

Regulatory Impact Statement: Bringing the initial legal harvest assurance system into effect

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of releasing a discussion document on the preferred options in this impact statement.
Advising agencies:	Ministry for Primary Industries
Proposing Ministers:	Hon Todd McClay (Forestry)
Date finalised:	12 November 2024
Problem Definition	
<p>New Zealand is committed to preventing the global trade in illegally harvested timber by reducing the risk of illegal imports into New Zealand, and ensuring New Zealand’s own timber products meet appropriate standards for market access.</p> <p><i>Context and scale</i></p> <p>New Zealand is a significant exporter of timber products with export revenue reaching \$6.4 billion to the year 30 June 2023.¹ Trading partners are increasingly requiring assurances for market access that our timber exports are legally harvested. While the risk of illegally harvested timber is low in New Zealand and we are recognised as having integrity in our supply chains, there is an increasing need to provide official assurances to confirm this status and maintain access to our higher value markets.</p> <p>New Zealand’s imports of timber and timber products have increased by an estimated 70 percent over the last decade, to around \$2.8 billion in 2023.² While this risk is partially addressed by use of private certification schemes and New Zealand’s geographic isolation, there is still a risk that illegally harvested timber products may enter the domestic supply chain and suppress the value of the legal market for domestic processors.</p> <p><i>Legislative intervention</i></p> <p>In May 2023, the Forests (Legal Harvest Assurance) Amendment Act 2023 (the Legal Harvest Amendment) was enacted. When it commences, it will amend the Forests Act 1949 (Act) to introduce a statutory legal harvest assurance system into law. The purpose of the Legal Harvest Amendment is to:³</p> <ul style="list-style-type: none">strengthen the international reputation of the forestry sector; andsafeguard and enhance market access for the forestry sector; and	

¹ [Situation and Outlook for Primary Industries June 2024 \(mpi.govt.nz\)](https://www.mpi.govt.nz/situation-and-outlook-for-primary-industries-june-2024/)

² [Initial Briefing to the Primary Production Select Committee \(parliament.nz\)](#) and [Statistics NZ Global Trade Atlas](#)

³ Forests Act 1949, s 74 as inserted by the Legal Harvest Amendment.

- reduce the risk of importing timber that is not legally harvested; and
- help reduce international trade in timber that is not legally harvested.

The Legal Harvest Amendment will commence no later than 1 August 2027.

The Legal Harvest Amendment establishes a framework for the statutory legal harvest assurance system and empowers secondary legislation to develop further detail to bring the system into effect and enable it to operate in practice.

Secondary legislation is necessary or desirable where it supports the purposes of the Legal Harvest Amendment and provides clarity about how the system is intended to operate in practice. This includes setting obligations for regulated people.

Powers to make secondary legislation may be exercised before an Act commences in reliance on section 43 of the Legislation Act 2019. These powers may only be exercised if it is necessary or desirable to bring the legislation into operation.

Executive Summary

The purpose of this impact statement is to support public consultation on proposals for secondary legislation. The analysis in this impact statement have been informed by public feedback on the assumptions and options available to address the policy problem. Feedback was received through responses to issues papers made publicly available on the Ministry for Primary Industries (MPI) website.

The options in this impact statement cover only the secondary legislation needed to bring the initial legal harvest assurance system into effect. Section 2 of this impact statement is divided into parts (2A – 2K) to address options by topic. Section 2L then provides an overall assessment of how the preferred options perform together.

Following consultation, the analysis of options will be updated to reflect the content of submissions. This may mean that the preferred options change.

Section 2A to 2K consider the following:

Section	Topic	Preferred option
2A	When is timber legally harvested?	<ul style="list-style-type: none"> • Specify listed land-use laws as relevant legal harvest laws in New Zealand.
2B	Legal harvest scope	<ul style="list-style-type: none"> • Refining what is regulated by excluding leaves from exotic species from the definition of 'regulated timber'. • Identifying goods by specified Tariff codes that will be regulated as 'specified timber products'.
2C	Legal harvest information	<ul style="list-style-type: none"> • Specifying legal harvest information for: <ul style="list-style-type: none"> ○ exotic species of regulated timber. ○ indigenous species of regulated timber. ○ specified timber products.
2D	Responsible persons	<ul style="list-style-type: none"> • Exempt responsible persons needing to comply with legal harvest information requirements for supplying regulated timber in specified circumstances. • Set an activity threshold at 600m³ of regulated timber supplied per annum.

		<ul style="list-style-type: none"> Specify information collection and storage requirements for record keeping for responsible persons.
2E	Who needs to register	<ul style="list-style-type: none"> Exempt specified classes of activities from legal harvest registration requirements. Set an activity threshold at \$10,000 New Zealand Dollars per annum or 2,000m³ for wood in the rough.
2F	Getting registered	<ul style="list-style-type: none"> Specify the listed matters the Secretary must consider when deciding if a person is fit and proper person to be registered. Set additional criteria a branch or division must satisfy before it can be registered separately to the parent entity. Specify the information that must be included in an application for registration.
2G	Due diligence systems	<ul style="list-style-type: none"> Specify information collection requirements for registered persons when using their due diligence system. Create guidance for risk assessment, including information verification and risk mitigation and elimination in a due diligence system. Specify additional criteria a private certification scheme must meet before it can be recognised for use in a due diligence system.
2H	Obligations once registered	<ul style="list-style-type: none"> Specify the information collection and storage for record keeping for registered persons. Specify the information that must be included in an annual compliance declaration. Restrict the conditions that can be imposed on registration to prevent conditions that are a matter for commercial agreement between parties.
2I	Export requirements	<ul style="list-style-type: none"> Specify the listed information that must be included in an application for an Exporter Statement.
2J	Recognition (assessors and agencies)	<ul style="list-style-type: none"> Create guidance about the competency requirements for recognised assessors. Specify that the Secretary must take into account all criminal convictions when deciding if a person is fit and proper to be recognised. Specify additional criteria the Secretary must take into account before recognising a class of individuals as recognised assessors. Specify the listed information that must be included in an application for recognition.
2K	Public registers	<ul style="list-style-type: none"> Specify additional operational information that must be displayed on the public register for legal harvest and public register of recognised assessors.

2L	Holistic assessment of preferred options	<ul style="list-style-type: none"> • Assessment of all preferred options as a package • Summary of monetised costs and benefits
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A summarised assessment of cost and benefits associated with the preferred options is contained in section 2L. This builds on the cost benefit analysis that supported the Legal Harvest Amendment (completed in 2021). It estimated that:⁴

“Considering the implementation and operational costs of the regulatory system, a conservative benefit estimate, from avoided losses, was calculated at \$97.3 million/annum), and the revised estimated New Present Value is \$690 million, over ten years”.

MPI will implement the proposals covered by this impact statement. MPI retains the regulatory stewardship role for the regulatory system, and will be responsible for the operation and enforcement of the legal harvest assurance system.

