

Submission

New Zealand's Legal Harvest Assurance System – Issues Paper One

Feedback to:

The Ministry for Primary Industries

4 June 2024

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Introduction

The New Zealand Forest Owners Association Incorporated (FOA) and the New Zealand Farm Forestry Association (FFA) (“together The Forestry Interests”) welcome the opportunity to provide feedback on New Zealand Legal Harvest Assurance System Issues Paper One (“Issues Paper”).

The “Issues Paper” seeks feedback on assumptions that can be made to assist with designing the details of how the legal harvest assurance system will work in practice.

The Submitters

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 Aotearoa New Zealand’s plantation forests and over 70% of the annual harvest.

The New Zealand Farm Forestry Association (FFA) represents people who own small-scale private forests and/or are interested in the many values of trees. Currently we have over 1200 members representing a good cross-section of the approximately 15,000 entities owning private forests in Aotearoa New Zealand. Small forest owners represent more than 96% of the participants in the New Zealand Emissions Trading Scheme.

In 2023, the forest growing sector was worth \$6.6 billion in export value and has a 12% share of rural land use. It contributes 1.6% of New Zealand’s GDP and employs between 35,000 and 40,000 people in wood production, processing, and the commercial sector.

Executive Summary

Assurance schemes are important for maintaining the integrity throughout the supply chain and we generally support provisions that relate to proof of ownership of timber / rights to harvest as mechanism for determining whether timber has been legally sourced and is therefore legal.

However, the Forests (Legal Harvest Assurance) Amendment Act 2023 (“Amendment Act”) instead creates significant complexity for foresters who are required to provide harvest information about the extent to which timber is “legally harvested” by reference to compliance with harvest laws. The Amendment Act’s broad definition of what amounts to a “contravention of the harvest laws of New Zealand” and as a consequence, renders timber illegal where there has been a contravention, is at the heart of our concerns.

The Forestry Interests are of the view that determining in what circumstances a “harvest law” is contravened and what timber this will relate to, will be extremely problematic for foresters. It will add increased regulatory cost and uncertainty that is disproportionate to any risk.

We query why the Amendment Act makes the proceeds of an activity (timber) illegal if the activity (harvesting) is in contravention of the law, when other legislation, including the Resource Management Act (RMA), does not have the same effect.

We query the rationale for the development of the legislation, why this has been applied to the forest industry and why, incongruously there are less obligations for the harvest of indigenous timber than the harvest of exotic timber.

We consider that application of the “harvest laws of a place or country” may have significant economic consequences for harvesting activities and the ability to clearly and consistently make the mandatory assurances under the Act.

We query how due diligence will be undertaken in relation to illegality when public records of contraventions are not generally available (with the exception of prosecutions).

As we acknowledge that the legislation has been passed, in response to the Issues Paper, we pose some ideas about how notices could clarify issues but stress that these solutions cannot remedy the underlying problems.

We address some of the assumptions and questions posed in the Issues Paper in an attempt to improve outcomes to the extent possible in line with the Amendment Act.

We attach two tables addressing:

- legislation relevant to determining the harvest laws; and
- legislation relevant to the question of property rights and interests.

It should be noted that we have not addressed questions relating to laws of other countries.

Overview – fundamental problems with the Act

The New Zealand Legal Harvest Assurance System Issues Paper One “Issues Paper” seeks feedback on assumptions that can be made to assist with designing the details of how the legal harvest assurance system will work in practice.

Before providing feedback on the Issues Paper, we record our view that that the assurances required by the Amendment Act are fundamentally flawed and that the application of the Amendment Act may have significant economic consequences for New Zealand timber.

The purpose of the Amendment Act is to –

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

Despite these laudable goals, for New Zealand Forestry Interests, the Amendment Act requires a forensic analysis of the legality of the harvest of New Zealand timber. We contend that the practical application of the Amendment Act is unlikely to result in any reduction in the international trade of illegally harvested timber from New Zealand.

