

# Submission

**on**

## Registration for **Log Traders**

### Proposed regulations under the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020

Log Traders and Forestry Advisers Consultation  
Forestry Operational Policy (FMAP)  
PO Box 2526  
Wellington 6140

Email submission to [TeUruRakau@mpi.govt.nz](mailto:TeUruRakau@mpi.govt.nz).

Table of Contents	
<b>Contact Details</b>	<b>3</b>
<b>Submitter</b>	<b>3</b>
<b>Summary</b>	<b>3</b>
<b>Regulating Log Traders</b>	<b>6</b>
Should employees of log trader businesses also be entitled to register as log traders?	6
Threshold volume of logs for registration as a log trader	6
<b>Exemptions from requirement to register as a log trader</b>	<b>6</b>
Who should be exempt from the requirement to register as a log trader?	6
Process for exemptions – notifying the Forestry Authority	7
<b>Getting Registered</b>	<b>7</b>
Information requirements	8
How long should registration last?	8
What should be the process for renewing registration?	9
<b>Obligations once Registered</b>	<b>9</b>
What records should log traders have to keep?	9
In what form should log traders keep records?	10
How long should log traders keep records for?	10
Reporting to the Forestry Authority	10
<b>The Public Register</b>	<b>10</b>
Appearing on the public register when suspended	11
<b>Complaints and Disputes</b>	<b>11</b>
Should a complaints panel be set up?	11
If a complaints panel is set up, should it publish its findings?	12
Disputes	12

## Contact Details

David Rhodes  
Chief Executive  
Forest Owners Association  
Level 9, 93 The Terrace, Wellington.  
Email [david.rhodes@nzfoa.org.nz](mailto:david.rhodes@nzfoa.org.nz)  
Web [www.nzfoa.org.nz](http://www.nzfoa.org.nz)

Glen Mackie  
Technical Manager  
Forest Owners Association  
Level 9, 93 The Terrace, Wellington.  
Email [glen.mackie@nzfoa.org.nz](mailto:glen.mackie@nzfoa.org.nz)

## Submitter

### The Forest Owners Association (FOA)

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 over 75% of the annual harvest.

Forestry export revenue is forecast to reach \$6.3 billion in the year ending June 2021, an increase of 12.8 percent from 2019-20 when the forestry sector was prevented from operating during Level 4 lockdowns. Harvest volumes are set to reach 36.5 million cubic metres in 2020-21, up 14.5 percent from last year. Log export volumes are expected to increase 21.4 percent, reflecting increased demand for export logs (SOPI June 2021).

If appropriate, the NZ Forest Owners Association (FOA) wishes to be heard in support of this submission.

## Summary

Forest Owners Association feedback on the design of the registration system for **log traders**.

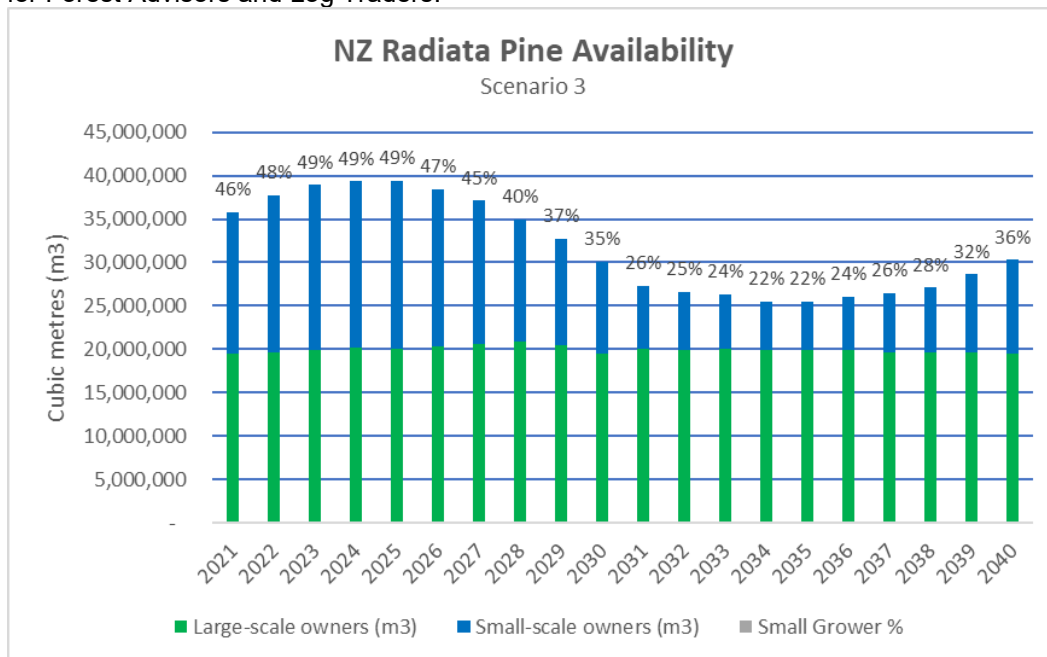
The Forest Owners Association, with the support from a wide range of primary sector and wider interest groups strongly opposed the imposition of the Log Traders and Advisors Amendment bill. The passage of the bill through to enactment was poor process with inadequate consultation and insufficient justification. A stated purpose of the bill – to control log supply – was an improper attempt to interfere in commercial arrangements between willing parties. While we acknowledge that this intent has been explicitly ruled out of the current provisions we, nonetheless, remain of the view that this legislation remains a solution in search of a problem.

