliance costs for government and participants.	- Processes and operational policies for these extensions will have to be implemented. The process itself is time and resource intensive for Ministers and Cabinet and decisions around extensions may be low risk and highly administrative. The option would minimise compliance cost for government and some participants.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 Participants cannot access extensions to re-establishment timeframes.	++ Situations that are considered disruptions preventing forest land re-establishment will be set out in regulations. All forestry participants affected by a disruption can apply for an extension. Applications for extensions will likely resemble applications for the extension currently available making it easy for participants to understand.	- Prior to the decision being made it may not be clear to participants whether they will receive an extension. Procedures for decisions made by the Minister may take some time due to development of advice and receiving priority for decision making. Once the Minister has decided participants may need to check whether their circumstances fall within the group. This may not be sufficiently clear resulting in participants incorrectly determining they will receive an extension.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 Post-1989 forest participants have more options to avoid liabilities for forest cleared by a disruption.	++ All forestry participants who experience a disruption that prevents them from re-establishing forest land can apply for an extension. Decisions are made based on the Act and regulations in accordance with any operational policy or guidance developed to support implementation of the Act.	- Only participants who experience a disruption and are in the defined group will receive extensions, while others who may experience disruptions but not qualify for an extension.
Overall assessment	0	++	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

138. The preferred option is *Option Two – Allow EPA to approve applications for extensions re-establishment timeframes* because it best addresses the policy problem and delivers the highest net benefits

139. The preferred options are most likely to address the problem because:

   a) participants can access extensions of up to 3 years to the re-establishment timeframes if they are affected by a disruption which will give them sufficient time to re-establish their forest land;
   b) this option provides the most clarity for participants, sufficient flexibility for the regulator to respond to participant needs and minimises the risk of the participant being unable to receive extensions if they are not in a determined group;
   c) the implementation and process for this option are considered low cost.

140. This option is also most likely to meet the policy objectives because:

   a) the integrity of the NZ ETS is maintained. Participant obligations remain the same and participants are supported to re-establish forest land after clearing has taken place. This ensures that deforestation of forest land is minimised.
   b) known gaps in the regulatory framework are addressed. Participants are able to apply for the extensions they need following a disruption to allow them to re-establish their forest land.
   c) it reduces complexity and operational burden for forestry participants in the NZ ETS and the Crown:
      - participants: participants avoid their forest land becoming deforested which would result in having to submit an emissions return or removing the land from the NZ ETS. Both of these options would result in a participant being required to surrender units.
      - the Crown: the Crown may approve the application, but does not become directly responsible for potential compliance cost of ensuring submission of the emissions returns and surrendering of units.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups	**Ongoing** - Regulated groups will bear the cost of preparing an application and any application fee (if there is one). It is possible the extension would be used by more Iwi and Māori as they own a large percentage of pre-1990 forest land.	Low to high. Any cost of applying for the extensions is likely to be substantively less than an instance of non-compliance	High
Regulators	**One-off** – New processes and operational policies will be required. **Ongoing** – Processing applications if these are not cost-recovered.	Low Any cost related to processing applications is likely to be less than addressing potential non-compliance in relation to deforestation.	High
Others	Wider government is unlikely to be affected by the proposed extensions.	Low	High
Total monetised costs	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised costs	*One-off costs associated with implementing new processes and operational policy. Potential ongoing cost incurred for processing extension applications if they are not cost-recovered.*	*Low*	*High*
Additional benefits of the preferred option compared to taking no action			
Regulated groups	**Ongoing** - Regulated groups do not become responsible for the cost of deforestation and do not incur costs of non-compliance if they are not able to surrender the unit liability.	High	High
Regulators	**Ongoing** – Reduced cost of addressing low risk non-compliance which is resource intensive for the regulator. This means the regulator can focus resources on high-risk non-compliance.	High	High
Others	The integrity of the NZ ETS is protected and contributes to the Government meeting its domestic and international climate change goals.	Medium	High
Total monetised benefits	*Not available.*	*Not applicable*	*Not applicable.*
Non-monetised benefits	*Participants avoid the costs of deforestation and the risk of becoming non-compliant. Regulators avoid the cost of addressing low risk non-compliance and can focus on high-risk non-compliance instead.*	*High*	*High*

Assumptions

141. Data to consider the marginal impacts of these changes is limited. Total compliance costs for regulated parties and the regulator incurred by a disruption preventing re-establishment of forest land is difficult to predict. Due to time constraints, the options considered are similar to options provided through orders created under emergency legislation in response to the severe weather events in 2023. The options have taken feedback from the regulator and regulated parties on these orders into consideration.

142. Potential cost recovery of applications will be considered as part of the periodical cost recovery review for the NZ ETS.

The benefits of the proposal outweigh the costs.

