

Departmental Disclosure Statement

Forests (Legal Harvest Assurance) Amendment Bill

The departmental disclosure statement for the Forests (Legal Harvest Assurance) Amendment Bill (Bill) seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular interest to the Parliament or the public and warrant an explanation.

This disclosure statement is primarily relevant to the proposed new Part 5 of the Bill on the legal harvest system. The Bill also repeals provisions related to log traders from the new Part 2A of the Forests Act 1949 on Regulation of Log Traders and Forestry Advisers and inserts similar provisions in the new Part 6 of the Bill on log traders (leaving Part 2A for the regulation of forestry advisers). This disclosure statement only mentions provisions in the new Part 6 that the Bill changes in substance.

This disclosure statement was prepared by the Ministry for Primary Industries.

The Ministry for Primary Industries certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

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Part One: General Policy Statement

The Forests (Legal Harvest Assurance) Amendment Bill is intended to establish a new regulatory system for providing legal harvest assurance for the forestry and wood processing sector. It is expected to operate in a manner that will:

- assist in the prevention of international trade in illegally harvested timber; and
- strengthen the international reputation of the New Zealand forestry and wood processing sector; and
- safeguard and enhance market access for New Zealand forestry exports; and
- reduce the risk that timber imported into New Zealand is sourced from illegally harvested timber.

Background

New Zealand is committed to assisting in the prevention of the global trade in illegally harvested timber products. The illegal harvesting of timber is a significant problem globally, contributing to deforestation and ecosystem degradation, with wide-reaching environmental, economic, and social impacts for affected communities.

Forestry is New Zealand's fourth largest primary sector export earner, generating NZ \$6.3 billion for the year ending June 2021. Having confidence in the integrity of the forestry supply chain and the operators within the system is critical for both domestic processing and New Zealand's reputation as a high-quality exporter of timber products.

New Zealand's imports of timber products have increased by approximately 70% over the last decade, to \$2.35 billion for the year ending June 2021. A rising volume (and diversity of imports) increases the risk of New Zealand becoming a conduit for the illegal timber trade due to a lack of mandatory assurance measures. While New Zealand has had voluntary measures in place since the early 2000s, and there have been proactive initiatives by importers, the coverage has not been complete.

Historically, New Zealand has relied on its reputation of being a low-risk producer of illegal timber products for ensuring market access. However, more recently New Zealand exporters have been required to demonstrate the legality of their timber products in a growing number of export markets.

International environment

The international trading environment is forecast to become more volatile in the wake of COVID-19, and the resulting disruptions to trade and economic activity. The initiatives proposed in this Bill will work to facilitate trade and support market access by enhancing the reputation of New Zealand's forestry and wood processing sector.

Several of New Zealand's key forestry trading partners—including Australia, United States, Indonesia, Republic of Korea, Japan, Vietnam, the European Union, and China—have implemented, or are developing, their own legislation to prevent the import, export, or trans-shipment of illegally harvested timber. While New Zealand is seen internationally as being a low-risk supplier of illegally harvested timber, our major overseas markets (and their consumers) are increasingly looking for legislation-backed assurances that our timber products have been legally harvested, and there are robust due diligence practices supporting these assurances. For the year ended March 2021, 85% of New Zealand's total exports of forestry and timber products were to those countries listed above with current or imminent legal harvest regulations.

To support market access, MPI has put in place interim arrangements with several key trading partners. These arrangements are an interim measure until a permanent legal harvest system is put in place. A long-term and consistent solution is required that can meet the requirements of an increasing number of trading partners for a robust legislative framework for legal harvest and provide confidence and certainty for the forestry and wood processing sector.

Scope of proposed legal harvest system

The legal harvest system will apply to exotic timber and specified timber products. With two exceptions, the legal harvest system will not apply to a person trading in indigenous timber as they are already regulated under Part 3A of the Forests Act 1949 (the Act). In the event that market requirements for indigenous timber change significantly, the Bill will allow regulations to specify certain indigenous timber to be included in the legal harvest system. In addition, the Bill will allow a person dealing with indigenous timber in the domestic supply chain to voluntarily opt into the legal harvest system if there is benefit in doing so.