At the heart of the issue is the very broad focus on whether the “harvest laws of a place or country” have been contravened. The broad definition of “harvest laws of a place or country” is problematic for reasons outlined in more detail in this feedback. In essence these relate to:

- (a) the design of New Zealand’s environmental laws.
- (b) the lack of public records establishing contraventions.
- (c) the timeframe between establishing a contravention and tracing the timber - by the time risks are established it is too late to apply the legislation.

(d) the lack of clarity regarding how and when a “contravention” will be applied to timber.

For clarity, we do not consider that establishing a legal right to harvest by way of ownership is likely to cause significant problems in a New Zealand context, though there are some complexities that we raise.

The following section examines the basis for determining when timber is legally harvested.

Section 3: When is timber legally harvested?

The Issues Paper seeks feedback on the assumptions made about relevant harvest laws.

The Issues Paper states that:

A person has the right and all necessary legal authority to exercise that right to harvest when they have:

- the legal rights to access and harvest the forest;*
- legal ownership of the trees; and*
- has complied with all relevant laws.*

This feedback deals with each of these three aspects. It begins by addressing the question of compliance with harvesting laws as this is fundamental to the concerns of the Forestry Interests.

S 77(3)(c) Compliance with relevant harvesting laws

The statement in the Issues Paper as to when timber is legally harvested does not accurately reflect s77(3)(c) which is set out below, and which relates to the relevant harvest laws when carrying out the harvest.

Section 77 of the Forest (Legal Harvest Assurance) Amendment Act 2023 (“Act”) defines when timber is legally harvested as follows:

77 When is timber legally harvested?

- (1) In this Part, timber is **legally harvested** if the person who harvests the trees or woody plants from which the timber derives—
 - (a) has the right to harvest them; and
 - (b) has all necessary legal authority to exercise that right; and
 - (c) does not contravene the harvest laws of the place or country of harvest when carrying out the harvest.
- (2) If the harvest laws of a place or country are specified by the Secretary in a notice, a person may choose to satisfy the requirement in subsection (1)(c) only in relation to the harvest laws specified in the notice.
- (3) The **harvest laws of a place or country** are laws that—
 - (a) affect how or whether a harvest is to be carried out; and
 - (b) set requirements, conditions, or restrictions relating to—
 - (i) land and resource use; or
 - (ii) property rights or interests in what is harvested; or
 - (iii) property rights or interests in the land where the harvest occurs; or
 - (iv) access to the land where the harvest occurs; or
 - (v) any other matter that the Secretary considers relevant for the purposes of this Part and specifies in a notice.

Under section 77(3) of the Act “the harvest laws of a place or country” are laws that include requirements, conditions, or restrictions relating to land and resource use. Section 77(1)(c) applies where “the person who harvests the trees or woody plants from which the timber derives does not (c) contravene the harvest laws of the place or country of harvest when carrying out the harvest.”

The question is, in what circumstances are harvest laws contravened when carrying out harvesting activities?

It is important to clearly establish when a contravention has occurred as failure to do so could have significant implications for the sale of timber. We focus mainly on the RMA as this is the key piece of legislation governing the harvest of timber.

How the RMA manages “contravention”

Under the RMA there is a broad spectrum of “non-compliances” or “breaches” that may arise, as follows:

- a. Failure to comply with a permitted activity standard (eg under the National Environmental Standards – for Commercial Forestry (NES-CF)). For example, this could be operating harvesting machinery within 5m of a perennial river (see reg 68(4)(a));
- b. Failure to comply with the provisions of a national environmental standard (eg the NES-CF);
- c. Failure to comply with a condition of resource consent;
- d. Failure to comply with the provisions of a district or regional plan.

The above scenarios may result in:

- (a) An informal request to comply issued after a Council inspection;
- (b) The issue of an infringement notice;
- (c) The issue of an enforcement order;
- (d) The issue of an abatement notice;
- (e) Charges brought for offences committed by contravening sections 9, 12, 13, 14 and 15, an enforcement order or an abatement notice.

