

Submission

on

Registration for **Forestry Advisers**

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)
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Email submission to TeUruRakau@mpi.govt.nz.

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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 yes, does it represent the view of your whole organisation, or just a section of it?

- Whole organisation
- Just a section of it
- N/A

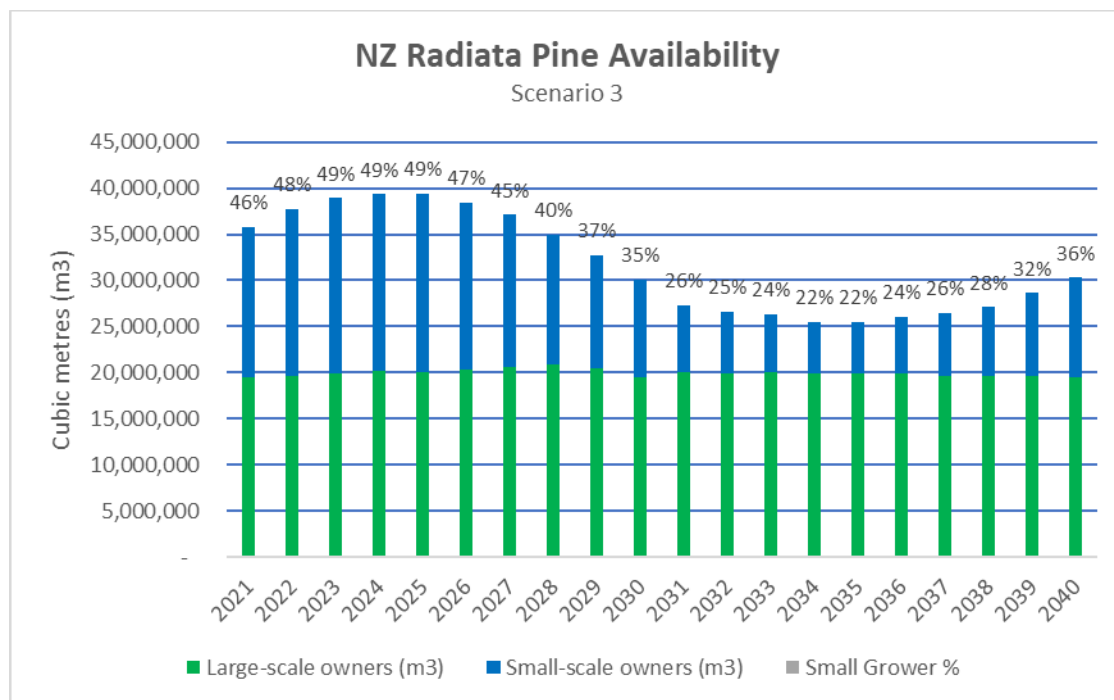
If appropriate, the NZ Forest Owners Association (FOA) wishes to be heard in support of this submission.

Summary

Forest Owners Association feedback on the design of the registration system for regulating forestry advisors.

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 Advisor. The FOA supports developing professional industry standards but notes that such provisions do not absolve individuals from taking responsibility for their own decisions and seeking professional advice that is already available.



Source: MPI Wood Availability Forecast 2021 – 2060.

Forestry Advisor:

The FOA is supportive of promoting professional industry standards.

It is appropriate that advice given to vulnerable forest owners is provided by advisors **under appropriate oversight** who are able to give robust advice to meet the forest owners needs (qualifications and experience as stated in the background information to the Bill do not necessarily provide this).

This legislation is about providing a level of protection for smaller forest owners from poor practice and maintaining industry credibility. The focus should be on the 3rd party professionals who are engaged to provide harvesting, management and marketing services.

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 for advisors to owners of greater than 1,000ha would be appropriate.

FOA especially supports the inclusion of services around the ETS as being under the meaning of Forest Advisor. The complexity and potential implications surrounding carbon decisions means investors must be able to be confident regarding the advice they receive.

Submission - Regulating Forestry Advisers

What is Forestry Advice?

See page 37

B1: Do you think there are any other services that should be identified as forestry advice?

- Yes
- No
- Not sure

Ideally a minimum level of competence should be a requirement of being identified as a forestry advisor. The challenge comes in confirming this via a system that is meaningful but not complex.

If yes, why should they be included and how should they be defined?

Sectn 63M 1 (a) (iii): the appraisal, harvest, sale, or utilisation of timber or other forest produce.

More information is required on exactly what "forest products are included.

Does this include non-wood forest products such as Koura, Ginseng?

Recommend that these forest products are not included.

Does this include bee keepers giving advice on Manuka plantations?

Recommend they are excluded.

Entitlement to Register as a Forestry Adviser

See pages 38 – 39

B2: Do you agree with the preferred option that only an individual should be entitled to register as a forestry adviser?

- Yes
- No
- Not sure

If you disagree, please provide your reasons why.