143. Costs related to an increase in processing of extension applications are assumed to be negligible. This is due to the expectation that extension applications will be fully cost-recovered.[29]

144. The benefits of the proposed change outweigh the costs. This is because the reduction in compliance costs is expected to be significant while the implementation of the changes requires minimal resources.

145. The preferred option allows for the flexibility to respond to a range of different significant disruptions. This will significantly reduce compliance costs for regulated parties as well as the regulator. Participants who want to comply are given the opportunity to do so due to the extended due dates.

146. This option also best addresses the disproportional effect for Māori. Allowing more flexibility in re-establishing forest means deforestation liabilities and complex section 60 exemptions can be avoided.[30] This proposal is also positive for Māori more broadly. Forest land is often returned to Māori ownership and/or management through Treaty Settlements following harvest, but before deforestation tests are applied.[31]

[29] MPI currently cost-recovers extension applications through a service fee.
[30] Section 60 provides a pathway for exemption from deforestation of pre-1990 forest land or pre-1990 offsetting land. The exemption must be made by the Governor-General, by Order in Council made on the recommendation of the Minister. Section 60 exemptions are resource-intensive and can take a long time.
[31] For example, through Treaty settlement processes.

2: Improving how quickly transmission of interest (TOI) notices are processed

147. When an interest in post-1989 forest land shifts to another person, this can lead to a transfer of NZ ETS responsibilities from one person to another – for example, when land is sold or a registered lease or forestry right changes hands.

148. A transmission of interest (TOI) for forestry will lead to the transfer of NZ ETS responsibilities if the two parties involved submit a TOI notice to MPI in the prescribed form. The TOI notice must be completed by both the existing person (transferor) and the new person (transferee). The transferor must submit their section of the TOI notice, including an emissions return and the processing fee for the TOI notice, and the transferee must submit their section of the TOI notice.

149. When a TOI notice is correctly submitted, participation in the NZ ETS moves from the transferor to the transferee with retrospective effect from the date of the TOI.

150. However, before a TOI notice is processed:

    a) the transferor cannot deregister from the NZ ETS with respect to that forest land; and
    b) the transferee cannot participate or earn NZUs in the NZ ETS.

151. Reasons TOI notices take longer to process include:

    a) The TOI notice is not submitted by one or both parties;
    b) The TOI notice is incomplete;
    c) The transferee does not have a holding account with the New Zealand Emissions Trading Registry (the Registry).

How do these proposals fit with wider TOI challenges?

152. The proposals in this section seek better alignment with the broader statutory framework and to improve operational efficiency.

153. Future policy work will likely be undertaken to improve wider TOI processes. However, the proposals in this RIS are urgent and should be implemented first. This is because of significant non-compliance in relation to TOI notices, particularly where transferees fail to open a holding account when they purchase, or enter agreements regarding land that is registered in the NZ ETS.

2A: Shortening timeframes for non-compliant TOI notices

What is the context for the policy problem?

154. If ownership or responsibility for forest land that is registered in the NZ ETS is transferred and MPI has not been properly notified via a complete TOI notice, MPI (under delegation from the EPA) may correct matters. Reasons for a TOI notice being incomplete include not all information fields being filled in, the final emissions return not being submitted, or the notice not being submitted at all.

155. As a starting point for correcting matters, MPI issues a section 187B(3) notice to the person (the transferor or transferee as applicable), specifying that they have 90 working days to submit or correct the TOI notice. The notice is used as a directive compliance measure.

156. If the relevant party does not correct matters within the 90 working day timeframe of the

section 187B(3) notice, MPI can amend, finish or prepare the TOI notice as well as the required emissions return if this is required.

157. Around three quarters (74 percent) of TOI notices are corrected by the participant within the 90 working day period (**Table 8**). The remaining 26 percent of TOI notices are still outstanding following the 90 working day period. Around 33 percent of section 187B(3) notices are issued to unincorporated bodies, which includes Māori trusts. Unincorporated bodies have the highest rates of compliance with s187B(3) notices (88 percent), followed by incorporated bodies (74 percent), Individuals (69 percent) and joint applicants (56 percent).

Table 9: Section 187B(3) notices issued between 1 January 2023 and 22 July 2025

Participant type	S187B(3) notices issued	S187B(3) notices for which the 90 working day timeframe has ended	TOI notices corrected or completed within the 90 working days	TOI notice still outstanding after the 90 working days
Incorporated bodies	46	34	25	9
Individuals	18	16	11	5
Joint applicants	17	16	9	7
Unincorporated bodies	40	26	23	3
Total	*121*	*92*	*68*	*24*

158. The Act has another 90 day timeframe which is related to a penalty notice requiring units to be surrendered or repaid.[32]

What is the policy problem or opportunity?

159. If MPI issues a notice under section 187B(3) to a transferor or transferee (as applicable) to correct or complete a failed TOI notice, they have 90 working days to do so. If the TOI notice is not corrected within the 90 working day period, MPI may then correct or complete matters.