Arguably, each of these scenarios is a “contravention” of the provisions of the RMA. The word “contravene” is used throughout the RMA.

Contravention for the purpose of the Amendment Act

According to a strict interpretation of the Amendment Act, timber is not legally harvested where there is any contravention “when carrying out harvest”. The meaning of “harvest” is broad and includes “any work on the land that is necessary to prepare for the harvest or to stabilise the land after the harvest.” This covers activities such site preparation, earthworks, mechanical land preparation, harvesting, slash management, weed spraying and replanting.

It is unclear:

- (a) Whether a failure to act amounts to a contravention which is sufficient to deem an activity to be illegally harvested or whether a prosecution is required, and if so, who by?
- (b) Whether a breach that is subsequently corrected is sufficient to change the activity status back to “legal”. For example, if an abatement notice is complied with, is the illegality cured for the purpose of disclosure and classification under the assurance provisions?
- (c) Whether an infringement notice issued by a Council is evidence of a contravention - though such notices are often minor and not routinely challenged given the fines involved;
- (d) How much timber will be “blighted” by a contravention. Does this relate to the whole of a forest, or a block or a specific area, and if so, for over what period of time? Proof of contravention of harvest laws takes time. In the interim, the associated logs are likely to be sold and or processed, possibly in a different country. Logs are biological and deteriorate over time. This can be very quick (a matter of

days for appearance grade logs in summer) so it is unfeasible to retain logs until any issues have made their way through the legal system. We assert that s77(3) should apply to “the timber” when carrying out “the harvest” activities, and that the extent of a harvest that is “blighted” should be minimised.

- (e) What happens to timber that has already been exported prior to a Court’s determination? As s77(3) applies to “the timber” when carrying out “the harvest” activities, it cannot apply to subsequent timber. This raises the question as to how timber which is deemed to be “illegally harvested” will be retrospectively labelled. It is very likely the conditions that led to the court case have been addressed as this is the purpose of the existing legal system. The legal harvest statement should only need to be updated to reflect the current system – which is likely now compliant.
- (f) What happens to timber if it can be and is identified? Is it to be left to rot and what are the implications under the New Zealand Emissions Trading Scheme (the ETS)?
- (g) Whether there is sufficient evidence for due diligence purposes to establish a contravention of any breach other than a prosecution. This is because, in relation to the RMA, Councils do not always keep public records of information in a way that identifies the party alleged to have committed a breach.

The RMAS, as the key environmental legislation, operates by requiring mitigation or remediation of adverse effects where those arise. In some instances, no effect is necessary to establish a breach. It is worth noting that New Zealand’s domestic environmental laws:

1. Are sophisticated and far-reaching, especially compared to some other countries;
2. Are often designed with a view to remedying a situation; and
3. Do not make an activity invalid in the event of a contravention or breach.

Requirement for certainty

In view of the questions identified above, we consider that the Amendment Act is not fit for purpose as it does not meet one of the core tenets of the rule of law, i.e, that laws must be clear and clearly enforceable.

In contrast, the Amendment Act has designed an assurance system that is rooted in opaque obligations. It is fundamentally flawed because, on its face, the Amendment Act makes the proceeds of an activity (timber) illegal if the activity (harvesting) is in contravention of the law, when other legislation, including the RMA, does not have the same effect.¹

Similarly, under the Forest Stewardship Council (FSC) or Programme for the Endorsement on Forest Certification (PEFC) certification scheme, noncompliance does not render the timber illegal and even if a certificate is suspended or revoked, timber can still be sold to entities that do not require certification.

We query the rationale for the development of the legislation, why this has been applied to the forest industry and why, incongruously there are less obligations for indigenously harvested timber than exotic timber.

