

Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill

Government Bill

As reported from the Environment Committee

Commentary

Recommendation

The Environment Committee has examined the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill would amend the Forests Act 1949 by inserting new Part 2A. It seeks to strengthen the integrity of the forestry and timber supply chains.

The bill would require the compulsory registration of forestry advisers and log traders. Regulations could be made on the recommendation of the Minister to set entitlements to registration, and exemptions, as well as the obligations on registered persons, and other related matters. The bill would establish the Forestry Authority to act as the regulatory body for forestry advisers and log traders. The Authority would be able to delegate any or all of its powers and functions to a forestry industry body or other person outside the public service. The bill would also give the Forestry Authority (or its delegate) rule-making powers to set forestry practice standards and a code of ethics.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss all minor, technical, or consequential amendments.

Purpose of new Part 2A

Clause 7 would insert new Part 2A into the Forests Act. New section 63A would set out the purpose of the new Part. We propose some amendments to new section 63A(1).

Paragraph (a) states that one purpose would be to support the continuous, predictable, and long-term supply of timber for domestic processing and export. We recommend amending this purpose to include supporting equity of access to timber for domestic processing and export.

We recommend inserting paragraph (aa) to include an additional purpose of supporting a more transparent and open market for log sales, through the provision of professional advice.

We recommend amending the purposes set out in paragraphs (c), (d), and (e) so that they also refer to the wood-processing sector, as well as the forestry sector.

Forestry Authority's functions and powers

New sections 63B to 63F would provide for the establishment of the Forestry Authority, and set out its functions and powers.

Establishment of the Forestry Authority

As introduced, new section 63B specifies that the Forestry Authority would be the Ministry or any person that is delegated the authority's functions. We recommend changing the reference from "Ministry" to "Secretary"; that is, the chief executive of the Ministry. This would ensure that the regulatory functions were vested in a legal person rather than a body with no legal personality.

Functions of the Forestry Authority

We recommend amending new section 63C(b)(ii) to expand the promotional role of the Forestry Authority to include promoting the benefits of using log traders, as well as forestry advisers.

We recommend amending new section 63C(g) to include, as a function of the Authority, the establishment of a process for resolving complaints, as well as disputes, relating to registered persons.

Additional criteria for delegations

New section 63D would enable the Secretary to delegate any or all of the Forestry Authority's functions or powers to a forestry industry body or other person outside the public service. Under the State Sector Act 1988, the Minister would be required to approve any delegation.

As introduced, subclause (2) would require the Minister to be satisfied that the body or person had "sufficient capacity and resources to properly perform the delegated functions and exercise the delegated powers". We recommend amending this to

instead require the Minister to be satisfied that the body or person “qualifies to be delegated the function or power”.

We also recommend setting out the criteria for determining whether the body or person is qualified to be delegated the function or power. The Minister should be satisfied that the body or person:

- has the capability to perform the function or exercise the power (including having robust systems, accountability measures, and administrative expertise)
- has experience and expertise in the forestry and wood-processing sector
- has broad industry support for them to perform the function or exercise the power
- would allow for a range of different parties who work in the forestry and wood-processing sector to have input into their governance
- would be more likely to perform the function, or exercise the power more timely, cost-effectively, and efficiently than it would have been otherwise.

We recommend inserting subclause (2A) accordingly.

Decision making should comply with natural justice

We recommend inserting new section 63EA to expressly provide that the Forestry Authority, or a delegate, must comply with the principles of natural justice when making decisions under certain provisions of the subpart. The decisions would include those relating to registration, complaints and disputes, and the management of the forestry register.

Power to obtain information from registered persons

Under new section 63F, the Forestry Authority would be able to require a registered log trader or a registered forestry adviser to provide it with information. It would do so by providing written notice to the registered party.

As introduced, subclause (2) would require the Authority to be satisfied that the information requested was necessary or desirable to assist it in carrying out its functions.

We think the criteria for exercising this power should be set out in the Act. We recommend amending subclause (2) to specify that the Forestry Authority may only seek information if it is satisfied that the information is needed to verify that a registered party is complying with their obligations, or to gather statistical information. We recommend inserting subclause (4) to make it clear that the Authority could only use the information it received for those two purposes.

We note concerns that the Authority might publish sensitive commercial information it received from registered persons. We recommend inserting subclause (5) to note that the Official Information Act 1982 would apply to the release of information by the Forestry Authority. This would cover situations where making the information available would disclose a trade secret or be likely to unreasonably prejudice a person’s commercial position.

Registration requirements for log traders and forestry advisers

Registration of log traders

New section 63G would require a person acting as a log trader to be registered, unless they were exempt from registration. We recommend amending this section to make it clear that an exemption would apply to a whole class of persons, rather than specific persons.

New section 63H(1) would set out the meaning of “log trader”, while subclause (2) would allow exemptions to the meaning to be made by regulation. However, we recommend amending the bill to provide some express exemptions, which we discuss below.

We also recommend amending the definition of “New Zealand log” to clarify that it must be a log grown in New Zealand on forest land. This would make it clear that the bill is about logs in the context of forestry.

Exemption for small-scale log traders

We recommend amending new section 63H(2) to enable small-scale log traders to be exempt from registration requirements.

We think that whether a log trader is considered small-scale should be determined by a threshold based on the volume of logs they trade. We recommend that the new section sets the threshold volume at 2,000 cubic metres a year, with regulations able to specify a different volume.

We acknowledge that introducing this threshold could create uncertainty about whether a person is required to register if their log volume is near the threshold. There could be situations where a person calculated in good faith that the exemption would apply to them, but as the year progressed their activity exceeded the threshold volume.

To provide some clarity for such persons, we recommend amending the bill to provide for the following:

- If the person carried out the activity in the previous year, they would not be required to register if their activity did not involve more than the threshold volume in that previous year, and does not involve more than the threshold volume in the current year.
- If the person did not carry out log trading in the previous full financial year, the new trader would not be required to register if their activity was not reasonably expected to go over the threshold volume. If it in fact does go over the threshold, they would be required to register.

To support the administration of the threshold volume exemption, the Ministry would develop further guidance for log traders.

Exemption for port companies and transporters

We recommend amending new section 63H(2) to specify that the definition of log trader would not include the physical act of transporting and shipping logs, or the associated logistical activities. This would make it clear that port companies and transporters are not included in the definition of log trader.

Registration of forestry advisers*Requirement to register, and exemptions to registration*

New section 63K would stipulate that a person must not, for reward, provide a “forestry adviser service” unless they are a registered forestry adviser who is authorised to provide that particular service.

New section 63L sets out what would constitute a “forestry adviser service”. We recommend amending it to exempt from registration requirements those occupations that are already subject to a statutory licensing or registration regime under another Act. The exemption would only relate to advice in their relevant professional capacity. It would include persons registered under, for example, the Real Estate Agents Act 2008, the Financial Service Providers Act 2008, the Lawyers and Conveyancers Act 2006, and the New Zealand Institute of Chartered Accountants Act 1996.

We also recommend amending new section 63L to exempt from registration requirements:

- providers of incidental services
- Ministers of the Crown or members of Parliament
- providers of advice on space plantings, riparian strips, or farm shelter belts.

We note that regulations could still be made by the Forestry Authority to exempt other classes of persons.

Decisions on an application for renewal of a registration

New section 63R would set out how a log trader or forestry adviser could apply for a renewal of their registration. New section 63S would require the Authority to renew the registration if they were satisfied the person was still entitled to be registered, and that the person was meeting their obligations under the Act. We recommend amending the latter so that the Authority would instead be required to renew a registration if they were satisfied the person had not engaged in “misconduct”. We discuss our proposed meaning of “misconduct” later in this commentary.

In the bill as introduced, if the Authority was declining an application for renewal, it would be required to notify the applicant of their decision, provide their reasoning, and inform the person about the right of review. We recommend also providing that if the person’s application was declined, they should be treated as if they were still registered until they had exhausted the right of review under new section 63W.

Conditions on a person's registration

New section 63T would enable the Forestry Authority to impose conditions on the registration of a forestry adviser, as long as they did not contravene any regulations made by the Minister.

We recommend amending new section 63T so that it would also allow conditions to be placed on a log trader's registration.

As introduced, the bill does not specify what the conditions on registration could relate to.

We recommend amending new section 63T to specify that regulations must be necessary and desirable for the purpose of the Act. They should also be reasonable.

For a forestry adviser, conditions should also only relate to:

- requirements for different categories of registration
- educational requirements, the recognition of relevant workplace experience, and professional development requirements that need to be met to achieve or maintain registration
- the advice that a forestry adviser can provide in relation to particular advisory service categories
- any other requirements necessary to provide assurance that the adviser will observe the code of ethics, practice standards, and generally accepted professional standards for applicable service categories.

For a log trader, conditions on registration should only be imposed if the Forestry Authority was satisfied the log trader had engaged in "unsatisfactory conduct". The conditions should only set requirements needed to monitor compliance with the log trader's obligations under Part 2A.

Measures to address unsatisfactory conduct or misconduct

We recommend inserting new section 63TA to set out the measures the Forestry Authority could take if it was satisfied that a registered person had engaged in unsatisfactory conduct or misconduct.

For unsatisfactory conduct, the Forestry Authority could impose or modify conditions on a registration for compliance monitoring purposes, or issue a notice to warn the person. In the case of log traders, the Authority could also issue a notice requiring the log trader to rectify an error or omission.

For misconduct, the Forestry Authority could suspend or decline to renew a person's registration, or consider whether to prosecute the person for an offence.

Suspension of registration for log traders or forestry advisers

As introduced, new section 63U would enable the Forestry Authority to suspend a person's registration if the person failed to meet their obligations under the new Part 2A. The Authority would need to give the person 15 working days' notice, provide reasoning, and allow the person to respond with any additional information.

We recommend amending proposed section 63U so that the Authority could only suspend a registration if it was satisfied that the registered person had engaged in “misconduct”. Our proposed amendment to new section 63Z would specify what “misconduct” would entail (which we discuss later).

Additionally, we recommend stipulating that if the Authority decided to suspend a person’s registration, it should notify the person of the decision and right of review.

Rights of review and appeal

As introduced, the bill would only enable a person who is dissatisfied with a decision set out in new section 63W about registration, or conditions on registration, to apply for a review by the Forestry Authority under new section 63Y. We recommend including the following decisions as reviewable in new section 63W: decisions about suspensions (under new section 63U), and the issuing of a notice to a log trader about unsatisfactory conduct (under new section 63TB). We note that all substantive decisions affecting registered persons’ rights would be reviewable prior to appeal to the court.

As introduced, the bill does not contain a right of appeal to the court.

