

Departmental Disclosure Statement

Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill

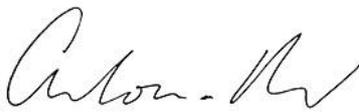
This departmental disclosure statement for the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill brings together information to support and enhance the Parliamentary and public scrutiny of the Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.



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Part One: General Policy Statement

The Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill (the Bill) is intended to establish a registration system for log traders and forestry advisers that strengthens the integrity of the forestry supply chain and support a continuous, predictable, and long-term supply of timber for domestic processing and export. It is expected to operate in a manner that:

- increases the transparency and professionalism of log buying, selling and trading activities;
- improves the confidence and informed participation of businesses and investors in the forestry sector ;
- contributes to improved economic, employment and environmental outcomes from the forestry sector, nationally and for local communities;
- contributes to improved environmental and climate change conditions for New Zealand; and,
- contributes to the development of, and improves the long term sustainability of, domestic timber processing and the wider forestry sector

The measures proposed in the Bill are aimed at building a more integrated forestry supply chain, with stronger linkages between forest growers and domestic processors, improved professional standards and greater confidence in business transactions (both domestically and internationally).

Covid-19 has highlighted the need to increase the resilience of the sector to support regional economies and jobs and help ensure security of supply for domestic processors. The Bill will provide some of the critical foundations to help supply chain stakeholders to navigate what is anticipated to be a more volatile and uncertain trading environment during the Covid-19 recovery period. It also makes provision to recognise and enable Forestry Authority oversight of industry accords or agreements established to support the forestry and wood processing sector during the COVID-19 recovery period and in the longer term that are consistent with the purpose of the Bill. New Zealand's log market is in transition, with smaller owners playing an increasingly important role in the annual harvest. Forecasts indicate that smaller owners will be providing 40% of the annual harvest during the 2020s, up from 25.5% in 2015 and just 14% in 2007.

The majority of those smaller owners (estimated at 14-15,000) have limited experience in the marketing and sale of forestry blocks. This can place them at a significant disadvantage when they come to plan, and negotiate, the sale of their forest. For an informed, and transparent market, those owners need to know who to seek impartial professional management advice from, the state of the market, their sale options, and how to seek redress. At present there are few checks to ensure forestry advisers are experienced in the areas in which they are offering. A similar situation exists for the companies and trading entities that small forest owners enter into a sale and purchase contract with for the sale of their logs. Owners who are new to the market do not necessarily know the experience and business credentials of the firms they are contracting to sale their logs to.

The quality of the advice owners receive from forestry advisers and their interactions with log trading entities is critical to the final returns they receive, and to the operation of the broader log market. A poor financial or environmental outcome for owners has flow on effects to market confidence for current and new investors, the reputation and public image of the industry and New Zealand's ability to achieve its long-term land management and climate change objectives.

Equally, commitment to industry standards, access to quality advice and reliable market information that creates greater confidence in and transparency across the supply chain, is of value to other industry stakeholders such as log traders, including domestic wood processors, who need to source log supplies from across an increasingly disaggregated supply source.

The initiatives proposed in the Bill are intended to strengthen confidence in the forestry supply chain (particularly for first time entrants to the market), provide greater transparency in the system, build the sector's social license to operate and help address the adverse impact of increased market volatility on all stakeholders during the Covid-19 recovery period.

The Bill provides for:

- compulsory registration of individual forest advisors providing one or more specified services related to the management, harvesting or sale of forest resources or forest land;
- compulsory registration of entities seeking to purchase, process, or export logs grown in New Zealand;
- the Ministry for Primary Industries (MPI) to act as the Forestry Authority responsible for administering the registration system. However, MPI will be able to delegate some of the Forestry Authority's functions to a suitable industry body or other person outside the Public Service;
- regulated parties to meet certain requirements to become registered and retain their registration. These requirements will include meeting a fit and proper person test and operating in accordance with practice standards and any industry agreements to which they are a party, and meeting record keeping and reporting requirements. Forestry advisers must also adhere to a code of ethics, and meet other requirements set in regulations, such as skills, education, and professional development requirements.
- an arbitration and compliance system to support system accountability;
- powers and sanctions, including offences and penalties that are proportionate and commensurate with similar regulatory systems;
- supporting measures that enable flexibility in administrative requirements to ensure regulatory compliance is not unreasonably burdensome, and cost recovery through fees, charges and levies; and,
- regulation-making powers to give effect to the regulatory system.