160. The 90 working day timeframe has been found to delay processing of non-compliant TOIs significantly. Around 26 percent of TOI notices are still non-compliant after this time, and in these cases it can take up to a total of six months to resolve the matter from when the section 187B(3) notice was first issued.

161. The 90 working day notice period is unnecessarily long and slows down the resolution of a non-compliant TOI because MPI cannot take further action until the 90 working days has passed. This has negative effects on the compliant party as they cannot leave or join the scheme (as applicable) with respect to the forest land, which can have implications for business planning and cash flow. This inefficiency also undermines the integrity of the NZ ETS, because emissions returns cannot be processed until the TOI notice is processed.

Assumptions

162. Options that resolve this policy problem are expected to work together with the changes to the Forestry Regulations. While the Forestry Regulations will require the holding account number to be provided on the form, the options below are expected to speed up the

[32] Sections 134 and 134AA(2)

resolution of TOIs if the transferee does not provide this number.

163. Although further changes to TOIs may be considered in the future, it is unclear what options may be considered or the timing for any consequential proposals. Immediate change is needed in the short-term, in advance of wider considerations, to help ensure the integrity of the NZ ETS through continuity of participation (as covered by the TOI process). This way transferors are able to leave the NZ ETS in a timely manner, and transferees can promptly participate and potentially receive units.

What options are being considered?

Limitations, constraints, and non-feasible options

164. In the case of unincorporated bodies, such as Māori trusts, a change in membership is not treated as a TOI as long as at least 60 percent of the members of the unincorporated body are the same following the change.[33]

165. There are known difficulties for unincorporated bodies when membership changes trigger a TOI which can lead to non-compliance as either:

a) Signatures are required from all members of the unincorporated body (both outgoing and incoming members), which can be challenging to obtain; or

b) If the unincorporated body has a representative, they can sign on behalf of the members, but a signed representative form must first be signed by all current members of the unincorporated body, which is similarly challenging.

166. Around 33 percent of non-compliant TOI notices for which a section 187B(3) notices have been issued have unincorporated body ownership structures (**Table 8**). This includes Māori trusts, which often have frequent turn-over of trustees, for example when a trust has an annual election cycle. Unincorporated bodies also have the highest compliance rate with section 187B(3) notices, of around 88 percent.

167. During targeted engagement, Māori stakeholders suggested a different ownership vehicle such as a trust board may be more suitable for trusts with regular trustee changes, so that the change in governance does not trigger a TOI notice. This suggestion will be considered if changes to TOIs are considered in the future.

168. Improving TOI processes for unincorporated bodies is out of scope of the proposals in this RIS, and may be considered if further changes to TOI notices are considered in future.

169. Existing timeframes for notices in the Act were considered including 20 working days and 60 working days. However, 60 working days was deemed a non-feasible option because in cases when the non-compliant party does not correct matters during a 60 working day notice period it may still take up to five months before MPI can resolve matters, an improvement of only one month.

[33] Section 157A of the Act.

Options for shortening timeframes for non-compliant TOI notices

Option 1: Make no changes to the Act (status quo)

170. Key features: When MPI issues a section 187B(3) ‘failure to give notice of TOI’ notice, the non-compliant party has 90 working days to submit or correct the TOI notice. Further action to resolve the case cannot be taken until the notice period ends.

171. Addressing the problem: If the non-compliant party does not respond within the 90 working day timeframe, it may take up to six months from when the TOI notice is issued by MPI until the case is resolved. While the TOI notice remains unresolved, the compliant party (transferor or transferee) will not be able to leave or participate in the NZ ETS with regard to the forest land subject to the TOI.

Option 2: Shorten the timeframe for correcting TOI notices under section 187B(3) of the Act from 90 to 20 working days

172. Key features: When participants are issued a notice to correct their TOI notice, they have 20 working days to do so. Further action to resolve the case cannot be taken until the 20 working day notice period ends.

173. Addressing the problem: If the non-compliant party does not respond within the 20 working day timeframe, it may take up to 3 months from when the TOI notice is issued by MPI until the case is resolved. Twenty working days is a commonly used timeframe in the Act, and is the same as the timeframe for submitting the TOI notice following the date the forest land changes hands[34] and the notice to be provided if a person joins or leaves an unincorporated body.[35]

Targeted engagement

174. The ETS TAG group indicated support for the section 187B(3) notice timeframe to be updated to 20 working days, but commented some participants will want a longer timeframe.

175. We heard in targeted engagement with Māori stakeholders that the change could be a challenge for trustees if the TOI notice correction cannot be turned around quickly, but that the proposal will not exacerbate the current challenges for Māori trusts with the TOI process.

[34] Section 187.
[35] Section 157.

How do the options compare to the status quo/counterfactual?