We recommend inserting new section 63YA to provide for a right of appeal to the court on a reviewer’s decision about a decision by the Forestry Authority set out in new section 63W.

We also recommend stipulating in new section 63Y that a reviewer of a decision must notify the applicant of this right of appeal.

We also recommend inserting sections 63YB to 63YF to include provisions for the technical aspects of appeals to the High Court. They would cover the time periods for appeals, and allow for appeals to the Court of Appeal on questions of law.

Complaints and dispute resolution

Providing for separate processes for complaints and disputes

As introduced, new section 63Z sets out the process for complaints and disputes. If a person had a complaint about a registered person, they would need to take the matter through whatever complaint process was set by regulation. If a forest owner or registered party had a dispute and the dispute was still unresolved after that process, it could be referred to mediation or to arbitration under the Arbitration Act 1996.

We think that there should be two distinct processes for complaints about unsatisfactory conduct or misconduct, and disputes about commercial matters. We discuss these below. We recommend amending new section 63ZX and inserting new section 63ZXA to provide for separate regulations to be made for the complaints and disputes resolution processes.

Complaints about unsatisfactory conduct or misconduct

We recommend amending section 63Z to provide that any person could make a complaint to the Forestry Authority about a forestry adviser or log trader that they consid-

ered engaged in unsatisfactory conduct or misconduct. The Forestry Authority could also initiate a complaint itself. The complaints process would be established by regulations.

We recommend setting out in the new section what would constitute unsatisfactory conduct or misconduct.

In addition to the description of misconduct, we recommend that the Minister be able to specify by regulation what serious offences or serious matters would constitute misconduct.

Disputes about commercial matters

We recommend inserting new section 63ZAAA to provide for the resolution of disputes about commercial matters between owners of forests or proposed forests, registered or previously registered log traders, and registered or previously registered forestry advisers. One of those parties would need to refer the matter for dispute resolution. It would then be required to follow a dispute resolution process established by regulations under this legislation. If the dispute remained unresolved, the parties could agree to refer the dispute to mediation or arbitration.

Forestry registers

New section 63ZG would require the Forestry Authority to make forestry registers available for public inspection.

Subsection (2) would allow people to apply to the Forestry Authority to have their physical address withheld from the register on the grounds of personal safety. We recommend amending this to add privacy as another reason for applying to have address details withheld from the public register.

However, we also recommend providing that the Secretary would be able to give a person the physical address of a registered person (that had been withheld from the register under subsection (2)) if the Secretary was satisfied it was needed to meet a legal right or obligation, such as serving a legal notice. The Secretary should first inform the registered person of the name of the person that the address would be given to, and on what date.

Cost recovery

New section 63ZI would require the Minister to ensure that the costs of administering the new regimes under Part 2A were recovered through fees, levies, or otherwise. New section 63ZK would require the Minister to consult with people who would be substantially affected before regulating for a cost to be imposed. The exact value of the fee would not need to be consulted on, as long as it was within a reasonable range of what was consulted on.

We recommend amending proposed section 63ZK to specifically include tangata whenua, forestry industry bodies, and unions as substantially affected persons.

For consistency, we also recommend the same amendment to proposed section 63ZM(2)(b), which relates to increasing a fee during the course of a financial year.

Penalties

New section 63ZQ would impose an accumulating penalty if a person did not pay a fee, levy, or charge by the due date. There would be scope for the Forestry Authority to waive any penalty.

However, new sections 63J and 63N would also impose an obligation on registered persons to pay any fee, levy, or charge imposed under the authority of regulations. Under new sections 63ZA and 63AB, a failure to comply with the obligation would be an offence punishable by a penalty.

We see a risk that a person could be punished twice for the same wrong. Therefore, we recommend deleting new section 63ZQ (and, therefore, 63ZR). We also note that there would be other means to incentivise timely payment of fees. For example, registration could be suspended due to non-payment of fees.

Regulations and rules

New sections 63ZU to 63ZZD would provide for the making of regulations and rules. As introduced, regulations could be made on the recommendation of the Minister. Rules could be made by the Forestry Authority.

Requirements for regulations and rules

Regulations and the purpose of new Part 2A

As introduced, new section 63ZU would require the Minister to be satisfied that any regulations were not inconsistent with the purpose of Part 2A, as set out in new section 63A. Similarly, new section 63ZZB would require the Forestry Authority to be satisfied that any rules were not inconsistent with the purpose.

We propose requiring a higher threshold for regulations and rules to meet the purpose of new Part 2A. We recommend amending these new sections so that the regulations or rules must be necessary or desirable for the purpose of new Part 2A.

Consultation

New section 63ZU would require the Minister to be satisfied, before recommending regulations, that there had been appropriate consultation with “affected persons or representatives of persons substantially affected”. New section 66ZZB would impose a similar requirement on the Forestry Authority, before making any rules.

We recommend amending new sections 63ZU(1)(c) and 66ZZB to state that “affected persons or representatives of persons substantially affected” includes tangata whenua, industry bodies, and trade unions.

We note that the bill stipulates that a failure to consult would not affect the validity of any regulations or rules made.

Rules made by persons delegated powers from the Forestry Authority

As discussed earlier, new section 63D would enable functions or powers of the Forestry Authority to be delegated to persons outside the public service. New section 63ZV would enable regulations to be made authorising the delegated person to make rules in relation to their delegated function or power. The delegated person would need to be satisfied that the rules met all of the requirements in new section 63ZU.

We consider that the Minister should be satisfied that the rules meet the requirements as set out in new section 63ZU. We recommend amending new section 63ZV accordingly.

Exemptions made by notice must include reasoning and may be subject to expiry

New section 63ZW would enable the Minister to make regulations about specified matters relating to registration. Some of the matters relate to the Minister's power to grant exemptions from registration as a log trader or forestry adviser.

We propose moving the power to regulate for exemptions to registration requirements to a new section 63ZZE, and that they should be made by the Forestry Authority by notice, rather than by regulations. We recommend requiring that the notice should specify the reasoning for the exemption.

We also recommend inserting new section 63ZZE(2) to require the Minister to determine whether an exemption should be granted for a specified period of no more than 5 years, or for an indefinite period but kept under review.

Rules for forestry practice standards

New section 63ZZC would enable the Forestry Authority to make rules that set practice standards for log traders' forestry operations and forestry advisers' delivery of forestry services. We recommend amending the new section to require the Minister to recommend the rules in order for them to be made.

Subsection (2) clarifies that the practice standards could be in relation to matters such as land preparation, biosecurity, or sale and purchase agreements. We recommend including "valuation" as a category of forestry adviser services where practice standards could be set.

We recommend inserting subsection (2A) to make it clear that rules must not impose any condition or requirement that is properly a matter for commercial agreement between parties.

Rules about a code of ethics

New section 63ZZD would enable the Forestry Authority to make rules to set a code of ethics for registered forestry advisers. We recommend amending the new section to require the Minister to recommend the rules in order for them to be made.

We also recommend amending proposed section 63ZZD to delete reference to "appropriate professional fees", as we do not consider that these should be regulated by a code.

Compliance with international trade obligations

A number of submitters raised the question of whether this bill would, in its introduced form, have the potential to breach New Zealand's international trade obligations. The committee took advice on this matter and has made a number of amendments, including inserting new clause 63ZZC(2A) making it clear that price controls would not be able to be imposed by rules. In light of this the committee is confident that this bill is compliant with New Zealand's international obligations.

National Party minority view

National does not support the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill for multiple reasons which are listed below.

National are disappointed that Government members blocked Ministry of Foreign Affairs and Trade officials briefing the select committee on what consequences this bill could potentially have on New Zealand trade that could negatively impact New Zealand through the World Trade Organization (WTO).

Multiple reasons for not supporting this bill include:

- The rushed process in which this bill has been put through under urgency through the Budget when there is no justifiable reason for the urgency.
- The lack of any reasonable level of consultation with the industry that it affects.
- This bill would create red tape in requiring everyone in the forestry industry to be registered. This will also incorporate scientists, machine operators, and anyone who gives any advice related to the forestry sector.
- The bill "enables" the Government to create regulations that would control when and where growers supply the market, which potentially affects all primary sectors and is, not surprisingly, opposed by a broad cross section of them in addition to forestry.
- No evidence has been produced to show a national problem with supply. Indeed the number of established supply agreements suggests the opposite.
- The negative impacts are likely to be felt most acutely by Māori (who are significant forest land owners) and numerous mum and dad Kiwi retirement investors
- There has been no cost analysis done on the bill, with the majority of submitters saying the bill, in fact, adds cost not lowers it for the many parties involved in any one forestry block. The New Zealand Institute of Research concludes this bill will reduce GDP.
- Clause 63ZZ of the bill also gives the Government the ability to introduce a levy which may benefit a limited number of sawmills but will, overall, increase cost to the sector.
- This clause could also result in a breach of New Zealand's world trade agreements by forcing logs to be sent domestically at a subsidised price.

- Even if the bill is found not to contravene trade law, it is certainly poor trade policy, sending a signal of domestic protectionism at the very time New Zealand is urging trade partners to maintain their commitment to free trade.
- The bill would reduce confidence in the industry which means less investment in the sector and a resultant decrease in the jobs that the investment would have generated throughout the supply chain, from planting right through to felling and transporting to domestic processors or overseas.

Appendix

Committee process

The Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill was referred to the committee on 14 May 2020. The closing date for submissions was 21 May 2020. We received and considered submissions from 631 interested groups and individuals. We heard oral evidence from 37 submitters via video link.

We received advice from the Ministry for Primary Industries. The Regulations Review Committee reported to us on powers contained in new sections 63ZV, 63ZW, 63ZY, and 63ZZ.

Committee membership

Dr Duncan Webb (Chairperson)

Dr Liz Craig

Hon Jacqui Dean

Hon Nathan Guy

Jenny Marcroft

Hon Scott Simpson

Erica Stanford

Chlöe Swarbrick

Angie Warren-Clark

Hamish Walker participated in our consideration of this bill.

**Forests (Regulation of Log Traders and Forestry
Advisers) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Shane Jones

Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act **2020**.

2 Commencement

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(1) This Act comes into force on a date appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made bringing different provisions into force on different dates.

(2) Any provisions of this Act that have not earlier been brought into force come into force on the ~~day that is 2 years after~~ second anniversary of the day on which this Act receives the Royal assent. 10

3 Principal Act

This Act amends the Forests Act 1949 (the **principal Act**).