Only business should have to register. This will significantly reduce administrative overhead.

Individuals may only act as a Forest Advisor if they are employed by / own a registered business.

Experience, qualifications, and professional memberships

See pages 39 – 41

B3:

a. Do you agree that experience should be required to register as a forestry adviser?

- Yes
- No
- Not sure

If yes, how many years' experience should be required?

It is impossible to gauge the capability of an Advisor without judging actual work. Years of experience do not necessarily reflect good practice operations. The strength of the Advisor proposal is in bringing Advisors into a framework comprising obligations and a disputes framework – not in trying to imply competence via tenure.

b. Do you agree that qualifications should be required to register as a forestry adviser?

- Yes
- No
- Not sure

If yes, what level of qualification should be required?

It is impossible to gauge the capability of an Advisor without judging actual work. Qualifications, or the ability to pass an exam do not necessarily reflect good practice operations. The strength of the Advisor proposal is in bringing Advisors into a framework comprising obligations and a disputes framework – not in trying to imply competence via level of qualification.

c. Do you agree that professional memberships are relevant to the entitlement to register as a forestry adviser?

- Yes
- No
- Not sure

If yes, how should professional memberships be taken into account?

Forest Advisors should be members of the forest industries Professional Body – the New Zealand Institute of Forestry. This brings them under the umbrella of an appropriate Code of Ethics.

Registering new forestry advisers

See pages 41 – 42

B4: Do you agree with the preferred option that new entrants are actively mentored and supervised?

- Yes
- No
- Not sure

If Yes, for what time period should active mentoring and supervision be required? If not, why not?

The status quo regarding the Bill should be maintained – no structured support or additional requirements. The requirement for new entrants to be mentored or their work peer reviewed presents an unknown administrative burden and will not necessarily be required. The majority of Advisors will be peer reviewed within their own organisations. Putting an administrative burden across all new advisors for those without this support is unwarranted.

A requirement for new advisors to be mentored without moderation of the mentoring will likely mean those advisors that are operating on the fringe will receive limited support. To provide this option satisfactorily will require significant administrative input / support and is unwarranted.

Forestry advisors should be peer reviewed/mentored within their employment organisation (as happens with all new entrants into a sector or organisation) and not need to be mentored outside of this structure.

Exemptions from Requirement to Register as a Forestry Adviser

See pages 43 – 45

B5:

a. Do you agree with the proposed exemptions for classes of people from the requirement to register as a forestry adviser?

- Yes
- No
- Not sure

b. Do you agree with the proposed exemptions for types of advice from the requirement to register as a forestry adviser?

- Yes
- No
- Not sure

c. Do you think there should be any other exemptions?

- Yes
- No
- Not sure

Please provide reasons for your answers.

Classes of people: Agree the exemption for registered Log Traders is appropriate where they are only providing services in relation to Log Trader operations.

Types of Advice: Disagree that advisors giving spiritual or cultural advice should be exempt. This suggests this class of advice is of lesser importance and does not require the level of oversight that other forestry advice requires.

Process for exemptions – notifying the forestry authority

See page 45

B6: Do you agree with the preferred option that if someone is exempt from registering as a forestry adviser 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.

Initially there is going to be substantial confusion regarding whether or not a person should be registered or not. Requiring everyone working in the industry to apply for Registration, or an exemption if they think they are exempt will remove the confusion, but the administrative burden could be substantial.

Consistent with registering as a Log Trader anyone who practices as a Forest Advisor should either be registered or have received confirmation they are exempt. Self-assessment leaves the system too open to abuse. This also allows the Forest Authority to determine whether anyone reported has an exemption or is operating in contravention of the Act.

Getting Registered

Fit and proper person test

See pages 46 – 47

B7: Do you agree with the preferred options for matters to take into account in deciding whether a person is 'fit and proper' to be registered?

- Yes
- No
- Not sure

Should any other elements be included?

Not bankrupt: Self declaration option is supported.

Tax compliant: Not required or relevant – have already stated they are not bankrupt.- Not supported.

Convictions: Criminal convictions only – not civil.

Previous compliance with the obligations of a Forest Advisor or Log Trader – supported.

How serious should an offence be before it should prevent a person from being fit and proper to register as a forestry adviser?

Criminal convictions only.

Information requirements

See pages 47 – 48

B8: Do you agree that the following information should be included in an application for registration as a forestry adviser?

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

- Contact details for applicant (one or more of telephone number, email address, physical address, or website with a contact application)
- Verified or certified copy of photo ID
- IRD number
- Declarations for tax, not bankrupt, and previous registration
- Criminal conviction and civil liability check
- evidence of qualifications
- Evidence of experience
- Evidence of professional memberships
- Name and registration of mentor if a new entrant
- Declaration that the person undertakes, or intends to undertake, some or all forestry adviser services (as described in section 63M or regulations under the Amendment Act).

