

21 December 2021

Log Traders and Forestry Advisers Consultation
Forestry Operational Policy (FMAP)
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**Re: Registration for Log Traders and Forestry Advisers;
Proposed regulations under the Forests (Regulation of Log Traders and Forestry Advisers)
Amendment Act 2020**

Thank you for the opportunity to provide responses to questions arising from the regulation of log traders and forestry advisers in NZ.

The Wood Processors & Manufacturers Association (WPMA) represents the perspective and interests of its members, being those individuals and companies invested in adding value including regional employment to NZ's annual forest harvest. WPMA's membership make a critical contribution to the production and supply of NZ's low or zero-emissions building and packaging products. WPMA's members are the genesis of the zero-emissions and bio-circular economy central to NZ's environmental aspirations and a number of its high-profile international commitments.

WPMA fully supports the Minister's aims and expectations for registration of log traders and forestry advisers including increased and long-term supply of timber and the strengthening of linkages between NZ's Forest growers and domestic processors. Both those outcomes can only be enhanced by the increased professionalism and transparency of decision-making fostered through the proposed regulations. The regulation of log traders and ensuring the integrity and professionalism of New Zealand's foresters is a useful but small step toward addressing the trade and policy imbalances that exist in NZ's trade policy architecture. Addressing those imbalances in any substantive way is critical to the country given its trade dependent and primary-sector focused economy. The changes promulgated by Government's regulation of log traders and forestry professionals are the vanguard of other changes NZ must make in order to meet its international and intergenerational commitments and to keep pace with the expectations of customers and consumers here and overseas.

The full benefit of 3rd party scrutiny of log traders and forestry advisers depends in large part on the integrity of the "forestry practice standards" applied by forest owners and their advisers. Those standards are to be the subject of further and separate consultation and will presumably align with the Minister's expectation for *climate and environment goals achieved through strengthening the resilience and integrity of the forestry supply chain*. (pg 3).

The rules and practice standards needed to achieve the purposes of the Forests Amendment Act 2020 are predicted to take several years (pg 10) to develop. WPMA suggests the standards of practice to be as important as the identification and registration of log traders and qualified foresters in the achievement of the country's climate and environment goals. We are therefore concerned that the time frame of 'several years' for the development of practice standards is out of

step with the urgency and importance attributed internationally to climate change and domestically to matters such as NZ's declining natural water quality. A delay of that period will compound present domestic regulatory impediments and distortions in NZ trade policy to (further) delay much needed investment in traditional and alternative forms of wood processing. For that reason, we consider delaying the development of practice standards by 'several years' to be both unconscionable and unnecessary. We recommend this time frame be greatly shortened, recognising that:

- Numerous international agreements and domestic political commitments serve to highlight the urgency of issues affecting the forestry sector including climate change and diffuse nitrate pollution
- Many studies have already documented the actual and potential contribution a processed wood products sector can and does make to a low-emissions, bio-circular and 'recycling' economy, and;
- Sustainable forestry standards already exist including ASNZS 4708 and systems for the registration of forestry professionals such as those developed by NZIF.

Defining "log traders" and "registered foresters" before defining what those entities are expected to accomplish seems inefficient at best.

The following submissions have been made in response to the questions posed in the November 2021 Discussion Document. We have focused on those questions where WPMA's perspective differs from the "Preferred Option". Where no comment is offered the WPMA supports the preferred option.

Part A: Regulating Log Traders

A1: Only a business should be entitled to registered as a log trader

WPMA profoundly disagrees with the preferred option that only a business be entitled to register as a log trader. The business of business is maximised profits, with a preference for those profits brought forward in time. NZ's climate and environmental goals require a greater emphasis be placed on the longer term environmental and social costs of investment. Ideally the public interest in environmentally and socially sustainable outcomes would be reflected in the statutory framework within which business operates, limiting the need for direct regulation of business practices including those of log traders. The reality is that statutes such as the Trade Act prescribe the "public interest in narrow cost and profit terms, something business is naturally attuned to deliver without statutory assistance. It is the longer term and the public interest that can require and justify regulation.