With the bill having been passed there is a legal requirement to develop the associated regulations. Given the lack of need for such rules for any other primary producer we expect any requirements to be minimal and not in excess of what are current practice.

In particular we are concerned at what might constitute a breach of “good character” and any associated remedial action.

The stated aim of the program is to strengthen the integrity and resilience of the forestry supply chain in New Zealand. The forest supply industry in New Zealand is in transition as smaller woodlots supply an increasing percentage of the NZ plantation harvest, with accompanying first time to the market forest owners. The small forest owner harvest percentage could be around 46% in 2021, however this falls to around 22% by 2034. Source: MPI Wood Availability Forecast 2021 – 2060.

First time, small lot forest harvesters are vulnerable and would benefit from the provisions in this Bill for Forest Advisors and Log Traders.



Source: MPI Wood Availability Forecast 2021 – 2060.

### Log Trader:

#### FOA Summary

If this legislation is about protecting smaller forest owners from poor practice then this should be the focus. ie. the 3<sup>rd</sup> party professionals who are engaged to provide harvesting and marketing services. Forest owners who cut and sell their own trees should not be included in the definition. The provisions should also not seek to replace the responsibility of any party to do their own due diligence, seek professional advice where appropriate and take responsibility for their own decisions.

It appears that there is still some hangover from the original content of the Bill, and intent of the Bill's chief architect regarding how and when forest owners may sell their logs. Following strong industry representation it was made clear that the regulations would not interfere with any pricing or any commercial arrangements that may be relevant to log trading, or override any transactional agreement that a forest owner has with a customer either domestic or export. Therefore, there shouldn't be any requirement for registered parties to provide a detailed breakdown of log volume sold by grade, species or end use. The complexities of a forest transaction, taking into account the variables surrounding individual sales means it will be impossible to provide a useful open marketplace.

If there is a need to provide a safeguard to protect the small forest owner then let the registration be about that. FOA is supportive of the provision of greater transparency across the supply chain for first time harvesters through access to impartial information and expert advice. This is not required for larger forest owners so a lighter regulatory hand would be appropriate for larger forest owners (>1,000ha). Corporate forest owners are in the domestic market long term and should not be captured by the content of this Bill. A 'one size fits all' solution across this section of the entire New Zealand Forestry industry is not appropriate and the regulations relating to those parties designated as Log Traders should reflect that reality.

As stated above, first time log sellers could be classed as potentially vulnerable and would benefit from the stated aims of the Bill. For Small Forest Owners, a simple register of Log Traders that can be publicly accessed to check that the business or its director hasn't been prosecuted for any criminal behaviour should be enough (eg. fraud, theft). There is absolutely no need for a business to have to disclose the details of its annual sales (other than an annual total).

“Log Trader” should only apply to those that are managing **other** people’s wood (Woodlot harvest and management, At Wharf Gate purchasing, etc. The legislation is not required to protect the seller where a forest owner is cutting and marketing their own wood.

FOA notes that the Forestry Advisor framework that is accompanying the Log Trader legislation will provide additional protection to vulnerable forest owners (small-scale foresters).

**Conflict of Interest**

A Log Trader that provides Forestry Advice to the same person it is either purchasing standing trees from or seeking to do so has an untenable conflict of interest that cannot be resolved by declaring that conflict.

The Regulations for Log Traders must contain specific clauses that prevent a Log Trader from misleading a forest owner in regard to any forestry supply chain or market situation. This protection must apply whether they are registered as Forestry Advisers or not. This could be achieved by

- a. Specifically prohibiting a Log Trader from providing any Forestry Advice to a person it is seeking to buy forest produce from under any circumstances.
- b. Requiring that the Log Trader provide written advice to the forest owner that it is conflicted and therefore unable to offer advice regards forest values, log values, log markets, or logging and other supply chain costs.
- c. Requiring that the Log Trader advise the forest owner in writing that it should seek its own advice from an independent Forestry Adviser regards any offer made to purchase standing trees or logs.

