

Legislative Statement for the Forests (Legal Harvest Assurance) Amendment Bill

Legislative Statement presented in accordance with Standing Order 272 J.17.

Forests (Legal Harvest Assurance) Amendment Bill – Third Reading

This legislative statement supports the third reading of the Forests (Legal Harvest Assurance) Amendment Bill.

Objective

The objectives of the Forests (Legal Harvest Assurance) Amendment Bill (the Bill) are to establish a legal harvest system to:

- strengthen the international reputation of New Zealand's forestry sector;
- safeguard and enhance market access for New Zealand's forestry sector;
- reduce the risk of importing timber into New Zealand that is not legally harvested; and
- help reduce international trade in timber that is not legally harvested.

The Bill also ensures the legal harvest system aligns with the regulatory systems for log traders and forestry advisers so the three systems operate as efficiently as they can.

Background

New Zealand is committed to assisting in the prevention of the global trade in illegally harvested timber products. The illegal harvesting of timber is a significant problem globally, contributing to deforestation and ecosystem degradation, with wide-reaching environmental, economic, and social impacts for affected communities.

Forestry is New Zealand's fourth largest primary sector export earner, generating NZ\$6.58 billion for the year ending June 2022.¹ Having confidence in the integrity of New Zealand's forestry supply chain and the operators within the system is critical for both domestic processing and New Zealand's reputation as a credible exporter of timber products.

Historically, New Zealand has relied on its reputation of being a low-risk producer of illegally harvested timber products for ensuring market access. However, more recently New Zealand exporters have been required to demonstrate the legal harvest of their timber products in a growing number of export markets.

New Zealand's imports of timber products have increased by approximately 70%

¹ Ministry for Primary Industries "Situation and Outlook for Primary Industries" (December 2022) p 12, available at [SOPI reports | NZ Government \(mpi.govt.nz\)](https://www.mpi.govt.nz/sopi-reports/).

over the last decade, to \$2.35 billion for the year ending June 2021.² A rising volume (and diversity of imports) increases the risk of New Zealand becoming a conduit for the illegal timber trade due to a lack of mandatory assurance measures. While New Zealand has had voluntary measures in place since the early 2000s, and there have been proactive initiatives by importers, the coverage has not been complete.

Summary of the Bill

The Bill will amend the Forests Act 1949 (Act) which is administered by the Ministry for Primary Industries (MPI). The Bill inserts three new parts into the Act:

- Part 5 – Legal harvest assurance
- Part 6 – Log traders (with provisions from Part 2A (Regulation of log traders and forestry advisers))
- Part 7 – Provisions that apply to Parts 2A, 5, and 6

The Bill has an enabling framework for the proposed legal harvest system with detailed requirements in secondary legislation. Part 5 proposes:

- a regulatory system and legislative framework with the Secretary (Director-General of MPI) having functions, powers, and duties as the regulator;
- a definition of legally harvested;
- mandatory registration for log traders, primary processors, exporters of timber products, and importers of timber products (or their agents) who operate above specified thresholds and are not exempted, with voluntary registration available to people who do these activities on a smaller scale;
- obligations on persons responsible for the harvest (meaning a forest owner, or person responsible for making the decision to harvest) to complete a legal harvest statement and declaration that confirms the timber is legally harvested;
- requirements on persons required to register to meet a fit and proper person test and establish and maintain a due diligence system in order to minimise the risk of timber or timber products they deal with being sourced from illegally harvested forests;
- an administrative and assessment framework, including assessment of due diligence systems by assessors approved by the Secretary;
- recognition of private certification schemes in the due diligence system;
- powers for the Secretary to provide an exporter statement to assist with market access and specify export requirements to facilitate trade and support continued market access;
- a principles-based cost recovery framework;
- ability for a regulated party to seek a review of a decision and have appeal rights;
- a graduated approach to compliance and enforcement;
- powers for forestry officers or other officers to carry out inspections, which may lead to investigations and the issue of a search warrant in accordance with Part 4 of the Search and Surveillance Act 2012;

² MPI internal analysis using Global Trade Atlas data and from MPI's annual forestry product import data available at <https://www.mpi.govt.nz/forestry/forest-industry-and-workforce/forestry-wood-processing-data/wood-product-markets-data/>.