Part 1

Amendments to principal Act

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4 Section 2 amended (Interpretation)

(1) In section 2(1), insert in their appropriate alphabetical order:

code of ethics means the code of ethics set under **section 63ZZD**

financial year means a period of 12 months commencing on 1 July and ending with 30 June

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| | | |
|-----|--|----|
| | forestry adviser service has the meaning given in section 63L | |
| | Forestry Authority or Authority means the Ministry (but see section 63D, which allows a function of the Forestry Authority to be delegated outside the Public Service) has the meaning given in section 63B | |
| | forestry practice standards means the practice standards set under section 63ZZC | 5 |
| | forestry register has the meaning given in section 63ZC | |
| | log trader has the meaning given in section 63H | |
| (2) | In section 2(1), definition of registered , after paragraph (b), insert: (c) in Part 2A , registered as a log trader or forestry adviser under Part 2A | 10 |
| 5 | New sections 2A and 2B inserted After section 2, insert: | |
| 2A | Transitional, savings, and related provisions The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms. | 15 |
| 2B | Parts of this Act that bind the Crown The following parts of this Act bind the Crown: (a) Part 2A ; (b) Part 3A. | |
| 6 | Section 13 amended (Protection of forestry officers, etc) | 20 |
| (1) | <u>In section 13, delete “or to an Authority under section 71A”.</u> | |
| (2) | In section 13, insert as subsection (2): | |
| (2) | Subsection (1) also applies to a person outside the Public Service to the extent that the person is acting under a delegation referred to in section 63D (that is, acting as the Forestry Authority under Part 2A). | 25 |
| 7 | New Part 2A inserted After Part 2, insert: | |
| | Part 2A Regulation of log traders and forestry advisers | |
| 63A | Purpose of this Part | 30 |
| (1) | The purpose of this Part is to— (a) support the continuous, predictable, and long-term supply of timber, <u>and equity of access to timber</u> , for domestic processing and export; and | |

- (aa) support a more transparent and open market for log sales through the provision of professional advice; and
- (b) improve the confidence and informed participation of businesses and investors in the forestry sector; and
- (c) contribute to improved economic, employment, and environmental outcomes from the forestry and wood-processing sector, nationally and for local communities; and 5
- (d) contribute to improved climate change outcomes from the forestry and wood-processing sector; and
- (e) contribute to the development, and improve the long-term sustainability, ~~of domestic timber processing and the wider forestry~~ the forestry and wood-processing sector. 10
- (2) To ~~this~~ that end, this Part—
- (a) establishes a regulatory system for log traders and forestry advisers; and
- (b) imposes obligations on registered log traders and forestry advisers to ensure that logs grown in New Zealand are bought and sold in a way that is transparent and professional; and 15
- (c) requires those who provide advice about forestry matters, including the application of the emissions trading scheme to forestry activities (within the meaning of the Climate Change Response Act 2002), to register as forestry advisers and meet regulatory standards. 20

Subpart 1—Registration and related matters

Forestry Authority

63B Forestry Authority

For the purposes of this Part, the Forestry Authority is the ~~Ministry Secretary~~ or any person to whom a function of the Forestry Authority is delegated (*see section 63D*). 25

63C Functions

The functions of the Forestry Authority are as follows:

- (a) to establish and maintain a registration system for log traders and forestry advisers: 30
- (b) to promote to persons in the forestry supply chain—
- (i) awareness of the registration system for log traders and forestry advisers; and
- (ii) the benefits of using registered log traders and registered forestry advisers: 35

- (c) to develop, maintain, and promote to registered persons the forestry practice standards:
- (d) to develop, maintain, and promote to registered forestry advisers a code of ethics for registered forestry advisers:
- (e) to facilitate the education and professional development of registered persons: 5
- (f) to monitor the compliance of registered persons with their obligations under this Part, including compliance with applicable forestry industry agreements (*see section 63ZW(i)*):
- ~~(g) to establish a process for receiving complaints and resolving disputes relating to registered persons:~~ 10
- (g) to establish a process for resolving complaints and disputes relating to registered persons:
- (h) to establish and maintain public registers of registered persons.
- 63D Functions or powers may be delegated outside Public Service** 15
- (1) The Secretary may, under section 41(2A) of the State Sector Act 1988, delegate any or all of the Forestry Authority's functions or powers under this Part, in whole or in part, to a forestry industry body or other person outside the Public Service.
- (2) However, the Minister must not approve the delegation (as required by section 41(2A)(a) of the State Sector Act 1988) unless the Minister is satisfied that the person ~~has sufficient capacity and resources to properly perform the delegated functions and exercise the delegated powers~~ qualifies to be delegated the function or power. 20
- (2A) A body or person **qualifies to be delegated** a function or power if— 25
- (a) they have the capability to perform the function or exercise the power (including having robust systems, accountability measures, and administrative expertise); and
- (b) they have experience and expertise in the forestry and wood-processing sector; and 30
- (c) there is broad industry support for them to perform the function or exercise the power; and
- (d) they will allow for a range of different parties who work in the forestry and wood-processing sector to have input into their governance; and
- (e) the performance of the function, or exercise of the power, by them is likely to be more timely, cost-effective, and efficient than it would have been otherwise. 35
- (3) This section does not limit the delegation of functions or powers to other persons under section 41 of the State Sector Act 1988.

63E Oversight of functions and powers delegated outside Public Service

- (1) This section applies if a function or power is delegated to a person outside the Public Service in accordance with **section 63D**.
- (2) The ~~Ministry~~ Secretary may audit the person's performance of the function or exercise of the power at intervals determined by the ~~Ministry~~ Secretary and notified to the person at least 3 months in advance of the first audit to occur after the intervals are determined or changed. 5
- (3) An audit may include physical inspection of the person's place of business.
- (4) The ~~Ministry~~ Secretary may also require the person, by notice, to provide the ~~Ministry~~ Secretary with the information or class of information specified in the notice. 10
- (5) The person must provide the requested information—
 - (a) in writing; and
 - (b) within 10 working days after the date of the notice.
- ~~(6) The person must continue to comply with audit requirements and information requests after the delegation is revoked (see section 42 of the State Sector Act 1988), but only to the extent that the requirements or requests relate to the person's performance of delegated functions or exercise of delegated powers. 15~~
- (6) The person must comply with audit requirements and information requests to the extent that they relate to the person's performance of delegated functions or exercise of delegated powers, and must continue to do so after the delegation is revoked (see section 42 of the State Sector Act 1988). 20
- (7) See section 41(2B) to (2F) of the State Sector Act 1988, which provides additional oversight mechanisms for a delegation outside the Public Service.

63EA Decision making must comply with natural justice

The Forestry Authority, including any person outside the Public Service who carries out a delegated function or power, must comply with the principles of natural justice when considering and making a decision under, or in relation to, any of **sections 63G to 63Y, 63Z, 63ZAAA, and 63ZC to 63ZH**. 25

63F Power to obtain information from registered persons

- (1) The Forestry Authority may, by notice to a registered log trader or forestry adviser, require the registered person to provide the Authority with the information or class of information specified in the notice. 30
- ~~(2) Before it issues a notice, the Authority must be satisfied that the information is necessary or desirable to assist the Authority in carrying out its functions under this Part. 35~~
- (2) Before it issues a notice, the Authority must be satisfied that the information is required to—

- (a) verify that a registered log trader or registered forestry adviser is complying with their obligations under this Part; or
 - (b) gather statistical information for understanding the forestry supply chain.
- (3) The registered person must comply with the notice—
 - (a) in writing; and
 - (b) within a reasonable time.
- (4) The Authority may use the information only for purposes related to those specified in **subsection (2)**.
- (5) See section 9 of the Official Information Act 1982 for reasons for the Forestry Authority to withhold any official information it holds (including where making the information available would disclose a trade secret or be likely unreasonably to prejudice a person's commercial position).

Log trader registration

63G Log traders must be registered

- (1) A person must not act as a log trader unless the person—
 - (a) is a registered log trader; or
 - (b) is within a class of persons who are exempt from the requirement to be registered (see ~~section 63ZW(a)~~ **63ZZE(1)(a)(i)**).
- (2) A person must not falsely hold out that that person, or any other person,—
 - (a) is a registered log trader; or
 - (b) is exempt from the requirement to be registered.
- (3) To avoid doubt, a new trader under **section 63H(2)(b)** must register as soon as that paragraph applies (when, at any time in the current financial year, their activity in that financial year is either reasonably expected to, or does in fact, involve at least the threshold volume of logs).

63H Meaning of log trader

- (1) A **log trader** is any of the following:
 - (a) a person who, in trade,—
 - (i) buys New Zealand logs, whether after harvest or in the form of trees to be harvested at an agreed time, and whether or not the person intends to on-sell the logs; or
 - (ii) exports New Zealand logs; or
 - (iii) processes New Zealand logs that the person has grown themselves;
 - (b) a person who does any of the things specified in **paragraph (a)** as the agent for another person:

- (c) a company that, in trade, transfers the ownership of New Zealand logs to or from a related company, whether the transfer relates to logs after harvest or in the form of trees to be harvested at an agreed time.
- ~~(2) However, **subsection (1)** does not include a transaction or transfer to which an exemption applies under regulations made under **section 63ZW(b)**.~~ 5
- (2) However, a **log trader** does not include a person (including a company) whose only activity covered by **subsection (1)** meets any of the following criteria:
- (a) if the person carried out the activity in the previous full financial year,—
- (i) the person’s activity in that year involved less than the threshold volume of logs; and 10
- (ii) the person’s activity in the current financial year does not in fact involve more than the threshold volume of logs:
- (b) if the person did not carry out the activity in the previous full financial year, the person’s activity in the current financial year (as a **new trader**) is reasonably expected by that person not to, and does not in fact, involve more than the threshold volume of logs: 15
- (c) the activity is activity described in **subsection (1)(c)** that is within a class of transactions or transfers for which there is an exemption (*see **section 63ZZE(1)(b)***):
- (d) the activity is the shipping or transporting of logs, or associated logistical activities. 20
- (3) In this section,—
- New Zealand log** means a log grown in New Zealand on forest land
- related company** has the meaning given in section 2(3) of the Companies Act 1993: 25
- threshold volume** means—
- (a) 2,000 cubic metres per year, unless **paragraph (b)** applies; or
- (b) any volume specified by regulations made under **section 63ZW(aa)**.
- 63I Entitlement to be registered log trader**
- (1) A person is entitled to be ~~a registered~~ registered as a log trader if the Forestry Authority is satisfied that the person— 30
- (a) is a fit and proper person to be a registered log trader; and
- ~~(b) has applied for registration in accordance with **section 63O**; and~~
- (c) meets the entitlement criteria set by regulations made under **section 63ZW(f)**. 35
- (2) In determining whether a person is a fit and proper person, the Authority must take into account—
- (a) the matters set out in regulations made under **section 63ZW(h)**; and

- (b) any other matters that the Authority considers relevant.