The primary risks relating to this proposal are implementation risks. The secondary legislation must be in place when the Legal Harvest Amendment commences to enable the legal harvest assurance system to function in practice. Operation of the legal harvest assurance system will be monitored, evaluated, and reviewed as part of the wider forestry regulatory system. Assessments of the wider forestry regulatory system are conducted by MPI as part of its regulatory stewardship role.

Limitations and Constraints on Analysis

Impact statement builds on impact analysis which lead to the Legal Harvest Amendment

Options and analysis in this impact statement are limited by and constrained to those empowered by the Forests Act 1949, as it will be amended when the Forest (Legal Harvest Assurance) Amendment Act 2023 commences. Further legislative amendments to primary legislation (including to the Forests Act 1949 and the Legal Harvest Amendment) are out of scope of these proposals.

It covers the majority of the problems and opportunities to bring the initial legal harvest assurance system into effect. Some matters that rely on decisions resulting from this impact assessment are out of scope until decisions are made, including cost recovery and infringement settings.

The overarching problem definition and objectives are based on the previous impact analysis that led to the Legal Harvest Amendment,⁵ and are outlined in Section 1: Diagnosing the policy problem.

⁴ Updated Regulatory Impact Assessment: proposed Legal Harvest Assurance System, 2021, <https://www.mpi.govt.nz/dmsdocument/49054-Updated-Regulatory-Impact-Assessment-Proposed-Legal-Harvest-Assurance-System>.

⁵ [Proposed legislation for a wood legality system](#) (2020) [PDF, 4.4 MB] and [Proposed Legal Harvest Assurance System](#) (updated assessment published 2021) [PDF, 4.8 MB]

Limitation to regulated people

Secondary legislation can only impose obligations on people that will be regulated under the Act, when the Legal Harvest Amendment commences. The forestry and wood processing supply chain includes a large number of diverse operators, not all of these operators are regulated for legal harvest assurance. Options are constrained to only those people that will be regulated under the Act.

Responsible Manager(s) (completed by relevant manager)

Olivia Sullivan

Director, Forestry System

Te Uru Rākau – New Zealand Forest Service

Ministry for Primary Industries



12 November 2024

Quality Assurance (completed by QA panel)

Reviewing Agency: Ministry for Primary Industries

Panel Assessment & Comment: The Ministry for Primary Industries Regulatory Impact Analysis (RIA) panel has reviewed the *Interim Regulatory Impact Statement: Bringing the initial legal harvest assurance system into effect*. The RIA panel considers that the document is clearly written, comprehensive and will support effective consultation overall. However, the RIA panel's assessment is that the document partially meets the RIA assessment criteria on the basis that the document would benefit from being more concise and accessible. The RIA panel did not assess the accompanying discussion document.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Trade in timber that is not legally harvested is a significant global problem with wide-reaching impacts

1. Trade in illegally harvested timber is a global problem and has wide reaching economic, environmental, and social consequences. Trade in illegally harvested timber risks driving down the value of legally produced timber, both domestically and in international markets. It also risks creating unfair competition for companies that follow the law.
2. It is estimated that illegally harvested timber accounts for up to 30 percent of the global timber trade and costs the global market US\$152 billion per year.⁶ Illegal harvesting contributes to more than 50 percent of tropical deforestation in Central Africa, the Amazon Basin and South East Asia.⁷
3. The trade in illegally harvested timber has a price suppression effect on the value of wood products globally. Research by Scion estimates that the trade in illegal timber reduces returns for New Zealand log prices by approximately 11 percent.⁸

New Zealand timber exporters are increasingly being required to provide harvest legality assurances for market access

4. Forestry plays a significant role in New Zealand's economy, with export revenue at \$6.4 billion in the year to 30 June 2023 and this is expected to reach \$6.6 billion by 2028.⁹ Forestry contributes employing between 35,000 and 40,000 people in timber production, processing, and the commercial sector.¹⁰
5. Trading partners are increasingly requiring assurances that imported timber products are legally harvested. Illegal harvesting is considered to be a low risk in New Zealand.¹¹ However, a growing number of markets are asking New Zealand exporters to demonstrate that their timber and timber products have come from legally harvested sources.
6. Some markets accept voluntary private certification as an assurance that timber has been legally harvested. Voluntary third-party certification schemes include those offered by the Forestry Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification (PEFC). These certification schemes are not accessible for all operators in the market and may not provide market access where government assurance about the legality of the harvest is required.

⁶ [The rise of environmental crime UNEP-Interpol \(2016\)](#)

⁷ <https://www.mpi.govt.nz/import/forest-products/combating-trade-of-illegally-logged-timber/> (mpi.govt.nz)

⁸ SCION (2007) for MAF: Implications for the New Zealand Wood Products Sector of Trade Distortions Due to Illegal Logging. [FF59BAEC-28F9-41ca-BB2C-BEBF728DD453.pdf](#)

⁹ [Situation and Outlook for Primary Industries June 2024 \(mpi.govt.nz\)](#)

¹⁰ [MPI Forestry and Wood Processing Data](#)

¹¹ New Zealand is considered low risk because of established and transparent political and legal processes, and consensus building practices. Transparent institutions and rigorous law enforcement effectively curtail corruption.

Non-regulatory arrangements for market access are temporary and unlikely to be sustainable

7. In 2004, Indonesia became the first trading partner to request government-backed assurances from New Zealand exporters. In 2017, the Republic of Korea introduced a system that would require government certification to assure legality of harvest. Without government intervention there was a risk New Zealand exporters would lose access to these markets.
8. To address this risk, MPI established interim administrative systems for these markets while developing the statutory legal harvest assurance system. In 2016, Exporter Information Statements (EIS) and Commodity Levy Statements (CLS) were introduced on an 'as-required' basis to help exporters with timber legality requirements for Indonesia and the Republic of Korea.¹² This market-by-market approach is inefficient for exporters, MPI, and Councils that provide information, is not supported by legislation or regulation, and is not responsive to new market access needs.

New Zealand timber importers have increasing risks the timber they import is not legally harvested

9. For New Zealand's timber imports, the likelihood of illegally harvested products arriving in the country is increasing due to higher volumes of imports. The increase in imports was approximately 70 percent over the last decade to around \$2.8 billion in 2023.¹³ New Zealand's top three countries for import were China, Australia, and Indonesia.
10. The risk of illegally harvested timber entering the market is exacerbated by complex and interlinked global supply chains. For some timber products, harvesting and processing can be carried out in a number of locations and countries before a finished product reaches the retail market. Where products are highly processed and/or contain timber components from many different sources, it can be difficult to identify where the timber in each component has come from, and the legality of the harvest for each component.
11. The risk of illegally harvested imports entering the domestic market is partially addressed by New Zealand's geographic isolation, existing border controls, and voluntary third-party certification (such as by FSC or PEFC) from suppliers.

¹² Exporter Information Statements (EIS) state that any exports from New Zealand forests must be compliant with the Resource Management Act 1991. Commodity Levy Statements (CLS) confirm that a levy is imposed on all harvest wood material from New Zealand plantation forests, and that all timber is being provided by an organisation that is subject to that levy.