If the proposed registration of log traders is to achieve Government's climate and environmental goals the obligation needs to be targeted to an individual or individuals, being the directors and shareholders of the entities engaged in log trading. In the absence of individual accountability, the expectations in the Forests Amendment Act 2020 could be more easily overlooked by the businesses concerned. Where poor practice did occur the reputational (including customer and investor) risk could be moderated (as the company sees it) by the opportunity to liquidate. That opportunity will be greatly reduced where directors and executives are held personally liable for the non-financial performance of a business, the obvious precedent being the Health & Safety In Employment Act.

A2: Threshold volume for registration

WPMA is opposed to the stipulation in regulation of a volume threshold. The outcomes to be achieved and or modified by registration of log traders are influenced as much by small operations as by large ones. There are no threshold limits applied in environmental management for

biodiversity, water quality and historic places protection. Poor outcomes are as or more likely on an unregulated 2 ha block as on an actively regulated multiple age class forest.

WPMA's opposition to a threshold volume presumes that the practice standards due for development over the next several years will be clear and straight forward. On that basis it is reasonable to assume the compliance costs in understanding and applying those practice standards will not be unreasonable and not out of proportion with the other obligations applying to all those harvesting forests including under the RMA, Historic Places, H&S, property, climate and tax laws. It is worth noting that in the event that a small scale 'log trader' is unable or unwilling to understand and apply the appropriate practices they can and should contract that function to an entity with the experience and scale needed to appropriately complete undertake the task.

A3: Exemptions

WPMA supports the "status quo" in the Act for reasons noted above.

A4: Limited Exemptions

WPMA supports the "status quo" in the Act, that there not be exemptions.

A5: Fit and Proper Person test

WPMA agree that all the elements identified (pgs 16 & 17) be included in a test of fit and proper person. We suggest any threshold as to the 'seriousness of an offence' be reconsidered in favour of the statutory context of the offending. The purpose of the Forests Amendment Act is the Government's climate and environment goals. It follows from that that full compliance with statute and regulation related to environmental laws, forestry investments and GHG reduction is reasonable. Other statutory matters such as compliance with traffic laws need not be considered at all from the limited frame of reference appropriate to the identification of a 'fit and proper person' to engage in the trade of logs.

A15: Complaints and disputes

WPMA supports the formation of a complaints panel as set out in the Preferred Option on page 29. The overarching intent of the Forests Amendment Act 2020 is encapsulated in the Minister's expectation that a vibrant and integrated forestry and domestic wood processing sector is needed for NZ to achieve its environmental and climate expectations. An efficient complaints and disputes process is needed to facilitate that outcome, particularly in the early years of the Act and as 'practices and standards' are developed and refined, including through precedents.

Page 28 of the discussion document lists the groups who may bring a dispute under the Act including "...owners of forests or proposed forests...". It is implied but not stated in the quoted description that a dispute could be brought by the owners or managers of land that is in forest or which is capable of afforestation. A widespread feature of forestry is the capacity for the owner of the overlying forest or forestry right to be an independent commercial entity and separate from the landowner.

WPMA recommends it is made explicit in regulation that the commercial and other interests of the landowner makes them a party able to avail themselves of the complaints and disputes procedures, including where they are a separate entity to the forest owner, the log trader and any other party with a direct interest in the land or the forest, for example the owner of a carbon credit or a mineral or water right.

A17: Dispute resolution process

Comments above with respect to A15 and the interests of landowners apply.