63J Obligations of registered log trader

A registered log trader must—

- (a) adhere to the forestry practice standards (*see* **section 63ZZC**), ~~as they apply to registered log traders~~; and 5
- (b) adhere to any agreement—
- (i) that is entered into by the registered log trader or an organisation to which they belong; and
- (ii) that is identified as an applicable forestry industry agreement by regulations made under **section 63ZW(i)**; and 10
- (c) continue to meet the criteria for entitlement to be a registered log trader; and
- (d) keep records as required by regulations made under **section 63ZW(j)**; and
- (e) report to the Forestry Authority as required by regulations made under **section 63ZW(k) and (l)**; and 15
- (f) comply with any other obligations that apply to registered log traders under this Part, including obligations set by regulations made under **section 63ZW(n)**.

Forestry adviser registration 20

63K Forestry advisers must be registered

- (1) A person must not, for reward, provide a forestry adviser service unless the person—
- (a) is a registered forestry adviser who is authorised to provide that service; or 25
- (b) is within a class of persons who are exempt from the requirement to be registered or authorised (*see* ~~**section 63ZW(a)**~~ **63ZZE(1)(a)(ii)**); or
- (c) is within a class of persons who are exempt from the requirement to be authorised to provide that service (*see* **section 63ZZE(1)(a)(iii)**).
- (2) A person must not falsely hold out that that person, or any other person,— 30
- (a) is a registered forestry adviser; or
- (b) is authorised to provide a forestry adviser service; or
- (c) is exempt from the requirement to be registered or authorised.

63L Meaning of forestry adviser service

- (1) A person ~~(A)~~ provides a **forestry adviser service** if, in the ordinary course of business, ~~A provides~~ they provide any of the following services to a client: 35

- (a) giving advice that relates to—
- (i) the establishment, management, or protection of a forest:
 - (ii) the management or protection of land used, or intended to be used, for any purpose in connection with a forest or proposed forest: 5
 - (iii) the appraisal, harvest, sale, or utilisation of timber or other forest produce:
 - (iv) the appraisal of a forest, forest land, or other forestry sector assets:
 - (v) the application of the emissions trading scheme to forestry activities (within the meaning of the Climate Change Response Act 2002): 10
 - (vi) the beneficial effects of forests (including, for example, how they contribute to environmental and economic outcomes):
- (b) acting on behalf of another person in relation to their sale or purchase of timber or other forest produce: 15
- (c) making inspections or preparing reports in connection with another forestry adviser service:
- (d) any other service identified as a forestry adviser service by regulations made under **section 63ZW(c)**.
- ~~(2) However, **subsection (1)** does not include the provision of a service to which an exemption applies under regulations made under **section 63ZW(d)**.~~ 20
- (2) However, a person does not provide a **forestry adviser service** if their only activity covered by **subsection (1)** is—
- (a) incidental to, and not the principal part of, their business; or
 - (b) the provision of advice on space plantings, riparian strips, or farm shelter belts; or 25
 - (c) the provision of advice only in their professional capacity as a member of an occupation that is subject to a licensing or registration regime under another Act (for example, the Real Estate Agents Act 2008, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the Lawyers and Conveyancers Act 2006, or the New Zealand Institute of Chartered Accountants Act 1996); or 30
 - (d) any activity in their capacity as a Minister of the Crown or a member of Parliament; or
 - (e) the provision of a service that is within a class of services for which there is an exemption (see **section 63ZZE(1)(c)**). 35
- 63M Entitlement to be registered forestry adviser**
- (1) A person is entitled to be ~~a registered~~ registered as a forestry adviser if the Forestry Authority is satisfied that the person—

- (a) is an individual; and
 - (b) is a fit and proper person to provide a forestry adviser service; and
 - ~~(c) has applied for registration in accordance with **section 63O**; and~~
 - (d) meets ~~any other criteria~~ the entitlement criteria set by regulations made under **section 63ZW(f)**. 5
- (2) In determining whether a person is a fit and proper person, the Authority must take into account—
- (a) the matters set out in regulations made under **section 63ZW(h)**; and
 - (b) any other matters that the Authority considers relevant.
- 63N Obligations of registered forestry adviser** 10
- A registered forestry adviser must—
- (a) adhere to the forestry practice standards (*see* **section 63ZZC**), ~~as they apply to registered forestry advisers~~; and
 - (b) adhere to the code of ethics for registered forestry advisers (*see* **section 63ZZD**); and 15
 - (c) adhere to any agreement—
 - (i) that is entered into by the registered forestry adviser or an organisation to which they belong; and
 - (ii) that is identified as an applicable forestry industry agreement by regulations made under **section 63ZW(i)**; and 20
 - (d) continue to meet the criteria for entitlement to be a registered forestry adviser; and
 - (e) comply with any conditions of the registration, whether imposed by the Forestry Authority under **section 63T** or by regulations made under **section 63ZW(m)**; and 25
 - (f) keep records as required by regulations made under **section 63ZW(j)**; and
 - (g) report to the Forestry Authority as required by regulations made under **section 63ZW(k) and (l)**; and
 - (h) comply with any other obligations that apply to registered forestry advisers under this Part, including obligations set by regulations made under **section 63ZW(n)**. 30

Applications for registration

- 63O Application for registration**
- (1) An application for registration as a log trader or forestry adviser must— 35
- (a) be made to the Forestry Authority ~~on~~ in the form approved by the Authority for that purpose; and

- (b) include the information specified by regulations made under **section 63ZW(o)**; and
- (c) be accompanied by payment of the application fee that is set by regulations made under **section 63ZY**.
- (2) A person must not provide false or misleading information in an application for registration. 5
- 63P Decision on application for registration**
- (1) This section applies when the Forestry Authority receives an application made in accordance with **section 63O** for registration as a log trader or forestry adviser. 10
- (2) If the Authority is satisfied that the applicant is entitled to be registered, the Authority must—
- (a) register the applicant; and
- (b) notify the applicant of the following: 15
- (i) the date ~~from~~ on which the registration has effect;
- (ii) the date on which the registration will expire if it is not renewed (*see **section 63Q***);
- (iii) for a forestry adviser, any conditions of the registration (*see **section 63T***);
- (iv) for a forestry adviser, which forestry adviser services the person is authorised to provide. 20
- (3) If the Authority declines the application, it must notify the applicant of—
- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the right of review under **section 63W**. 25

Renewal of registration

63Q Registrations expire unless renewed

- (1) The registration of a log trader or forestry adviser expires ~~on~~ at the end of the last day of the registration period set by regulations made under **section 63ZW(p)**, unless ~~an application for renewal is made before that date~~ the registration is renewed in accordance with **sections 63R and 63S**. 30
- ~~(2) **Sections 63R and 63S** apply to the renewal of the registration.~~

63R Application for renewal of registration

- (1) An application for renewal of the registration of a log trader or forestry adviser must— 35

- (a) be made to the Forestry Authority ~~on~~ in the form approved by the Authority for the purpose; and
- (b) be made at least 3 months before the date on which the registration is due to expire; and
- (c) include the information specified by regulations made under **section 63ZW(o)**; and 5
- (d) be accompanied by payment of the application fee that is set by regulations under **section 63ZY**.
- (2) A person must not provide false or misleading information in an application ~~under this section~~ for renewal. 10
- 63S Decision on application for renewal of registration**
- (1) This section applies when the Forestry Authority receives an application made in accordance with section 63R from a registered log trader or forestry adviser for renewal of their registration.
- (2) If the Authority is satisfied that the applicant is still entitled to be registered ~~and is meeting their obligations under the Act~~ has not engaged in misconduct (as defined by section 63Z), the Authority must— 15
- (a) renew the registration, with effect ~~from~~ on the day after the date on which the previous registration expires; and
- (b) notify the applicant of the following: 20
- (i) the date ~~from~~ on which the renewal has effect;
- (ii) the date on which the registration will expire (at the end of that day) if it is not renewed;
- (iii) ~~for a registered forestry adviser~~, any change in the conditions of the registration (*see* **section 63T**): 25
- (iv) ~~for a registered~~ forestry adviser, any change to the forestry adviser services that the person is authorised to provide.
- (3) ~~If the Authority declines the application, it must notify the applicant of—~~
- (a) ~~the decision; and~~
- (b) ~~the reasons for the decision; and~~ 30
- (c) ~~the right of review under section 63W.~~
- (3) If the Authority declines the application,—
- (a) it must notify the applicant of—
- (i) the decision; and
- (ii) the reasons for the decision; and 35
- (iii) the right of review under section 63W; and

- (b) the person must be treated as if they were still registered until they have exhausted that right of review.

Registration conditions

63T Conditions of forestry adviser registration

- (1) The Forestry Authority may, subject to subsection (1A) and any restrictions set out in regulations made under **section 63ZW(m)**,— 5
- (a) impose conditions on the registration of a forestry adviser—log trader or forestry adviser—any conditions it thinks fit; and
- (b) at any time, modify the conditions of registration ~~as it thinks fit.~~
- (1A) The Authority may only impose conditions that the Authority considers necessary or desirable for the purpose of this Part, and that are reasonable. 10
- (1B) Conditions on the registration of a log trader—
- (a) may only be imposed if the Forestry Authority is satisfied that the log trader has engaged in unsatisfactory conduct (as defined in **section 63Z**); and 15
- (b) may only set requirements needed to enable the Forestry Authority to monitor the person’s compliance with their obligations under this Part.
- (1C) Conditions on the registration of a forestry adviser may only relate to 1 or more of the following:
- (a) requirements relating to different categories of registration established by the Authority: 20
- (b) requirements for education, relevant workplace experience, or professional development that must be met to achieve or maintain registration;
- (c) the advice that a forestry adviser may provide under different categories of forestry adviser service established by the Forestry Authority: 25
- (d) any other requirements needed to ensure that the forestry adviser will comply with their obligations under this Part and provide services, in their capacity as a registered person, in accordance with the practice standards, code of ethics, and generally accepted professional standards.
- (2) Whenever the Authority decides to impose or modify a condition of registration, the Authority must give the registered person notice of— 30
- (a) the decision; and
- (b) the reasons for the decision; and
- (c) the right of review under **section 63W**.
- (3) A new or modified condition has effect on and from the effective date specified by the Forestry Authority in the notice or, if no effective date is specified, the date of the notice. 35

- (4) Conditions imposed on a registered forestry adviser under this section apply in addition to any general conditions of registration for forestry advisers that are imposed by regulations made under **section 63ZW(m)**.