¹³ [Initial Briefing to the Primary Production Select Committee \(parliament.nz\)](https://www.parliament.nz/en/committees/primary-production-select-committee/initial-briefing-to-the-primary-production-select-committee)

What is the policy problem or opportunity?

New Zealand has committed to reducing the global trade in illegally harvested timber

12. As a trading nation, New Zealand has made a commitment to combat illegally harvested timber. New Zealand participates in international forums on this topic, for example, as a member of the Asia-Pacific Economic Co-operation (APEC) Experts Group on Illegal Logging and Associated Trade (EGILAT).
13. Many of these forums have goals relating to recognising the impact of illegal harvesting and taking action to minimise the risk of trading in illegally harvest timber and timber products.
14. Trading partners are implementing systems to combat illegal harvesting and associated trade. Examples include the Lacey Act in the United States of America, the European Union Timber Regulation (EUTR) in the European Union, and the Illegal Logging Prohibition Act in Australia.
15. Globally, customers are also seeking assurances that timber products are legally sourced. Both domestic and international customers want to know that the products they are buying, and companies they are supporting, are trading in legally harvested timber.

Trading partners are increasingly requiring assurances that our timber exports are legally harvested

16. To date, assurance processes to avoid dealing in illegally harvested timber have been satisfied by third party certification schemes and voluntary measures.
17. Administrative and temporary arrangements will not satisfy market access requirements on an ongoing basis and are not applied equally across the supply chain (e.g. they apply to exporters but not importers).
18. Without an effective and efficient legal harvest assurance system in place, New Zealand exporters may risk losing market access with significant economic impact for the forestry and wood processing sector and broader New Zealand economy.

Primary legislation sets a framework for legal harvest assurance but specificity is required

19. In May 2023, the Forests (Legal Harvest Assurance) Amendment Act 2023 (the Legal Harvest Amendment) was enacted. When it commences, it will amend the Forests Act 1949 (Act) to introduce a statutory legal harvest assurance system into law. The purpose of the Legal Harvest Amendment is to:¹⁴
 - strengthen the international reputation of the forestry sector; and
 - safeguard and enhance market access for the forestry sector; and
 - reduce the risk of importing timber that is not legally harvested; and
 - help reduce international trade in timber that is not legally harvested.
20. The Legal Harvest Amendment will commence no later than 1 August 2027. Secondary legislation is needed to bring the legal harvest assurance system into effect. Before

¹⁴ Forests Act 1949, s 74, as inserted by the Legal Harvest Amendment.

recommending secondary legislation, the relevant decision maker must be satisfied it is necessary or desirable for the purposes of the Legal Harvest Amendment.

21. Secondary legislation is necessary or desirable where it supports the purposes of the Legal Harvest Amendment and provides clarity about how the system is intended to operate in practice.
22. Powers to make secondary legislation may be exercised before an Act commences in reliance on section 43 of the Legislation Act 2019. These powers may only be exercised if it is necessary or desirable to bring the legislation into operation.
23. The framework for legal harvest assurance establishes a number of components to address the policy problem and achieve the purpose of the Legal Harvest Amendment at the high level. Each of these inter-connected components seek to address aspects of the overarching policy problem. This impact statement describes these components and sub-problems in sections 2A – 2K. The sub-problem and relevant sub-objectives are set out in each section.

Opportunities from developing the legal harvest assurance system

24. In developing the legal harvest assurance system, the following opportunities may be created:
 - New Zealand’s timber and timber products will continue to be accepted by export markets as legally harvested and, where applicable, meet market access requirements;
 - assist in securing New Zealand’s trading position in markets where government assurance that timber has been legally harvested is required;
 - opening the possibility that exports receive streamlined access into markets with equivalent timber legality controls;
 - provide equal access to government assurance for all exporters to ensure market access. This is important for forest growers and exporters that are unable to access voluntary assurances, including because of costs and geographic limitations.

What objectives are sought in relation to the policy problem?

25. The overarching objectives of the Legal Harvest Amendment apply to the secondary legislation to bring the legal harvest assurance system. Both the primary and secondary legislation both seek to address the same policy problem.
26. The overarching objectives remain:¹⁵

“New Zealand’s legal harvest assurance system will enable cost effective assurance that applies to exported, domestic and imported wood products in a manner that:

- Strengthens market access certainty for New Zealand forestry exports to jurisdictions with harvested wood legality requirements; and

¹⁵ Updated Regulatory Impact Assessment: Proposed Legal Harvest Assurance System, MPI, 2021, retrieved 26 August 2024: <https://www.mpi.govt.nz/dmsdocument/49054-Updated-Regulatory-Impact-Assessment-Proposed-Legal-Harvest-Assurance-System>.

- Demonstrates New Zealand’s commitment to reducing international trade in illegally harvested wood.”

27. The secondary legislation is being developed to also achieve the following additional objectives:

- demonstrating to our trading partners New Zealand’s ongoing commitment to combating illegal logging and associated trade;
- responding to evolving demands for government assurance that New Zealand’s timber and timber products come from legally harvested sources; and
- increasing the confidence of New Zealand consumers that the timber products they are buying have come from legally harvested sources, whether imported or domestically produced.

Section 2: Deciding upon an option to address the policy problem

What scope will options be considered within?

28. This impact statement contains options for secondary legislation empowered by the Act, as it will appear when the Legal Harvest Amendment commences. Many of the empowering provisions contain procedural requirements that the secondary legislation is:

- necessary or desirable for the purposes of the legal harvest assurance part of the Act; and
- appropriate consultation has been carried out.¹⁶ To help meet this requirement, this impact statement has been prepared to support public consultation.

29. Options are only considered feasible when they are necessary or desirable for at least one of the following purposes of the legal harvest assurance system part of the Act:¹⁷

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

30. The scope of feasible options is limited to those empowered or enabled by the Act. Wider considerations, such as sustainability or deforestation, have not been considered.

Broad coverage of impact statement to support transparency

31. The options and analysis in this impact statement has been prepared to support public consultation on preferred options for secondary legislation to support implementing the legal harvest assurance system being established by the Legal Harvest Amendment. It considers both regulations (made by the Executive Council and to which regulatory

¹⁶ Appropriate consultation means consultation with affected persons or representatives of persons substantially affected, including representatives of tangata whenua and forestry industry bodies.

¹⁷ Forests Act 1949, s 74, as inserted by the Legal Harvest Amendment.

impact analysis requirements apply) and secondary legislation made by the Secretary¹⁸ (to which regulatory impact analysis requirements do not apply).