	Option One – [*Status Quo / Counterfactual*]	Option Two – Shorten the timeframe for correcting TOI notices under section 187B(3) of the Act from 90 to 20 working days
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 Delays continuity of participation and undermines the integrity of the NZ ETS because MPI cannot correct matters until the 90 working days have passed.	+ A faster timeframe for resolving outstanding TOI notices improves continuity of participation and associated reporting on carbon removals.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 Simple to implement using existing processes. The compliant party carries a burden of not being able to leave or join the NZ ETS while the TOI notice is outstanding. 90 working days is a long notice period in comparison to other notice periods in the Act.	+ Simple to implement using existing processes. Reduces burden on the compliant party because they can leave or join the NZ ETS (as applicable) more quickly. Reasonable timeframe for most participants as aligns with other 20 working day notice periods. Compliance with the 90 working day timeframe is already high for unincorporated bodies and Māori forestry stakeholders indicated in targeted engagement that shortening the timeframe is unlikely to exacerbate problems for unincorporated bodies.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 The 90 working day response period is clearly stated on the s187B(3) notice.	0 The 20 working day period would be clearly stated on the s187B(3) notice.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 The 90 working day timeframe only aligns with a penalty notice period for surrendering or repaying units. The compliant party is disadvantaged because they must wait until either the non-compliant party takes action, or the 90 working days elapses and MPI can correct matters (such as an outstanding emissions return).	+ The timeframe aligns with other relevant forestry-related notice periods, such as when the transferor and transferee first have to give notice of the transmission to MPI: within 20 working days of the date of transmission.[36] The compliant party is treated more fairly because the maximum TOI notice resolution time is halved, from six to three months from when the notice is issued until the case is resolved (assuming the TOI notice is not corrected during the notice period and MPI must take further action to resolve matters). A shorter timeframe to resolution is more consistent with treatment of other compliant participants who are not intentionally disadvantaged elsewhere in the Act.
Overall assessment	0	+

36 Section 187 of the Act.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

176. The preferred option is *Option Two – Shorten the timeframe for correcting TOI notices under section 187B(3) of the Act from 90 to 20 working days* because it best addresses the policy problem and delivers the highest net benefits.

177. The preferred option addresses the problem because:

    a) Non-compliant parties have a shorter timeframe to correct matters, so rates of non-compliance may rise, increasing the number of TOI notices corrected by MPI. This risk is balanced by an overall quicker time to resolution for all non-compliant TOI notices.

    b) A 20 working day timeframe is better aligned with other forestry-related notice periods in the NZ ETS.

    c) The proposal is likely to be positive for businesses because non-compliant TOI notices can be resolved more quickly and the compliant party will have greater business certainty.

    d) TOIs can be challenging for some participant structures such as Māori trusts with a frequent turnover of trustees. While this proposal will not address these broader issues, we also do not anticipate it to exacerbate them given the high rates of compliance unincorporated bodies have with s187B(3) notices and the feedback from targeted engagement.

178. The preferred option meets the policy objectives by:

    a) Reducing complexity and operational burden for compliant forestry participants in the NZ ETS and the Crown by speeding up the timeframe to resolution.
    b) Maintain the integrity of the NZ ETS in support of New Zealand's domestic and international targets and emissions budgets by increasing continuity of participation and reporting of emissions and removals.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

179. The benefits of increased certainty for compliant parties outweigh the costs to non-compliant parties and the regulator (**Table 9**).

180. The benefits of increased certainty and more efficient / timely resolution include:

    a) reduced burden for compliant parties that can have their TOI resolved more quickly;
    b) the integrity of the scheme is supported by ensuring the correct participant is recorded in the system and responsible for meeting NZ ETS obligations.

Table 10: Comparison of costs and benefits associated with shortening the s187B(3) notice period

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups: specifically non-compliant parties	**One-off**: shorter timeframe to become compliant may increase opportunity cost of time.	Low	Low
Regulators	**One-off:** processes and operational policies will require updating. **On-going**: the shorter timeframe may increase non-compliance with section 187B(3), which may lead to MPI correcting more TOI notices.	Low: absorbed in business as usual.	Low
Others	Wider government is unlikely to be affected by the proposed change to shorten the section 187(3) to 20 working days.	None.	High
Total monetised costs	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised costs	*One-off costs associated with updating processes and operational policies. Potential ongoing cost from addressing increase of non-compliance with section 187B(3) notices.*	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups: compliant parties	**One-off**: more certainty of timeframe to resolution, benefiting their financial/ business planning	Medium: depends on individual circumstances of the compliant party, such as the size of their forestry business and the forest land subject to the TOI.	Low
Regulators	**Ongoing**: faster resolution of compliance cases.	Medium	High
Others	The integrity of the NZ ETS is protected and contributes to the Government meeting its domestic and international climate change goals.	Medium	Medium
Total monetised benefits	*Not available.*	*Not applicable.*	*Not applicable.*
Non-monetised benefits	*More certainty for participants as to the timeframe of resolution of TOIs, benefitting their financial/business planning and faster resolution of compliance cases for the regulator.*	Medium	Medium

2B: Clarifying that transferees need a holding account

What is the context for the policy problem?

