

Submission

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

Submission to:

Committee Secretariat, Environment Committee, Parliament Buildings, Wellington

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The Forest Owners Association (FOA)

1. The New Zealand Forest Owners Association Incorporated (FOA) is the representative membership body for the commercial plantation forest growing industry. FOA members are responsible for the management of approximately 1.2 million hectares of New Zealand's plantation forests and the great majority of the annual harvest.
2. In 2019, the forest growing sector was worth \$6.32 billion in export value and has a 12% share of rural land use.

Summary

3. The FOA does not support the current Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill (the Bill) on the basis that:
 - a. The Bill “enables” the imposition of unbridled, unknown, and damaging constraints on the industry through subsequent regulations with totally inadequate justification through reasoning or evidence. The bill currently has the potential to harm both prosperity and employment including in the very parts of the sector it purports to protect.
 - b. It is not at all clear that there is a problem for the Bill to solve. Two very recent surveys from FOA and the Timber Industry Federation indicate that the wood supply ‘problem’ is not as extensive nor urgent as the assumptions used to justify the Bill.
 - c. The Bill will cause uncertainty for investors in the forestry industry, for which the majority of new investors currently are New Zealanders.
 - d. The consequential chilling effect on new forest investment diminishes the ability of plantation forest carbon sequestration to be used as a tool for achieving the statutory goal of a carbon zero economy by 2050 as well as to diminish employment in forests and through the supply chain.
 - e. The ultimate purpose of the Bill has been stated in Parliament and in the news media as a means to force the log export part of the industry to subsidise domestic processing. This is a measure unprecedented in New Zealand history.

- f. The stated purpose of such a legislatively compulsory ‘value add’ regime is a measure far too important and significant to be left to drafters of a subsequent set of regulations. No such impost appears to be yet intended to, for instance, the wool industry, where the volume ratio of unprocessed exports is more than eight times that of the log export ratio.
- g. The Bill has no specified mechanism for achieving its purported aim, no clearly spelt out problem to solve the stated objective, and no supporting data or investigation. FOA cannot support enabling legislation which relies totally on subsequent and so far, unwritten Regulations to give purpose to its ultimate effect.
- h. The Regulatory Impact Statement addressing the economic consequences of the bill is flawed and should be reassessed. There is no indication for instance whether there has been an investigation as to whether the Practice Standards forming the basis for the registration scheme are consistent with the requirements of the Commerce Act 1986, World Trade Organisation regulations and various Free Trade Agreements. The RIA appears to address only the first of the two expected outcomes. There is little, to no, basis for the subsequent three claimed outcomes as follows:
- *“contributes to improved economic, employment, and environmental outcomes from the forestry sector, nationally and for local communities; and*
 - *contributes to improved environmental and climate change conditions for New Zealand; and*
 - *contributes to the development, and improves the long-term sustainability, of domestic timber processing and the wider forestry sector.”*
- i. The Bill will impose a new, expensive and largely unjustifiable layer of bureaucracy and compliance costs across the industry while doing nothing to satisfy any of the five “General Policy Statements” as set out in the Explanatory Note on page one of the Bill.
- j. Consultation on the bill is completely inadequate. Before Friday 15th May the industry had been exposed to only the general concept of a registration system. The democratic processes embedded in the NZ legal framework have been largely sidestepped to meet the government legislation timetable for passing the Bill. Tabling the Bill under urgency as a supposed necessary response to Covid-19, and then allowing 4 working days to make a submission is unjustifiable. Submitters have absolutely no idea of the range, reach, or content of the Regulations on which the Bill will operate. Nor does Parliament. There is no need for it to proceed under such a limited time frame given the public and industry implications.
- k. The Bill should logically be presented to the Primary Production Select Committee given the implications for all primary producers. Instead it is being presented to the Environment Committee simply to ensure a government majority.

Recommendations

4. That adequate time be allowed to fully develop the bill including detail on the regulations, proper assessment of the implications and appropriate consultation with the industry. A fit for purpose bill can then be re-tabled in Parliament.
5. The FOA also submits that the ostensible reasons for introducing the Bill should be subject to a select committee inquiry. We suggest the terms of reference should be the need to investigate the timber supply chain for both New Zealand processing and for exports.
6. That if the Select Committee is of a mind to recommend the Bill back for a second reading that its scope is clearly restricted to support the improvement of professionalism in the forest industry.