32. This approach has been taken to aid transparency in government decision-making and to provide stakeholders with a holistic explanation of how the legal harvest assurance system is intended to work.
33. Following public consultation, the analysis will be updated to reflect the feedback received. A final impact statement will accompany advice to Cabinet on final decisions for regulations, and the Secretary for notices.
34. This impact statement is structured to provide:
 - the overarching context, problem definition, and objectives for the legal harvest assurance system (section 1);
 - chapters to address components of the legal harvest assurance system (sections 2A to 2K), including the sub-problem to be addressed and assumptions about the matters;
 - an overarching holistic assessment of preferred options (section 2L); and
 - the overarching delivery of the preferred options (section 3).
35. It covers the majority of the problems and opportunities to bring the initial legal harvest assurance system into effect. Some matters that rely on decisions resulting from this impact assessment are out of scope until decisions are made, including cost recovery and infringement settings.

Options incorporate feedback from pre-consultation engagement

36. The options and analysis in this impact statement have been informed by pre-consultation engagement. Te Uru Rākau – New Zealand Forest Service released two issues papers to test assumptions and gather feedback on options for secondary legislation. The following issues papers were made publicly available on the Ministry for Primary Industries (MPI) website:
 - [New Zealand's Legal Harvest Assurance System, Issues paper one: the legal harvest assurance framework](#), available for comment from April 4 – June 4 2024.
 - [New Zealand's Legal Harvest Assurance System, Issues paper two: implementing the legal harvest assurance framework](#), available for comment from July 19 – August 28 2024.
37. Release of issues papers was notified through interested stakeholder lists and industry organisations. Feedback received on issues papers on the assumptions and options available is included in sections 2A to 2K of this impact assessment, alongside the content it is most relevant to.

What criteria will be used to compare options to the status quo?

38. Only options which are feasible are assessed against the criteria described in table one below. An option may not be feasible for a number of reasons, including if it does not meet any procedural requirements, like being necessary or desirable for the purposes of

¹⁸ The Secretary is the chief executive of the Ministry, being the Director-General of the Ministry for Primary Industries (MPI), Forests Act 1949, s 2. In this impact statement Secretary is used to describe exercise of these powers, though exercise may be delegated to another named decision-maker.

the legal harvest assurance system part of the Act, or if it is prohibitively expensive, geographically inaccessible, or requires steps that are unreasonable.

Table one: criteria used for multi-criteria analysis of options for secondary legislation

Criterion	Description
Consistency and proportionality	Implementation of an option should treat parties consistently and avoid advantaging some parties over others. Proportionality means interventions are appropriately scaled to address the problem or achieve the outcome or objective sought.
Minimal complexity and administrative cost	Implementation of an option should be as straightforward as possible, so that administration and transaction costs for regulated parties, the regulator (the Secretary), and those in the forestry and wood-processing supply chain are minimised.
Clarity and transparency	The system, including its penalties, should be understandable, unambiguous, and transparent. Transparency also includes ensuring that appropriate information is made publicly available in a timely manner.

39. Options are assessed for how they perform compared to the status quo. The extent to which the option met the criteria is represented as follows:

Key for interpreting multi-criteria analysis tables:	
++	much better than doing nothing/the status quo
+	better than doing nothing/the status quo
0	about the same as doing nothing/the status quo
-	worse than doing nothing/the status quo
--	much worse than doing nothing/the status quo

40. Each criterion is weighted equally. Where options perform equally well against the criteria, trade-offs may need to be made to choose a preferred option to proceed with. In these situations, the option that best supports the purpose of the legal harvest assurance system part of the Act will be preferred.

41. If options still perform equally well, the option that performs best against the consistency and proportionality criterion will be preferred. This is to ensure that the preferred options chosen are those that best deliver the overarching objectives (set out in section 1 above) with the least intervention in the supply chain.

Structure of options analysis sections

42. The following sections, 2A to 2L, consider the following matters:

Section	Topic	Matters covered
2A	When is timber legally harvested?	<ul style="list-style-type: none"> Relevant legal harvest laws in New Zealand
2B	Legal harvest scope	<ul style="list-style-type: none"> Refining what is regulated as 'regulated timber' Identifying goods by Tariff code that will be regulated as 'specified timber products'
2C	Legal harvest information	<ul style="list-style-type: none"> Specifying legal harvest information for: <ul style="list-style-type: none"> exotic species of regulated timber indigenous species of regulated timber specified timber products
2D	Responsible persons	<ul style="list-style-type: none"> Exemptions and exceptions for responsible persons needing to comply with legal harvest information requirements Record keeping requirements for responsible persons
2E	Who needs to register	<ul style="list-style-type: none"> Exemptions and exceptions from registration
2F	Getting registered	<ul style="list-style-type: none"> Matters to consider in the fit and proper person test Any other criteria to be satisfied before a person can be registered Information required with an application for registration
2G	Due diligence systems	<ul style="list-style-type: none"> Information collection requirements Risk assessment, including information verification and risk mitigation and elimination Any other criteria a third party certification scheme must meet before being recognised for use in a due diligence system
2H	Obligations once registered	<ul style="list-style-type: none"> Record keeping for registered persons Information in an annual compliance declaration. Restrictions on the conditions that can be imposed on registration
2I	Export requirements	<ul style="list-style-type: none"> Information in an application for an Exporter Statement
2J	Recognition (assessors and agencies)	<ul style="list-style-type: none"> Competency requirements for recognised assessors Specified convictions for the fit and proper person test Any other criteria before recognising a class of individuals as recognised assessors Information in an application for recognition
2K	Public registers	<ul style="list-style-type: none"> Information to be displayed on the public register for legal harvest and public register of recognised assessors
2L	Holistic assessment of preferred options	<ul style="list-style-type: none"> Assessment of all preferred options as a package Summary of monetised costs and benefits

Section 2A: When is timber legally harvested?

What is the policy problem or opportunity?

Context

39. The Act establishes that timber is legally harvested when the person who harvests the trees or woody plants from which the timber derives:¹⁹

- has the right to harvest them;
- has all necessary legal authority to exercise that right; and do so, and
- does not contravene the harvest laws of the place or country of harvest when carrying out the harvest.

40. This definition applies at the point of harvest. The harvest may take place in New Zealand or in an overseas country. The relevant harvest laws will be the ones that apply where the harvest takes place and can include any law that affects how or whether a harvest is to be carried out.

The problem and opportunity

41. As the Act is established, each person with obligations in the legal harvest assurance system must identify the laws in the place or country of harvest that apply to their operations. Without intervention, this is expected to result in:

- difficulty and cost (both in time and money) for each person to identify the harvest laws;
- inconsistent approaches between people with obligations in the legal harvest assurance system about which laws they identify and show compliance with;
- a higher burden for the Secretary to monitor how each person with obligations in the legal harvest assurance system has identified and complied with relevant harvest laws on a person-by-person basis;
- a lack of transparency for customers (domestically and globally) about whether timber is legally harvested.

42. To assist people to identify the relevant harvest laws, the Secretary²⁰ may make a notice²¹ that specifies the relevant harvest laws in the place or country of harvest. If there is a notice, then a person with obligations in the legal harvest assurance system may choose to satisfy that the harvest of the timber has not contravened the harvest laws in the place or country only in relation to the laws specified in the notice. This will reduce uncertainty for regulated people and enable consistency in the legal harvest system.