There are existing private certification schemes that some forest owners use to demonstrate the legality of their production, including schemes by the Forest Stewardship Council (FSC) and the Programme for Endorsement of Forest Certification (PEFC).

The reporting requirements and costs associated with private certification have been a barrier to smaller forest owners becoming certified. Smaller forest owners are an important component of the plantation estate, providing an increasing portion of the annual timber harvest over the past 15 years. It is estimated that this trend will continue, with forecasts predicting small growers will provide 40% of the harvest during the 2020s, up from 25.5% in 2015 and just 14% in 2007. The legal harvest system will ensure this timber can continue to be incorporated into the commercial supply chain.

Expected benefits of new system

New Zealand has the opportunity through this Bill to step up its contribution to preventing the global trade in illegally harvested timber by reducing the risk of illegal timber imports while also ensuring New Zealand's own timber products are sourced from logs that have been legally harvested. The establishment of a regulatory system in New Zealand will help reduce the adverse global impact of the trade in illegally harvested timber and help build the reputation of New Zealand's timber products in export markets.

The introduction of a legal harvest system, with a robust legislative framework and appropriate assessment measures, will provide oversight and transparency across both domestically produced and imported timber. The system is expected to deliver a significant net benefit of approximately \$690 million over 10 years, primarily through the maintenance of higher value markets (by having a legal harvest system that can meet the legality requirements of importing countries).

Key components of the legal harvest system

As part of the proposed legal harvest system, timber importers, exporters, log traders and primary processors will be required to register and establish due diligence systems to demonstrate that the timber they have obtained has been legally harvested. The due diligence system allows for recognition of private certification schemes. Registered parties will use these systems to assess that the timber they are dealing with has been legally harvested and to provide legal harvest information through their supply chain. For New Zealand sourced timber, this starts with the person responsible for the harvest

providing a legal harvest statement (and supporting information if required) that may flow through to the exporter. The registered person will use the legal harvest statement to undertake due diligence to assess whether the timber has been legally harvested.

A registered exporter will be able to apply to MPI for an exporter statement to assist with market access. The exporter statement, and any supporting documentation, will form part of the documentation supplied to importing authorities and wholesale customers.

For imported timber products, the importer will use their due diligence system to assess whether the timber they intend to import has been legally harvested.

The Bill, amongst other things, proposes:

- a regulatory system and legislative framework with the Secretary (Director-General of MPI) having functions, powers, and duties as the regulator; and
- a definition of legally harvested; and
- mandatory registration for log traders, primary processors, exporters of timber products, and importers of timber products (or their agents) who operate above specified thresholds and are not exempted, with voluntary registration available to people who are exempt (e.g. people who do these activities on a smaller scale); and
- obligations on persons responsible for the harvest (meaning a forest owner, or person responsible for making the decision to harvest) to complete a legal harvest statement and declaration that confirms the timber is legally harvested; and
- requirements on persons required to register to meet a fit and proper person test; and
- establish and maintain a due diligence system in order to minimise the risk timber or timber products are illegally harvested; and
- an administrative and assessment framework, including assessment of the due diligence systems by assessors approved by the Secretary; and
- recognition of private certification schemes in the due diligence system; and
- powers for the Secretary to provide an exporter statement to a registered exporter or overseas authority and specify export requirements to facilitate trade and support continued market access; and
- a principles-based cost recovery framework; and
- ability for a regulated party to seek a review of a decision and have appeal rights; and
- a graduated approach to compliance and enforcement; and
- powers for forestry officers or other officers to carry out inspections, which may lead to investigations and the issue of a search warrant in accordance with Part 4 of the Search and Surveillance Act 2012; and
- secondary legislation to give effect to the system; and
- a review of the operation of the legal harvest system and legislation no later than 5 years after full commencement and then at least every 10 years after that.

Log traders

The Bill will amend the Act which is administered by MPI. The proposed legal harvest system will have operational overlaps with the regulation of log traders under new Part 2A of the Act (to be inserted by the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020). To ensure that the two systems operate as efficiently as they can, the Bill repeals provisions relevant to log traders in the new Part 2A and inserts a new Part 6 in the Act. The new Part 6 (Log Traders) has similar provisions to

those in Part 2A with some adjustment in order to align with the operational design for the legal harvest system. The Bill makes other technical adjustments to Part 2A of the Act, in order to ensure a more effective administration of the log trader and forestry adviser regulatory system.