Background

Problem Definition

7. Early this year MPI conducted a series of workshops and produced a discussion document outlining the government's perception of the problem. The problem definition was as follows:
 - a. "New Zealand's log supply market is in transition, with smaller owners playing an increasingly important role in the annual harvest. The forecasts indicate that smaller owners will be providing 40% of the annual harvest during the 2020s, up from 25.5 percent in 2015.
 - b. The majority of these smaller owners (estimated at between 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, these owners need to know who to seek management advice from; the state of the market; their sale options; and how to seek redress.
 - c. Owners gain experience through repeated sales, but this cannot occur when an owner has a single stand. For many of the 14-15,000 forest owners, the 2020s will be the first, and only time that they enter the market.
 - d. Owners depend heavily upon advice from consultants, and other intermediaries in the sales process. The quality of the advice owners receive from these sources is critical to the final return they receive, and to the operation of the broader log market (e.g. enabling an open bidding system for stands). "
8. This Bill, as presented, goes well beyond addressing the issue presented to the forest industry in this statement and consequently there has been NO industry consultation on the majority of the content of the Bill.

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

9. The Bill appears to be an attempt to impose unbridled constraints on the industry through subsequent regulations.
10. Officials have admitted that the Bill allows the government to decide on matters such as date of harvest and who logs are sold to.
11. The FOA is quite prepared and eager to work on ways to address any issues there may be in the operation of rogue log traders including the option of registration, even if it would appear that there are sufficient provisions in New Zealand's existing civil and criminal law, as well as the operations of the Forest Stewardship Council and voluntary registration under the New Zealand Institute of Forestry, to already afford sufficient protection to forest owners.
12. The issue is getting vulnerable forest owners (small-scale foresters) to access existing safeguards.
13. If there is a rationale for registration, then it certainly extends beyond just "forestry advisors" and "log traders" and should also include wood processing advisors and sawn timber traders. It also raises the question about why not such controls are present or proposed in the New Zealand agricultural, horticultural and fisheries industries.
14. The industry has had only concept level exposure to the workings of the Bill and has not been provided with either the workings of its provisions, nor the justifications for their introduction. Industry consultation has been misleading (did not cover the extent of the Bill at all) and was totally inadequate.
15. Most of the Bill is machinery clauses to put the infrastructure in place to implement down the track requirements which are to-be-advised and may not appear until regulations are promulgated.
16. The fear that the Bill is intended in some way to force logs into the domestic processing market, if necessarily at the cost of withholding export opportunities, is a paramount concern. How licenced log brokers are to achieve this interference in the marketplace is not at all clear, other than a statement of intent made when the Forests Minister introduced the Bill into Parliament on 14 May and prior statements made to the news media.
17. The Bill's Explanatory note addresses 'integrity' and lists a number of dispirit principles which the Bill is held to embody, most particularly about supporting supply of timber to domestic processors.

18. How this is intended to be achieved without restrictions on exports in some form is not clear, even if the end result of supply to domestic processors is.
19. It is ironical that prior to introducing the Bill in Parliament on 14 May, the government addressed amendments to the Overseas Investment Act. The Minister of Trade told Parliament that areas of the OIA regime should be taken out of regulations and placed in primary legislation, as regulations were too open to political abuse. The same government, the same evening, sought to acquire the same potential of abuse under the Bill.
20. The Bill is unprecedented in New Zealand's history. It is difficult if not impossible, other than perhaps the anti-monopoly provisions in the Dairy Industry Restructuring Act 2001, to find another example where the right to export is contingent on some form of assistance to the domestic processing or consumption sector. Monopoly issues are not present in this case.
21. New Zealand's economic prosperity has been built on its primary product exports. Indigenous timber, together with gold, flax, and marine mammal products, were to be the first income generators for New Zealand.
22. Since then, the government has indeed intervened into the workings of the primary sector, invariably to assist producers, and usually at their request, in their export markets. This led to the producer boards for meat and wool, and to the establishment of Fonterra and Zespri.
23. Government intervention has often, even when demanded by market conditions and producer demands, not worked.
24. But it has never, to our knowledge, been a state intervention to constrain and restrict the export trade. An attempt was indeed made in 2011 to force dairy exporters to subsidise the price paid by local consumers. This was however again an issued driven by anti-duopoly issues with supermarket chains. This attempt at constraint was not backed by Parliament. Nor should this Bill be supported either.
25. While members of the FOA on occasions have issues with what are termed rogue traders in the forest business, and putting aside the other agendas the Bill is intended to carry in regulations, it is difficult to see value in creating a new bureaucracy to try to address this, with all of its ancillary costs and time demands.
26. This will particularly affect small-scale forest owners. As a result, many small forest owners and farm foresters will not engage professional help from advisors, because of the cost. They will become increasingly DIY – just the opposite of the intended outcome.