181. Operationally, a TOI notice cannot be processed if the transferee does not have a holding account with the New Zealand Emissions Trading Register (the Register).

182. Under sections 56[37] and 57[38] of the Act, applicants entering forest land into the NZ ETS must have applied to open a holding account with the Register.[39] Holding accounts are necessary for receiving, surrendering or repaying units. Holding accounts also enable the regulator to undertake compliance, monitoring, and enforcement.

183. Although there is a general requirement in the Act for a participant to have a holding account, the TOI provisions themselves do not explicitly require that a transferee must open a holding account when they submit their TOI notice.

184. As of March 2025, for 67 out of 86 (78 percent) currently open TOI notices, processing was delayed because the transferee had not opened a holding account. Common reasons for not opening an account are that:

    a) the transferee's pre-sale checks did not cover whether the land was entered in the NZ ETS, so they have unintentionally acquired an interest in post-1989 forest land; or

    b) the transferee does not want to participate in the NZ ETS because they will be liable to surrender or repay units.

185. Transferees who do not wish to engage in the NZ ETS may refuse to open a holding account, and without one, a TOI notice cannot be processed in the usual way. While a complete TOI notice is waiting to be processed:

    a) the transferor cannot deregister from the NZ ETS with respect to that forest land;

    b) the transferee cannot participate or earn NZUs in the NZ ETS;

    c) future land transfers are also affected. A new owner in future may be unable to meet compliance obligations, as the previous ownership change was never properly recorded;

    d) forest land may be acquired with the intent to deforest (e.g., deforestation for a housing development, without intention to offset the lost carbon nor pay liabilities), which undermines the integrity of the NZ ETS for other foresters, the New Zealand public, and New Zealand's international climate targets.

186. MPI is often contacted multiple times by compliant transferors for delays in processing a TOI notice, but section 187B(3) notices cannot be issued when the transferee has not provided a holding account as the regulator cannot open a holding account on a transferee's behalf.

187. Currently, MPI cannot not take compliance action in instances when a transferee does not open a holding account.

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[37] Pre-1990 deforestation or pre-1990 off-setting.
[38] Standard or permanent post-1989 forestry.
[39] Section 61 of the Act.

Requiring a holding account number on the TOI notice

188. Earlier in 2025, MPI consulted on a proposal to amend the Forestry Regulations to make a transferee holding account number 'prescribed information' on the TOI notice submitted to MPI. This requirement, which will apply from 1 January 2026, means transferees are required to provide a holding account number on the TOI notice.

189. When the change to the Forestry Regulations takes effect MPI will be able to issue infringement fees and fines for failure to notify MPI of a TOI, within the time required and/or failure to provide information:

    a) an infringement fee is $1,000 for an individual or $2,000 in any other case;
    b) an infringement fine is $3,000 for an individual $6,000 in any other case.

What is the policy problem or opportunity?

190. Participants must have a holding account,[40] and participants must apply to open a holding account on registration as a participant[41], regardless of whether a holding account is needed for units at the time. However, there is currently no explicit requirement in the Act for a transferee to open a holding account by or before the time the TOI notice is provided to MPI (under section 187).

191. Transferees without or refusing to open a holding account are a significant operational burden for the regulator. There is an opportunity to clarify intent in the Act to achieve better operational efficiency through clarity of obligations and increased compliance options.

192. There may be multiple drivers for why a person may not open a holding account, ranging from a lack of awareness to a reluctance to participate in the NZ ETS. Non-regulatory options alone, including education targeted for people involved in land transactions, have not measurably increased persons opening a holding account when they need one. We consider it is necessary to make the requirement to open a holding account explicit to assist people to understand their obligations.

Assumptions

193. Options that resolve this policy problem are expected to work together with the changes to the Forestry Regulations. While the Forestry Regulations will require the holding account number to be provided on the form, there is an opportunity to clarify in the legislation at what point the participant is expected to open the holding account.

194. Although further changes to the TOI provisions may be considered in the future, it is unclear what options may be considered or the timing for any consequential proposals. Immediate change is needed in the short-term, in advance of wider considerations, to help

[40] Under section 61 of the Act.
[41] Under sections 56(1)(b) and 57(3).

ensure the integrity of the NZ ETS through continuity of participation (as covered by the TOI process).

What options are being considered?

Limitations, constraints, and non-feasible options

195. As well as legislative solutions, MPI is working on guidance and education to support NZ ETS compliance during land and forestry transactions, including working with relevant industry groups.

