Russall Mc\aagh

Forestry regulation relating to logs and harvesting

David Raudkivi Prepared for NZIF Conference





Presentation Contents

Background to regulation of log traders and advisers

Implications

Status and key dates

Harvest Assurance Amendment Bill



Background to regulation of traders and advisers

- Forests (Regulation of Log Traders and Forestry Advisors) Amendment Act 2020 introduced by Shane Jones (former MP) of New Zealand First
- Intended to protect the domestic forestry industry by:
 - reducing the number of raw logs sent overseas for processing
 - boosting employment at mills
 - increasing value of exported New Zealand timber
- This followed alleged undercutting of domestic producers by foreign buyers of New Zealand logs
- Manifested in changes to the Forestry Act 1949 and Forests (Regulation of Log Traders and Forestry Advisers) Regulations 2022



Log traders

- A log trader is any person who, in trade:
 - Buys New Zealand logs, whether after harvest or trees to be harvested at an agreed time, and whether the person intends to on-sell the logs
 - Exports New Zealand logs
 - Processes logs that the person has grown themselves
 - >2,000 cubic meters per annum or as set by regulations.
 - Agents for those doing the above
- For log traders, an entity or individual can register.

Registration involves:

- Criminal record check
 (on individual or decision makers)
- Declaration of no relevant civil liabilities

Duties include:

- Records of log transactions and disputes
- Duty to report to make annual report to the forestry authority covering the financial year ending 30 June (by 1 December)



Forestry advisers

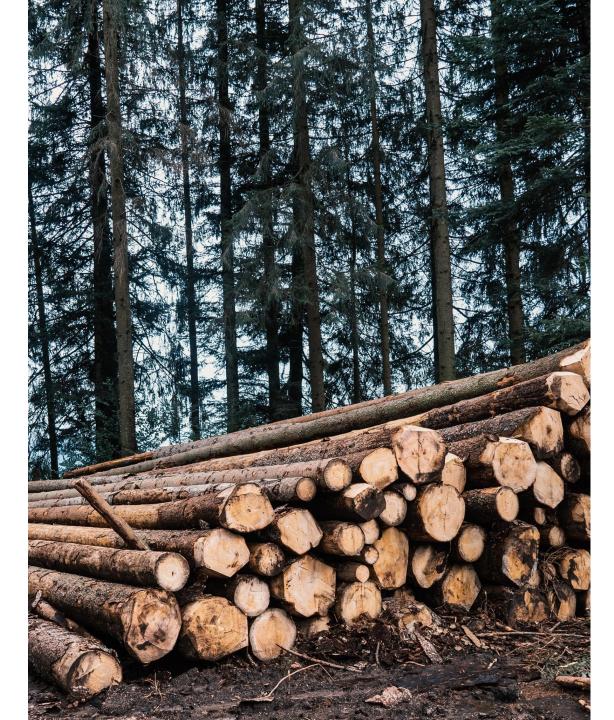
- Prohibition on providing a forestry adviser service for reward unless:
 - Authorised to provide the service
 - Exempt
- Forestry adviser services include giving advice in the ordinary course of business that relates to:
 - The establishment, management or protection of a forest
 - The management or protection of land used in connection with a forest
 - Appraisal, harvest, sale or utilization of timber or other forest produce
 - Appraisal of forest
 - Application of ETS to forest activities
 - Beneficial effects of forests (e.g. environmental and economic outcomes)



Forestry advisers

- Individuals need to register
- Based on fit and proper person assessment
- Criteria set by regulations:
 - (Diploma and 2 years experience providing forestry advice in NZ); or
 - At least 5 years of experience providing forestry advice in New Zealand; or
 - Possible discretion to register where the person has five years experience in the sector, diploma and supervised for 2 years
- Exemptions for those acting in a professional capacity in a regulated occupation:
 - Real estate agents
 - Accountants
 - Lawyers
 - Financial advisers





Other matters

Record keeping of advice

Complaints process

Disputes regulation regime for disputes between registered parties or forest owners – mediation or arbitration

Penalties for non-compliance

 Fine for non-compliance for individuals



Implications!

Consider whether the legislation achieves its purpose and overreach?

Log traders – jurisdictional reach

Those buying large volumes of logs (even as principal for own use) fall within the regime.

Consider jurisdictional reach – not clarified in the legislation so requires common law overlay – nexus to New Zealand should be required

Advisers

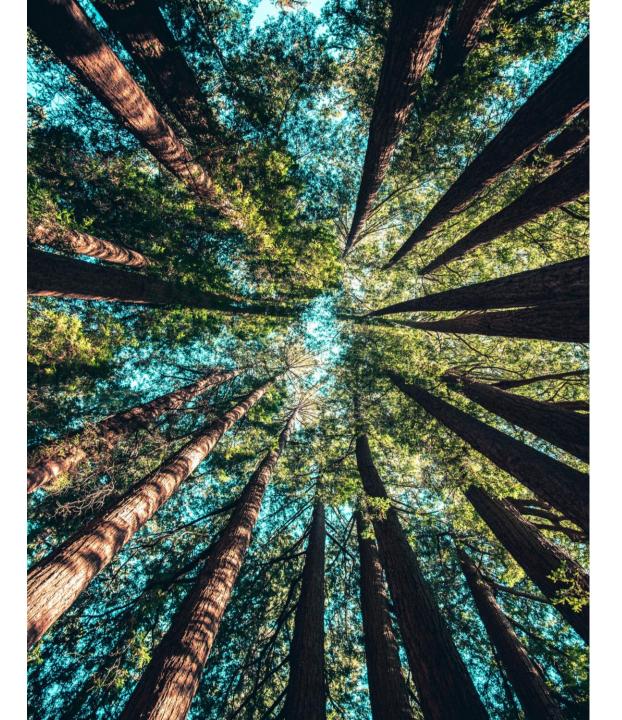
Requirement for experience and supervision

- consider implications for succession, diversity, client choice and economies of scale
- position of TIMOs providing advice from offshore

Comparable regimes

Comparable regimes allow sophisticated parties to opt out of the regime – generally focused on consumer protection, rather than corporates.





Status

From 6 August 2022, log traders and forestry advisors must register to be able to operate

From 6 August **2023** it will be an offence to operate without being registered

Generally, no other transition.

However, the log traders' regime is subject to review



Forests (Legal Harvest Assurance) Amendment Bill

- Aims to establish a new regulatory system for providing legal harvest assurance for the forestry and wood processing sector:
 - assist in the prevention of international trade in illegally harvested timber
 - strengthen the international reputation of the New Zealand forestry and wood processing sector
 - safeguard and enhance market access for New Zealand forestry exports
 - reduce the risk that timber imported into New Zealand is sourced from illegally harvested timber.

Implications:

- Forest owners and others with the right to harvest "regulated timber" will need to comply with the legal harvest information requirements when supplying that timber to another person in trade
- Log traders, primary processors of timber, and importers and exporters of timber products will need to register with MPI and maintain a due diligence system to demonstrate that the timber they have obtained has been legally harvested.
- Log traders' provisions are moved to fit within that regime, but substantially reproduced
- Submissions to the Select Committee have closed and their report is due in December
- Most provisions of the Bill will come into force 3 years after it receives the Royal assent





Auckland

Level 30, Vero Centre, 48 Shortland Street PO Box 8, Auckland 1140, New Zealand, DX CX10085 Ph +64 9 367 8000 F +64 9 367 8163

Wellington

Level 24, NTT Tower, 157 Lambton Quay
PO Box 10-214, Wellington 6011, New Zealand, DX
SX11189
Ph +64 4 499 9555 F +64 4 499 9556