Part B: Regulating Forestry Advisers

Introduction

The rules and practice standards needed to achieve the purposes of the Forests Amendment Act 2020 are predicted to take several years (pg 10) to develop. WPMA suggests the standards of practice to be as important as the identification and registration of log traders and qualified foresters in the achievement of the country's climate and environment goals. We are therefore concerned that the time frame of 'several years' for the development of practice standards is out of step with the urgency and importance attributed internationally to climate change and domestically to matters such as NZ's declining natural water quality. A delay of that period will compound present domestic regulatory impediments and distortions in NZ trade policy to (further) delay much needed investment in traditional and alternative forms of wood processing. For that reason, we consider delaying the development of practice standards by 'several years' to be both unconscionable and unnecessary. We recommend this time frame be greatly shortened, recognising that:

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- Many studies have already documented the actual and potential contribution a processed wood products sector can and does make to a low-emissions, bio-circular and 'recycling' economy, and;
- Sustainable forestry standards already exist including ASNZS 4708 and systems for the registration of forestry professionals such as those developed by NZIF.

WPMA is concerned that matters deemed outside the scope of this consultation are critical to the success of the Forests Amendment Act 2020. Without the context of an agreed and finalised code of ethics, clear practice standards etc it will be difficult for forestry advisers to know by August 2022 (pg36) what records to keep, what they will report on and the likely cost and risk of the complaints and disputes processes. Adjudicating disputes will be difficult and likely time consuming.

B1: Other services that should be identified as forestry advice

WPMA is concerned that the Government's climate and environment goals require and would benefit from a broader definition of forest sector advice and therefore a broader definition of "forestry advisor" than contemplated in Section 63M of the FAA 2020. 'Environmental management' is a rapidly evolving area of public interest and policy, with greatly increased expectations nationally and internationally as a result of 'ethical investing', increasingly formal ESG (environmental and social governance) obligations, and commitments to enhance the bio-circular aspects of the economy. The rapid growth in consumer, customer and investor interest has brought to public attention the long-standing obligations for accuracy and integrity in environment-related marketing claims under commerce law, in NZ's case the Fair-Trading Act 1986.

Specialist forest-sector related advice is increasingly relied on in relation to claims of emissions neutrality, the recyclability of paper-based products and the biodegradability or reuse of wood-based building products. The need for accurate and impartial advice is beyond question, for example where it underpins product claims that could be and have been the subject of Commerce Commission and the Advertising Standards Authority investigation. The accuracy of advice offered with respect to NZ's international trade in logs and wood products needs to be maintained. That advice needs to take account of changes in domestic and international obligations related to constraints on illegally traded wood products. It is foreseeable that claimed capacity to reprocess and recycle wood-based products could become matters of interest to Government's and customers, where that capacity underpins claims relating to 'circular economic' and "Extended Producer Responsibility" outcomes.

Significant changes in the economics of domestic reprocessing can and do occur, often for reasons outside individual and even national control. Legislative and policy changes related to NZ's management of waste significantly altered the ability to recycle some paper when Councils capitalised the collection of 'recyclable' materials in mixed form. NZ was not alone in making such changes. The resulting increase in cross-contaminated paper generated in numerous countries resulted in China and other importing countries imposing (environmentally justified) border restrictions on such imports, sparking a wave of interventions by other countries including Australia. There is a renewed focus internationally on enhancing domestic recycling capacity, including by requiring disclosure and other 'border adjustment' obligations on importers. NZ exporters comply with importing country and customer obligations including where that relates to disclosures as to the legality and sustainability of NZ's domestic forest industry. NZ has to date refrained from countervailing interventions, presumably because such intervention is not considered in the 'National Interest', at least as that term is defined in the Trade Act 2017.

The broad definition of 'advice' covered by Section 63M (1)(a) including subclause (vi) (*the beneficial effects of forests (including, for example, how they contribute to environmental and economic outcomes)*) would suggest advice can be and is legitimately required on a range of issues other than the traditional aspects of forest management. The broad scope of 63M(1)(a)(iv) and the qualifications in 63M(2) could usefully be explained and expanded on in regulation. The sorts of matters discussed above in relation to recycling could serve as an illustration of the need for care and 'currency' in providing generic advice on aspects of the forestry and wood products supply chain with which the adviser may not be familiar. This is not to suggest that a 'fully circular' approach to advice and information is not needed. It is however an indication of the urgent need for completion of the rules and practice standards related to the provision of advice in order that:

- I. the scope of advice and adviser can be understood, and;
- II. those qualified to provide such advice reliably identified.