The Bill will come into force on a date appointed by the Governor-General by Order in Council and 1 or more Orders in Council may be made bringing different provisions into force on different dates. This is to enable:

- the development of enabling regulations and associated rules;
- the establishment of the Forestry Authority's functions; and,
- the timely registration of log traders and forestry advisers.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Scion Report, Managing a steady base flow of log supply to Northland mills and other supply constrained regions, through warehousing models.</i> Prepared by Robert I Radics, Peter Hall, Karen Bayne, Michael Wang, David J. Palmer, and Leslie Dowling (27 March 2019)</p> <p><i>Forme Consulting Group, An Analysis of the Logistical Options for Improving Log Supply Conditions for Processors in Northland and Other Regions Facing Supply Constraints</i> (19 November 2019)</p> <p><i>NZ Institute of Forestry (Inc) Code of Ethics (Amended 2014)</i>, accessible at: https://www.nzif.org.nz</p> <p><i>Rules of New Zealand Institute of Forestry (NZIF) Te Pūtahi Ngāherehere O Aotearoa Incorporated (Amended August 2016)</i>, accessible at: https://www.nzif.org.nz</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	Not Applicable

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Strengthening the Integrity of the Forestry Supply Chain: Licensing and Registration</i>, Ministry for Primary Industries (27 February 2020).</p> <p>This regulatory impact assessment will be available on the Ministry for Primary Industries website at www.mpi.govt.nz/law-and-policy/legal-overviews/regulatory-impact-statements</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p><i>The regulatory impact assessment did not meet the threshold for needing an independent opinion on the quality of the regulatory impact assessment from the Regulatory Impact Assessment Team in the Treasury. A panel at the Ministry for Primary Industries assessed draft versions of the regulatory impact assessment and the final document.</i></p> <p><i>The Panel provide the following quality assurance assessment:</i></p> <p><i>The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Assessment “Strengthening the integrity of the forestry supply chain: licensing and registration” produced by the Ministry of Primary Industries and dated February 2020. The review team considers that it partially meets the Quality Assurance criteria.</i></p> <p><i>The analysis is clear and concise, despite the limitations in a number of key areas. Overall, we are convinced that the problem should be addressed by the preferred option.</i></p> <p><i>The RIA notes that consultation was constrained by the timeframe for MPI to report back and the impacts on key groups affected such as forestry practitioners and Māori are not fully known. Nor have the impacts on sectors beyond the forestry system (e.g. the building industry) been identified. Those gaps could have been addressed by a Select Committee consultation process. However, this is not currently proposed as the Bill will be introduced under urgency, and therefore will not be referred to Select Committee. We note, nevertheless, the efforts made by the Ministry of Primary Industries to consult with industry stakeholders and some Māori through workshops and other meetings.</i></p> <p><i>The RIA provides an honest assessment of its evidence base relating to the scale and magnitude of the problem. For example, the RIA notes that a detailed, longitudinal study would have been preferable to define the magnitude of the problem for growers, and to explore the nature of the issue.</i></p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	No
<p>Further regulatory impact analysis will be undertaken to support the development of the regulations that will give effect to the proposed primary legislation. It is anticipated that the analysis will be able to encompass the impacts associated with, inter alia:</p> <ul style="list-style-type: none"> • The registration standards regulated parties need to meet; • The dispute arbitration and mediation process for registered forestry advisers and log trading entities; • The scope of the assessment and monitoring of registered log traders, by the regulatory body; and • The nature of the penalty regime (from advisory and support through to suspension and the revocation of a license or registration). 	