Commencement of Bill

The Bill will come into force on a date appointed by the Governor-General by Order in Council. The various provisions of the Bill will come into force no later than three years after Royal Assent, except for the compliance and enforcement provisions in Part 5 (Legal Harvest Assurance), which will come into force no later than 12 months after these other provisions are in force. This staged approach is to enable the development of enabling regulations and associated rules; the education of regulated parties in this new system; the timely registration of regulated parties; and adequate time to liaise with our trading partners.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>NZ's Timber Legality Template – APEC EGILAT timber legality guidance template for NZ (apec.org)</p> <p>FSC Controlled Wood Centralised National Risk Assessment Controlled Wood Risk Assessment (fsc.org)</p> <p>European Commission FLEGT Action Plan Timber Regulation - Forests - Environment - European Commission (europa.eu)</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	Not applicable

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p><i>Proposed Legislation for a Wood Legality System</i>, Ministry for Primary Industries (July 2020).</p> <p><i>Updated Regulatory Impact Assessment: Proposed Legal harvest system</i>, Ministry for Primary Industries (September 2021)</p> <p>The regulatory impact assessment and an updated RIA are available on the Ministry for Primary Industries website at Proposed legislation for a legal harvest system for forestry NZ Government (mpi.govt.nz)</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p>The regulatory impact assessment did not meet the threshold for needing an independent opinion on its quality from the Regulatory Impact Assessment Team in the Treasury.</p> <p>In September 2021 the RIA <i>Proposed Legal harvest system</i> updated the RIA for the <i>Proposed Legislation for a Wood Legality System</i> that was published in 2020.</p> <p>The MPI Regulatory Impact Analysis Panel assessed draft versions of the regulatory impact assessment and the final document. The review panel considered that the information and analysis in the RIA meets the quality assurance criteria. The panel noted that the RIA includes an analysis of a proposed cost recovery system (in Section Five). The review panel considers that the information and analysis in this section meets the quality assurance criteria for a Stage 1 Cost Recovery Impact Statement.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
<p>There have been small differences in detail as the Bill has evolved, e.g., the Bill now uses the term 'assess' rather than 'audit' in relation to due diligence systems.</p> <p>In addition to inserting a new Part 5 on the legal harvest system into the Forests Act 1949, the Bill inserts a new Part 6 on log traders. The Bill repeals provisions related to log traders from the new Part 2A of the Forests Act 1949 on Regulation of Log Traders and Forestry Advisers and inserts similar provisions in the new Part 6 (leaving Part 2A for forestry advisers). This is to align log trader registration with the legal harvest system due to the strong overlap of regulated parties.</p> <p>The regulatory impact statements for the legal harvest system do not mention these changes as they were covered by the Regulatory impact assessment for Strengthening the Integrity of the Forestry Supply Chain done prior to the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 which will insert new Part 2A when it commences.</p> <p>To align log trader registration with registration for legal harvest, there have been small changes in policy for the new provisions for log traders in the new Part 6 of the Bill. These include:</p> <ul style="list-style-type: none"> • Having the Secretary (chief executive of MPI) as the regulator instead of the Forestry Authority (Secretary or any other person to whom a function is delegated) • Removing the renewal of registration for log traders and replacing it with an obligation to do an annual declaration of compliance • Expanding the Secretary's power to obtain information in order to enable more effective implementation. 	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	YES
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Since 2020, MPI has developed a detailed operating model for the new legal harvest system. MPI therefore commissioned a new CBA from a forestry economist. The revised CBA led MPI to update the cost benefit information provided in the 2020 RIA. The changes do not affect our problem definition, objectives, options identification, or the conclusion of our analysis.