Measures to address unsatisfactory conduct or misconduct

63TA Measures to address unsatisfactory conduct or misconduct

5

- (1) If the Forestry Authority is satisfied that a person has, in their capacity as a registered person, engaged in unsatisfactory conduct (as defined in **section 63Z**), the Forestry Authority may—

(a) impose or modify a condition of the person’s registration under **section 63T** to enable the Forestry Authority to monitor the person’s compliance with their obligations under this Part:

10

(b) issue a notice to warn the person that the Forestry Authority may consider a failure to address the unsatisfactory conduct as satisfying the test in **section 63Z** for misconduct:

(c) if the person is a log trader, issue a notice under **section 63TB** to require the person to rectify any error or omission.

15

- (2) If the Forestry Authority is satisfied that a person has, in their capacity as a registered person, engaged in misconduct (as defined in **section 63Z**), the Forestry Authority may—

(a) decline an application for renewal of the person’s registration under **section 63S**:

20

(b) suspend the person’s registration under **section 63U**:

(c) consider whether there are grounds to prosecute the person for an offence under **section 63ZA**.

63TB Notice requiring log trader to address unsatisfactory conduct

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- (1) This section applies if the Forestry Authority is satisfied that—

(a) a person has, in their capacity as a registered log trader, engaged in unsatisfactory conduct (as defined in **section 63Z**); and

(b) the unsatisfactory conduct involves an error or omission on the part of the person.

30

- (2) The Authority may issue the person with a notice that requires the person—

(a) to rectify, at their own expense, the error or omission; or

(b) where it is not practicable to rectify the error or omission, to take steps to provide, at the person’s own expense, relief, in whole or in part, from the consequences of the error or omission.

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- (3) A notice under this section must include notice of the person’s right of review, under **section 63W**, of the decision to issue the notice.

- (4) A notice under this section may be enforced in all respects as if it were an order of the District Court on the filing of a sealed copy in that court.

Suspension and revocation of registration

63U Suspension of registration ~~if obligations not met~~ for misconduct

- (1) If the Forestry Authority is satisfied that a registered log trader or forestry adviser ~~fails to meet their obligations under this Part~~ has engaged in misconduct (as defined by **section 63Z**) in their capacity as a registered person, the Forestry Authority may suspend the person's registration. 5
- (2) However, the ~~Forestry~~ Authority must first—
- (a) give the registered person 15 working days' notice of its intention to suspend their registration, including reasons for the decision to suspend; and 10
 - (b) in its notice of intention, invite the person to provide information to satisfy the Forestry Authority that the decision to suspend is inappropriate.
- (2A) If the Authority decides to suspend the person's registration, it must notify the person of— 15
- (a) the decision; and
 - (b) the right of review under **section 63W**.
- (3) A suspension has effect from ~~the date on which~~ when it is notified to the registered person (the **suspension date**). 20
- (4) The suspension continues until the start of—
- (a) ~~the date that is 3 months after the suspension date~~ the date on which the person has exhausted their right of review in respect of the decision to suspend (after which the registration is revoked under **section 63V**); or 25
 - (b) any earlier date on which the Authority notifies the person that the suspension is lifted. 30
- (5) The Authority may lift the suspension if it is satisfied that the reasons for the suspension no longer apply.
- (6) While a person's registration is suspended, the person must be treated as not being registered under this Part. 30
- 63V Revocation of registration**
- (1) The Forestry Authority must revoke the registration of a log trader or forestry adviser—
- (a) if the registration is suspended under **section 63U** and ~~the suspension is not lifted before the date that is 3 months after the suspension date~~ the person has exhausted their right of review in respect of the decision to suspend; or 35
 - (b) at the request of the registered person.

- (2) The revocation has effect ~~from~~ on the date on which it is notified to the registered person.

Review of decisions

63W Right of review of certain decisions of Forestry Authority

- (1) A person who is dissatisfied with any of the following decisions made by the Forestry Authority may apply for a review of the decision: 5
- (a) a decision to decline an application for registration as a log trader or forestry adviser (*see* **section 63P**):
 - (b) a decision to decline an application for renewal of the registration of a log trader or forestry adviser (*see* **section 63S**): 10
 - (c) a decision to impose or modify a condition of registration ~~as a forestry adviser~~ (*see* **section 63T**):
 - (d) a decision to issue a notice requiring a registered log trader to rectify an error or omission (*see* **section 63TB**):
 - (e) a decision to suspend the registration of a log trader or forestry adviser (*see* **section 63U**). 15
- (2) An application for review of the decision must—
- (a) be made to the Secretary, in writing, within 30 days after the decision was notified to the applicant; and
 - (b) state the grounds on which it is believed that the decision was inappropriate. 20
- (3) The decision sought to be reviewed remains valid unless and until altered by the Forestry Authority, subject to **section 63S(3)(b)**.

63X Who reviews decision

- (1) The reviewer of the decision referred to in **section 63W(1)** must be,— 25
- (a) for a decision made by the Secretary, a person appointed by the Minister under **subsection (2)**; and
 - (b) for a decision made by a person who is acting under the delegated authority of the Secretary,— 30
 - (i) a person who was not involved in making the decision and who is designated by the Secretary; or
 - (ii) the Secretary.
- (2) The Minister may appoint a person for the purpose of **subsection (1)(a)** on any terms and conditions that the Minister considers appropriate (including conditions as to the payment of fees). 35

63Y How review is conducted

- (1) If the Secretary receives an application for review under **section 63W**, the Secretary must ensure that the application is forwarded to the appropriate reviewer (*see* **section 63X**).
- (2) The reviewer must review the matter— 5
- (a) within 60 days after receiving the application; or
- (b) within an extended period not exceeding a further 30 days that ~~is notified~~ the reviewer notifies to the applicant in writing before the 60 days end.
- (3) For the purposes of a review,— 10
- (a) the reviewer may require the applicant to supply, ~~within a specified time~~ the time specified by the reviewer, information additional to that contained in the application for review; and
- (b) the time taken to supply the additional information (or allowed for its supply, if the information is not in fact supplied) is not to be counted for the purposes of the time limits specified in **subsection (2)**. 15
- ~~(4) The reviewer must, as soon as practicable after completing the review, notify the applicant in writing of his or her decision on the review, giving reasons for the decision.~~
- (4) The reviewer must, as soon as practicable after completing the review, notify the applicant in writing of— 20
- (a) the decision on the review; and
- (b) the reasons for the decision; and
- (c) the right of appeal under **section 63YA**.
- (5) A decision by the reviewer under this section is final, unless determined otherwise by a court of law of competent jurisdiction. 25

*Appeal to court***63YA Appeal to High Court**

A person who is dissatisfied with a decision made by a reviewer under **section 63Y**, in respect of a decision made by the Forestry Authority that is referred to in **section 63W(1)**, may appeal to the High Court against the reviewer's decision. 30

63YB Time for appeal to High Court

- (1) An appeal to the High Court must be made in the prescribed manner within 20 working days after the day on which notice of the relevant decision is given to the appellant. 35
- (2) However, the court may accept a late appeal no later than 60 working days after the day on which notice was given to the appellant if the court is satisfied that exceptional circumstances prevented the appeal from being made in time.

63YC High Court may make interim order

- (1) At any time before the final determination of an appeal, the High Court may make an interim order that an appellant is to be treated as if they were a registered person until the end of the day on which the High Court finally determines the appeal. 5
- (2) An interim order may be subject to any conditions that the High Court thinks fit.

63YD Determination of appeal

The High Court's decision in the determination of an appeal is final, subject to section 63YE. 10

63YE Appeal to Court of Appeal on question of law

- (1) A party to an appeal to the High Court, if dissatisfied with a decision of the court on the ground that it is erroneous in law, may appeal to the Court of Appeal on a question of law only.
- (2) The appeal must be heard and determined in accordance with the rules of court. 15
- (3) The decision of the Court of Appeal on any appeal under this section is final.

63YF Time for appeal to Court of Appeal

- (1) An appeal to the Court of Appeal must be made in the prescribed manner within 20 working days after the day on which notice of the relevant decision is given to the appellant. 20
- (2) However, the court may accept a late appeal no later than 60 working days after the day on which notice was given to the appellant if the court is satisfied that exceptional circumstances prevented the appeal from being made in time.
- (3) In deciding whether to accept a late appeal, the court must have regard to whether the appellant made a late appeal against the original decision, and the appellant's reasons for that late appeal. 25

Complaints and dispute resolution

~~63Z Unresolved disputes to be referred to arbitration~~

- (1) ~~This section applies if—~~ 30
- (a) ~~a complaint or dispute arises in relation to a registered person; and~~
- (b) ~~after the resolution process for complaints and disputes that is set by regulations (see ~~section 63ZX~~) is followed, a dispute remains that is unable to be resolved by agreement between the parties.~~
- (2) ~~The dispute must be referred to—~~ 35
- (a) ~~mediation; or~~
- (b) ~~if the parties are unable to resolve the dispute at mediation, arbitration.~~

~~(3) If a dispute is referred to arbitration, the provisions of the Arbitration Act 1996 apply to the dispute.~~

63Z Complaints about unsatisfactory conduct or misconduct

(1) Any person may complain to the Forestry Authority, or the Forestry Authority may itself initiate a complaint, that a person has engaged in unsatisfactory conduct or misconduct in their capacity as a registered person.

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(2) The complaint must be made and dealt with in accordance with regulations made under **section 63ZX**.

(3) A person engages in **unsatisfactory conduct** if their conduct—

(a) falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent registered person; or

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(b) contravenes the person's obligations under this Part in a way that is more than minor or inconsequential; or

(c) is incompetent or negligent; or

(d) would reasonably be regarded by registered persons of good standing as being unacceptable.

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(4) A person engages in **misconduct** if—

(a) they engage in conduct that would reasonably be regarded by registered persons of good standing, or reasonable members of the public, as disgraceful; or

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(b) they wilfully or recklessly fail (whether by act or omission) to meet an obligation under this Part that is more than minor or inconsequential; or

(c) they commit a serious offence, or are involved in a serious matter, that is specified by regulations made under **section 63ZW(ha)**.

63ZAAA Disputes about commercial matters

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(1) If there is a dispute between any of the following persons about a commercial matter, 1 or more of the parties to the dispute may refer it to dispute resolution:

(a) owners of forests or proposed forests;

(b) registered, or previously registered, log traders;

(c) registered, or previously registered, forestry advisers.

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(2) The dispute must be referred and dealt with in accordance with regulations made under **section 63ZA**.

(3) If the parties to the dispute have not resolved the dispute by agreement after following that process, the parties may agree to refer the dispute to mediation or arbitration.

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(4) If a dispute is referred to arbitration, the provisions of the Arbitration Act 1996 apply to the dispute.

