

## OPERATIONAL POLICY

# Administering warning letters and infringements

OP-22-15 | January 2023

### Summary description

#### *Administering warning letters and infringements*

Warranted Te Uru Rākau – New Zealand Forest Service enforcement officers have statutory discretion under [Subpart 3 of Part 2 of the Climate Change Response Act 2002](#) to issue and revoke infringements in relation to offences under Climate Change response Infringement Regulations. This operational policy sets out how officers are expected to exercise those statutory powers, and how they make decisions to issue a written warning letter in respect of an infringement.

Read more about Emissions Trading Scheme (ETS) offences and penalties on the MPI website:

<https://www.mpi.govt.nz/emissions-trading-scheme-offences-and-penalties/>

See the full list of Emissions Trading Scheme (ETS) policies on the MPI website:

<https://www.mpi.govt.nz/ets-policies>

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## Purpose

1. This operational policy sets out how Te Uru Rākau – New Zealand Forest Service expects enforcement officers to exercise its statutory discretion to issue and revoke infringements. It also sets out expectations as to how enforcement officers make decisions to issue a written warning letter.

## When this operational policy applies

2. This operational policy applies when an enforcement officer:
  - issues a warning letter; or
  - proceeds with an infringement under [section 300\(1\)\(a\) of the Climate Change Response Act 2002](#) (the Act) or
  - issues an infringement notice under [section 300\(1\)\(b\) of the Act](#); or
  - revokes an infringement.
3. This operational policy is valid from **1 January 2023**.

## Who this operational policy applies to

4. This operational policy applies to Te Uru Rākau – New Zealand Forest Service enforcement officers warranted by the Ministry for Primary Industries under section 30P of the Act.

## Background

5. Te Uru Rākau – New Zealand Forest Service enforcement officers warranted by the Ministry for Primary Industries (MPI) have statutory discretion under [Subpart 3 of Part 2 of the Act](#) to issue and revoke infringements in relation to offences under the [Climate Change Response \(Infringement Offences\) Regulations 2021](#) (the Infringement Regulations).

## Enforcement officers

6. Under section 30P of the Act, Te Uru Rākau – New Zealand Forest Service (under delegated authority from the EPA) may appoint one or more employees as enforcement officers. Enforcement officers exercise powers and perform the required functions to use these powers given to them under subpart 3 of Part 2 of the Act.

## Warning letters

7. Te Uru Rākau – New Zealand Forest Service has chosen to use warning letters as a compliance intervention. Warning letters are a non-statutory intervention used in place of issuing an infringement notice or pursuing an infringement offence.
8. Warning letters are a form of directed compliance. A warning letter identifies an offence but gives no penalty. It is used for low-level offending and is recorded so it can be taken into account if future non-compliance occurs. A warning letter will provide education to encourage future voluntary compliance.
9. For enforcement officers to issue a warning letter a person must have committed an infringeable offence under the Act and its Regulations.

## Infringements

10. Issuing or proceeding with an infringement enables a regulator to respond to offending in a manner that holds a person accountable for their offence by imposing a set financial penalty following relatively minor breaches of the law. It intends to encourage future voluntary compliance.
11. An enforcement officer may issue or proceed with an infringement against a person if the enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringeable offence under the Act and its Regulations.
12. An enforcement officer may revoke an infringement. In the case of an infringement notice, revocation must occur before the infringement fee is paid or an order for payment is made or deemed to be made by a court under [section 21 of the Summary Proceedings Act 1957](#).

## Review of decision

13. Warning letters cannot be subject to a review of decision.

14. Te Uru Rākau – New Zealand Forest Service has considered [The Solicitor-General's Guidelines for the Use of Warnings](https://www.crownlaw.govt.nz/assets/Uploads/GuidelinesProtocolsArticles/Solicitor-Generals-Guidelines-for-Warnings.PDF)<sup>1</sup> and chosen not to apply the matters regarding warning policy as the penalties for infringement offences are not significant enough to warrant it.
15. Infringements can be subject to a review of decision.