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	YES
<p>The regulatory impact assessment for the legal harvest system, available on the MPI website, provides a summary of the overall potential costs and benefits of the policy to be given effect by the Bill together with an assessment of its impact on particular groups of stakeholders.</p> <p>An experienced forest economist has completed a cost-benefit analysis of the proposed framework. The analysis shows a strong net benefit across the supply chain, with an estimated net present value of approximately \$690 million over ten years. This analysis is summarised in the RIA and briefly summarised in Appendix One of this Agency Disclosure Statement.</p> <p>There are some unquantified impacts (such as improved consumer confidence in products) that will positively affect the costs and benefits – particularly for importers, who are the only group that the analysis has shown as having a net cost. The economist identified economic benefits for importers (principally improved confidence in the source of supply and fairer competition for legally sourced products) but could not quantify these benefits in the calculations for net present value.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>These matters considered at a high level in the regulatory impact assessment for the legal harvest system, and it is recognised that a concerted education and promotional effort will be required during the transition phase to ensure regulated parties are able to comply with their obligations on the commencement date and all persons needing to register are registered.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The legal harvest system will be notified under the WTO Agreement on Technical Barriers to Trade (TBT Agreement) once the Bill has been introduced, and provision will need to be made to consult with other WTO Members. The system will also be notified and consulted under New Zealand's Free Trade Agreements (FTAs). Officials anticipate this process will help ensure trading partners have the opportunity to raise any concerns for their products imported into New Zealand, and that the design of the New Zealand scheme will meet our trading partners' wood legality requirements for our exported products. It will also satisfy our transparency requirements as a member of the WTO.

MPI anticipates any risk of disruption to imports will be minimised by providing a phased-in period for the application of the regulations. Enabling MPI to recognise third party certification schemes that are assessed as meeting New Zealand's harvest legality requirements will also facilitate compliance verification.

The legal harvest system will also need to comply with New Zealand's trade obligations under both the TBT Agreement and the General Agreement on Tariffs and Trade (GATT). Under the TBT Agreement, these include requirements that the system not be discriminatory, that it not be more trade restrictive than necessary to achieve its legitimate objective, and that it aligns with relevant international standards unless this would be ineffective or inappropriate. Obligations relating to the procedure for carrying out conformity assessments may also be relevant. Officials have taken these obligations into account in developing the system and will continue to do so as they develop the Bill and subsequent regulations. Officials also consider it is likely that the system will amount to a quantitative restriction on trade for the purposes of Article XI GATT. In order to be consistent with GATT, the system will need to fall within one of the general exceptions (likely the exception applying to measures relating to the conservation of exhaustible natural resources).

MFAT and MBIE have been working with MPI to discuss and address these matters to the extent possible and will continue to work with MPI as the Bill and regulations are developed.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Input and participation was sought from Māori on the proposed legal harvest system. Participants had a range of views from general support for the proposed legal harvest system to questions on how it would work for and benefit Māori businesses. This included discussion on joint land ownership, the importance of the definition of legally harvested, and the costs and regulatory burden that may result from the implementation of the system. These views were taken into account in developing the policies.

Māori are heavily invested in the forestry sector and own approximately 40% of commercial forestry land. Outside commercial interests, tangata whenua have a broad interest in any changes that affect forestry.

Māori landowners and businesses with interests in the forestry sector will be impacted by the proposed mandatory legal harvest system and benefit from the assurance it will provide for New Zealand timber products in export markets. As landowners, they will be required to provide legal harvest information to log buyers. As log traders, processors, exporters or importers, they will need to be registered, perform due diligence on timber and timber products they deal with, and comply with other mandatory registration obligations.

The Bill takes this interest into account by requiring representatives of tangata whenua to be consulted in regard to decision made on cost recovery, regulations, and rules for the legal harvest system. The proposal is to have a staged approach to commencement to allow time for this consultation to happen and other engagement, including education, with affected parties including tangata whenua.