Offences and penalties

63ZA Offences

- (1) A person commits an offence if the person fails to comply with—
- (a) **section 63G(1)** (requirement for log traders to be registered); or
 - (b) **section 63G(2)** (requirement not to falsely hold out that a person is a registered log trader); or 5
 - (c) **section 63J** (obligations of registered log trader); or
 - (d) **section 63K(1)** (requirement for forestry advisers to be registered); or
 - (e) **section 63K(2)** (requirement not to falsely hold out that a person is a registered forestry adviser or authorised to provide a forestry adviser service); or 10
 - (f) **section 63N** (obligations of registered forestry adviser); or
 - (g) **section 63O(2)** (requirement not to provide false or misleading information in application for registration); or
 - (h) **section 63R(2)** (requirement not to provide false or misleading information in application for renewal of registration). 15
- (2) It is a defence to a charge under **subsection (1)(g) or (h)** that the person to whom the charge relates—
- (a) did not know that the information they provided was false or misleading; and 20
 - (b) exercised all reasonable care and due diligence to ensure that the information provided was not false or misleading.

63ZB Penalties

- A person who commits an offence under **section 63ZA** is liable on conviction,— 25
- (a) if the person is an individual, to a fine not exceeding \$40,000; and
 - (b) in any other case, to a fine not exceeding \$100,000.

Forestry registers

63ZC Meaning of forestry register

- In this Act, **forestry register** means— 30
- (a) the register of log traders maintained under **section 63ZD**; or
 - (b) the register of forestry advisers maintained under **section 63ZE**.

63ZD Register of log traders

- (1) The Forestry Authority must keep and maintain, or arrange to be kept and maintained, a public register of registered log traders. 35

- (2) The purpose of the register is—
- (a) to enable members of the public to know whether a person is a registered log trader and, if so, how to contact the person; and
 - (b) to assist with the enforcement of the provisions of this Part.
- (3) The register must include, in relation to each registered person,— 5
- (a) the person’s trading name and contact details; and
 - (b) the date on which the person became registered; and
 - (c) the date on which the registration expires; and
 - (d) any other information required by regulations made under **section 63ZW(q)**. 10

63ZE Register of forestry advisers

- (1) The Forestry Authority must keep and maintain, or arrange to be kept and maintained, a public register of registered forestry advisers.
- (2) The purpose of the register is— 15
- (a) to enable members of the public to know—
 - (i) whether a person is a registered forestry adviser and, if so, how to contact the person; and
 - (ii) whether a person is authorised to provide a forestry adviser service; and
 - (b) to assist with the enforcement of the provisions of this Part. 20
- (3) The register must include, in relation to each registered person,—
- (a) details of which forestry adviser services the person is authorised to provide; and
 - (b) the person’s name and contact details; and
 - (c) the date on which the person became registered; and 25
 - (d) the date on which the registration expires; and
 - (e) any other information required by regulations made under **section 63ZW(q)**. 30

63ZF Form of forestry registers

- The Forestry Authority— 30
- (a) must determine the form in which the forestry registers will be kept; and
 - (b) may amend the form from time to time as it considers necessary, as long as the content of the registers is as set out in **sections 63ZD and 63ZE**.

63ZG Access to forestry registers

- (1) The Forestry Authority must— 35

- (a) make the forestry registers 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 Forestry Authority; and
- (b) supply a copy of information contained in a forestry register to anyone who requests it, at no more than a reasonable cost. 5
- ~~(2) However,—~~
- ~~(a) a person whose physical address is entered on a forestry register may apply to the chief executive of the Forestry Authority to have the address withheld from inspection or other disclosure on the grounds that its disclosure would be prejudicial to the personal safety of the person or the person's family; and 10~~
- ~~(b) if the chief executive is satisfied that the grounds for withholding the address apply, the chief executive must ensure that the address is not available for inspection or disclosure.~~
- (2) However,— 15
- (a) a person whose physical address is entered on a forestry register may apply to the Secretary to have the address withheld from inspection or other disclosure—
- (i) on the grounds that its disclosure would be prejudicial to the personal safety of the person or the person's family; or 20
- (ii) on the grounds of preserving the person's privacy; and
- (b) the Secretary must ensure that the address is not available for inspection or disclosure, if satisfied that—
- (i) the grounds relating to personal safety apply; or
- (ii) the grounds relating to privacy apply and the chief executive can provide the person's electronic contact details to any person who requests them. 25
- (3) Despite **subsection (2)(b)**, the Secretary may provide the person's physical address to another person if—
- (a) the Secretary is satisfied that the other person needs the address to exercise a legal right, or satisfy a legal obligation, in relation to the first person (for example, to serve notice on them); and 30
- (b) before providing the address, the Secretary gives notice to the first person specifying—
- (i) the name of the person to whom it will be provided; and 35
- (ii) the date on which it will be provided.

63ZH Obligation to notify Forestry Authority of changes

- (1) A person whose details are included in a forestry register must notify the Forestry Authority of any change in the information.

- (2) The notification must be made, in writing, within 10 working days after the change.

Subpart 2—Cost recovery

63ZI Obligation to recover costs

- (1) The Minister must take all reasonable steps to ensure that the direct and indirect costs of administering this Part are recovered under this Part, whether by way of fees, levies, or otherwise. 5
- (2) The obligation to recover costs does not apply to costs that are provided for by money appropriated by Parliament for the purpose. 10
- Compare: 1949 No 19 s 67ZH(1)

63ZJ Principles of cost recovery

- (1) In determining the most appropriate method of cost recovery to use, the Minister must have regard, as far as is reasonably practicable, to the following criteria:
- (a) equity, in that funding for a particular function, power, or service, or a particular class of functions, powers, or services, should generally, and to the extent practicable, be sourced from the users or beneficiaries of the relevant function, power, or service at a level commensurate with their use or benefit from the function, power, or service: 15
- (b) efficiency, in that costs should generally be allocated and recovered in order to ensure that maximum benefits are delivered at minimum cost: 20
- (c) justifiability, in that costs should be collected only to meet the actual and reasonable costs (including indirect costs) of the provision or exercise of the relevant function, power, or service:
- (d) transparency, in that costs should be identified and allocated as closely as practicable in relation to tangible service provision for the recovery period in which the service is provided. 25
- (2) However,—
- (a) there need not be a strict apportionment of the costs to be recovered for a particular function or service based on usage; and 30
- (b) without limiting the way in which fees or charges may be set, a fee or charge may be set at a level or in a way that—
- (i) is determined by calculations that involve an averaging of costs or potential costs:
- (ii) takes into account costs or potential costs of services that are not directly to be provided to the person who pays the fee or charge, but that are an indirect or potential cost arising from the delivery 35

of the service in question to a class of persons or all persons who use the service.

Compare: 1949 No 19 s 67ZH(2), (5)

63ZK Requirement for consultation

- (1) Costs ~~should~~ must not be recovered under this Part unless there has been consultation with affected persons or representatives of persons substantially affected, including representatives of tangata whenua, forestry industry bodies, and unions (as defined in section 5 of the Employment Relations Act 2000). 5
- (2) Consultation is not required in relation to specific fees or charges, or the specific levels of fees or charges, so long as the fees or charges set are reasonably within the scope of any general consultation. 10
- ~~(3) A failure to consult does not affect the validity of any regulations made for the purposes of this Part.~~

Compare: 1949 No 19 s 67ZH(3), (4)

63ZL Methods of cost recovery

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The methods by which costs may be recovered under this Part are as follows:

- (a) fixed fees or charges:
- (b) fees or charges based on a scale or formula or at a rate determined on an hourly or other unit basis:
- (c) use of a formula or other method of calculation for fixing fees and charges: 20
- (d) the recovery by way of fee or charge of actual and reasonable costs expended in, or associated with, the performance of a service or function:
- (e) estimated fees or charges, or fees or charges based on estimated costs, paid before the provision of the service or function, followed by reconciliation and an appropriate further payment or refund after provision of the service or function: 25
- (f) levies:
- (g) any combination of the above. 30

Compare: 1949 No 19 s 67ZI

63ZM Cost recovery to relate generally to financial year

- (1) Regulations under **subpart 3** that set a fee, charge, or levy that applies in any financial year—
 - (a) must have been made before the start of that financial year, unless **sub-section (2)** applies; and 35
 - (b) apply in that financial year and all subsequent financial years until revoked or replaced, unless the regulations provide otherwise.

- (2) Regulations may be made during a financial year that alter or set a fee, charge, or levy payable in that financial year only if—
- (a) the fee, charge, or levy is reduced, removed, or restated without substantive alteration; or
- (b) in the case of an ~~increase~~ increased or a new fee, charge, or levy,— 5
- (i) appropriate consultation has been carried out with persons or representatives of persons substantially affected by the alteration or setting, including representatives of tangata whenua, forestry industry bodies, and unions (as defined in section 5 of the Employment Relations Act 2000); and 10
- (ii) the Minister is satisfied that those persons, or ~~their~~ representatives, agree or do not substantially disagree with the alteration or setting.
- (3) **Subsection (1)** does not prevent the amendment of any regulation setting a fee, charge, or levy if any substantive alteration effected by the amendment is for the purpose of correcting an error. 15
- (4) Recovery may be made in any financial year of any shortfall in cost recovery for any of the preceding 4 financial years, and allowance may be made for any over-recovery of costs in those financial years (including any estimated shortfall or over-recovery for the immediately preceding financial year). 20

Compare: 1949 No 19 s 67ZJ

63ZN Minister may review levels and methods of cost recovery

- (1) The Minister may, from time to time, review the levels and methods of cost recovery in relation to the regulation of log traders and forestry advisers.
- (2) A review may— 25
- (a) make provision for recovery in any relevant financial year of any shortfall in cost recovery for any of the preceding 4 financial years; or
- (b) make allowance for any over-recovery of costs in those years (including any estimated shortfall or over-recovery for the immediately preceding financial year). 30
- (3) To avoid doubt, all areas of cost recovery need not be reviewed at the same time, nor is there any time limit on the making of regulations to implement the results of a review.

Compare: 1949 No 19 s 67ZK

63ZO Trust accounts required to be kept by persons collecting levies 35

- (1) This section applies if regulations made under **section 63ZZ** require the operation of a trust account for any levy money by the person responsible for collecting the levy.