196. Education alone was discounted as a feasible option as education to date has not made a tangible difference. Part of the reason for this is that MPI cannot identify the target audience until they become a participant. However, MPI will continue to provide guidance and work alongside industry groups including real estate agents to improve knowledge about NZ ETS obligations.

197. In considering the chain of consequence for a transferee not opening a holding account, a bespoke penalty was ruled out. This is because the consequence for not having a holding account is that a person cannot receive entitlements, or surrender units when required to do so, and there is already a penalty for not surrendering units.[42]

Options for addressing transferees not opening a holding account

Option 1: Make no changes to the Act (status quo)

198. Key features: The requirement for transferees to open a holding account in a timely manner is not explicit in the Act. Operationally, a holding account is required for a TOI notice to be processed in the usual way, so that the transferee promptly becomes a participant in the NZ ETS. A holding account is required in order to receive or surrender units, and to submit an emissions return. A mandatory emissions return may be the first interaction with MPI that a holding account is needed for in practical terms. However, depending on the timing of the TOI, a mandatory emissions return may not be required for several years after the TOI. Until such a time, a transferee may not be aware of a practical need to have a holding account.

199. Addressing the problem: The lack of clarity in the Act makes it difficult for operational staff to articulate to transferees that there is urgency to open a holding account. The change to the Forestry Regulations to prescribe a holding account number on the TOI notice goes some way to encourage transferees to open a holding account. Though infringement fees and fines are expenses a transferee would otherwise not have, these may be insignificant for larger businesses.

Option 2: Transferees must open a holding account in the Register before submitting the TOI notice and the timeframe for submitting the notice is extended to 30 working days

200. Key features: Make it an explicit requirement that transferees must open a holding account in the Register before submitting the TOI notice.[43] Extend the timeframe for the TOI notice from 20 working days to 30 working days to align with new participants registering in the NZ

[42] Ss134 and 134AA.

[43] For example, so that section 187A of the Act reflects the approach taken in sections 56(1)(b) and 57(3).

ETS who are required to have applied to open a holding account when they register and to provide a holding account number to the regulator within 10 working days of receiving it.

201. Addressing the problem: This option would align TOI processes with the requirement for any other new forestry participant to open a holding account and the longer timeframe to submit the TOI notice may reduce non-compliance. It would also allow operational staff to articulate the requirement to open a holding account to transferees and to potentially use powers to require information[44], creating a clearer incentive for transferees to open a holding account. For example:

   a) Issue a notice under section 94 of the Act, requiring the 'prescribed information' on the TOI notice to be provided within 20 working days;
   b) if this information is still not provided, an infringement fee ($1,000 for an individual or $2,000 in any other case).
   c) a fine liable on conviction for failing to provide information[45] (if convicted, a maximum fine of $12,000 for an individual or $24,000 for a body corporate).

Feedback from related consultation

202. Consultation on technical improvements to the Forestry Regulations was held in April and May 2025. That consultation included the proposal to prescribe a holding account number on the TOI notice and feedback is relevant to this proposal to amend the Act.

203. Twenty-two submitters responded to the proposed change to the Forestry Regulations, with 19 in support of the proposal, two opposed, and one commented but did not indicate a preference. The stakeholder category 'forestry sector organisation' was represented both in support of and opposed to the proposal. The stakeholder categories 'forestry company or consultant', 'individual', 'farmer/farming entity' and 'Māori and iwi organisation' were also represented in submissions in support of the proposal.

204. Those in support of the proposal noted that improvements to TOIs are desirable and the proposal will provide increased clarity.

205. Both of the submitters opposed to the proposal expressed concern that transferees may not be able to open a holding account within the 20 working day deadline for submitting the notice. This concern could be mitigated by extending the timeframe for submitting a TOI notice to 30 working days. We also note a holding account can be applied for prior to a sales and purchase agreement being finalised, and that some TOI notices are successfully processed within the 20 working day timeframe.

206. One of the submitters, a forestry sector organisation, expressed concern about the proposal's ability to "offer any fixable solutions to the bulk of ToP [sic] issues", indicating that problems with TOIs are recognised within the sector and that further ability to take compliance action to streamline TOIs would likely be supported.

Targeted engagement

207. The ETS TAG group supported the proposal to make transferee holding accounts more explicitly mandatory at the time a TOI notice is submitted. They noted the forestry sector is

[44] Under section 94.
[45] Under sections 94 and 131 of the Act.

also exploring putting the requirement for transferees to have a holding account in sales and purchase agreements.

208. Māori foresters noted that TOI processes are often triggered by trustee changes (e.g., some Māori land trusts hold annual elections), but in practice there is no change in substance. The proposal will not exacerbate the current challenges for Māori trusts with the TOI process. Further changes to TOI processes may be considered as part of MPI's continuing work programme and the difficulties for unincorporated bodies will be considered.

How do the options compare to the status quo/counterfactual?