## Operational policy: Relevant considerations

### Warning letters

#### *Issuing a warning letter*

16. An enforcement officer may issue a person a warning letter if the enforcement officer believes on reasonable grounds that the person is committing, or has committed, an infringement offence.
17. A warning letter must only be issued to a person where there is sufficient evidence to prove the person has committed an offence in relation to their obligations under the Act and its Regulations.
18. Warning letters must be issued by an enforcement officer in the ETS Forestry Compliance team.

#### Consequences of a warning letter

19. A warning letter must be recorded on a person's compliance history and may be taken into account for any future compliance action.

### Infringements

#### *Issuing an infringement*

20. An enforcement officer will issue or proceed with an infringement against a person if the enforcement officer believes on reasonable grounds that the person is committing, or has committed an infringeable offence under the Act and its Regulations.
21. An infringement must only be issued or proceeded against a person where there is sufficient evidence to prove the person has committed an offence.
22. An enforcement officer must also consider the factors for issuing or proceeding with a infringement before concluding that issuing an infringement would be more effective at achieving future voluntary compliance than a warning letter.

### Factors to consider

23. Enforcement officers should consider the following factors when considering issuing a warning letter or issuing or proceeding with an infringement:
- a) The frequency of which the person has offended in this nature.
  - b) The sophistication of the person or participant's ability to act in forestry in the ETS.
  - c) Did the person take reasonable care?
  - d) Did the person voluntarily disclose they had made an error?

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<sup>1</sup> <https://www.crownlaw.govt.nz/assets/Uploads/GuidelinesProtocolsArticles/Solicitor-Generals-Guidelines-for-Warnings.PDF>

- e) The extent of risk or harm to the integrity of the ETS and our strategic outcomes.
  - f) The value a warning letter or infringement would provide to the person and maintaining the integrity of the ETS – future mitigation, education, deterrence from committing the offence again.
24. A warning letter or infringement will be considered if Te Uru Rākau – New Zealand Forest Service has confirmed a 100% reduction in penalty for the offence will be applied.
25. A warning letter will be considered in place of an infringement if the enforcement officer concludes a warning letter would be more effective at achieving future voluntary compliance than issuing or proceeding with a infringement.

## **Review of decision**

26. A person who has received an infringement may challenge or respond by contacting Te Uru Rākau – New Zealand Forest Service in writing.
27. If the person requests a review of the decision to issue or proceed with an infringement this must be done within 28 days of receipt. They must provide grounds for Te Uru Rākau – New Zealand Forest Service to review by providing:
- a) further context for why the offence occurred;
  - b) new information which was not included in the initial decision-making process; and/or
  - c) a specific error in the decision they have identified.
28. If a request to review a decision to issue or proceed with an infringement is made outside 28 days of receipt or does not provide grounds for review, an enforcement officer may use their discretion to deny the review.
29. An enforcement officer who was not involved in the original decision will review the case and any information provided by the person. They will decide whether to revoke or amend the infringement.
30. If the enforcement officer finds the infringement was issued correctly it will be confirmed and remain on the person's compliance record.
31. If the enforcement officer finds the infringement was issued in error it will be revoked.
32. Te Uru Rākau – New Zealand Forest Service will notify the person of the outcome of the review in writing, within 28 days of receipt of the request to review the decision.

## **Penalties**

33. Infringements and penalties are assessed under separate sections of the Act. In some cases where a person has committed an infringement offence they may also be liable for a penalty. For further information on how penalties are assessed see sections 134A – 134D of the Act

## **Approval, owner and review**

### **Approval**

34. This operational policy was approved by the Manager, Forestry ETS Compliance on 5 December 2022.

### **Owner**

35. The owner of this operational policy is the Manager, Operational Policy – Forest Incentives.

## Date for review

36. This operational policy will be reviewed within two years of publication, or earlier if the relevant legislative or regulatory provisions are amended.
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