- (2) Any amount held on trust that is due to be paid to the Secretary by the levy collector—
- (a) is to be treated as levy money held on trust for the Secretary; and
 - (b) is not available for the payment of any creditor (other than the Secretary) of the levy collector, and is not liable to be attached or taken in execution at the instance of the creditor. 5
- (3) A person who ceases to be responsible for collecting a levy must continue to maintain the trust account until all the levy money payable to the Secretary for the period during which the person was responsible for collecting the levy has been paid. 10
- (4) **Subsection (3)** does not affect any obligation or liability under this Part of any other person who has become responsible for collecting the levy.
- Compare: 1949 No 19 s 67ZO

63ZP Fees, levies, and charges payable are debt due to the Crown

A fee, levy, or charge that has become payable under this Part is a debt due to the Crown that is recoverable by the Secretary in any court of competent jurisdiction. 15

Compare: 1949 No 19 s 67ZQ

~~**63ZQ Penalty for failure to pay fee, levy, or charge**~~

- (1) ~~This section applies if a person fails to pay by the due date any fee, levy, or charge payable under this Part.~~ 20
- (2) ~~The amount that remains unpaid (the debt) is increased,—~~
- (a) ~~on the expiry of the due date, by 10% of the amount of the debt at that time; and~~
 - (b) ~~on the expiry of every complete period of 6 months after the due date, by 10% of the amount of the debt at that time.~~ 25

~~Compare: 1949 No 19 s 67ZR; 1997 No 100 s 14~~

~~**63ZR Waiver of penalty**~~

- (1) ~~This section applies if the Forestry Authority is satisfied that the failure or refusal of any person to pay a fee, levy, or charge payable under this Part was a result of a genuine dispute between the person and the Authority as to—~~ 30
- (a) ~~the person's liability to pay the debt; or~~
 - (b) ~~the amount of the debt; or~~
 - (c) ~~both.~~
- (2) ~~The Authority may waive the payment of all or any part by which the debt has been increased under **section 63ZQ**.~~ 35

~~Compare: 1949 No 19 s 67ZR; 1997 No 100 s 15~~

63ZS Services may be withdrawn until debt paid

- (1) If a person fails to pay by the due date any fee, levy, or charge payable under this Part, the Forestry Authority may—
- (a) withdraw, or refuse to provide the person with, a service of the kind to which the debt relates; or 5
 - (b) refuse to perform a function under this Part leading to the registration of the person in default.
- (2) The Authority—
- (a) must give the person written notice of its intention to act under **subsection (1)** at least 10 working days before it acts; and 10
 - (b) must not act if the person satisfies the Authority during that period that the debt is not payable.
- (3) The Authority is not required to reinstate or supply the service, or perform the function, until a court holds that—
- (a) the debt or part concerned is paid; or 15
 - (b) the debt or part concerned is not payable; or
 - (c) some lesser amount is payable, and the amount is paid.

Compare: 1949 No 19 s 67ZR; 1997 No 100 s 16

63ZT Obligation to pay fee, levy, charge, or penalty not suspended by dispute

The obligation of a person to pay any fee, levy, charge, or penalty under this Part (any **amount owing**), as well as the right of the Secretary to receive and recover the amount owing, is not suspended by any dispute between the person and the Secretary regarding the person's liability to pay the amount owing or the amount that is owed. 20

Compare: 1949 No 19 s 67ZS 25

Subpart 3—Regulations

63ZU Requirements before making regulations

- (1) The Minister must not recommend that regulations be made under this subpart unless the Minister is satisfied—
- (a) that the regulations ~~are not inconsistent with~~ are necessary or desirable for the purpose of this Part (*see* **section 63A**); and 30
 - (b) for regulations relating to cost recovery, that the requirements of the following sections have been met (to the extent appropriate in the circumstances):
 - (i) **section 63ZJ** (principles of cost recovery): 35
 - (ii) **section 63ZK** (requirement for consultation):

- (iii) **section 63ZM** (cost recovery to relate generally to financial year); and
- (c) for other regulations, that there has been appropriate consultation with affected persons or representatives of persons substantially affected, including representatives of tangata whenua, forestry industry bodies, and unions (as defined in section 5 of the Employment Relations Act 2000). 5
- (2) Consultation need not be undertaken on matters involving minor corrections or updating, or otherwise of a minor or technical nature.
- (3) A failure to consult does not affect the validity of any regulations made for the purposes of this Part. 10
- 63ZV Regulations may subdelegate power to make rules**
- (1) This section applies ~~if~~ in respect of any of the Forestry Authority's functions or powers that are delegated to a person outside the Public Service (*see* **section 63D**). 15
- (2) Regulations made under this subpart, other than under **section 63ZZ** (levies), may—
- (a) authorise the person to make rules, on the recommendation of the Minister, for any of the purposes for which the regulations may be made, to the extent that the rules relate to the delegated function or power; and 20
- (b) set limits for the authorisation (for example, the maximum amount for a fee or charge).
- (3) If regulations authorise a person to make rules,—
- ~~(a) the regulations must also require that the person be satisfied, before making rules, of the matters referred to in **section 63ZU** (which relate to the purpose of this Part, the principles of cost recovery, and consultation); and~~ 25
- (a) the regulations must require that the Minister be satisfied of the matters set out in **section 63ZU** before recommending that rules be made; and
- (aa) for the purpose of **paragraph (a), section 63ZU** must be read as if the references in that section to regulations were references to the rules; and 30
- (b) if the rules relate to cost recovery, **sections 63ZJ to 63ZM** apply with all necessary modifications; and
- (c) the rules are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act; and 35
- (d) the regulations must contain a statement about the status of the rules that is consistent with **paragraph (c)**.

63ZW Regulations: registration

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that do any of the following:

Who must be registered

- (a) ~~exempt any class of persons from the requirement —~~ 5
- (i) ~~to be a registered log trader (see **section 63G(1)(b)**); or~~
- (ii) ~~to be a registered forestry adviser or to be authorised to provide any forestry adviser service (see **section 63K(1)(b)**):~~
- (aa) specify a volume of logs for the purpose of the definition of threshold volume in **section 63H(3)** (to determine who has to register as a log trader under **section 63G**): 10
- (b) ~~exempt any class of transactions or transfers for the purpose of **section 63H(2)** (meaning of log trader):~~
- (c) identify a service as a forestry adviser service (see **section 63L(1)(d)**):
- (d) ~~exempt any class of services for the purpose of **section 63L(2)** (meaning of forestry adviser service):~~ 15
- (e) ~~set terms and conditions for any exemption made by regulations under this section:~~
- Entitlement to be registered*
- (f) set criteria for entitlement to be registered as a log trader or a forestry adviser (see **sections 63I(1)(c)** and **63M(1)(d)**): 20
- (g) in relation to the entitlement criteria for a registered forestry adviser, provide for qualifications gained, or professional memberships held, in a country outside New Zealand to be treated as meeting criteria set under **paragraph (f)**: 25
- (h) set matters the Forestry Authority must take into account in determining whether a person is a fit and proper person to be registered as a log trader or forestry adviser (see **sections 63I(2)(a)** and **63M(2)(a)**):
- (ha) specify offences or matters that are serious for the purposes of **section 63Z(4)(c)** (relating to misconduct): 30
- Obligations of registered persons*
- (i) identify an agreement entered into by participants in the forestry sector as an applicable forestry industry agreement for the purpose of **sections 63J(b)(ii)** and **63N(c)(ii)**:
- (j) set requirements in relation to the records that registered persons must keep, how they are to be kept, and for how long (see **sections 63J(d)** and **63N(f)**): 35
- (k) require registered persons to report to the Forestry Authority on a regular basis (see **sections 63J(e)** and **63N(g)**), to enable the Forestry

Authority to monitor the compliance of registered persons with their obligations under this Part:

- (l) specify when reports referred to in **paragraph (k)** must be made and what information they must contain:
 - (m) set conditions of registration for forestry advisers that will apply generally (*see* **section 63N(e)**) or restrict the conditions of registration that may be imposed by the Forestry Authority under **section 63T**: 5
 - (n) set additional obligations that will apply to registered persons (*see* **sections 63J(f) and 63N(h)**), (which may include, for registered forestry advisers, a requirement to undertake ongoing professional and technical training): 10
- Miscellaneous*
- (o) specify the information that must be included in an application for registration as a log trader or forestry adviser, or an application for renewal of the registration (*see* **sections 63O(1)(b) and 63R(1)(c)**): 15
 - (p) set the registration period that will apply to log traders, forestry advisers, or both (*see* **section 63Q**):
 - (q) specify information that must be kept on a forestry register (*see* **sections 63ZD(3)(d) and 63ZE(3)(e)**).

63ZX Regulations: complaints and disputes 20

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that establish a resolution process for complaints and disputes that arise in relation to a that a registered person under this Part (including one whose registration is suspended or revoked) has engaged in unsatisfactory conduct or misconduct (as defined by section 63Z). 25
- (2) Without limiting **subsection (1)**, regulations under this section may do any of the following:
 - (a) establish a complaints panel and its procedures:
 - (aa) require the Forestry Authority to forward any complaint to the panel:
 - (b) authorise the panel to require registered persons to provide information relating to a complaint ~~or dispute that has arisen~~: 30
 - (c) require the panel to publish its findings:
 - (d) if the panel finds that a registered person has, or may have, ~~failed to meet their obligations under this Part~~ engaged in unsatisfactory conduct or misconduct, require the panel to— 35
 - (i) notify the Forestry Authority of that finding; and
 - (ii) recommend that the Forestry Authority consider whether to ~~modify the conditions of the person's registration, suspend the person's registration, or prosecute the person for a breach of their~~

~~obligations under this Part~~ take 1 or more of the actions specified
in **section 63TA**.

63ZXA Regulations: disputes

The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that establish a process for disputes about a commercial matter between any persons described by **section 63ZAAA(1)** to be resolved by agreement.

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63ZY Regulations: fees and charges

(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that do any of the following:

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- (a) set the amounts of fees and charges for the purposes of this Part:
- (b) set the method by which the amount of any fee or charge is to be calculated:
- (c) provide for exemptions from, or waivers or refunds of, a fee or charge, in whole or in part, in any class of case:
- (d) authorise the Secretary or another person to grant an exemption, waiver, or refund in any particular case or class of case.

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(2) The regulations may set fees and charges that—

- (a) differ depending on whether a special or urgent service is provided:
- (b) include more than 1 level of fee or charge for the same service provided in different ways, or provided in, or in respect of, different places:
- (c) differ for otherwise similar services provided in different ways:
- (d) differ depending on the amount of service required or the components of the service required for the particular person.

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63ZZ Regulations: levies

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(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that do any of the following:

- (a) impose a levy payable to the Secretary for the purpose of wholly or partially funding the services provided and functions performed by the Forestry Authority:
- (b) provide for exemptions from, or waivers or refunds of, a levy, in whole or in part, in any class of case:
- (c) authorise the Secretary to grant an exemption, waiver, or refund in any particular case or class of case.