Consistency with the New Zealand Bill of Rights Act 1990

<p>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</p>	<p>YES</p>
<p>The proposals in this Bill have been vetted for consistency with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.</p>	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>The Bill provides for offences, penalties and search powers to enforce the requirements of the Bill for the proposed legal harvest system, where not already covered under the Crimes Act 1961. This includes criminal liability for strict liability offences, and for providing false or misleading information, punishable with fines but not imprisonment. The Bill includes enabling provisions to set infringement offences and penalties in regulations. The principles applied in designing enforcement tools are to:</p> <ul style="list-style-type: none"> a) Disincentivise non-compliance with the standards and misleading behaviour by businesses; b) Provide a proportionate response to the nature of the offending; and c) Encourage effective engagement and participation in the legal harvest system. <p>The Bill for the legal harvest system provides for a right of review of decisions by the Secretary (i.e., the Director-General of MPI) or an appropriate reviewer depending on the circumstances. The decision may be appealed to the High Court and then to the Court of Appeal on questions of law only.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted in the policy formulation phase for the legal harvest system and has reviewed the provisions contained in the draft Bill. Its feedback is reflected in the final design decisions.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p>The Bill will provide registered participants for the legal harvest system with the right to apply to the Secretary to withhold certain information from a public register on the grounds of preserving the person's privacy. The Secretary will be required to, amongst other things, make the log trader and legal harvest assurance registers, and register of assessors, available for public inspection at all reasonable times, free of charge, by publishing them on an Internet site maintained by, or on behalf of, the Secretary.</p>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
The Privacy Commission was consulted and has reviewed the provisions contained in the draft Bill for the proposed legal harvest system. Their feedback is reflected in the final design decisions.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><i>Sector engagement:</i></p> <p>Following the July 2020 Cabinet high-level decisions to develop a Bill to amend the Forests Act 1949 to establish a wood legality assurance system, MPI has continued to consult with the forestry and wood processing sector and related sectors and interested parties. This has involved engagement with the New Zealand Forest Owners Association, New Zealand Importers of Tropical Timber Group, the New Zealand Timber Industry Federation, the Wood Processors and Manufacturers Association of New Zealand, Forest Product Exporters Committee, forest owners, timber processors, exporters, and importers. These groups have been generally supportive of the Bill.</p> <p>MPI has engaged with environmental non-government organisations, some of whom had mixed views, as they considered the Bill should include sustainability and deforestation in addition to the legality of the harvest.</p> <p><i>Engagement with Māori</i></p> <p>MPI engaged with a cross-section of Māori participants in the forestry sector, including through an online forestry symposium and other industry engagement where Māori attended largely as forestry owners. Participants had a range of views from general support for the proposed legal harvest system to questions over how it would work for and benefit Māori businesses. This included discussion on joint land ownership, the importance of the definition of legally harvested, and costs and regulatory burden that may result from the implementation of the system.</p> <p>See Appendix Two for further information on the external engagement with the sector.</p> <p><i>Agency engagement:</i></p> <p>The following agencies have been consulted: MFAT, New Zealand Customs, Ministry of Justice, Ministry of Business Innovation and Employment, Ministry for the Environment, Te Kawa Mataaho Public Service Commission, the Department of Conservation, Land Information New Zealand, Te Puni Kōkiri, Te Arawhiti, Office of the Privacy Commissioner, and the Department of Internal Affairs and their comments have been taken into account. The Department of Prime Minister and Cabinet has been informed.</p> <p><i>International engagement:</i></p> <p>MPI has advised New Zealand's APEC trading partners that Cabinet will be considering the proposals outlined in this Bill. We have provided several updates on the proposals to APEC trading partners through the forum for the Experts Group on Illegal Logging and Associated Trade.</p> <p>MPI also engaged with Australian officials from the Department of Agriculture, Water and the Environment on the proposals.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Legislation Design and Advisory Committee (LDAC) provided MPI with advice after a discussion on the Bill for the proposed legal harvest system in March 2021. LDAC advised MPI to spend time clarifying the scope of the concept of “illegally harvested” and consider whether it is possible to build from the existing regulatory regime established by the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020.</p> <p>In LDAC’s view, examining this existing regulatory scheme and the range of existing criminal offences that might be engaged by dealing with “illegally harvested” timber would help identify the gaps in which further obligations could be added to meet the policy objectives.</p> <p>To address these concerns the Bill proposes to remove provisions relating to log traders in the new Part 2A (to be commenced by 6 August 2022) and include similar provisions in the proposed new Part 6 for log traders. This is because most, if not all, log traders registered under the Amendment Act will also need to be registered for legal harvest. The Bill also proposes to repeal the requirement to renew registration for log traders, to align with the legal harvest system where registered persons will be required to do an annual declaration of compliance.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