B3: The extent to which experience is required to qualify for registration

WPMA accepts that 'experience' is a legitimate and arguably essential requirement for a registered forestry adviser. We are concerned at the unavoidably subjective nature of 'experience' with not even 'years of service' a guarantee of the quality of advice. By contrast, 'qualifications' and 'professional memberships' offer a more certain measure of ability, accepting that the responsibility falls on the educational institution and professional body to maintain their respective standards and relevance. There is some guarantee that educational institutions and professional bodies will be incentivised to maintain standards by the fact that reputational damage accrues to all qualified / members if one individual indirectly endorsed by an organisation is found wanting.

The above comments are not intended to convey the impression that 'experience' is not relevant or valued. It is in our assessment a matter for the organisation providing professional registration to determine the relevance of an applicant's experience. The professional judgement of the qualifications and qualification providers needed to cover specialist categories of advice is similarly qualified, with a judgement needed of the years of experience post-graduation to hone academic skills in practice. Systems of internship and formal mentoring can be established where the 'qualified' lack 'experience' and vice versa. Our understanding is this is how doctors, engineers, teachers and other professions operate now.

WPMA does not consider the definition of particular 'experience' in regulation necessary or helpful, the comment reflecting the rapid change in matters and 'experience' considered relevant to forestry and much else in society.

B14: Reporting to the Forestry Authority

WPMA doesn't support an active role for the Forestry Authority in policing or administering of professional forestry adviser services at the level of the individual or organisation. That function should be the sole preserve of the registering body. On that basis the Forestry Authority would limit its oversight to determining whether the environmental and climate-related expectations underpinning the enactment of the Forests Amendment Act 2020 are being delivered on. To the extent that the Forestry Authority is dissatisfied with the environmental, climate-related and other outcomes of regulation of forestry advice it has the ultimate sanction, in the form of regulatory and legislative amendment.

For the above reasons WPMA doesn't support the idea of annual or other returns, other than to the extent that the organisation providing recognition of forestry professionals imposes and polices such requirements. In the absence of a clear separation of roles and responsibilities there is a risk of confusion and dispute, for example with regard to the standards that applied where regulatory stipulation differed from or did not keep pace with the changing obligations of forestry professionals.

WPMA supports the status quo as provided for in the Act.

B16: Deletion from the Register if suspended

It is a matter of good practice and helps ensure the integrity of 'registered forester advisers' if those whose practice is being formally investigated are removed from the register. It is a matter of logic and natural justice that such removal is for the shortest period possible and for reinstatement within one or 2 working days if claims of wrongdoing are not upheld.

B17: Complaints Panel

WPMA supports the creation of a permanent complaints panel (the preferred option) provided there are clear rules for the identification and substitution of individuals where a conflict of interest arises.

WPMA suggests that the broad scope of professional advice in all aspects of the forestry sector's contribution to matters of environmental concern and climate change needs to be maintained and updated to retain relevance. Matters of relevance and therefore the relevance of expertise will change over time, often at comparatively short notice.

WPMA recommend an explicit provision be made to allow the complaints panel to co-opt expertise as the need arises, whether in an advisory role or in direct adjudication of a dispute and subject to all the same obligations and rights as apply to formally appointed panellists.

Delegation of Functions (pg 62)

The power to delegate outside the Public Service is limited by the requirement to first obtain ".....the appropriate Minister's prior approval....". It is not clear which Minister or Ministers are being referred to or the basis on which they would judge the merits of an application to delegate. These matters could be usefully resolved in regulation.

Nga mihi



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