Specific comments on registration of log brokers and advisers

27. New Zealand is blessed with a large number of excellent industry providers. Cowboys are few and the legislation is unlikely to weed them out.

28. If an owner has failed to do their homework and works with an individual of poor repute and low sense of ethics that is a consequence of not getting good advice. It is “buyer beware” and this is a key driver across all sectors of business.
 - a. If a forest owner sells logs to its own processing facility they have to be registered and subject to “fit & proper person tests” and subject to reporting etc all of which is totally unnecessary and in many cases a duplication of other data collected by Statistics NZ and others.
 - b. Requiring registration of those involved in transferring logs between related entities and for those involved in the processing of their own logs is completely unnecessary and as worded would require registration of all small forest owners who sell their own logs or who operate portable sawmills processing their own logs unless they apply for and are granted an exemption.
 - c. The Bill seems silent on those providing advice to processors – why aren’t they included in this scheme?
 - d. MPI has the ability to request registered traders and advisers to provide any information they request which would require the disclosure of confidential commercial information and put this at risk of disclosure under OIA requests.
 - e. ” Fit & proper person” test. The scope for this to be used way beyond what is intended appears high.
 - f. The New Zealand Institute of Forestry already has a registration system covering forestry advisors that has good standing. Another option would be to appropriately amend the provisions governing the registration of licenced financial advisers though there would be concern about costs here as well.
 - g. “Carrying out activities for reward” – is uncertain in its scope and arguably includes a party giving advice to the Forestry Ministerial Advisory group or university lecturers.
 - h. Appendix one registration requirements; the need for a registered log trader to have to employ a registered forestry advisor to perform the sale and purchase of logs is unnecessary.
 - i. If individuals are required to register will they also have to carry insurance and form trusts and conduct other measures to personal protect assets against possible heavy fines.

- j. Clause 63C (d) the code of ethics needs to apply to registered log traders as well as forestry advisers.
- k. 63 H Log Trader – a small forest owner who owns a portable sawmill and processes his own logs is a log trader under this definition. There is no discernible benefit in requiring this person to be registered.
- l. 63 I – Entitlement to be a Log Trader – entitlement will set by regulations, and it is not known how this will be set or who will be entitled to be a log trader.
- m. 63L – It is not uncommon within a syndicate or JV forest investment for one or two of the partners to provide services or advice to the forest partnership, often for a consideration. This will not be possible under these rules exposing the partnership to higher costs of hiring registered advisers.
- n. 63M – Registered forestry adviser - again regulations will provide the criteria, but we have no means of challenging or having input to these.
- o. 63O – The costs of applying for registration are unknown. In the case of a forest management services company it is not clear if the company is the person who applies for registration or each person who is employed to provide advice or trade in logs needs to register. In the case of research organisations who are providing advice to forest owners, does each scientist have to be registered? It is not clear and having to apply for exemptions will impose costs and time. Same question applies to FOA staff and contractors – members are paying for FOA to provide advice. Is that deemed to be providing services for reward?
- p. 63U – 63XA- The disputes process and potential of arbitration proceedings to resolve disputes will mean many forestry advisers will no longer wish to provide services and will result in significant costs increases for forest owners seeking advice.

Specific Comments on powers of log brokers and advisers

- 29. Clause 63ZZC will also be able to set standards *for any matter relating to forestry operations*. This is unnecessary. The plantation forest industry operates under the specific scope of the National Environmental Standard for Planation Forestry – the most extensive provisions ever promulgated under the Resource Management Act 1991 – as well as the general provisions of the RMA and environmental standards imposed by local government.
- 30. The FOA is also a party to such successful arrangements as the New Zealand Forest Accord, signed with 10 environmental NGOs in 1991.
- 31. 63A 1(a) support the continuous, predictable, and long-term supply of timber (presumably this should read logs – timber is what comes out of the mill; logs go in) for domestic processing and

