



DEFORESTATION OF PRE-1990 FOREST LAND INVOLVING **LAND-USE CHANGE AFTER CLEARING**

ARE YOU CONSIDERING CONVERTING YOUR PRE-1990 FOREST LAND TO NON-FOREST LAND AFTER CLEARING?

The Ministry for Primary Industries (MPI) and the Environmental Protection Authority (EPA) have identified an issue about when a Deforestation Notification, and a Deforestation Emissions Return, are required to be submitted for the deforestation of Pre-1990 Forest Land.

MPI and EPA acknowledge that this issue can be a difficult one for participants to work through so the purpose of this guidance note is to describe when this issue applies and how government agencies are required to assess it under the Climate Change Response Act 2002 (the Act).

Issue: The issue arises when land is cleared and at a later point, after that clearance, is converted to non-forest land.

If this scenario is relevant to you please carefully read this guidance note and contact MPI at **0800 CLIMATE (254 628)** with Option 3 or **climatechange@mpi.govt.nz** if you have any questions.

So, for example:

- **May 2010:** A Pre-1990 forest landowner harvests 10 hectares of Pre-1990 forest land. At this point the landowner has not made a decision regarding whether to change the land use of that land.
- **June 2013:** the same landowner converts the land to pasture.

How the legislation applies: For this scenario the relevant section in the legislation is section 181. This section means that:

- The act of converting the land in 2013 results in the land being treated as deforested in May 2010, meaning that the Deforestation Notification was due to be submitted in June 2010 and the Deforestation Emissions Return was due to be submitted by 31 March 2011.
- This means that the landowner has failed to submit the Deforestation Notification and Deforestation Emissions Return and this may be considered an offence under section 129 of the Act.

This has created confusion among some Pre-1990 forest landowners and forestry consultants who have assumed previously a Deforestation Notification/Emission Return is due either:

- i. the year following the conversion or change in land use; or
- ii. four years after clearance if no conversion, or change in land use, occurs.

Backstop provisions in section 179

For completeness, if no decision has been taken about the land use, the legislation (see section 179) provides a series of backstop dates by which deforestation is deemed to have taken place if the forest land has not met certain replanting/regeneration thresholds.

Operational treatment

If a participant fails to submit a Deforestation Emissions Return when required to do so, MPI and EPA may make an assessment under section 121 of the matters that should have been in the participant's Deforestation Emissions Return. If the assessment results in a liability to surrender eligible units, the legislation automatically applies an excess emissions penalty of \$30 per unit.

The summary above shows that in certain scenarios the way section 181 works means that it is not possible for participants to complete an emissions return by the date

it was technically due. The Act does provide flexibility for penalties to be reduced by up to 100 percent under certain circumstances. Where appropriate, MPI and EPA will use the flexibility to reduce penalties. For example, MPI and EPA will take into account whether or not it was possible for the relevant participant to submit a Deforestation Emissions Return by the due date. Please note that this means that participants may receive notice that a penalty assessment will be carried out.

DISCLAIMER

The information in this publication has no statutory or regulatory effect and is of a guidance nature only. The information should not be relied on as a substitute for the wording of the Climate Change Response Act 2002.

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For help, call us on

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www.mpi.govt.nz

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