	Option One – *Status Quo*	Option Two – Transferees must open a holding account in the Register before submitting the TOI notice and the timeframe for submitting the notice is extended to 30 working days
Consistency with purpose of NZ ETS The extent to which the option is consistent with the purpose of the NZ ETS to drive emissions reductions in line with emissions budgets and targets	0 78 percent of non-compliant TOIs cannot be processed because the transferee has not opened a holding account, impeding continuity of participation and operation of the NZ ETS.	+ This option would better align TOI and NZ ETS processes and increase continuity of participation, upholding the integrity of the NZ ETS.
Ease of implementation and cost The extent to which the option is easy to implement and minimises compliance costs for government and NZ ETS participants	0 MPI has few compliance tools to incentivise transferees to open a holding account. Transferors have NZ ETS obligations despite no longer owning or having a right or lease for use of the forest land.	+ Transferees who are new participants will need to open a holding account more quickly and compliance action (notices, fees, fines) can be taken if they do not. This option will reduce problems for transferors and for future land transfers. The additional 10 working days for the TOI notice period will ease the burden on transferees. The process is timelier and more effective.
Clarity and transparency The extent to which the option is clear, or clarifies an existing area of law, and establishes certainty for NZ ETS participants on how it will be applied	0 Officials consider the change to the Forestry Regulations to be a first step, but that an infringement fee of $1,000 or $2,000 may be insufficient to encourage compliance. A stronger incentive may be needed for a transferee to open a holding account. While a TOI notice remains unprocessed, the transferor has NZ ETS obligations in respect of the forest land. A new owner in future may be unable to meet compliance obligations, as the previous ownership change was never properly recorded	+ Clarifies an existing area of law by making the requirement for a transferee to open a holding account before the TOI notice is submitted a legal obligation. The option also provides MPI with more compliance tools in situations where a transferee does not open a holding account. This increases the efficiency of TOI notices being processed and certainty for existing and new participants.
Consistency for participants The extent to which the option ensures that NZ ETS participants are treated consistently	0 The requirement to open a holding account is less clear for transferees than for other people who enter the NZ ETS as forestry participants. There are few consequences for transferees who refuse to open holding accounts, who can largely avoid compliance action, whereas compliance action can be taken against other participants when they fail to carry out their obligations as NZ ETS participants.	++ Increased fairness and greater consistency with requirements for all other forestry participants to open a holding account. The compliance regime can be applied more consistently because compliance action can be taken against transferees who do not open a holding account. The proposal will not exacerbate challenges for unincorporated bodies.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

209. The preferred option is *Option Two – Transferees must open a holding account in the Register before submitting the TOI notice* because it is is likely to best address the policy problem and deliver the highest net benefits including fairness for all participants in forestry in the NZ ETS.

210. The preferred option addresses the problem because:

a) We do not anticipate disproportionate impacts on any population groups. This option is not anticipated to exacerbate existing difficulties for trusts and unincorporated bodies with TOI processes because a holding account already exists for the unincorporated body.

b) The increased costs to transferees who do not open a holding account are consistent with the NZ ETS compliance regime.

c) The anticipated benefits of the proposed option outweigh the anticipated costs. For MPI, it is anticipated that less time will be spent on unresolved TOIs.

211. The preferred option meets the policy objectives by:

a) Reducing complexity and operational burden for forestry participants in the NZ ETS and the Crown through increased clarity and compliance options to compel transferees to open a holding account and participate in the NZ ETS; and

b) Supporting the integrity of the NZ ETS in support of New Zealand's domestic and international targets and emissions budgets through greater continuity of participation.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
	Additional costs of the preferred option compared to taking no action		
Regulated groups: Compliant and non-compliant transferees	**One-off**: Non-compliant transferees will face increased cost if compliance is action taken against them, with potential for further compliance action if matters are not resolved. Compliant transferees are unlikely to face increased cost.	Medium – the relative impact of infringements or fines will depend on the individual circumstances of the transferee, but will be a cost they would otherwise not be subject to.	High
MPI as regulator	**One-off:** processes and operational policies may require updating **Ongoing**: Cost of staff resource to take compliance action when this was not possible before.	Low – unlikely that new staff will be hired.	Low – we anticipate the change will incentivise more transferees to open holding accounts.
EPA as operator of the Register	**One-off:** processes and operational policies may require updating **Ongoing**: Cost of staff resource to open more holding accounts	Very low – unlikely that new staff will be hired.	High
Others	Wider government is unlikely to be affected by the proposed change to clarify the requirement to open a holding account at the time the TOI notice is due.	None.	High
Total monetised costs	*Not available.*	Nil	Not quantifiable
Non-monetised costs	*Non-compliant parties will face an increase in the cost of non-compliance, and the regulators may face an increased cost of taking compliance action they were unable to take before.*	Low	High
	Additional benefits of the preferred option compared to taking no action		
Regulated groups	**One-off***:* Transferors will benefit from TOI notices being processed more quickly. **One-off***:* Transferees can be compliant and potentially receive NZUs. Compliance reduces the cost of future consequential non-compliance arising from multiple unresolved TOIs. **Ongoing***:* Increased fairness in the compliance regime for all regulated parties.	Medium	Medium
Regulators	**Ongoing***:* Likely to experience increased compliance with TOIs and will have greater ability to take compliance action when a transferee fails to open a holding account. Reduced time spend on administrative non-compliance and processing.	Medium	Medium
Others	The integrity of the NZ ETS is protected and contributes to the Government meeting its domestic and international climate change goals.	High	High
Total monetised benefits	*Not available.*	Nil	Not quantifiable
Non-monetised benefits	*Transferors will be able to leave the scheme more quickly after selling, or granting rights or leases on their land providing clarity. Transferees will be compliant more quickly and potentially receive NZUs. For the regulator there is an expected increase in compliance for TOIs and the ability to take compliance action*	Medium	Medium

