

21 May 2020

Environment Committee
Committee Secretariat
Parliament Buildings
Wellington

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Dear Committee Members,

FORESTS (REGULATION OF LOG TRADERS AND FORESTRY ADVISERS) AMENDMENT BILL

1. Thank you for the opportunity to make a submission in relation to this important Bill.
2. The Wood Processors and Manufacturers Association (**WPMA**) represents New Zealand's domestic timber-processing industry. Our members manufacture solid and reconstituted wood products as well as paper, paper packaging and recycled paper products, for domestic and export markets.
3. Our aims include supporting our members to help New Zealand realise the huge benefits offered by domestic processing of wood (especially in terms of encouraging the use of sustainable materials in construction, increased export earnings, improved climate change outcomes, and better regional development and employment).
4. We would appreciate the opportunity to be heard in relation to these matters.

Summary

5. WPMA supports the Bill as a reasonable response to the challenging issues confronting the forestry sector as we move into a post COVID-19 world.
6. In the short time we have had to prepare this submission, we have focused on the log trader regime contemplated by the Bill. Our principal observations and recommendations on the relevant aspects of the Bill are as follows:
 - (a) Purpose statement: Proposed section 63A encapsulates the purpose of Part 2A in a way that is generally balanced and fair to all segments of the forestry sector. Save for one small change, we do not consider that the purpose statement needs amendment.
 - (b) Application of regime: The definition of "log traders" in section 63H captures those who buy logs but not all those who sell them. For instance, it captures domestic processors but not forest owners. That is inexplicable in the context of a bill that is designed to regulate poor conduct across the forestry sector, for the long-term benefit of New Zealanders. Forest owners should be subject to the same rules as everyone else. Any concerns about the regulatory burden on smaller forest owners could be dealt with by way of exemptions, or by tailoring obligations in secondary legislation.

- (c) Conditions for log traders: For consistency, a provision equivalent to section 63T (which relates to forestry advisers) should be inserted to enable the Forestry Authority to impose conditions on the registration of log traders.
- (d) Log availability: Government statements in relation to the Bill indicate that it is expected to ensure that logs are made available to New Zealand processors.¹ WPMA supports that policy, but the Bill needs to be made clearer in relation to that important issue. It appears to be intended that relevant obligations will be set out in regulations or forestry practice standards. The empowering provisions in the Bill should be clarified, to ensure that secondary legislation setting out such obligations is not subject to unnecessary legal challenge.
- (e) Applicable forestry industry agreement: Sections 63J and 63ZW contemplate registered log traders being required to adhere to an applicable forestry industry agreement identified by regulations. The forestry sector has a long history of reaching constructive accords with wide support on important matters. WPMA looks forward to engaging with other parts of the sector in the short-term to develop a sustainable consensus that benefits all New Zealanders. WPMA does have a concern that some parties could be discouraged by the Commerce Act 1986 from even discussing such an agreement. To avoid that, the Bill may need to provide a competition law exemption.
- (f) Delay: The Bill contemplates a 12-month delay following enactment before the substantive regime takes effect. There obviously needs to be a short delay while officials develop suitable forestry practice standards and regulations in consultation with the sector, but it would be preferable if that 12-month period could be reduced to 9 or even 6 months. Change is needed now.

Purpose statement

- 7. Sections 63A(1) sensibly indicates that the purpose of Part 2A is to “support”, “improve” or “contribute to” certain interests. That approach avoids prioritising one of those interests over others. WPMA recognises that a balanced and fair approach is more likely to be durable.
- 8. Section 63A(1) identifies five types of interests, some of which could conflict with each other. WPMA particularly supports those which focus on long-term domestic timber supply, which will in turn improve confidence and sustainability in the sector thus generating the better outcomes identified in section 63A(1)(c) and (d). There is a weakness in the drafting of section 63A(1)(a), which speaks only in terms of supporting timber supply. Preserving the status quo will simply result in further mills closing in the very near term, with hundreds of jobs lost in the regions. We consider that adjusting this provision to focus on not only supporting timber supply but actively improving it is imperative for the survival of domestic processors, and for the realisation of the important outcomes identified in section 63A(1)(c) and (d).
- 9. WPMA supports section 63A in its current form, save for amending section 63A(1)(a) to read “support and improve”.