- secondary legislation to give effect to the system; and
- a review of the operation of the legal harvest system and legislation no later than 5 years after full commencement.

The proposed legal harvest system will have operational overlaps with the regulation of log traders under new Part 2A of the Act (inserted by the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020). To ensure that the two registration systems operate as efficiently as they can, the Bill repeals provisions relevant to log traders in Part 2A and inserts a new Part 6 in the Act. The new Part 6 (Log Traders) has similar provisions to those in Part 2A with some adjustment to align with the operational design for the legal harvest system.

The Bill makes other technical adjustments to Part 2A of the Act, in order to ensure a more effective administration for the forestry adviser regulatory system.

Key features of the Bill

Definition of “legally harvested”

The definition of legally harvested is a core component of the Bill. It is used, for example, in the legal harvest statement provided by forest growers and in the due diligence systems used by registered persons. Under the Bill, trees or woody plants are legally harvested if they are harvested by a person who has a right to harvest the trees and the person does not contravene the relevant harvest laws that apply in the place where the harvest occurs.

With two exceptions, the legal harvest system will not apply to a person who trades in indigenous timber as that timber is already regulated under Part 3A of the Forests Act which provides a domestic trading and export pathway. To allow for future market requirements, the Bill allows regulations to specify certain indigenous timber forest types to be included in the legal harvest system. In addition, a person who is dealing with indigenous timber in the domestic supply chain can voluntarily opt into the legal harvest system if there is a commercial benefit in doing so.

Scope for regulated parties and timber products

Under the Bill, log traders, primary processors, importers and exporters of specified timber products who meet specified thresholds and are not exempted will need to be registered to be able to operate commercially. Persons with responsibility for the harvest will not be required to register but will have obligations to provide legal harvest statements to people buying their timber.

The intention is to focus on timber products that are regularly traded. The Bill will enable the setting of thresholds and exemptions in regulations to provide the flexibility needed to adjust thresholds in a changing international supply chain and trade environment. The thresholds would consider the cost of compliance and cover harvested timber and certain timber products (as prescribed in regulations) that are processed, exported, or imported to and from New Zealand and do not meet specified exemptions.

Harvest information

The Bill has been designed so that harvest information is generated from the person at the source of the harvest and then flows through the supply chain to the exporter. The Bill addresses the time it can take to harvest a forest by ensuring the information on a harvest statement remains relevant during the harvest period. The person will be required to update the buyer if the information in the statement changes during the course of harvest and supply agreement (for example, if information on compliance with relevant laws is no longer accurate or information identifying the timber changes). The update will ensure the buyer has up to date information relating to the harvest for use in their due diligence system. The update, however, would not affect the timber or timber product associated with the statement as at the time the logs left the forest, the statement was correct.

Due diligence and the role of private certification schemes

Assurance of legal harvest will be achieved under the proposed legal harvest system. Registered persons will be required to establish and maintain a due diligence system and carry out due diligence (for example, risk assessment and mitigation) on all timber and timber products covered under the Bill to ensure they have been legally harvested.

The Bill allows registered persons to use a template approved by MPI for their due diligence system. This may be a template made and approved by MPI, or a template made by a third party and approved by MPI. The application process for registration takes into account whether or not an applicant has used a template approved by MPI for their due diligence system.

The Bill will allow due diligence requirements to be modified if a registered person has had their products or themselves certified by a certification scheme that has been recognised by the Secretary. This recognises that there are existing private certification schemes that some forest sector participants use to demonstrate the legality of their production, including schemes by the Forest Stewardship Council and the Programme for Endorsement of Forest Certification.

The schemes mentioned above often go beyond legal harvest to include sustainability of timber products and are not normally economic for small forest owners to join. This can put small foresters at a disadvantage as there is international pressure to be able to confirm timber is legally harvested. The Bill provides small foresters who operate above the thresholds or voluntarily register, with a New Zealand specific system so they can demonstrate legal harvest.

