



## Legally Speaking



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# Updates to the Emissions Trading Scheme

The New Zealand Emissions Trading Scheme (ETS) was created through the Climate Change Response Act 2002 (the Act) in recognition of New Zealand's obligations under the Kyoto Protocol. It is a significant strategy in New Zealand to reduce greenhouse gas emissions.

The Climate Change Response (Infringement Offences) Regulations 2021 (Regulations) came into force on 1 January 2022 which requires ETS participants and those who own pre-1990 forest land to keep accurate records and provide requested information.

To assist ETS participants with their obligations and compliance, the Te Uru Rakau – New Zealand Forest Service (NZFS) has released a phased roll out to the Regulations and from 2023, those who do not comply may be served infringement notices and penalties.

**If you are a participant (either mandatory or voluntary) in the ETS you must:**

- Apply to open a holding account in the register
- Register as a participant
- File an emissions return
- Surrender or receive units

**Under the Act, there are two categories of non-compliance:**

1. A surrender and repayment non-compliance (section 134A and 134B of the Act); and
2. A reporting non-compliance (section 134C and 134D of the Act).

Surrender and repayment non-compliance applies where a participant fails to surrender or repay units by the due date.

The corresponding penalty is calculated using section 134 of the Act which multiplies the number of units the entity has failed to surrender or repay by the dollar value of carbon per tonne which is then multiplied by a factor of three.

This calculation is set and it is unlikely that a non-compliant participant will receive a reduced penalty.

Reporting non-compliance applies where a participant either: incorrectly submits information/an emissions return/ allocation adjustment or fails to submit information/an



emissions return/allocation adjustment by the due date.

Where NZFS determines that a participant has been non-compliant with respect of these obligations, the participant is served with a notice requesting compliance within 20 working days.

If the participant has taken reasonable care to comply with the notice, no penalty will apply. If the participant has not taken reasonable care to comply, the participant is fined using the penalty calculations within section 134 of the Act.

The participants who have been issued with a penalty will be published in each reporting year. The information which will be published includes the penalised entity, the amount and due date for payment and any other outstanding penalty owing by that entity.

If you have any questions, we recommend that you seek the advice of a Forestry Consultant or the Environmental Protection Authority.