Differing obligations for indigenous timber

With respect to the regulation of indigenous timber the Issues Paper notes that:

“Indigenous timber and timber products do not need to be part of legal harvest because regulation under Part 3A of the Forests Act 1949 is sufficient to manage the risk of illegal harvest and ensure market access; (s 4.3)

¹ A prosecution for example, for breach of an abatement notice, may require certain actions to remedy the environmental effects caused, but the Forestry Interests are not aware of any example under the RMA where a Court has deemed the proceeds of the activity to be illegal because the activity itself has been undertaken in contravention of the law. There is some power to address the proceeds of an illegal activity under the Criminal Proceeds Recovery Act 2009, though this relates to significant criminal activity.

However, although Part 3A of the Forests Act sets requirements for sustainable management plans it does not make indigenous timber illegally harvested by way of a failure to comply with those plans or other harvest laws unless it is “regulated timber”.

Notices to address the issue

Putting our significant concerns regarding the practical ability to implement, the usefulness or feasibility of the legislation to one side, we have considered whether there is any method that may resolve our concerns. Our conclusion is that, short of repealing the legislation, guidelines or other methods cannot satisfactorily resolve the inherent flaws of the Amendment Act.

Nevertheless, under the provisions of the Amendment Act there is some ability to clarify the harvest laws of a place or country through Notices. Notices may specify what the Secretary considers to be the harvest laws of the country or place “after being satisfied that the laws specified meet the description in subsection (3).”

The concept of “contravening harvest laws” should be applied in the most practical way possible to ensure that the information supplied is as consistent and meaningful as possible.

We consider limiting contraventions to successful prosecutions is appropriate because only prosecutions confirmed by a Court finding provide evidence of an activity undertaken in contravention of the law. Other contraventions are not able to be established through public records (which is important from a due diligence perspective). Councils may publish reports of enforcement actions, but they generally do not cover warnings or, most importantly the identity of the persons involved.

We observe that by the time a prosecution takes place, the practical ability to trace the timber associated with the contravention so that the illegal timber is not traded, is likely to be impossible. Tracing is therefore a question that needs to be addressed.

A notice could also carefully limit the extent of the harvested wood that is deemed to be illegal.

Accordingly, to the extent that s77 allows, a Notice should clarify:

- (a) That only successful prosecutions by the Courts are a contravention of the law;
- (b) The extent of timber that is affected by a “contravention”; and
- (c) How tracing should occur.

For the avoidance of doubt, we do not consider that issuing notices can or will cure the identified flaws.

Ownership issues – right to harvest and legal authority to exercise those rights

This section addresses the extent of the laws and regulations that create the right to harvest and the necessary legal authority to exercise that right.

A key question for establishing a right to harvest and all necessary legal authority to exercise that right (as per the first two limbs of s77(1)) is ownership of the trees. For forestry, ownership of trees is recognised as being separate to the land. Trees and land may be owned by the same entity or may be subject to licences, leases, contracts, settlement deeds and other forestry rights that confer ownership of the trees on a third party.

At issue is how the person harvesting trees proves a right to harvest and legal authority to exercise that right.

For example, while a person / entity may be able to prove ownership of the land, how do they positively prove the lack of a forestry right that entitles the third party to harvest?

A similar issue arises when forestry activities are undertaken as a permitted activity, for example under the NES-CF. Short of obtaining a certificate of compliance how does an entity positively prove that it has a right to undertake an activity?

These matters may benefit from a Notice that provides a deeming provision, i.e. that the relevant parts of s77 are met in the absence of other evidence.

The laws and regulations that we consider relevant to establishing ownership or an interest in trees are set out in Table Two, Appendix 2. This table addresses exotic timbers and may not be a comprehensive list of all legislation.

The next section responds directly to questions raised in the Issues Paper that are relevant to forest growers.

Assumptions about compliance in the Issues Paper

The Issues Paper makes the following assumptions about identifying relevant harvest laws:

Only conduct directly related to the harvesting operation should be regulated by the legal harvest system. Conduct not directly related to the harvest is not relevant to the legality of harvest as is managed by other laws.