# Regulating Log Traders

## Should employees of log trader businesses also be entitled to register as log traders?

See pages 12 – 13

A1: Do you agree with the preferred option that only a business should be entitled to register as a log trader?

- Yes
- No
- Not sure

Please provide reasons for your answer.

Registering only businesses as log traders will reduce the administrative burden on companies and employees.

Registering the business will give the transaction the required accountability and satisfy the objectives of the Act.

## Threshold volume of logs for registration as a log trader

See page 13

A2: What do you think should be the threshold volume of logs, to be entitled to register as a log trader? Please provide your reasons.

The threshold of 2,000M3 per year is too low. The threshold volume is stated as being intended to exclude small scale operators from the registration regime, including smaller scale firewood operators, low volume portable mills and sawmills. We agree 2,000M3 is approximately the yield from 3 hectares. However, over the period of a year even very small operations will be captured.

We recommend a threshold of 10,000m3, equating to an annual harvest of approximately 20ha. These are still very small operations.

## Exemptions from requirement to register as a log trader

### Who should be exempt from the requirement to register as a log trader?

See pages 14 – 15

A3: Who should be exempt from the requirement to register as a log trader?

Please tell us the reasons for your choice of options, or whether there is another option (not included here) that you would prefer.

Exempt anyone trading in their own logs. There is no benefit to the log owner in having to register their staff to trade with themselves.

The provisions requested for Registered Forestry Advisors could satisfy them being registered as a log trader if relevant. This reduces cost, bureaucracy and confusion. It is likely Forest Advisors could be giving advice on harvesting operations and therefore there is considerable overlap in the responsibilities. A Log Trader should not receive automatic Forest Advisor registration because a Forest Advisors field is much wider.

## Process for exemptions – notifying the Forestry Authority

See page 15

A4: Do you agree with the preferred option that if someone is exempt from registering as a log trader, they should have to notify the Forestry Authority?

- Yes
- No
- Not sure

Should this be required for every exemption, or only some exemptions?

- Only some exemptions
- All exemptions

Please provide reasons for your answers.

It provides clarity for the individual and the Authority.  
It is reasonable to expect that exemption will need verification, not be self-conferred.  
Support for notification is on the assumption that the system is efficient and not complex.

## Getting Registered

### Fit and proper person test

See pages 16 – 17

A5: Do you agree with the preferred options for matters to take into account in deciding whether a business is 'fit and proper' to be registered?

- Yes
- No
- Not sure

Consistent with the preferred option for registration of log traders as a business, then the fit and proper person test should apply to the Directors of that business, as per the Companies Act.

Agree information is unambiguous and easy to provide.

Other info to supply: Given the registration has an expiry period, re-registration should include any relevant interactions with the Forestry Authority in the previous registration period.

Should any other elements be included?

How serious should an offence be before it should prevent a business from being fit and proper to register as a log trader?

The seriousness threshold needs to be high – ie: the business or its director has been prosecuted for criminal behaviour such as fraud or theft within a stated time period ie: five years. As well as the criminal infringement it will be important to take into account the response by the entity prosecuted and any remedial action. A distinction should also be drawn between pre-mediated deliberate action and situations involving inadequate oversight or control.

This area is fraught with issues. Prosecutions under the RMA, for example, vary widely and can take years to progress while companies continue to trade.

The provisions governing Forest Advisers will be sufficient to meet most situations.

Fit and Proper test provisions could include:

- Self declaration not in receivership or liquidation
- Criminal offences only of the business (not civil offences)
- Previous criminal convictions of directors, partners, trust board members, or sole trader – within last 5 years
- Previous compliance with the obligations of being a registered log trader – however, only if this information can be supplied quickly and at reasonable cost.
- As previously noted – apply to the Directors of the business.

## Information requirements

See page 18

A6: Do you agree that the following information should be included in an application for registration as a log trader?

Tick the box next to each piece of information you think should be included with an application.

- Contact details for applicant (business)
- Contact details for the person making the application for the corporate entity
- Certified copy of photo ID of person making application
- Criminal conviction and civil liability check for the business
- Criminal conviction and civil liability check for directors, partners, trust board members, or sole trader
- Evidence of registration as a business
- Tax declaration
- Declaration of meeting the volume threshold for registration (subject to selling an appropriate volume threshold).

Please provide reasons for your response and tell us if any other information should be included to support an application for registration.

See response to “Fit and Proper Test”. It is important to strike a balance between having sufficient, minimal, information to provide assurance and not attempting to prescribe requirements that the Forestry Agency will struggle to administer.

## How long should registration last?

See pages 18 – 19

A7: Do you agree with the preferred option that log trader registration should last for five years?

- Yes
- No
- Not sure

If you disagree, please provide your reasons.

Five years strikes a balance keeping administrative costs low while ensuring the register reflects active participants.