43. If the harvest laws specified in the notice change, then the Secretary will need to update the notice.

¹⁹ Forests Act 1949, s 77, as inserted by the Legal Harvest Amendment.

²⁰ The Secretary is the chief executive of the Ministry, meaning the Director-General of MPI. In this impact statement 'Secretary' is used to describe exercise of a power, whether by the Director-General or another person under delegated authority.

²¹ A notice is secondary legislation but is not subject to regulatory impact analysis requirements. This section has been included to provide transparency about how the legal harvest assurance system is intended to operate.

Assumptions

44. The following assumptions have been made about the Secretary making a notice to identify relevant harvest laws:

- Only conduct and activities covered by the Act and directly related to the harvesting operation should be identified in a notice specifying relevant harvest laws. Conduct not directly related to the harvest is not relevant to the legality of the harvest and is managed by other laws.
- International forums are supportive of reducing the risk of trading in illegally harvested timber and therefore trading partners that participate in these forums will have, or are developing, appropriate harvest laws or systems in the places and countries where harvesting is taking place.
- If a legal harvest system is in place in the trading partner's jurisdiction, this provides evidence the risk of trading in illegally harvested timber is being managed by laws in the place or country of harvest. This is relevant for people importing timber or timber products into New Zealand, who need to show the harvest laws have been met in the country where the timber was harvested.

What do stakeholders think about the problem?

45. In Issues paper one, we asked for feedback on the assumptions and range of options for relevant harvest laws. Feedback included the following suggestions:

- legal harvest assurance should focus on the law regarding the right to harvest only and not extend to other regulatory matters including common law.
- certain named laws/Acts and regulations may be relevant, with the following suggested:
 - Health and Safety at Work Act;
 - Crimes Act;
 - Resource Management Act and instruments made under it;
 - Biosecurity Act;
 - Heritage New Zealand Pouhere Taonga Act;
 - Climate Change Response Act; and
 - Income Tax Act.
- extending legal harvest assurance to matters covered by the Resource Management Act will be excessive, complex, bureaucratic, expensive, and highly problematic.
- Legality of harvest should be time bound to legal matters that arise from each rotation up to the harvest, and that future issues arising (e.g., weather events post-harvest that may result in legality issues from the previous rotation period) should not affect this.

46. Feedback tended not to include comments on inclusion of customary law. The feedback that was received suggested that extending recognition of customary law or indigenous rights beyond those that are included in statute would result in uncertainty, inconsistencies, and subjectivity in the regulatory system. In the New Zealand context, feedback suggested legality should rely on existing processes that already include aspects of tikanga and/or consultation with relevant iwi.

47. Some feedback highlighted that the ability to demonstrate that production forestry is 'deforestation free' is as important as demonstrating the legality of the harvest. Feedback did not explain what was envisaged by harvest being 'deforestation free'.

What objectives are sought in relation to the policy problem?

48. By identifying relevant harvest laws, we are trying to:

- recognise the harvest laws in place in trading partner jurisdictions;
- recognise existing domestic laws to determine legality, not create new ones;
- constrain the relevant laws to those relating to the harvesting operation;²²
- ensure due diligence and information requirements, particularly on imported goods, are not disproportionate to the risk.

49. In response to feedback on issues paper one, an additional objective has been added:

- provide clarity to regulated parties which laws they need to show compliance with to demonstrate timber has been legally harvested.

What options are being considered?

Limitations, constraints, and non-feasible options

50. Options are limited to existing laws in the place or country where the timber was harvested, at the time the timber was harvested. We cannot impose law retrospectively, for example, if the law changes during a harvesting operation or after timber has been supplied. Similarly, we cannot impose New Zealand harvest laws on harvesting that occurs outside of New Zealand.

51. While some feedback has suggested considering third party certification schemes, these are not the law and are out of scope for solving this policy problem (identifying relevant harvest laws). Third party certification schemes are considered as part of due diligence requirements in section 2G.

52. These options should be read as identifying the laws relevant to whether a harvest meets the definition of 'legally harvested' for the purposes of the legal harvest system. A person must comply with all relevant laws when conducting their operations.

Options for identifying harvest laws in New Zealand

Note: Options three to six are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

53. **Key features:** people regulated under the legal harvest assurance system would need to identify the harvest laws of the place or country of harvest as relevant to their business. A notice would not be made to specify the laws the Secretary considered relevant.

54. **Addressing the problem:** each person regulated under the legal harvest system would have the cost, administrative burden, and regulatory uncertainty outlined in the problem definition. The Secretary would also face costs and the administrative burden of carrying out compliance, monitoring, and enforcement on a wide range of approaches, making education and verification inefficient.

²² Note, the following examples were included in this objective for issues paper one to assist with understanding the questions presented only: resource management, health and safety, Forests Act, tax, and their equivalents in the place the harvest happened, such as concession fees and conditions.

55. For exports, if the laws that are identified do not meet the receiving nations expectations there is a risk the legal harvest assurance system will not provide the evidence required for market access.

Option Two – Guidance on relevant laws only

56. Key features: guidance would be published to assist people regulated under the legal harvest assurance system to identify the harvest laws of the place or country of harvest as relevant to their business. A notice would not be made to specify the laws the Secretary considered relevant.

57. Addressing the problem: each person regulated under the legal harvest system would need to review the guidance and apply it to their business. As guidance is non-binding, compliance with the guidance would be voluntary. Regulated people would still need to consider whether there were any other laws relevant to their business. This option presents the same problems as the status quo in terms of cost, administrative burden, and uncertainty.

Option Three – Specify land-use laws relevant to harvest

58. Key features: specify in a notice the land-use laws considered relevant to harvest in New Zealand. Laws would cover the listed Acts and any regulations, rules, or other requirements made under the Act as they relate to harvest:

- Resource Management Act 1991;
- Forests Act 1949;
- Biosecurity Act 1993;
- Heritage New Zealand Pouhere Taonga Act 2014.

59. Addressing the problem: these land-use laws apply to the biophysical aspects of harvesting and in some cases have democratic plan and rule making processes that assist to reflect community expectations about how a harvest is conducted.

60. This option would create certainty for regulated people about which laws they need to provide information about through the supply chain. It will also provide clarity about the laws the Secretary considers relevant. Specifying land-use laws responds to the objective of constraining the relevant laws to those relating to the harvesting operation.

Option Four - Specify commercial laws relevant to harvest

61. Key features: specify in a notice that the following laws relating to commercial activity are relevant harvest laws. Laws would cover the listed laws as they relate to harvest:

- Tax Administration Act 1994;
- Contract laws, including the Contract and Commercial Law Act 2017;
- Financial Markets Conduct Act 2013;
- Land Transfer Act 2017;
- Overseas Investment Act 2005.

62. Addressing the problem: specifying commercial laws risks identifying laws broader than the objective to constrain the relevant laws to those relating to the harvest operation. Where a regulated person is undertaking a number of activities it may be difficult for the person to identify which aspects of their business relate to the harvest for these laws.