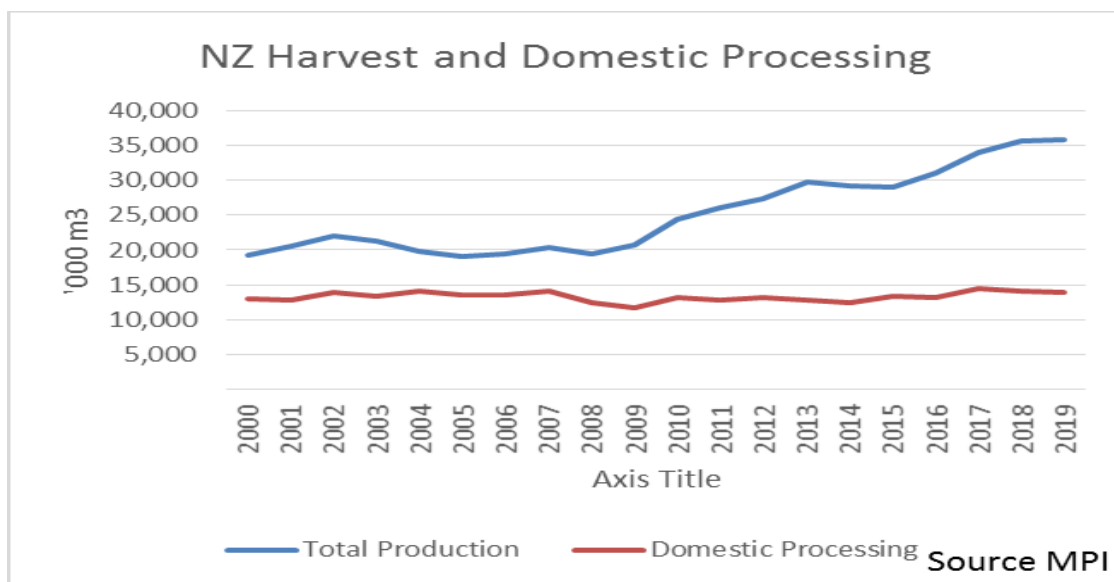
export.

32. This is inconsistent with the point in the Explanatory Note and is essentially saying that the forest growing sector will be forced to commit to long term non declining yield, irrespective of the economics of forest growing, competing land use pressure or individual investment aspirations. This purpose contained in the Bill cannot stand.

New Zealand Harvest and Domestic Processing

33. The Bill does not address the actual constraints constraining the construction of additional processing in New Zealand and this is why it is appropriate for the Select committee to undertake a review.

Graph One



34. Domestic processing utilises 44% of logs harvested divided into;
- A. The volume which is retained for use in New Zealand, which is about 16% of the logs harvested.
 - B. A further 28% of the log harvested which is processed, and then exported, into such markets as Australia, and is the second most valuable export earner for the forest product export industry.
35. The volume processed domestically has been amazingly consistent over the past twenty years. From 2009 onwards, harvest levels have risen consistently as the high plantings in the early 1990s have been harvested (Graph One).
36. Domestic processing is going through a slow drawn out rationalisation towards an internationally competitive wood processing sector. Domestic demand could be met by 3-4 low cost processors who are making it very difficult for higher cost smaller mills unless they are

innovative and have found niche markets. This has led to a consistent decline in the number of mills while volume processed has remained largely consistent, mainly affected by factors such as the Christchurch rebuild.

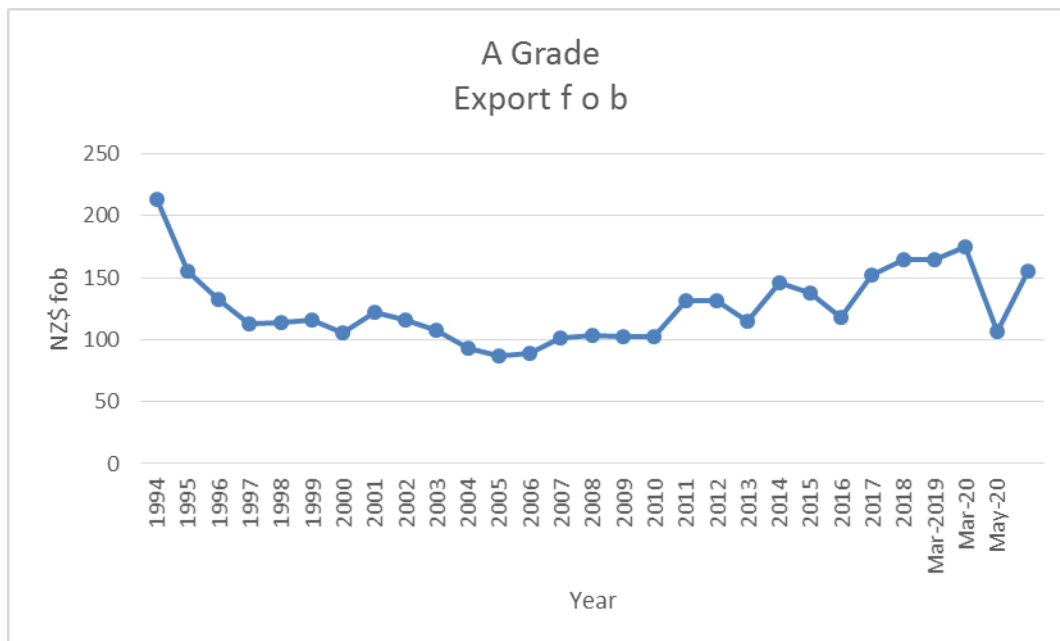
37. The measure most likely to increase the scale of domestic processing is not in regulatory impost on buying and selling contracts, but rather delivery of a wood preference policy as contained in the Labour Party Manifesto in the 2017 election. Though formally confined to government building construction, an introduction of such a policy would have a strong influence on timber specifying and design in the private sector.