Subject to our overriding concerns regarding the legislation, we generally agree with the above assumption in the context of the Amendment Act. As outlined above we consider that an underlying assumption should be that a contravention should only be deemed to have occurred when proven by a Court prosecution.

What statutory laws / Acts and regulations do you think are relevant?

The various Acts and regulations that may apply to determining the “harvest laws” when carrying out harvesting are set out in Table One, Appendix 1 with an assessment as to the extent to which they may meet the criteria in the Amendment Act.

What common law / law from the Courts do you think is relevant?

We consider that common law is not relevant except where it is evidence of a prosecution of an entity for the purpose of establishing a contravention. Otherwise, case law is specific to the facts of a situation. In the context of harvesting activities, case law generally establishes only whether the facts of a case amount to a contravention of the legislation, including secondary legislation and resource consents.

What tikanga or other customary law do you think is relevant?

With respect to tikanga, provisions relating to matters such as waahi tapu are regulated by district plans or the Heritage New Zealand Pouhere Taonga Act 2014 (“HNZPT Act”). In some instances, resource consents may have been subject to considerations of tikanga. A breach of a district plan provision, resource consent or authorisation granted under the HNZPT Act may result in a prosecution. To incorporate other aspects of tikanga beyond what is regulated would result in uncertainty and inconsistencies across New Zealand.

The same principles apply in relation to the matters referred to in the paper as “indigenous laws, traditions and customs”. For an activity to be classified as “illegal” it is essential that the tests that determine illegality are not subjective or uncertain.

If you export, what information about legal harvest are you being asked for and by whom, when you are exporting timber and timber products?

Some export customers require provision of log levy statements. Those making certification claims require certificate details.

Are there any other matters you think should be included in deciding if timber or timber products are legally harvested in New Zealand?

No. It is important that relate only to matters that relate to the legality of harvest.

Notwithstanding this, we have considered the international agreements relevant to forestry. To the extent that these may be relevant to harvesting, and subject to the detail of each agreement, the expectation is that these agreements have been incorporated into the relevant laws of New Zealand. As such, we do not consider that these are directly relevant to establishing the legality of harvesting for the purpose of the Amendment Act.

There are also a number of local standards and best operating practices which set in place principles or best practice guidelines. As principles or best practice guidelines are not laws, we do not consider that they fall within the definition of “harvest laws”. As such, they are not relevant to determining whether timber is legally harvested. For completeness these are listed below:

- a. The New Zealand Forest Accord, 1991
- b. New Zealand Forest Code of Practice, June 1993
- c. Code of Practice for the Management of Agrichemicals, 2004. (NZS8409:2004)
- d. Safety and Health in Forestry Operations: Code of Practice and Best Practice Guidelines
- e. Principles for Commercial Plantation Forest Management in New Zealand, 1995
- f. NZ Environmental Code of Practice for Plantation Forestry, 2007
- g. N.Z. Threat Classification system (2005)
- h. Ecological Regions and Districts of NZ agreements relating to harvest

Section 5: Thresholds for registering legal harvest assurance

Should there be a threshold that needs to be met before a person needs to register for legal harvest assurance?

Yes, for the harvesting of trees in New Zealand – to avoid complexities/costs not justified by the risk associated with a small harvesting activity.

What measure should be used to set thresholds?

For harvesting timber in New Zealand, we suggest to either set a threshold of 1 hectare or 600 tons every calendar year. The measures are chosen for reasons of simplicity.

Should all thresholds be set by reference to the same measurement type, e.g. all thresholds be set by volume (or another measurement)?

No. It depends on the risk involved, and that may vary depending on the activity/good, or the ability to even verify compliance.

How often and when should thresholds be reviewed and change over time?

For a simple threshold such as we are proposing, we suggest that an initial review after 3 years would be adequate.

Section 6: Due diligence systems for registered persons

Do you agree with the assumptions?