Please provide reasons for your response and tell us if any other information should be included to

Only information relevant to registering as a Forestry Advisor should be required.

- contact details,
- declaration not bankrupt,
- declaration of any criminal convictions and
- declaration of experience.

Not relevant :

- IRD number
- photo id
- tax declaration
- evidence of qualifications
- evidence of experience
- evidence of professional memberships
- mentor details

support an application for registration.

If you disagree, could you please provide your reasons why.

Length of registration

See pages 48 – 49

B9: Do you agree with the preferred option that the length of registration for forestry advisers should be 5 years?

- Yes
 No
 Not sure

Please tell us your reasons.

Regular updating is required to ensure the register remains relevant. This must be balanced against the administrative overhead.

Five years is appropriate allowing regular confirmation of the “fit and proper” status.

declarations.

Tax declaration unnecessary on the basis they – have declared not bankrupt. IRD will bankrupt for unpaid tax.

Qualifications and professional memberships are an indication but not a guarantee of good work. Declaration of intended work provides no additional information about the appropriateness of a person to be a forestry advisor unless it is contemplated that there would be different categories of forestry advisor which we do not support.

Keep registration simple with a low administrative overhead.

What should be required for a forestry adviser to renew their registration?

See pages 49 – 50

B10: Do you agree with the preferred option for the process and information required for renewal for registration?

- Yes
 No
 Not sure

If you disagree, could you please provide your reasons why and any alternatives you would prefer?

Agree – Shorter application with a declaration that they have met the required obligations and will continue to do so. If they have not met requirements, an explanation of why this should not preclude them.

Obligations once Registered

What records should a forestry adviser have to keep?

See pages 51 – 52

B11: Do you agree with the preferred option for the records a forestry adviser should keep?

- Yes
- No
- Not sure

If not, what records do you think a forestry adviser should be required to keep?

Agree – Records of advice (can be a summary), complaints and disputes.
This reflects good industry practice and is not expected to present an additional business burden.

In what form should forestry advisers keep records?

See page 52

B12: Is it reasonable to expect forestry advisers 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.

The forestry advisor should have the option to keep records in a range of formats. This could be hand written notes or photos (non-digital).

How long should forestry advisers keep records?

See page 53

B13: Do you agree with the preferred option that written records should be kept for 7 years?

- Yes
- No
- Not sure

To meet the stated requirements of this legislation, 2 years would generally be sufficient.
Alternatively for as long as the advice is being acted upon.

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.

If not, please tell us what you would prefer.

Reporting to the Forestry Authority

See page 54

B14: Do you agree with our preferred option for reporting to the Forestry Authority?

- Yes
- No
- Not sure

If not, what reporting should be made by forestry advisers to the Forestry Authority?

There should not be a requirement for annual reporting.

Supply of data stating how an advisor is meeting their obligations is worthless unless this data is collated, reviewed, summarised and reported. This constitutes a substantial administrative overhead for limited benefit.

The Public Register

Information to be kept on the public register

See pages 55 – 56

B15: Do you agree with the preferred options about what information should be on the public register?

- Yes
- No
- Not sure

Should additional information beyond what the Amendment Act provides be voluntary or compulsory for forestry advisers to provide?

- Voluntary
- Mandatory

Please tell us if you would like to see any additional or alternative information on the public register.

As already stated, information on qualifications, experience and professional memberships is of limited usefulness as an indication of quality of work and sustainability. Therefore this information should not be required, but be optional.

The option to supply additional information voluntarily is supported.

Appearing on the register when suspended

See page 57

B16: Do you think a forestry adviser 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 Forest Advisor. However, there must be an option for an Advisor to challenge their status before it is published on the register.

Complaints and Disputes

Should a complaints panel be set up?

See pages 58 – 59

B17: 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 Forestry Advisor system and NZ plantation forest practice.

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?
Should the panel hear all complaints?

Knowledge of the NZ Plantation Forest Industry and the Forestry Advisor system.
As previously stated – this should be a panel of industry peers.

- Yes
- No
- Not sure

If you consider there are other options, or if 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.

In addition, 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 warning that the complaint is unlikely to succeed and if unsuccessful possibly a financial penalty to cover the other parties costs.

The complaints process, dispute resolution and penalties shouldn't be the driving force of the forestry advisor initiative.

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

See pages 60 – 61

B18: Do you agree with the preferred option?

- Yes
- No
- Not sure

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

Agree with the preferred option with the following modification - Should only publish findings where the complaint has been upheld.

Disputes

See page 61

B19: Do you agree with our 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 forestry advice they have received.

An easily accessible, industry based, neutral disputes body will greatly increase transparency and raise confidence for smaller forest owners but is not a substitute for taking responsibility for commercial decisions.

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

Note on making this submission public

We consent to the submission being made public.

David Rhodes
Chief Executive
Forest Owners Association