Constraints to Additional Domestic Processing

Price:

38. Price is not the constraining factor as those processing are able to compete. As noted already, the level of processing is consistent, not declining. Price has been relatively stable and has risen only slowly over time (Graph Two).

Graph Two:



39. In real terms log prices have actually declined over time while costs have significantly increased, and long run profitability declined. Additional costs associated with this Bill will do nothing to encourage further investment in forestry.

40. Further, the focus of the Bill on domestic processing is on stability and price of **input costs**. There is no discussion about, or controls proposed on factors effecting **output price**.

Volume:

41. Recent proposals for processing plants in Kawerau and Taupo have not proceeded. Volume available was not the issue. Rather consenting and physical site issues have stymied progress. Red Stag was able to recently increase production to approximately 1.2 million m³ from 6-700,000 m³. CHH – one of New Zealand's largest wood processing groups sold its forest estate in 2005 – obviously not concerned that log supply was a constraint. JNL – sold its Northern estate, in a region where it has two processing plants, again obviously not concerned that log supply was a constraint.

Regulation:

42. This is the main constraint to constructing new processing capacity. Three major incidents have damaged investors' confidence in the NZ Wood Processing sector.
 - 1) Tony Davies Colley (TDC) Mill – 2004. 8 months delay to the consent process because of a pipeline.
 - 2) Ernslaw One – Coromandel Mill - One million dollar + Environment Court case – Mill declined.
 - 3) City Forests Mill – Otago. Mill consent declined.
43. These three cases have had a major negative impact on investment in greenfield wood processing in New Zealand.
44. The Bill imposes additional costs on the delivery of logs to domestic and export facilities. This will reduce (forest and processing plant) returns and reduce the workforce opportunities and New Zealand's competitiveness in export markets for logs and processed product. Until the existing regulatory issues are addressed through reform of the RMA additional processing capacity will be constrained to those sites with favourable regulatory oversight.

Conclusion

45. This proposal opens the door and seeks to facilitate a creeping nationalisation of private assets. The Crown sold its rights to own and control a strategic asset (local wood supply security, processing investment employment, value add) in the late 1980's to private investors, simply because the government of the day decided it wasn't a business the government needed to be in.
46. If you think otherwise then I feel you should ask yourself this – If grower returns for commercial forestry far exceed nearly all land use income options in New Zealand and have consistently done so for a long time what is broken that a registry of log traders and advisors will fix?
47. Export receipts per hectare are at least half as high again as the average returns for all farm types. And the forest industry achieves this while providing considerable positive ecosystems services. It is the understanding and appreciation of such important facts which is lacking in the logic of the Bill as presented.

48. It is indeed possible that a slight increase in the forest harvest area would provide both more export returns and employment than even a huge increase in timber processing – even if there were instant markets for such processed production.
49. It would be of greater value for the Select Committee to investigate the profitability, employment prospects and long-term viability of the relative sectors of the forest industry, than to report this Bill back to the House in its present, or even heavily amended form.
50. It should not be lost on members of the Environment Select Committee that this legislation is the first step in a process to limit choice, reduce log prices and place heavy constraints on log exports. There are strong negative signals to forest investors in this Bill.
51. Thank you for the opportunity to submit on this issue. As always, FOA is available for further consultation.
52. The FOA wishes to make a verbal submission on the Bill.

A handwritten signature in black ink, appearing to read 'D Rhodes', with a stylized flourish at the end.

David Rhodes, Chief Executive