The whole section is written as though the 'registered person' is separate from the forest owner (for example, a log trader) and therefore required to do due diligence to assess the risks. But if you are a large forest owner, or a manager for a large forest owner, you hold all of the information relating to ownership, legal compliance etc so you don't need a due diligence process as such, you simply need to know what information is required to be provided. The Ministry for Primary Industries (MPI) will need to ensure the requirements are clear and streamlined, for example FSC certification requires that the forest owner has the legal right to harvest the wood, and that is checked by an independent accredited auditor, therefore certification should be acceptable as proof, rather than a large forest owner having to provide a multitude of property titles, lease and forestry right agreements.

What should the requirements of a due diligence system be?

Due diligence (for a third party) should be limited to confirming the requirements of legal harvest, which need to be clearly articulated by MPI.

As per our previous answer, it also needs to be clear that if you are the owner, or manager of the owner, and hold all of the information in house then a due diligence system is not required – you are simply required to provide whatever information, or statements are required.

Should chain of custody be required as part of a due diligence system?

Chain of custody of specific logs will be extremely difficult to operate right through to an export destination. FSC and PEFC certified forest owners operate chain of custody, through to delivery to export markets and domestic processing customers, but it needs to be recognised that this is tracking certification status, not specific logs. It is ensuring that only certified logs are sold with a certification claim. If the logs are exported they will be accumulated with other certified logs at the port and it would be impossible to differentiate their source location. Similarly, if they are processed at a domestic processor prior to export, tracking specific logs or fibre would be impossible, even for FSC certified processors. Again, they track certification status, and the percentage of certified input so as to make a claim – not individual logs. Before MPI introduces any requirements for chain of custody they should be very clear exactly what exactly they are intending to be traced and for what actual purpose, and the costs and benefits of doing so. Introduction of chain of custody requirements has the potential to introduce complexity, confusion and cost for potentially little benefit.

What matters should be required to demonstrate elimination or mitigation of the risks of dealing in illegally harvested timber?

For New Zealand grown timber the risk is extremely low. All that should be required is confirmation that the requirements of legal status are met.

When should supporting evidence be required for demonstrating of the size of the risk?

For imported timber only. For exotic wood grown in New Zealand, with strong regulation and enforcement processes, the risk is uniformly low.

When and how often should evidence be required to demonstrate the risk and risk mitigation?

Not applicable for New Zealand growers. The risks are low and do not change over time. This should only apply to importers of timber.

Section 7: Exporter statements and requirements

Do you think there is any other information needed to support access to overseas markets?

There needs to be an official Government document similar to the current Forest Information Statement issued by MPI for Japanese and Korean markets. It is the experience of our forestry corporate members that only a certificate or letter on a Government letterhead is sufficient for offshore regulators/markets.

For small growers, any information required is collected by service companies managing the harvest and selling the derived products.

We consider this can be easily and cost effectively done with a web-based solution where foreign regulators can easily check an exporters registration and credentials, and any due diligence undertaken by the owner of the logs. We think if a simple web-based solution is implemented then there should be no further requirement necessary.

Conclusion

While assurance schemes can play an important role in maintaining integrity of the wood supply chain, proof of ownership / the right to harvest is the only issue that should establish the legality of timber.

Beyond this, the extension of the legislation to timber that is harvested in contravention of harvest laws is fundamentally flawed. We doubt that tinkering with guidance and notices is capable of rectifying these flaws or achieving the intent of the legislation.

We have attempted to provide some suggestions but, for the avoidance of doubt, we do not consider these to be solutions that resolve the identified issues.

The Forestry Interests invite further direct discussion and any associated clarification on this feedback. We do not object to our submission being made public.