<p>The Bill establishes a principles-based framework to enable cost-recovery for the proposed legal harvest system using a range of methods, including levies and direct charges for services. The details of cost recovery will be established in regulations. Those regulations will be subject to public consultation prior to being finalised and gazetted.</p> <p>Provision should be made for MPI to cost recover from industry for its services because the forestry industry will directly benefit from it. This is common for other systems that MPI administers and will be shaped by the same principles that guide MPI's general cost recovery process: equity, efficiency, justifiability, and transparency.</p> <p>The actual quantum of any fees and levies will be established during the regulatory service design phase.</p> <p>From the commencement of the legal harvest system, costs to government that would be recovered by a fee or levy to cover the costs of maintaining and implementing the system, which includes:</p> <ul style="list-style-type: none">• the registration system• considering relevant laws for the definition "legally harvested"• developing templates for due diligence• approving assessors and recognised agencies for due diligence• providing exporter statements to registered parties• compliance management and enforcement	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
<p>Most of the offences for the proposed legal harvest system are strict liability offences, except for offences for providing false or misleading information knowing it to be false or misleading.</p> <p>Offences that are strict liability have fines not exceeding \$40,000 for individuals, and not exceeding \$100,000 for any other case.</p> <p>Offences relating to providing false or misleading information that requires knowledge have fines not exceeding \$100,000 for individuals, and not exceeding \$200,000 for any other case.</p>	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Section 117 of the Bill provides immunity from liability in civil proceedings for assessors who are outside the public service in accordance with section 104 of the Public Service Act 2020.</p> <p>Section 112 limits liability relating to exporter statements for the Crown, Secretary, or any employee of the Ministry. This limitation is for any loss resulting from a refusal or failure by a relevant authority of an overseas market to admit regulated timber or specified timber products to that market.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>For the proposed legal harvest system, the Bill requires a person doing a regulated activity (i.e., as a log trader, primary processor, importer or exporter of specified timber products) and who does not meet exemptions to be registered in order to operate. If a person does not register as required, this would have a significant impact on their right to operate a commercial business.</p> <p>The Bill sets out a “fit and proper person” test for persons applying to be registered. Declining or revoking registration (based on the fit and proper person test or non-compliance) would have a significant impact upon a person’s interests. The fit and proper person test is also used in the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020. The regulator makes the decision on whether a person meets the fit and proper person’s test taking into account matters set out in regulations and any other matters considered relevant.</p> <p>Fit and Proper person tests are commonly used by New Zealand government agencies to assess or certify authorisations (licenses / registration) by individuals and organisations and to ensure the person is trustworthy. Agencies can consider the behaviour of the person applying to be registered both in New Zealand and overseas, and can use discretion to consider all pertinent matters, including any previous criminal convictions and previous non-compliance with obligations under the Forests Act.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The Bill provides for secondary legislation for the proposed legal harvest system in relation to (amongst other things):</p> <ul style="list-style-type: none"> a) Relevant laws for the definition of “legally harvested” (both for NZ and overseas countries) b) Specifying regulated indigenous timber to be included in the legal harvest system c) Providing exceptions for kinds of timber for legal harvest requirements d) Legal harvest statement and information requirements e) The manner of application for registration and any procedural matters in relation to registration including on record keeping f) Criteria for a fit and proper person test for applicants seeking to register g) Other registration criteria h) Due diligence requirements i) Thresholds and exemptions for all regulated parties j) List of regulated products k) Criteria for recognition of a private certification schemes l) Criteria for recognition of assessors and recognised agencies m) Criteria used by the Secretary to approve templates for due diligence systems by other persons n) Forms and templates including for: <ul style="list-style-type: none"> • the legal harvest statement • applying for an exporter statement • due diligence templates o) Procedures and other matters in respect of review of decisions and appeals p) Information required for registers q) Details on infringement offences and the setting of infringement fees payable in respect of infringement offences. r) Cost-recovery using a range of methods, including levies and direct charges for services. 	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>For the proposed legal harvest system, the Bill provides for a variety of secondary legislation to enable the establishment and operation of the legal harvest system, such as the ability to make infringement offences and fees.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Extent of impact analysis available – question 2.5(a)