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The regulatory impact assessment, available on the MPI website, provides a summary of the overall potential costs and benefits of the policy to be given effect by the Bill together with an assessment of its impact on particular groups of stakeholders.</p> <p>Further information on the potential costs and benefits is included in the cost benefit analysis prepared by MPI as input to the regulatory impact assessment.</p> <p>The cost benefit analysis concluded that all the stakeholder groups examined would experience a 'net benefit' from the introduction of a licensing and registration system for the forestry sector.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>These matters are considered at a high level in the regulatory impact assessment, and it is recognised that a concerted education and promotional effort will be required during the transition phase to initially raise voluntary registration rates and then ensure that all forestry advisers and log traders are registered at the commencement date.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

While the Bill is concerned with professional standards within the New Zealand forestry sector, forest advisers are a mobile workforce, with temporary and permanent movements, particularly between Australia, Canada and New Zealand. The Bill enables:

- Mutual recognition of those voluntarily registered under the professional scheme administered by the Institute of Foresters of Australia;
- Mutual recognition of qualifications with other jurisdictions, to enable the short-term movement of skilled labour to New Zealand; and
- The development of procedures to determine the equivalence of overseas professional qualifications, for those seeking to move permanently, or on a long-term basis, to New Zealand.

MPI has received advice from the Ministry of Business Innovation and Employment (MBIE) on the application of the Trans-Tasman Mutual Recognition Act 1997 (which does not apply to occupations where registration is not legally required in both countries). MPI will engage further with officials from MBIE on the design of New Zealand's occupational regulatory requirements for forestry advisers and also with our Australian counterparts on the associated mutual recognition arrangements during the development of secondary legislation.

The proposed legislation, and the registration requirement for log traders and those providing certain types of forestry advisory services it introduces, will trigger a notification obligation under Art III.3 of the WTO General Agreement on Trade in Services (GATS), given New Zealand's WTO GATS commitments on 'services incidental to forestry and logging' (CPC8814).

The Ministry of Foreign Affairs and Trade (MFAT) also reviewed the original Cabinet paper, RIA and the draft Bill and will also have the opportunity to consider draft secondary legislation to ensure it is consistent with our international obligations before it is gazetted.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Officials have consulted with Te Puni Kōkiri on the structure of the proposal, and on its consistency with the principles of the Treaty of Waitangi.

Public consultation included a hui held in Kerikeri that considered the objectives of the policy proposal as well as targeted discussions with key representatives from Māori forestry interests.

The short timeframe for consultation and policy development has precluded a more detailed consultation process with Māori and affected stakeholders more generally.