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Appendix 1:

FOA – Feedback on Legal Assurances Paper One

Table One – Statutory laws / Acts and regulations

Primary Legislation	Secondary Legislation	Relevance	Meets s77 criteria?	Should contravention make timber harvest illegal?
Resource Management Act	National Policy Statements	Not relevant – do not contain rules	No - do not set conditions or restrictions relating to land and resource use	N/A
	NES-CF	Relevant – contains permitted activity rules and other rules requiring consent for harvesting activities	Yes – affect how harvest is carried out and relate to land or resource use	Not if non-compliance is remedied. Not unless subject to a successful Court prosecution
	District / Regional Plans	Relevant – may contain permitted activity rules and other rules requiring consent for harvesting activities	Yes only so far as the regulations relate to harvesting activities – affect how harvest is carried out and relate to land or resource use	Not if non-compliance is remedied. Not unless subject to a successful Court prosecution
	Resource Consents for harvesting activities	Set conditions relating to harvesting activities. Failure to comply may be prosecuted	Yes – affect how harvest is carried out and relate to land or resource use	Not if non-compliance is remedied. Not unless subject to a successful Court prosecution
Biosecurity Act 1993	Pest Management Strategies	May set rules for plant pests which may include wildings	Does not relate to “harvest” – see the NES-CF definition of “harvesting” which does not include clearance of vegetation that is not plantation forest trees	N/A
Heritage New Zealand Pouhere Taonga Act 2014		Sets rules relating to modification or destruction of land that may be subject to harvesting	Yes where it relates to harvesting activities – may affect how or whether harvest is carried out and set restrictions relating to access to land or land or resource use	Not unless subject to a successful Court prosecution. It is important that interim orders are not considered a contravention.
Health and Safety at Work Act 2015	Regulations	Set rules relating to management of safety	Does not set requirements or conditions relating to land or resource use but personal use of machinery etc. Does not relate to property rights or interests in the land	No - There is a lack of nexus between whether harvesting is legal and a breach of health and safety regulations. If it is considered that this should apply, as above, this should be only where there is a successful Court prosecution.
Climate Change Response Act 2002	Climate Change (Forestry) Regulations 2002	Imposes costs obligations in relation to deforestation.	No – does not affect how or whether harvest is carried out.	N/A
Income Tax Act		Sets rules relating to payment of tax	Does not meet s77(3)(a) as it does not affect how or whether a harvest is to be carried out.	N/A

Appendix 2:

FOA – Feedback on Legal Assurances Paper One

Table Two – Ownership - Statutory laws / Acts and regulations

Primary Legislation	Secondary Legislation / Licences / Leases etc	Relevance	Meets s77 criteria?
Land Transfer Act 2017	Certificates of Title. These may record lease instruments, licences, covenants, mortgages, easements	Continues and maintains the Torrens system of land title recording interests in land. This is the primary mechanism for determining ownership of land and / or interests in trees. Interests in land should generally be recorded on titles. Exceptions to this are customary rights, Māori customary land and Māori freehold land (see below)	Titles recorded in the register are evidence of interests in land
Settlement legislation E.g. Central North Island Forests Land Collective Settlement Act 2008		Establishes beneficial interest in land and or of trees	May provide the legal authority to exercise the right to harvest
Crown Forest Assets Act 1989	Specific Crown Forest Licences	Instrument by which interest in Crown Forestry Assets are transferred to licensees	Licences provide the right to harvest
Forests Act 1949		The Forests Act regulates the sustainable harvesting of indigenous forest The Act limits export of certain indigenous timber.	May limit the right to harvest
Te Ture Whenua Māori Act 1993	Orders conferring ownership Leases	Records the ownership and status of certain Māori freehold land	Establishes ownership
Forestry Rights Registration Act 1983		Provides for the creation and registration of forestry rights, including over unregistered land. However, forestry rights do not have to be registered under the Land Transfer Act.	May establish the right to harvest.
Overseas Investment Act 2005		May limit forestry activities that can be carried out on relevant land (s16A)	May provide the legal authority to exercise the right to harvest
Property Law Act 2007		Creates provision for leasing of land. Most commonly associated with Māori owned land (in relation to forestry)	Establishes right to harvest
Conservation Act 1987		May grant rights on Conservation land or limit activities on specially protected areas.	May limit the right to harvest