Illegal logging is a significant problem in many countries and regions and has wide-reaching environmental, economic, and social impacts. Illegal logging degrades forest environments, reduces biodiversity, impacts on the price of legally traded timber, and undermines government regimes and revenues. It also contributes to greenhouse gas emissions and deprives communities of opportunities to improve their quality of life.

Estimating the scale of illegal logging is challenging. However, investigations into forestry practices and the timber trade worldwide indicate that it is a substantial problem. Interpol recently estimated that the international trade in illicitly harvested timber is valued at between USD51 to 152 billion annually and accounts for 15 to 30 percent of all timber traded globally. In 2008, a national study estimated that the illegal trade in wood products reduces the returns for New Zealand forestry products by 10 per cent and that the New Zealand forestry industry could gain an annual equivalent revenue of \$264 million¹.

Establishing a robust legislative framework for confirming the timber and timber products both exported and imported into New Zealand have been sourced from legally harvested logs has direct and indirect benefits for the forestry and wood processing sector. These include mitigating the risk of losing access to some markets or losing the status of preferred supplier with a consequential loss of export revenue. Every 1% loss of wood product export results in a \$60 million loss for the sector at current prices. With increasing international action on timber legality, the loss of access to long established export markets (without an assurance system in place) is possible. Losing market access to key trading partners such as, Japan, and South Korea is reported to be expected to drop the sales price and revenue because of the higher log supply and the price elasticity of the log market². The estimated price drop is 10%, and the chance of this loss without proper legislation is assumed to be 50%. This report does not calculate losing China's log market access due to the lack of harvest assurance³. Losing access to China's market would cause a devastating export revenue loss of \$2.4 billion a year for a period, and that underlines the urgency of the implementation of the proposed legal harvest system. Looking across the forestry export sector as a whole (from logs through to semi-processed and processed timber exports), losing access to 50% of our established markets, and moving this volume to alternative markets could reduce the average log and wood product export price for these products by 10%. Therefore, the lack of an adequate regime for proving wood legality could result in an annual loss of \$300 million.

Considering the above, maintaining the status quo without implementing a legal harvest assurance system could result in a \$264-600 million annual loss in export revenue depending on the affected market access⁴.

Considering the implementation and operational costs of the legal harvest system and a conservative benefit estimate from prevented loss (\$97.6 million/annum avoided loss), the Net Present Value is \$690 million over ten years.

Apart from one exception, all the regulated parties and the regulator have a positive NPV. Importers will have additional costs and non-quantified benefits only.

¹ James A. Turner, Andres Katz, and Joseph Buongiorno, 'The Economic Implications of Illegal Logging for the New Zealand Forest Sector', *New Zealand Journal of Forestry*, 53.2 (2008), 20–25.

² Baodong Cheng, Guangyuan Qin, and Weiming Song, 'Analysis of the Log Import Market and Demand Elasticity in China', *Forestry Chronicle*, 91.4 (2015), 367–75 <<https://doi.org/10.5558/tfc2015-066>>.

³ Cheng, Qin, and Song.

⁴ Turner, Katz, and Buongiorno.

The set-up cost of the planned legal harvest system is about \$1.5 million. The annual cost of operating the system is approximately \$450,000, managed on a cost-recovery basis from the regulated parties. There are significant non-quantified benefits of the system, while costs are all quantified.

While the total costs represent around 8 cents/m³ of wood products exported, the benefits are an estimated \$3.2/m³.

The proposed legal harvest system covers New Zealand harvested timber, timber products manufactured in NZ for domestic and export markets and imported timber products.

With two exceptions, the legal harvest system will not apply to a person who trades in indigenous timber (both planted and naturally occurring) as indigenous timber is already regulated under Part 3A of the Forests Act. To allow for future market requirements the Bill allows regulations to specify certain indigenous timber to be included in the legal harvest system. In addition, a person who is dealing with indigenous timber in the domestic supply chain can voluntarily opt into the legal harvest system if there is benefit in doing so.

Appendix Two: Further Information Relating to Part Three

External consultation – question 3.6

Early Stakeholder Engagement

MPI has been working with industry representatives since October 2017 on options for a legal harvest assurance framework to meet the regulatory requirements of key importing countries. Representatives from major exporters and industry groups have been involved in the deliberations, and in supporting MPI with hosting representatives from importing countries.