63. This option risks creating duplication with other aspects of the definition of legally harvested. For example, if a person harvesting the trees fails to meet contractual pre-

conditions to harvest or does not comply with Overseas Investment Act conditions, they are unlikely to have all lawful authority to exercise the right to harvest as required for the purposes of defining when something is legally harvested.

Option Five – Specify conduct laws about how the harvest is undertaken

64. Key features: specify in a notice that the following laws relating to how the harvest is undertaken are relevant harvest laws. Laws would cover the listed Acts and any regulations, rules, or other requirements made under the Act as they relate to harvest:
- Health and Safety at Work Act 2015;
 - Employment law, including the Employment Relations Act 2000;
 - Crimes Act 1961;
 - Hazardous Substances and New Organisms Act 1996.
65. Addressing the problem: specifying these laws is an opportunity to demonstrate the industry and Secretary's commitments to the health, safety, and wellbeing of people in determining whether timber has been legally harvested.
66. This option would recognise existing domestic law but may go further than the objective of constraining the relevant laws to those relating to the harvesting operation. It may be difficult to draw a direct link between particular laws and the harvest.
67. Where a regulated person is undertaking numerous activities, it may be difficult for the person to identify which aspects of their business relate to the harvest for these laws.

Option Six – Specify climate laws relevant to harvest

68. Key features: specify in a notice the climate related laws that are relevant to harvest. Laws would cover the Climate Change Response Act 2002 and regulations and other requirements set under this Act (collectively referred to as the CCRA for the purposes of this analysis).
69. Addressing the problem: in a practical sense, adherence to the CCRA will mean the person needs to have complied with all Emissions Trading Scheme (ETS) requirements. In some circumstances, participation in the ETS is mandatory for forestry, while in others it is voluntary. Specifying adherence to the CCRA for legal harvest assurance would create a disproportionate burden between people dependent on how the ETS applies to them.
70. Extending the relevant harvest laws to climate related matters goes further than the objective of constraining the relevant laws to those relating to the harvest operation.

Options for identifying harvest laws for overseas countries

71. Notices may also be made to specify the relevant laws in place in the place or country of harvest when the harvest takes place outside of New Zealand. This power involves recognising which laws are relevant to harvest for the legal harvest assurance system.
72. The options and content of these notices will be negotiated with trading partners before being made public. Options are not included in this document because regulatory impact analysis requirements do not apply to these notices.

How do the options for identifying harvest laws in New Zealand compare to the status quo?

	Option One – Status Quo	Option Two – Guidance on relevant laws only	Option Three – Specify land-use laws	Option Four – Specify commercial laws	Option Five – Specify conduct laws about how the harvest is undertaken	Option Six – Specify climate laws
Consistency and proportionality	0	+ will promote a more consistent approach than the status quo because people will be acting on the same guidance.	+ limits recognised laws in proportion to the risk of losing market access but may create a higher burden for smaller or more specialist operators to identify the relevant land-use laws.	- disproportionate as many of these laws are already captured by the legal right and authority to harvest in the definition of legally harvested.	0 this option may go further than the objective of constraining the relevant laws to those relating to the harvesting operation and so may be disproportionate to the risks. However, it is ranked as neutral because it may also promote consistency in the practices the laws apply to.	- disproportionate at ETS obligations apply differently depending on when a forest was planted. This would create different obligations, and therefore an inconsistent regulatory burden, between different people for legal harvest assurance.
Minimal complexity and administrative cost	0	+ reduced complexity and cost as each regulated party does not need to identify the relevant harvest laws. The cost to produce guidance will be borne by the Secretary to identify the laws, and keep these up to date, however this may result in more efficient monitoring as regulated parties may use the same relevant laws (however, as the guidance is not binding, this is not guaranteed).	+ the relevant laws will be clear at a broad/high level, but regulated parties will need to drill down to the specific provisions that affect their operation. However, it would provide some efficiency in limiting the laws to only those specified for the purposes of determining if something is legally harvested.	- duplication with other aspects of definition of legally harvested increases the administrative burden. Difficult to separate when these laws apply to a harvest or to other business operations.	- complex to determine when laws apply to the harvest when they are undertaking a number of activities, including personal conduct during the harvest.	- Information sharing under the CCRA is restricted to acknowledge the financial nature of the ETS. Information sharing and determining which obligations would be relevant for each regulated person would add cost and complexity for regulated people and the Secretary.
Clarity and transparency	0	0 because guidance is non-binding it is open for regulated parties and the Secretary to adopt a different approach which may not be transparent.	+ will provide clarity about which laws the Secretary is concerned about for the purposes of timber being legally harvested. It will be clearer for trading partners about which domestic New Zealand laws are relevant to legal harvest.	- Not clear that these laws relate to harvest rather than to the operations of a business more generally.	+ would provide a transparent commitment to health and safety in the sector as it relates to harvest.	0 Not clear that these laws relate to harvest rather than to wider environmental benefits of forestry.
Overall assessment	0	+	+	-	0	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

73. The preferred option is *option three – specify land-use laws* in a notice. This option performed the best against the criteria and best meets the objective to constrain the relevant laws to those relating to the harvesting operation.
74. By making a notice, a person may choose to satisfy the requirement not to contravene the harvest laws of the place or country of harvest when carrying out the harvest only in relation to the harvest laws specified in the notice. This means that while a person must comply with all laws in the place or country of harvest, they may choose to only consider the laws set out in the notice for the purposes of determining if timber has been legally harvested.
75. Although *option two – guidance on relevant laws only* also performed well against the criteria, as a non-regulatory option it is not compatible with option three. To support implementation of the preferred option, guidance will be provided to promote consistent understanding of the resulting notice to recognise land-use laws.

Section 2B: Legal harvest scope

76. This section covers:
- refining what is regulated as ‘regulated timber’; and
 - identifying goods by Tariff code that will be regulated as ‘specified timber products’.

What is the policy problem or opportunity?

Context

77. The legal harvest assurance system is intended to cover people trading in goods to import, export, and process timber. To achieve this, the Act defines the terms set out in the table below.

Table two: relevant definitions from the Act

Term	Definition
Timber	<p>Timber means—</p> <ul style="list-style-type: none"> • trees (excluding cuttings, suckers, and shoots); and • woody plants able to be milled. <p>Timber includes branches, roots, and stumps of trees and other woody plants able to be milled, logs, woodchips, wood products, veneer, tree ferns, and tree fern fibre.</p>
Regulated timber	<p>Regulated timber means the roots, stump, logs, branches, and leaves from—</p> <ul style="list-style-type: none"> • exotic species of New Zealand timber unless and to the extent that they are excluded by regulations; <p>or</p> <ul style="list-style-type: none"> • indigenous species of New Zealand timber but only to the extent that they are included by regulations.