The Bill also provides the Secretary with the power to recognise agencies or persons as assessors who could be third party persons that meet certain criteria specified in regulations, or MPI staff. The framework for assessment will reflect the level of risk of illegally logged timber traded in New Zealand, and the cost of compliance for registered parties.

Enforcement

The Bill will provide for offences, penalties, and search powers to enforce the requirements of the legal harvest system using a graduated approach to compliance, from educating regulated parties about their legal obligations through to prosecution.

The Secretary will have the power to obtain information including to verify whether the person is complying with their obligations under the legal harvest system. Officers will be able to issue warning notices if they believe a person registered for legal harvest is not complying with requirements, and compliance notices if, despite a warning, a person has continued to fail to comply.

Officers will also have the power to enter premises (not including a dwelling house or a marae) and carry out inspections, which may lead to investigations and the issue of a search warrant in accordance with Part 4 of the Search and Surveillance Act 2012.

Penalties for strict liability offences range from a fine not exceeding \$40,000 dollars for an individual to a fine not exceeding \$200,000 dollars in any other case. Penalties for knowingly providing false or misleading information range from a fine not exceeding \$200,000 dollars for an individual to a fine not exceeding \$600,000 in any other case. Penalties for providing false or misleading information range from a fine not exceeding \$100,000 dollars for an individual to a fine not exceeding \$200,000 in any other case.

The Bill also proposes to empower the making of regulations for an infringement system for legal harvest.

Amendments recommended by the Primary Production Committee

The Primary Production Committee recommended some amendments to the Bill. Key amendments include:

Amendments to Part 2A (Forestry advisers)

- Allowing the Forestry Authority to establish different categories of registration for registered forestry advisers in Part 2A of the Act.
- Clarifying the meaning of “forestry adviser service” in Part 2A of the Act.

Amendments to new Part 5 (Legal harvest assurance)

- Amending the definition for legally harvested to clarify the use of notices for “harvest laws” and to extend the definition of harvest laws to include the property rights and interests in the land (as well as what is harvested).
- Simplifying the requirements for a legal harvest statement to allow more flexibility in the way timber can be identified.
- Requiring a registered person to receive the legal harvest information and undertake due diligence before receiving the regulated timber or specified timber products.
- Requiring a registered person to supply legal information they hold for any timber or specified timber product to another registered person on request.

- Limiting the Secretary's ability to impose conditions on a person's suspension of registration for legal harvest to only conditions that the Secretary considers are necessary or desirable for the purposes of new Part 5, and that are reasonable.
- Adding more detail to the requirements for regulations that could set for due diligence.
- Providing more detail on how an assessor would carry out an assessment of a due diligence system.
- Requiring a registered person applying for an exporter statement to state whether or not they are complying with all relevant export requirements.
- Requiring the Secretary to be satisfied before setting export requirements that they are necessary or desirable to safeguard or strengthen New Zealand's reputation as a producer of legally harvested timber.
- Allowing the Secretary to grant an exemption from an export requirement if the product to be exported is to be used for product assurance or research purposes, as trade samples, or for personal or non-commercial use.
- Allowing the Secretary to recognise a class of individuals on their own application as assessors, in addition to a class of individuals employed by a recognised agency.
- Making it clearer that the Secretary may suspend recognition of a class of individuals, or an assessor who belongs to a recognised class of individuals.
- Making it clear that the Secretary's power to gather statistical information is limited to requesting information for the purpose of Part 5.
- Making it clear that failure of a registered person to comply with a compliance notice may result in any one or more of four potential results (rather than only one of the results).
- Including a new offence of aiding or conspiring with another person to commit an offence with a penalty of up to \$200,000 for an individual, or up to \$600,000 for any other person.
- Increasing the penalty levels for intentional dishonesty offences for legal harvest to up to \$200,000 for an individual, or up to \$600,000 for any other person, or unintentional dishonesty offences of up to \$100,000 for an individual, or up to \$200,000 for any other person.
- Increasing the penalty levels for strict liability offences for legal harvest to up to \$200,000 for a non-individual.
- Making the justification for the power to conduct a search for legal harvest more reasonable.
- Removing the need for the Minister to review Part 5 and the operation and effectiveness of the legal harvest system at least once every ten years after the first review is completed, so it only needs to be reviewed under Part 5 no later than 5 years after commencement.