Application of regime

- 10. The definition of “log trader” in section 63H captures those who buy or export logs, and those who process their own logs. That rightly captures log trading entities, which buy up logs from

¹ Hon Shane Jones (NZ First, Minister of Forestry): “There will be a clear obligation, as a consequence of this bill, for people to have demonstrated that they have made the raw material available to Kiwis.” Rino Tirikatene (Labour): the Bill “will ensure that a relevant portion is available to support our local industries”. Hon Eugenie Sage (Green, Minister of Conservation): “And one of the key things the bill also does is ensure that there is log supply going to domestic processors.” (Hansard vol 745, 14 May 2020, First Reading).

growers and frequently export them without giving any consideration to the benefits of processing them locally. It also captures domestic processors. WPMA is willing to accept that the Bill is intended to introduce a regulatory system for those who take part in log markets, so should extend to domestic processors.

11. But the definition of “log trader” does not appear to capture forest owners. WPMA assumes that that is simply a drafting oversight. The interests identified in the section 63A purpose statement could not be served by a regulatory system that does not capture those who control the raw material – it would not be possible for Part 2A to support the continuous, predictable, and long-term supply of timber to domestic processors if it did not apply to growers. There are numerous references in Part 2A to the “forestry sector”, which obviously extends to forest owners. Section 63ZZC even contemplates setting forestry practice standards for “forestry operations” including “land preparation, planting, forest management, and harvest planning and site preparation ... biosecurity, sustainable land use, biodiversity ... sale and purchase agreements ... other sale and purchase requirements”. Those are clearly matters which bear on forest owners.
12. Concerns could be raised that smaller forest owners would be placed under an undue regulatory burden if the definition of “log trader” were extended to growers. Given the interests identified in section 63A, it is entirely appropriate that all forest owners be potentially subject to the regime. If there are indeed good reasons to carve smaller forest owners out of the regime, they could be exempted by regulations under section 63ZW(1) or made subject to a ‘lighter touch’ regime. Those are matters that can be worked through in detail when officials consult on the secondary legislation contemplated by the Bill.
13. WPMA submits that section 63H(1)(a) should be amended as follows:
 - (1) A log trader is any of the following:
 - (a) a person who, in trade, -
 - (i) sells New Zealand logs, whether after harvest or in the form of trees to be harvested at an agreed time; or

Conditions for log traders

14. Section 63T provides that the Forestry Authority may, subject to regulations, impose on the registration of a forestry adviser any conditions it thinks fit.
15. There is no equivalent provision for log traders. Again, WPMA assumes that this is a drafting oversight. The need for the Forestry Authority to be able to impose conditions on registration for log traders is obviously greater than it is for forestry advisers, given that log traders are likely to be larger organisations with diverse ownership and management, and capable of making decisions which significantly affect the various levels of the timber supply chain.
16. WPMA submits that:
 - (a) an equivalent to section 63T for log traders should be included (in relevantly identical terms to section 63T);
 - (b) consequential amendments be made to section 63J (cf section 63N(e)), section 63P(2)(b), section 63S(2)(b), and section 63ZW (cf section 63ZW(m)).