Specified timber products	Means any timber, or any product made from or containing timber, that is identified by regulations, and by reference to items, headings, or subheadings that appear in the Tariff, as a product to which this Part applies.
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Problem

78. The scope of the legal harvest assurance system and the risks it seeks to address, are disproportionate to the definitions of regulated timber and specified timber products. The application of these definitions means:
- more people trading in regulated timber are covered than is necessary to mitigate the potential risks; and
 - until specified in regulations, no importers or exporters are covered for importing or exporting specified timber products.
79. For regulated timber, the Act requires separate regulations to be set depending on whether the regulated timber comes from harvest of an exotic or indigenous species.
80. For regulated timber from exotic species, the wide scope of timber from exotic species being regulated goes further than is required for ensuring domestic and imported products are treated similarly.
81. For regulated timber from indigenous species, there are no requirements unless regulations are made. This may not be sufficient to provide the necessary information for market access.
82. For specified timber products, the same Tariff codes will be recognised for both imports and exports. Unless Tariff codes are specified in regulations, the products they refer to will not be captured by the legal harvest assurance system. This could result in market access being lost if exporters cannot show that their products have been legally harvested. It would also mean imported products could be sold in New Zealand without any checks or controls on the legality of the harvest of the timber and timber products.

Opportunity

83. There is a policy opportunity to use regulations to specify which timber products will be regulated (by refining the definition of regulated timber and/or specifying Tariff codes to identify specified timber products). This is expected to result in:
- consistency in the products covered by the legal harvest assurance system, including reducing unintended gaps in coverage;
 - coverage which responds to the risk of illegally harvested timber entering the supply chain or losing market access;
 - a risk-based approach to the types of timber and timber products that are covered, to support the legal harvest assurance system to respond to emerging and/or reducing risks, which will change depending on the current forestry environment;
 - alignment with trading partners.

Assumptions

84. We have made the following assumptions about identifying regulated timber and specified timber products:

- Indigenous timber and timber products do not need to be part of legal harvest because regulation under Part 3A of the Forests Act 1949 is sufficient to manage the risk of illegal harvest. Documentation under Part 3A will provide assurance to ensure market access.
- People trading in timber or timber products from planted indigenous forests will voluntarily register for legal harvest assurance if they require proof of legal harvest for market access.

What do stakeholders think about the problem?

85. In the first issues paper, we asked for feedback about regulated timber and specified timber products. The feedback we received was varied. Some feedback suggested that legal harvest should apply to both exotic and indigenous timber as they believed indigenous timbers have the highest risk of being harvested illegally. While other feedback suggested that since the export of indigenous timber requires Sustainable Forest Management Plans (SFMP) or permits there is low risk of illegal harvest.
86. Other feedback suggested that legal harvest assurance should not be species specific and should only apply if there is a threat to market access. Some feedback suggested using the same Tariff codes to identify specified timber products as are used in Australia's Illegal Logging Prohibition Act 2012 and the Illegal Logging Prohibition Regulation 2012.

What objectives are sought in relation to the policy problem?

87. By identifying regulated timber and specified timber products, we are trying to:
- adopt a simple way to identify goods that may be at risk of containing illegally harvested timber, as a way to identify the people that will need to register in the legal harvest system;
 - only regulate people trading in the identified products that are at highest risk of losing market access and/or being illegally sourced;
 - take a proportionate approach to addressing the risks of illegal harvest while enabling legal trade.

What options are being considered for regulated timber?

Limitations, constraints, and non-feasible options

88. At the time that the policy for the Legal Harvest Amendment was developed, the intent was to exclude indigenous timber on the basis that it is regulated under Part 3A of the Act. Part 3A of the Act uses sustainable forest management plans or permits (SFMPs) as the core tool for promoting the sustainable forest management of indigenous forest land.²³
89. Under Part 3A of the Act an SFMP is not required in the following circumstances:
- Planted indigenous forests do not require a SFMP. Timber from planted indigenous forests only require a planted indigenous forest certificate to exclude them from

²³ Forests Act 1949, s 67B.

export controls.²⁴ This certificate does not provide any information about the legality of the harvest other than that the indigenous timber is from a planted forest.

- Leaves harvested from indigenous forests as these are not included in the definition of timber as it applies in Part 3A of the Act, though they are included in the definition of regulated timber for the purposes of the legal harvest assurance part of the Act.

90. Options are constrained to secondary legislation under the legal harvest part of the Act. Options that would extend the application of SFMPs are out of scope.

91. We considered options that would include leaves from indigenous species as regulated timber, to provide consistency between exotic and indigenous species. However, we did not identify any feasible options, particularly given the practical difficulty in monitoring an option of this nature.

Options for regulated timber

92. *Note: Options two and three are compatible with option four, i.e. they are not mutually exclusive and may be chosen to work together. Options two and three are considered mutually exclusive and cannot both be chosen.*

Option One – Status Quo: No change to regulations

93. Key features: no changes are made to exclude exotic species or include indigenous species as regulated timber.

94. Addressing the problem: any person trading indigenous timber or product containing indigenous timber remain exempt from being regulated under legal harvest assurance system. All exotic timber would be regulated.

Option Two – include all roots, stumps, logs, branches, and leaves from indigenous species

95. Key features: include any timber from any indigenous species as regulated timber by regulations.

96. Addressing the problem: indigenous timber (including leaves) would be regulated, regardless of whether it is managed under an SFMP or not. The person responsible for harvest would need to provide legal harvest information about the timber. This would increase the regulatory burden for these harvesters as they would need to comply with both Part 3A and the legal harvest assurance part of the Act for the same activity.

97. Regulating all indigenous species would provide positive Government assurance of legality. However, including all indigenous timber may be disproportionate to the risk of people trading in illegally harvested timber given the controls that exist under Part 3A of the Act.

Option Three – all indigenous timber from a planted indigenous forest grown in New Zealand that is not subject to an SFMP

²⁴Forests Act 1949, s 67C(1)(g). The purpose for this certificate is to provide evidence of the forest being planted for the purpose of issuing a subsequent milling statement.

98. Key features: include any timber (excluding leaves) from any indigenous species in New Zealand from a planted indigenous forest will be included as regulated timber by regulations.
99. Addressing the problem: indigenous timber from planted indigenous forests are only regulated for export or milling under Part 3A of the Act in as much as the Secretary must be satisfied that the timber has been harvested from a planted indigenous forest.
100. This option would ensure that indigenous species from planted indigenous forest grown in New Zealand are subject to legal harvest requirements. It would not have the same potential duplication issues as including all indigenous species as described in option two above.
101. This option would provide documentation about the legality of the harvest. This supports the objective of only regulating people trading in the identified products that are at highest risk of losing market access and/or being illegally sourced.

Option Four – exclude all leaves from exotic timber species as regulated timber by regulations

102. Key features: the definition of regulated timber means the roots, stump, logs, branches, and *leaves* from exotic species of New Zealand timber unless and to the extent that they are excluded by regulations (emphasis added). Leaves from exotic species would be excluded from being regulated timber by regulations.
103. Addressing the problem: the risk to market access for harvest of leaves from exotic species is anticipated to be low. Requiring people training in leaves from exotic species to meet the obligations of the legal harvest assurance system is impractical, and unnecessary to meet the purposes of the legal harvest assurance part of the Act.
104. If a person requires proof of legality of the harvest of exotic leaves, they may choose to voluntarily comply with the relevant legal harvest assurance requirements.