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(2) The regulations must specify—

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- (a) the persons primarily responsible for paying the levy; and

- (b) the basis on which the amount of levy is to be calculated or ascertained; and
 - (c) the persons (if any) to be exempt from paying the levy; and
 - (d) the persons responsible for collecting the levy from those primarily responsible for paying it; and 5
 - (e) the maximum rate of levy; and
 - (f) how the actual rate of the levy is to be set; and
 - (g) how the rates of the levy and variation of rates are to be notified; and
 - (h) whether the persons collecting the levy are entitled to recover the cost of levy collection and the estimated amount. 10
- (3) The regulations may provide for any of the following:
- (a) the making of returns to the Forestry Authority for the purpose of enabling or assisting the determination of amounts of levy payable:
 - (b) the circumstances in which, and conditions subject to which, persons may be allowed extensions of time for the payment of any levy: 15
 - (c) the payment of additional or increased levy when amounts of levy otherwise payable have been paid late, paid in part, or not paid at all:
 - (d) the holding of funds from which payments of levy are to be made, on trust in separate accounts.
- 63ZZA Levies regulations are confirmable instruments** 20
- The explanatory note of regulations made under **section 63ZZ** must indicate that—
- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
 - (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and 25
 - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.
- Subpart 4—Rules and exemptions**
- 63ZZB Requirements before making rules and exemptions** 30
- (1) ~~The Forestry Authority must not make rules~~ Minister must not recommend that rules or exemption notices be made under this subpart unless ~~it~~ the Minister is satisfied—
- (a) that the rules ~~are not inconsistent with the purpose~~ or notices are necessary or desirable for the purposes of this Part (*see* **section 63A**); and 35
 - (b) that there has been appropriate consultation with affected persons or representatives of persons substantially affected, including representatives

of tangata whenua, forestry industry bodies, and unions (as defined in section 5 of the Employment Relations Act 2000).

- (2) Consultation need not be undertaken on matters involving minor corrections or updating, or otherwise of a minor or technical nature.
- (3) A failure to consult does not affect the validity of any rules or notices made for the purposes of this Part.

63ZZC Rules: forestry practice standards

- (1) The Forestry Authority may, on the recommendation of the Minister, make rules that set, for registered log traders and registered forestry advisers, practice standards for forestry operations and the delivery of forestry services.
- (2) The rules—
- (a) may set standards for any matter relating to forestry operations and the delivery of forestry adviser services, including but not limited to—
 - (i) land preparation, planting, forest management, ~~and~~ harvest planning and site preparation, and valuation; and
 - (ii) biosecurity, sustainable land use, biodiversity, and emissions trading; and
 - (iii) sale and purchase agreements for domestic transactions or exports; and
 - (iv) other sale and purchase requirements; and
 - (b) must identify which standards apply to registered log traders, registered forestry advisers, or both.
- (2A) However, the rules must not impose any condition or requirement that is properly a matter for commercial agreement between parties.
- (3) Rules under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

63ZZD Rules: code of ethics

- (1) The Forestry Authority may, on the recommendation of the Minister, make rules that set a code of ethics for registered forestry advisers.
- (2) The rules may include, without limitation, matters relating to—
- (a) professional responsibility (maintaining the highest standards of integrity and technical accuracy); and
 - (b) responsibility to clients (including issues of confidence and conflicts of interest); and
 - ~~(c) appropriate professional fees; and~~
 - (d) professional work standards by registered forestry advisers in employment; and

- (e) maintaining professional competency.
- (3) Rules under this section are a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

63ZZE Exemptions from registration requirements

(1) The Forestry Authority may, by notice made on the recommendation of the Minister,—

(a) exempt any class of persons from the requirement—

(i) to be a registered log trader (see section 63G(1)(b)); or

(ii) to be a registered forestry adviser (see section 63K(1)(b)); or

(iii) to be authorised to provide a forestry adviser service, whether a particular service or a class of service specified by the exemption (see section 63K(1)(c));

(b) exempt any class of transactions or transfers for the purpose of section 63H(2)(b) (meaning of log trader):

(c) exempt any class of services for the purpose of section 63L(2) (meaning of forestry adviser service):

(d) set terms and conditions for any exemption granted under this section.

(2) Before recommending that an exemption be granted, the Minister must obtain and consider advice from the Forestry Authority as to whether the exemption should—

(a) be granted for a specified period of no more than 5 years; or

(b) be granted for an indefinite period but kept under review.

(3) The breach of a term or condition of an exemption granted under this section is a breach of the provision to which the exemption relates (unless the terms of the exemption otherwise provide).

(4) A notice under this section must include a statement of the Authority's reasons for granting the exemption.

(5) A notice under this section is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

8 Section 67A repealed (Part binds the Crown)

Repeal section 67A.

8A Section 72A amended (Remuneration and expenses)

In section 72A,—

(a) delete “to the members of any Authority constituted under section 71A or”; and

(b) delete “authority or”.

~~9~~ ~~**New Schedule 1AA inserted**~~

~~Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.~~

Part 2

5

~~**Technical amendment**~~ **Transitional schedule inserted in principal Act**

~~9~~ ~~**New Schedule 1AA inserted**~~

~~Insert the **Schedule 1AA** set out in the **Schedule** of this Act as the first schedule to appear after the last section of the principal Act.~~

10

~~10~~ ~~**Forests Amendment Act 2004 amended**~~

(1) ~~This section amends the Forests Amendment Act 2004.~~

(2) ~~Repeal sections 19 to 22.~~

Schedule
New Schedule 1AA inserted

s 9

Schedule 1AA
Transitional, savings, and related provisions

5

s 2A

Part 1
~~Provisions relating to Forests Amendment Act 2004~~

1 Compensation

- (1) ~~No person is entitled to compensation from the Crown in respect of any diminution, by reason of the enactment of the Forests Amendment Act 2004, in —~~ 10
- ~~(a) the rights, or value of the rights, of that person under a contract relating to indigenous timber on any specified Maori land; or~~
 - ~~(b) the value of indigenous timber on any specified Maori land; or~~
 - ~~(c) the value of any specified Maori land.~~ 15

- (2) ~~This clause is subject to **clause 2**.~~

~~Compare: 2004 No 49 s 19~~

2 Power to specify criteria and method of assessment in relation to payment of assistance

- (1) ~~The Governor General may, by Order in Council, specify the criteria and methods of assessment that must be applied by the Crown in determining any claim for financial losses suffered in relation to a specified contract as a direct result of the enactment of section 4 of the Forests Amendment Act 2004.~~ 20

- (2) ~~In this clause, **specified contract** means a written contract that —~~

- ~~(a) relates to the export of indigenous timber harvested from specified Maori land; and~~ 25
- ~~(b) was entered into before 13 July 1999, being the date on which the Forests Amendment Act 2004 was introduced as a Bill into the House of Representatives.~~

~~Compare: 2004 No 49 s 20~~

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3 Power to specify payment of money in relation to conservation covenant not gross income of recipient

- (1) ~~The Governor General may, by Order in Council, made in accordance with a recommendation of the Minister of Finance, specify that a payment of money~~

| | | |
|----------|---|----|
| | made in consideration of the entering into of a conservation covenant over specified Maori land is not gross income of the recipient. | |
| (2) | An Order in Council under this section may relate to a payment of money that is made in any income year, beginning with the 2002–03 income year. | |
| (3) | In this clause, gross income has the same meaning as in section BD 1 of the Income Tax Act 1994. | 5 |
| | Compare: 2004 No 49 s 21 | |
| 4 | Certain payments of money under deed of settlement relating to Waitutu Block not assessable income or gross income | |
| (1) | This clause applies to payments of money made— | 10 |
| | (a) in any of the 1995–96 to 1999–2000 income years; and | |
| | (b) to the Proprietors of Waitutu Incorporated under the deed of settlement in relation to that portion of the Waitutu Block that is specified Maori land. | |
| (2) | A payment of money made in the 1995–96 or 1996–97 income year is not assessable income of the Proprietors of Waitutu Incorporated. | 15 |
| (3) | A payment of money made in any of the 1997–98 to 1999–2000 income years is not gross income of the Proprietors of Waitutu Incorporated. | |
| (4) | In this clause,— | |
| | assessable income has the same meaning as in the Income Tax Act 1994 as in force immediately before the commencement of the 1997–98 income year | 20 |
| | deed of settlement has the same meaning as in the Waitutu Block Settlement Act 1997 | |
| | gross income has the same meaning as in the Income Tax Act 1994 as in force at the commencement of the 1997–98 income year | 25 |
| | payment of money includes the provision of consideration in kind | |
| | Proprietors of Waitutu Incorporated has the same meaning as in the Waitutu Block Settlement Act 1997 | |
| | Waitutu Block has the same meaning as in the Waitutu Block Settlement Act 1997. | 30 |
| | Compare: 2004 No 49 s 22 | |

Part 2

Provisions relating to Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020

| | | |
|----------|-----------------------|----|
| 5 | Interpretation | 35 |
| | In this Part,— | |

| | |
|---|----|
| amendment Act means the Forests (Regulation of Log Traders and Forestry Advisers) Amendment Act 2020 | |
| commencement date , in relation to a provision of this Act, means the date on which the provision is amended, replaced, repealed, or inserted by the amendment Act | 5 |
| new , in relation to a provision of this Act, means the provision as amended, replaced, or inserted <u>as in force on and after its amendment, replacement, or insertion</u> by the amendment Act | |
| old , in relation to a provision of this Act, means the provision as in force immediately before its amendment or repeal by the amendment Act. | 10 |
| 6 Application of new provisions to existing agreements | |
| (1) The new provisions do not apply (and the old provisions continue to apply) in relation to the following: | |
| (a) a transaction or transfer described in section 63H(1) that is agreed to before the commencement date <u>of that section</u> : | 15 |
| (b) an agreement to provide a forestry adviser service, in a particular case, that is made before the <u>that</u> commencement date. | |
| (2) It does not matter whether the transaction or transfer occurs, or the advice is provided, before, on, or after the <u>that</u> commencement date. | |
| (3) To avoid doubt, the reference in subclause (1)(b) to an agreement does not include a contract of employment to provide forestry adviser services generally. | 20 |
| 7 New registration requirements and offences do not apply until 12 months after commencement date | |
| The following new provisions do not apply in respect of an act or omission that occurs earlier than 12 months after that section's commencement date: | 25 |
| (a) section 63G(1) (which prohibits a person from acting as a log trader unless registered or exempt): | |
| (b) section 63K(1) (which prohibits a person from providing a forestry adviser service unless registered or exempt): | |
| (c) section 63ZA(1)(a) to (f) (which creates offences under Part 2A). | 30 |

Legislative history

14 May 2020

Introduction (Bill 250–1), first reading and referral to
Environment Committee