MPI proposes establishing a reference group or groups that will be open to representatives of Maori and iwi groups with an interest in forestry to provide advice on the development of the associated regulations and the service design and implementation process for the regulatory system.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
Advice has been provided to the Attorney-General by the Ministry of Justice which is expected to be available on the Ministry of Justice website upon introduction of the Bill. Such advice, or reports, will be accessible at: http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>A penalties and compliance regime is proposed, as a mechanism to provide proportionate responses to breaches of the Bill, Regulations and professional behaviour (as prescribed in industry practice standards).</p> <p>Clause 63Z provides for a complaints and disputes resolution process which includes the referral of disputes to mediation, or where the parties are unable to resolve the dispute at mediation, arbitration. Clauses 63ZA and 63ZB provide for offences and penalties for breaches of the Bill.</p> <p>The Bill provides for a registration authority (either MPI or a delegated professional association) to have the power to exercise these rights, and to create supporting bylaws or regulations (through a consultative process).</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
The Ministry of Justice was consulted in the policy formulation phase and has reviewed the provisions contained in the draft Bill. Its feedback is reflected in the final design decisions.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>Clauses 63Z and 6ZE provide for the establishment and maintenance of two public registration databases, for registered log traders and forestry advisers. These databases will be searchable, and will assist smaller growers in identifying professionally trained and qualified individuals and companies in their immediate area.</p> <p>Clause 63ZG requires each forestry register to be available for public inspection and for information contained in the register to be supplied to anyone that requests it at no more than reasonable cost. A person whose physical address is entered into the register may, however, apply to have it withheld from public inspection where its disclosure would be prejudicial to the registered party or their family.</p> <p>Clause 63ZX provides for the complaints panel considering cases involving registered log traders and forestry advisers to publish its findings. The publication system will support the maintenance of high professional standards within New Zealand's forestry system.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Privacy Commission was consulted and has reviewed the provisions contained in the draft Bill. Its feedback is reflected in the final design decisions.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>External consultation commenced with a hui in Northland on 22 November 2019, where the Minister of Forestry announced a suite of initiatives to strengthen the resilience of the forestry supply chain. The initiatives included the registration of log traders and forestry advisers.</p> <p>Officials undertook a series of regional workshops over the December 2019 and January 2020 period, along with convening a technical experts meeting, and a presentation to the major industry associations, to test the preferred approach.</p> <p>The participants in the regional workshops received a comprehensive Information Pack, which set out the problem; the regulatory and non-regulatory options that had been identified; the costs and benefits associated with these options; and the approach to cost recovery. The regional workshops and industry association meeting were well attended and provided feedback from a range of key stakeholders. A two-month period was provided for e-mail submissions (up until 31 January 2020) and MPI took available opportunities to engage with smaller forest owners and farming representatives to test the underlying problem and the potential solutions.</p> <p>The feedback from stakeholders found that there was:</p> <ul style="list-style-type: none"> • Mixed support for a compulsory registration system to strengthen professional standards, but a strong view that a phased transition would be required to successfully introduce any new system; • Strong support for better information and extension services to assist small forest growers to build their knowledge of market conditions, the steps in harvesting and marketing, and to know qualified forest practitioners are; and • A strong view that any new costs need to be well justified, and that these must be kept to a minimum as they will be passed down to the forest owner. <p>The following agencies were consulted in developing the registration proposal agreed by Cabinet. The Treasury, State Services Commission, the Ministry of Foreign Affairs and Trade, the Ministry of Business Innovation and Employment, Ministry of Justice, Ministry for the Environment, Department of Conservation, New Zealand Customs Service, Land Information New Zealand, Te Puni Kōkiri, and the Department of Internal Affairs. The Department of Prime Minister and Cabinet was informed. Government agencies were generally supportive of the policy proposals outlined in the paper agreed by Cabinet.</p> <p>The same government agencies together with the Privacy Commissioner were also consulted on the draft Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO
<p>MPI will, however, convene a reference group or groups to provide advice during the development of the regulations designed to give effect to the proposed primary legislation and to inform the service design and implementation of the new regulatory system.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill provides for the Forestry Authority to recover its costs by establishing fees and charges through rules, which will be subject to public consultation. These fees and charges will recover:</p> <ul style="list-style-type: none">• The administrative costs of maintaining a national registration scheme;• Course development and delivery costs;• The maintenance of a dispute resolution service and compliance system; and,• System promotion and auditing costs. <p>The Authority will incur establishment costs through the transitional period, which it will recover from future membership fees and other charges if required.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>The registration of log traders and forestry advisers creates ‘a right to practice’, which will only be available to:</p> <ul style="list-style-type: none"> • Suitably qualified individuals who meet the registration standards, and subscribe to the industry code of ethics and industry practice standards; and, • Log trading entities who meet the registration standards and employ (or contract) registered forest advisers. <p>With the shift to compulsory registration, there would be a risk that forestry advisers with extensive industry experience, but few formal qualifications could be disadvantaged. The assessment standards developed by the Authority will need to cater for these grand-parenting situations, while the continuing education programme may need to provide targeted training to ensure key skill areas are met and maintained.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill provides for secondary legislation to define the meaning of certain terms in the Act, grant exemptions and more generally provide for the establishment and operation of the regulatory system.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill provides for a variety of secondary legislation to enable the establishment and operation of the regulatory system.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>The Bill would enable MPI to delegate to an established professional association some of the functions to be undertaken by the Forestry Authority, with bylaw making powers, if the membership agreed to the proposal.</p> <p>If the Association’s members decline a proposal to provide Forestry Authority functions, a Registration Office would be established as part of Te Uru Rākau within the Ministry of Primary Industries.</p>	