Log availability

17. As already noted, Government statements in relation to the Bill indicate that it is expected to ensure that logs are made available to New Zealand processors.² That would be in line with the interests identified in section 63A, which include supporting and improving supply for domestic processing.
18. There is no clear provision in the Bill directly ensuring improved log availability to domestic processors. It may have been intended that relevant obligations for registered persons would be set out in regulations or forestry practice standards (assuming that no industry accord is reached promptly). If so, the empowering provisions for the making of those regulations or rules need to be clarified. Otherwise, there is a danger that parties opposed to value-added processing in New Zealand will be able to exploit any narrowness in the language of those empowering provisions to challenge any supply obligations introduced by regulations or rules, delaying realisation of the benefits they offer to New Zealand.
19. In particular, section 63ZW(n) contemplates regulations which “set additional obligations that will apply to registered persons” (which must include registered log traders). But it then gives as an example a requirement that registered forestry advisers undertake ongoing professional and technical training. In view of section 63A, it should also give as an explicit example a requirement that registered log traders offer logs to domestic processors on appropriate terms.
20. Further, section 63ZZC contemplates the Forestry Authority making rules setting forestry practice standards in relation to a range of matters. Those matters include as a catch-all “other sale and purchase requirements”. In view of section 63A, that should include as an explicit example a requirement that registered log traders offer logs to domestic processors on appropriate terms.
21. WPMA submits that:
 - (a) section 63ZW(n) should be amended to include as a further example “for registered log traders, a requirement to offer logs to domestic processors on specified terms”; and
 - (b) section 63ZZC(2)(a)(iv) should be amended to include as an example “(which may include a requirement to offer logs to domestic processors on specified terms)”.

Applicable forestry industry agreement

22. Sections 63J and 63ZW contemplate registered log traders being required to adhere to an applicable forestry industry agreement identified by regulations.
23. The forestry sector has a long history of reaching constructive accords with wide support on important matters including conservation (1991), log transport safety (2001 and 2008) and climate change (2007). Those accords have tended to be high-level statements of principle, but there is no reason why more detailed agreements could not be reached.
24. WPMA considers that a durable pan-sector accord could provide an efficient and collaborative way of furthering the interests identified in section 63A, avoiding the need for heavy regulation. WPMA will support any efforts made to reach a sensible agreement, and calls on other parts of the sector to adopt a similar approach.

² Hon Shane Jones (NZ First, Minister of Forestry): “There will be a clear obligation, as a consequence of this bill, for people to have demonstrated that they have made the raw material available to Kiwis.” Rino Tirikatene (Labour): the Bill “will ensure that a relevant portion is available to support our local industries”. Hon Eugenie Sage (Green, Minister of Conservation): “And one of the key things the bill also does is ensure that there is log supply going to domestic processors.” (Hansard vol 745, 14 May 2020, First Reading).

25. Some of the interests identified in section 63A bear on supply arrangements. Some parties may adopt the position that entering into any discussions in relation to such matters would put them at risk of breaching the Commerce Act 1986. Although there are already statutory mechanisms for obtaining authorisation of any agreement, there is a danger that negotiations towards a forestry industry agreement might not get off the ground if some parties take an overly cautious approach. One solution would be for the Bill to provide a competition law exemption, to clear away an obstacle to the sector reached an agreement that promotes the section 63A interests.
26. WPMA submits that officials should be asked to urgently consider whether an appropriately drafted exemption should be inserted into the Bill to remove this impediment to negotiation. If other parties identify other such impediments, officials could be asked to consider similar exemptions, to avoid progress towards an accord being artificially obstructed.

Delay

27. Clause 7 of proposed Schedule 1AA contemplates a 12-month delay following enactment before the substantive regime takes effect.
28. Officials will need some time to develop regulations and forestry practice standards in consultation with the forestry sector. But the issues confronting the sector are pressing now, as the sector and the country recovers from COVID-19. Now is not the time for a leisurely policy consultation process. Change is needed urgently. A period of 6 or at most 9 months before the regime came into full effect should be sufficient.
29. WPMA submits that clause 7 of Schedule 1AA should be amended to provide that the relevant sections should apply 6 months after the section's commencement date.

Technical points

30. Thought could also be given to addressing the following minor issues:
 - (a) Section 63A(1)(e) could be amended to remove "timber", to ensure consistency with section 63(1)(a).
 - (b) Section 63C(f) could be amended to also confer upon the Forestry Authority the function of enforcing compliance with Part 2A rather than simply monitoring it, to avoid doubt as to which agency has enforcement responsibility for the regime.
 - (c) A definition of "registered person" could be inserted into section 4, to make it clear that it captures both a registered log trader and a registered forestry adviser. The term is used in section 63C, 63F, 63U, 63V, 63Z, 63ZD, 63ZE, 63ZW and 63ZX.

Yours faithfully,



Dr Jon Tanner
Chief Executive