Amendments to new Part 6 (Log traders)

- Clarifying the meaning of "log trader" to make clear it would cover a company that, in trade, receives ownership of New Zealand logs from a related company.
- Clarifying that any dispute process specified in a contract between a registered (or previously registered) log trader and a forest owner should not be affected by the procedure for disputes set out in Part 6.

- Clarifying the conditions under which a registered log trader charged with an offence under Part 5 would have a defence, and making that defence available only if the defendant notifies a prosecutor with a set time limit.

Amendments to new Part 7 (Provisions that apply to Parts 2A, 5 and 6)

- Establishing an infringement system for log traders and forestry advisers that is aligned to the infringement system proposed for legal harvest and putting this into a Part 7.
- Renaming Part 7 to “Provisions that apply to Parts 2A, 5 and 6” and moving the provisions on the infringement framework for legal harvest from Part 5 to Part 7.

Changes introduced via Supplementary Order Paper

Supplementary Order Paper 349

Amendments have been made to the Forests (Legal Harvest Assurance) Amendment Bill via a Supplementary Order Paper (SOP) that will ensure the proposed legal harvest assurance system is cost-effective for regulated parties and works well with the new professional registration systems for log traders and forestry advisers that are currently being implemented.

Aligns the regulatory system for forestry advisers and log traders with the proposed regulatory system for legal harvest

The SOP makes a number of changes to better align the regulatory systems for forestry advisers and log traders with the proposed regulatory system for legal harvest. These include:

- Widening the scope of the general obligations for forestry advisers so it does not refer to a particular provision and is more similar to equivalent provisions for log traders and legal harvest.
- Allowing the regulator to request more information from a person applying to be registered as a forestry adviser to better inform the decision-making process.
- Changing the process for suspending a forestry adviser so it is more consistent with equivalent processes for log traders and legal harvest, and it is a more reasonable process.
- Adding a new criterion for suspension of registration for forestry advisers to allow the regulator to suspend a forestry adviser’s registration when they are no longer undertaking the activity for which they were registered.
- Amending the timing of revocation of registration for forestry advisers so it is more consistent with equivalent timing for log traders and forestry advisers and allows the regulator to give advance notice of revocation before it occurs.
- Amending the time period for forestry advisers to notify change of details for the public register so it is the same as equivalent time periods for log traders and forestry advisers.
- Adding a defence for forestry advisers for strict liability offences so it is the same as defences for similar offence provisions for log traders and legal harvest.

- Allowing an extension of time for log traders to make a declaration of compliance to provide registered log traders with more leniency if something outside of their control prevents them from complying with the obligation.

Allowing log traders and forestry advisers to be suspended for non-payment of fees, charges or levies

The SOP enables the Secretary (the Director-General of the Ministry for Primary Industries) to suspend a registered person for non-payment of fees or levies for forestry advisers in section 63X of Part 2A of the Act, and for log traders in section 183 of new Part 6, if the non-payment is done in a way that is more than minor or inconsequential.

Having an express requirement to pay levies and enabling the Secretary to suspend a registered person for non-payment of levies and fees will provide a clearer process to incentivise the payment of levies and fees and further aligns the regulatory systems and provides for more consistent and effective implementation.

Clarifies the definition of “legally harvested”

The SOP clarifies the definition of “legally harvested” in section 77 of new Part 5 in the Bill by moving the example of access to land from section 77(1) to section 77(3). This will make it more straightforward for regulated parties to consider if there has been any contravention of laws regarding access to the land where the harvest occurs.

Makes other technical improvements

The SOP makes a number of other technical improvements to the Bill including:

- Providing more flexibility for a person seeking to use a defence by allowing a registered log trader or forestry adviser to apply for judicial discretion to use a specific defence when they are not able to notify the prosecutor within the required 15 working days before the hearing.
- Removing a duplication of provisions on immunity from liability for assessors in new Part 5 and making it clear the protection only applies to duties performed by assessors under Part 5.
- Removing the requirement for confirmation of instruments for two levy-making powers in new Parts 5 and 6 and one levy making power in Part 2A of the Act.