Following Cabinet agreement in September 2019 to develop a national definition of legal harvest, MPI undertook targeted engagement on the proposal (between November 2019 and January 2020) at regional workshops which covered the proposed legal harvest system and the proposals to register log traders and forestry advisers. To support the engagement process, MPI prepared a comprehensive Information Paper which set out the problem, proposed a range of regulatory and non-regulatory options, identified the costs/ risks and benefits of these options, and the approach to cost recovery as a basis for discussions and subsequent written submissions. MPI held two workshops at the end of the engagement period to discuss the preferred options. Time constraints precluded a full consultation and submission process.

The four regional workshops between November 2019 and January 2020 attracted more than seventy stakeholder representatives, from small owners through to large corporate entities, forest management companies and log traders. The industry associations involved in the regional workshops and in subsequent meetings included:

- the Forest Industry Contractors Association (representing the majority of harvest contracting crews);
- New Zealand Farm Forestry Association (representing a membership of almost 2,000 small forest owners);
- New Zealand Forest Owners' Association (representing New Zealand's major forest owners);
- New Zealand Imported Tropical Timber Group (representing key timber importers);
- New Zealand Institute of Forestry (representing the professional forestry workforce);
- New Zealand Timber Industry Federation (representing timber processors); and
- The Wood Processors & Manufacturers Association of New Zealand (representing timber processors and manufacturers).

Industry stakeholders have actively engaged on the policy proposals that officials have developed, and this was reflected in the conversations during the workshops. There was mixed support for some of the policy options, and officials have drawn on the discussions to develop the preferred approaches. Key feedback included:

- the preference of stakeholders was towards a mandatory legal harvest system for both exporters and importers which MPI would regulate and provide services under;
- any additional measures implemented by the legislation must be proportionate to the low-level of risk in the domestic industry and leverage off the current documentation that is available in the system that can be readily verified;
- there is a need to guard against the risk of a new system providing no added value but adding extra regulatory costs;
- acknowledgement that a voluntary approach is unlikely to result in any significant change, so legislation is required;
- additional costs in the system must be kept as low as possible, as these will be passed down the supply chain and will ultimately result in the forest grower receiving less money for their wood; and
- the system should not try to pre-empt all potential market needs, but instead retain flexibility so that it can respond to market demands as required.

MPI supports the above key feedback. As a result of stakeholder engagement, further iterations of the Operating Model were drafted. This revised Operating Model was presented at various roundtable engagements throughout March 2021 to March 2022.

Additional Stakeholder Engagement

As a result of the earlier stakeholder engagement further iterations of the Operating Model were drafted. These versions incorporated the themes from previous stakeholder sessions. Relevant elements of the Operating Model were presented at various roundtable engagements throughout March 2021 to March 2022. Some of these engagements included:

- two engagement workshops were held in March/April 2021 that focused on determining a wood legality definition and registration;
- a presentation at the New Zealand Farm Forestry Association (NZFFA) Annual Conference;
- a presentation to a New Zealand Imported Tropical Timber Group (NZITTG) Council Meeting;
- a roundtable workshop facilitated by the New Zealand Forest Owners Association (NZFOA) in July 2021, and one in February 2022;
- a presentation to a Forest Products Exporters Committee (FPEC) meeting;
- a roundtable with Environmental Non-Government Organisations (ENGOS); and
- a roundtable with the Wood Processors and Manufacturers Association (WPMA) and the New Zealand timber Industry Federation (NZTIF).

The ENGO representatives were highly engaged on the policy intent. The discussion focussed on:

- broader forestry-related issues including deforestation, human rights violations, and climate change;
- the function of the proposed legislation and how curbing trade of illegal timber and timber products will be monitored; and
- issues experienced by systems operating internationally that the policy design needs to consider and address.

Engagement with Māori

Engagement with some Māori, including a webinar and presentation on the legal harvest proposals, as part of a larger Māori Forestry Symposium which included webinars on other forestry work programmes. The July 2021 NZFOA workshop was well attended and some of the key messages that came out of this meeting included:

- parties recognising the need for some form for assurance system and market access certainty;
- risks of not having a reputable assurance scheme are growing and represent a genuine threat to the supply chain (domestic and export);
- communications must be improved in both directions;
- There is a willingness to work cooperatively to find a solution to the registration process that works for all;
- defining “legality” is a top priority;
- the need for a system that works for all the stakeholders involved in the process: one that is transparent and easily understood, effective and efficient; and
- the need to understand what the ultimate product [legislation and regulations] will look like.