

# Supplementary Departmental Disclosure Statement

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Forests (Legal Harvest Assurance) Amendment Bill
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A supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Forests (Legal Harvest Assurance) Amendment Bill, dated 12 May 2022, which can be found at this link [Forests \(Legal Harvest Assurance\) Amendment Bill – NZ Legislation: Disclosures](#).

This supplementary 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.

2 March 2023

## Significant Legislative Features

### Offences, penalties and court jurisdictions

<b>1. Do the proposed amendments create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
The proposed Supplementary Order Paper (SOP): <ul style="list-style-type: none"><li>• Makes an additional defence available for forestry advisers charged with a strict liability offence under section 63ZK of the Forests Act 1994 (Act). This is that the commission of the offence was due to the act or omission of another person, or an accident, or some other cause or circumstance outside the defendant's control and the defendant took reasonable precautions and exercised due diligence to avoid the commission of the offence. This is to align the forestry registration system with the log trader registration system and the proposed legal harvest system which have equivalent provisions. It will also provide a more reasonable compliance system for forestry advisers.</li><li>• Provides more flexibility for a person seeking to use a defence to offences in the regulatory systems for forestry advisers, log traders and legal harvest by allowing a Court to grant leave to notify a prosecutor in writing of their intention to rely on a specific defence outside of the timeframe specified in new sections 145, 146 and 192 in the Forests (Legal Harvest Assurance) Amendment Bill (Bill), and section 63ZK of the Act.</li></ul>	

<b>1.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice was consulted on the proposed amendments in the SOP on defences to offences. In their feedback they supported these two proposed amendments.	

### Privacy issues

<b>2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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### Compulsory acquisition of private property

<b>3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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## Strict liability or reversal of the burden of proof for offences

<b>6. Do the proposed amendments:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>NO</b>
<b>(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?</b>	<b>NO</b>

## Civil or criminal immunity

<b>7. Do the proposed amendments create or amend a civil or criminal immunity for any person?</b>	<b>YES</b>
<p>New section 117 in the Bill applies the protection from liability under section 104 of the Public Service Act 2020 to assessors outside of the public service as if they were a public service employee. Section 13 of the Act provides protection from liability for forestry officers, etc. Clause 6 of the Bill amends this provision to make it apply also to assessors within the meaning of section 76.</p> <p>To fix this duplication, the proposed Supplementary Order Paper amends:</p> <ul style="list-style-type: none"><li>• section 13 of the Act by removing references to assessors; and</li><li>• new section 117 in the Bill by limiting the immunity from liability for assessors outside the public service to only when they are acting as an assessor under Part 5 and clarifying the immunity does not extend to the Crown.</li></ul>	

## Significant decision-making powers

<b>8. Do the proposed amendments 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?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>9. Do the proposed amendments 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?</b>	<b>NO</b>
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<b>10. Do the proposed amendments create or amend any other powers to make delegated legislation?</b>	<b>NO</b>
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## Any other unusual provisions or features

<b>11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>YES</b>
<p>Under the Act and Bill registered persons, including log traders and forestry advisers, are required to comply with obligations which would include obligations to pay fees and levies that are imposed by regulations.</p> <p>Currently if a log trader or forestry adviser does not pay a fee or levy there would need to be a finding of misconduct before the log trader's or forestry adviser's registration could be suspended.</p> <p>To better incentivise the payment of fees or levies, the Supplementary Order Paper amends:</p> <ul style="list-style-type: none"><li>• section 63X of the Act to expressly enable the Secretary (named the Forestry Authority for the purpose of Part 2A) to suspend a registered forestry adviser for non-payment of fees or levies in Part 2A if the non-payment is done in a way that is more than minor or inconsequential; and</li><li>• new section 183 in the Bill to expressly enable the Secretary to suspend a log trader for non-payment of fees or levies, if the non-payment is done in a way that is more than minor or inconsequential.</li></ul>	