Section 3: Delivering an option

How will the proposal be implemented?

212. The preferred options will be progressed alongside other proposals via an amendment Bill, which is anticipated to be passed mid-2026 and for amendments to come into force shortly afterwards. It is expected that this allows for sufficient time for regulated parties and MPI to prepare for the proposed change.

Consequential amendments required

213. If the preferred options are progressed some consequential amendments are required to ensure that obligations in the Act remain sequential.

Surrender and repayment deadlines should be adjusted

214. Surrender and repayment deadlines should be set at 60 working days after the EPA notifies the participant, instead of 31 May for participants who received an extension to their emissions return deadline. Without this amendment, participants would be required to surrender or repay units prior to calculating the units required to be surrendered or repaid.

Extensions should be granted for emissions returns associated to UEF applications

215. Participants who receive an extension to the deadline for their UEF application should receive an automatic 20 working day extension to the filing due date for the associated emissions return. This ensures there is sufficient time for the EPA to assess the UEF application before the return is due. Without a corresponding extension, participants may be forced to file their return using a default emissions factor or risk missing the deadline. Aligning the two deadlines supports accurate reporting and reduces administrative burden on the EPA and the participant.

Implentation of the preferred options

216. Reliance on existing institutional structures assumes that implementation of the system will be able to be absorbed by the relevant agencies. MPI is responsible for the operation of forestry in the NZ ETS, and compliance, monitoring, and enforcement for all regulated parties. The EPA is responsible for the Register, IAs, UEFs, and compliance, monitoring, and enforcement for non-forestry participants.

217. Implementation will require updating existing systems and processes, this is considered a part of existing system maintenance by the regulator. The Act enables cost recovery for operating the NZ ETS, cost recovery settings are reviewed periodically to ensure they reflect the cost and benefits of operating the system. MPI currently cost recovers services, while the EPA does not. Cost recovery may be considered for some of the proposals in this statement.

218. Internal operational policies and public facing guidance will be used to guide operation of the amendments.

Are there any implementation risks?

219. Proposal 1A requires that extensions be granted if the regulator is satisfied that a person was affected by 'significant disruption'. The Act specifies what qualifies as a significant disruption providing clarity on when a person can access an extension. The option to issue

a notice with ministerial oversight allows persons affected by a significant disruption where no state of emergency was declared to be able to receive extensions.

220. Another implementation risk is that the changes may not be well understood by regulated parties. Education will be developed to communicate the changes to participants. Examples of these initiatives for participants in forestry in the NZ ETS are:

1. The ‘Forestry ETS Alert’ email newsletter;
2. The ‘ETS newsletter’;
3. Discussion at the monthly Ops Forum, an online discussion between MPI’s forestry in the NZ ETS operations staff and the forestry sector; and
4. Guidance published on EPA and MPI’s websites.

How will the proposal be monitored, evaluated, and reviewed?

221. The proposals will be integrated into pre-existing regulatory systems.

222. MPI and the EPA has the responsibility as part of its regulatory stewardship role to monitor, review, and report on regulatory system performance. MPI and the EPA routinely monitor and report on non-compliance each month, including types and rates of non-compliance.

223. The uptake of the proposal 1A and 1C extensions will be tracked in the MPI and EPA processing systems and added as an agenda item to meetings between MPI and EPA operations teams.

224. The impact of proposals 2A and 2B will be tracked through on-going monthly reporting on compliance.

225. Participants and other stakeholders can contact the regulator through the methods listed on the website for general issues and concerns. Processes are in place so that problems are recorded and escalated as appropriate.

226. The Act also contains mechanisms for reviewing the operation of the emissions trading scheme, and these proposals do not suggest changes to these mechanisms.

227. Further changes to TOI processes may be considered as part of the continuing work programme and will include an evaluation of the 2A and 2B proposals.