## What should be the process for renewing registration?

See page 20

A8: Do you agree with the preferred option for renewing registration?

- Yes
- No
- Not sure

If not, please tell us why, and what option or alternative you would prefer.

Agree – Declaration that they have and will continue to meet Log Trader obligations.  
If there have been issues – a note of how they have been resolved.

This process must be proactive in notifying Log Traders that their registration is about to expire..

## Obligations once Registered

### What records should log traders have to keep?

See pages 21 – 22

A9: Do you agree with the preferred option for the records a log trader should keep?

- Yes
- No
- Not sure

If not, what records should log traders have to keep?

Requiring Log Traders to keep the data required in the preferred option suggests that this data would / could be required to be supplied to MPI.

The data is commercially sensitive.

It is unclear why this level of data is required (age, price, species, etc).

Age, grade and price for example are useless in determining the merits / validity of a sale without significant additional data such as location, gradient, access, market condition, etc.

The preferred option requires excessive information detail which we consider is not justified to meet the provisions of the Act.

## In what form should log traders keep records?

See page 22

A10: Is it reasonable to expect log traders to keep records in digital form?

- Yes
- No
- Not sure

If you do not think it is reasonable to expect this, please tell us why.

## How long should log traders keep records for?

See page 23

A11: Do you agree with the preferred option of keeping records for 7 years?

- Yes
- No
- Not sure

If not, what length of time do you think log traders should keep records for?

Records should only be required to be kept for the purposes of meeting Log Trader requirements for a period that gives useful information to any potential customer.

Two years of trading history is sufficient to meet these requirements.

## Reporting to the Forestry Authority

See page 23 – 24

A12: Do you agree with the preferred option for reporting to the Forestry Authority?

- Yes
- No
- Not sure

If not, what reporting should be made by log traders to the Forestry Authority?

- Annual return stating they have met their obligations in the past year.
- Total annual volume of logs traded. This will give the scale of the operation, plus once all returns are summed, will allow analysis of how complete the Log Trader reporting scheme is (% of total harvest).

NOT required:

Grade, price, age, species, region. This data does not indicate whether the Log Trader has or has not met their obligations. Requesting this information is going beyond the stated intentions of the scheme. Some of this information is commercially sensitive.

## The Public Register

See pages 25 – 27

A13: Do you agree with the preferred options about what information should be on the public register?

- Yes
- No
- Not sure

Should any other options be considered, and why?

Do not support other options. The public register shows the range of services offered by the Log Trader with geographic area of operation. This would be beneficial to the public and the Log Trader, with minimal overhead.

## Appearing on the public register when suspended

See page 27

A14: Do you think a log trader should appear on the register indicated as suspended?

- Yes
- No
- Not sure

Should any other options be considered and why?

It will be beneficial to show to the public the registration status of a Log Trader. However, there must be an option for a company to challenge their status before it is published on the register.

## Complaints and Disputes

### Should a complaints panel be set up?

See pages 28 - 29

A15: Do you agree that a complaints panel should be set up?

- Yes
- No
- Not sure

If yes:

a. What types of people should be in the pool of complaints panel members?

Every panel should contain a professional arbitrator.  
The panel will require an understanding of legal process and obligations under an agreement as well as knowledge of the NZ log trading process.  
The panel should comprise industry peers. Ultimately this should be the industry overseeing itself, not an outside body.

b. What should qualify someone to be in the pool of complaints panel members?

Recommendation and endorsement by suitable bodies, parties.  
We agree that the Complaints Panel should be separate from the Forestry Authority.

c. Should the panel hear all complaints?

- Yes
- No

Not sure

If you consider there are other options or you disagree with these options, please tell us why.

There needs to be a threshold before a complaint is put before a panel. A complainant may just want feedback or basic information or it may be frivolous or anti-competitive. There needs to be a process to identify vexatious or inappropriate complaints. These may still proceed to the panel if the complainant insists, but there should be clear advice that the complaint is unlikely to succeed and if unsuccessful the complainant may face a financial penalty to cover the other parties costs.

## **If a complaints panel is set up, should it publish its findings?**

See page 30 – 31

A16: Do you agree with the preferred option?

- Yes  
 No  
 Not sure

If not, please tell us which option you prefer, and why.

Transparency and public good benefit of information.  
Agree with the preferred option with the following modification - Should only publish findings where the complaint has been upheld.

## **Disputes**

See page 31

A17: Do you agree with the suggested dispute resolution process?

- Yes  
 No  
 Not sure

Should any other options be considered, and why?

There currently are limited options for smaller owners that are unhappy with their harvesting outcomes.  
An easily accessible, industry based, neutral disputes body will increase transparency and raise confidence for smaller forest owners.

This option must be uncomplicated with a very low overhead – at least for non-complex cases.