



## Consultation on proposed exemptions from Emissions Trading Scheme (ETS) deforestation obligations

The Ministry for Primary Industries (MPI) is seeking feedback on three proposed exemptions from ETS obligations associated with the deforestation of pre-1990 forest land. The proposed section 60 exemptions are for:

1. Landowners undertaking deforestation of pre-1990 forest land in order to comply with the Heritage New Zealand Pouhere Taonga Act 2014 (the Heritage Act);
2. Maori Land not operating under a management structure on 1 September 2007;
3. Holders of perpetual leases under the Perpetual Maori Reserve Land Act or Crown Pastoral Leases.

The following pages briefly outline the issues and proposed exemptions.

### Feedback

MPI is seeking feedback on these proposals from landowners or parties who feel they would be affected by these exemptions. In particular, MPI would like to feedback on the following questions:

- Do you feel the proposed exemptions adequately address these issues?
- Are there any alternatives that would better address these issues?

If you would like to provide feedback, or would like further information on these proposals, please email [climatechange@mpi.govt.nz](mailto:climatechange@mpi.govt.nz). When providing feedback, please indicate whether you will be affected by the proposed exemptions.

**Please send your feedback by 5pm Tuesday 7<sup>th</sup> April.**

Kind regards,

MPI ETS Operations Team

## Proposed exemptions from Emissions Trading Scheme (ETS) pre-1990 deforestation obligations

### **Landowners undertaking deforestation activity in order to comply with the Heritage Act**

**Proposal:** To exempt landowners from having to surrender units for deforestation of pre-1990 forest land, where management activities agreed to by Heritage New Zealand Pouhere Taonga (Heritage New Zealand) for the protection and preservation of a heritage site results in the deforestation of that site.

#### **Background:**

1. It is an offence under the Heritage Act to modify or destroy a historic place, historic area or thing that is vested in or managed by Heritage New Zealand, or to cause the place, area, property, thing or associated land to be modified or destroyed.
2. Forestry activities such as root growth and harvesting activities can modify or destroy historic sites. Undertaking such activity may constitute an offence under the Heritage Act. Consequently, the forest must be managed in such a way that prevents this.
3. However, activity to prevent modification or destruction of an historic site, such as spraying after harvest to prevent re-growth, may result in deforestation of pre-1990 forest land. This could mean that compliance with the Heritage Act would result in deforestation obligations under the ETS.
4. We propose a full exemption for all pre-1990 forest land participants from the requirement to surrender units for deforestation of pre-1990 forest land on historic sites.
5. We consider it necessary that the applicable area for this exemption is defined by an authority of Heritage New Zealand or any person or body authorised by Heritage New Zealand, and be limited to deforestation that is necessary for the protection and preservation of the historic site only. Management activities under the Heritage Act must already be approved by such an authority, as such we do not consider this requirement will create significant barriers to this exemption where appropriate.

## **Maori Land not operating under a management structure on 1 September 2007**

**Proposal:** To exempt Maori Land not operating under a management structure on 1 September 2007 from having to surrender units for deforestation of pre-1990 forest land, provided that:

- The area is less than 50 hectares; and
- The area was owned on 1 September 2007 by a person or persons who, owned in total less than 50 hectares; and
- No allocation of units has been issued under the Pre-1990 Forest Land Allocation Plan in respect of the deforested area.

### **Background:**

1. Section 183 of the CCRA provides for exemption in relation to pre-1990 forest land holdings of less than 50 hectares which meet various criteria. The rationale for this exemption was to eliminate the administrative costs and burdens associated with requiring numerous small forest landowners to participate in the ETS.
2. Section 183(3)(e) requires that an application for exemption for land holdings of less than 50 hectares of pre-1990 forest land must be accompanied by a statutory declaration from each person who owned the land on 1 September 2007, stating that the person, together with any associated persons, owned less than a total of 50 hectares pre-1990 forest land on 1 September 2007. The timeframe for accepting applications for exemption under section 183 has closed, however MPI may accept late applications at its discretion.
3. It is common across Maori Land without a management structure for there to be hundreds of individuals listed by Maori Land Court as landowners on 1 September 2007. As such it is unfeasible for every landowner to be traced in order to provide a statutory declaration to gain access to an exemption under section 183 of the CCRA. The ability for MPI to accept late applications for exemption under section 183 does not assist these landowners in accessing exemption as they cannot meet the requirement to provide statutory declarations.
4. We propose a full exemption from the requirement to surrender units for deforestation of pre-1990 forest land for owners of Maori Land not operating under a management structure on 1 September 2007.
5. For the purposes of this exemption, 'land not operating under a management structure' is considered to be land that is not operating under either a Maori Incorporation, Ahu Whenua Trust, or Whenua Topu Trust as constituted under Part 12 of the Te Ture Whenua Maori Act 1993.

## **Holders of perpetual leases under the Perpetual Maori Reserve Land Act, or Crown Pastoral Leases**

**Proposal:** Where a perpetual lease holder had less than 50 hectares of pre-1990 forest land on 1 September 2007, it is proposed to exempt that lease holder from surrendering all units for deforestation of pre-1990 forest land. Where a perpetual lease holder has more than 50 hectares total of pre-1990 forest land, it is proposed that a participant receives a partial exemption of 60 tonnes of carbon dioxide per hectare deforested. This is the number of units the lease holder would likely have received under the Pre-1990 Forest Land Allocation Plan had they been eligible to apply.

### **Background:**

1. We have considered perpetual lessees to be holders of leases over Perpetual Maori Reserved Land or Crown Pastoral Leases. Both of these lease types include a perpetual right of renewal for the lease holder.
2. In the case of perpetual leases, it is likely that the lessee, as the person with complete control of the land, would be considered the “participant” in respect of pre-1990 forest land deforestation under section 180(1) of the CCRA. Therefore the lessee would be liable to surrender units as a result of deforestation activity on that land.
3. Owners of pre-1990 forest land were entitled to apply for an allocation of carbon units under the Pre-1990 Forest Land Allocation Plan as a partial offset for the reduction in land use flexibility brought about by the introduction of the ETS. Typically leases do not vest the “right to decide to deforest” in the lease holder, meaning deforestation liabilities under the ETS are usually borne by the landowner. As such, the Pre-1990 Forest Land Allocation Plan and the less than 50 hectare exemption were provided as options for landowners and not lease holders.
4. For typical (non-perpetual) leases, the impact of the ETS on the land can be considered when a lease is renegotiated, and thus the negative impact of the ETS on the lease is mitigated. For perpetual leases, the ETS negatively impacts the lease for as long as it is in force.
5. Some holders of perpetual leases feel that they should not face a liability for deforestation as they did not receive a unit allocation to partially offset the loss of flexibility in land use or an ability to receive an exemption, and yet are liable for the deforestation should it occur. As such they wish to be made exempt from deforestation liabilities.
6. Granting a full exemption to Perpetual Lease Holders could encourage landowners to deforest as there is no associated liability with that activity, and would undermine the environmental integrity of the ETS.