How do the options for regulated timber compare to the status quo?

	Option One – Status Quo: No change to regulations	Option Two – include all roots, stumps, logs, branches, and leaves from indigenous species	Option Three – all indigenous timber from a planted indigenous forest grown in New Zealand that is not subject to an SFMP	Option Four – exclude all leaves from exotic timber species as regulated timber by regulations
Consistency and proportionality	0	0 disproportionate for indigenous timber already subject to Part 3A of the Act.	+ promotes a proportionate approach by including indigenous timber that is not subject to an SFMP in the legal harvest assurance system.	++ treats harvest of leaves consistently between species. The trade in leaves is likely to be very small, therefore excluding leaves is considered proportionate to the risk of illegal harvest.
Minimal complexity and administrative cost	0	-- some people will have the cost of demonstrating compliance with sustainable forest management plans and legal harvest requirements.	0 may still be a minor administrative cost to demonstrate that the harvest is from a planted indigenous forest, however this is an existing burden not a new cost imposed by the legal harvest assurance system.	++ will reduce complexity and administration costs for people who harvest leaves, and for registered persons trading in leaves.
Clarity and transparency	0	+ transparent that legal harvest requirements apply to all species of timber.	0 increased transparency for legality of harvest of timber from planted indigenous forests. However, reduced clarity about the standards that indigenous species may have met due to different obligations applying based on when an SFMP applies.	+ clear that leaves are not intended to be regulated the same as the other fibrous parts of the timber.
Overall assessment	0	0	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

105. The preferred option is *option four - exclude all leaves from exotic timber species as regulated timber by regulations*. Excluding leaves from exotic species as regulated timber by regulations provides a proportionate response to the risk for market access for those who trade in leaves. It is consistent with how persons harvesting leaves from indigenous forests are managed.

106. Although *option three - all indigenous timber from a planted indigenous forest grown in New Zealand that is not subject to an SFMP* performed positively overall. Regulations are not considered necessary to include all indigenous species that meet the option description because a person may voluntarily comply with the relevant legal harvest obligations..

107. Option three is not required to meet the objective of only regulating people trading in the identified products that are at the highest risk of losing market access and/or being illegally sourced.

What options are being considered for identifying specified timber products?

Limitations, constraints, and non-feasible options

108. Options for identifying specified timber products are constrained to the Tariff. The Tariff means the Harmonised System established by the International Convention on the Harmonised Commodity Description and Coding System in effect in New Zealand, as set out in the Tariff Act 1988. The Tariff code is an internationally recognized numerical system created by the World Customs Organization (WCO). The Tariff Code helps international trade by making it easier to identify and categorize traded goods. A Tariff code exists for every product involved in global commerce. More information about the Tariff code is available on the WCO website: [Nomenclature 2022 Edition – WCO website](#).

109. A significant portion of Tariff are, or could be, goods made from or containing timber. The Tariff does not identify all goods by what they are made from. For example, yachts, pleasure or sports boats, rowing boats and canoes under HS code 89.03 may be predominantly timber but are identified by whether they are motorised, their length, inflatable, etc. In other instances, composite or mixed goods (goods with different components made up from different material such as timber, metal, plastic, etc), may be listed under multiple headings, under the heading which gives the good their essential character, or the heading which occurs numerically last.²⁵

110. For the purposes of options three to five that limit the identification of goods as specified timber products to specific areas of the Tariff, the following Tariff Chapters were identified as the Chapters containing most goods that are either timber or made from or contain timber: 44-49, 89, 94, and 95. As most goods containing timber would be listed under these Chapters, the majority of risk that a product imported or exported containing timber that was illegally harvested would be found within goods under these Chapters. The analysis within these options is therefore restricted to these Tariff Chapters.

²⁵ Rule 3 of the General Rules of Interpretation of Part 1 of the Tariff addresses how to classify composite goods, mixtures, and items that are sold in a set.

111. The Act states that the legal harvest assurance system only applies to indigenous timber if it is regulated timber or the person voluntarily complies.²⁶ There is no power to identify specified timber products made from indigenous timber.

112. In circumstances where a specified timber product is imported into New Zealand and is made from indigenous timber (to New Zealand) but is grown outside of New Zealand, that timber will not be regulated for the purposes of legal harvest assurance.

Options for identifying specified timber products

Note: Options three to five are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo: No Tariff codes are identified

113. Key features: no Tariff codes are identified, and therefore no timber, or any product made from or containing timber, are identified in regulations. No timber, or timber products are identified as specified timber products.

114. Addressing the problem: each person importing or exporting timber, or any product made from or containing timber would not need to register for legal harvest and would not be regulated under the legal harvest system. This makes it clear who needs to register but does not regulate items that are at risk of losing market access and/or of, or containing, timber that is illegally sourced.

Option Two – All Tariff codes are identified

115. Key features: all Tariff codes are identified in regulations. Therefore, any product that is made from, or contains timber, under any Tariff code will be identified in regulations. A product or timber item may be categorised in any part of the Tariff, and any product made from, or containing timber would be excluded by exemptions and thresholds if required. Goods that do not contain timber are automatically excluded from the regulations as they do not meet the definition of specified timber products.

116. Addressing the problem: each person importing or exporting timber, or any product made from or containing timber would need to register for legal harvest. If a person regulated under the legal harvest system does not meet a specified threshold or are exempt (considered in section 2E below), they are not required to register for legal harvest.

Option Three – Tariff codes representing 98% of the total export value from goods made from, or primarily made from, timber

117. Key features: Tariff codes for timber goods, or any product made from or containing timber identified under the subheadings and Harmonised System (HS) codes in the Tariff set out in Table three, will be identified in regulations as specified timber products.

Table three: Tariff codes representing 98% of timber product total export value

²⁶ Forests Act 1949, s 78, as inserted by the Legal Harvest Amendment.

Tariff reference (HS4 code)²⁷	Headings
44.01	Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms.
44.03	Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared.
44.07	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm.
44.08	Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.
44.09	Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, v-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed.
44.10	Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances.
44.11	Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances.
44.12	Plywood, veneered panels and similar laminated wood.
44.18	Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes.
47.01	Mechanical wood pulp.
47.03	Chemical wood pulp, soda or sulphate, other than dissolving grades.
47.05	Wood pulp obtained by a combination of mechanical and chemical pulping processes.
48.04	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03
48.05	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in Note 3 to this Chapter.

²⁷ HS4 code refers to the first four digits of the eight-digit New Zealand Tariff code in The Working Tariff Document of New Zealand. The first two digits refer to the Chapter, and the second two digits refer to the Heading. The Working Tariff Document of New Zealand is found here: <https://www.customs.govt.nz/business/tariffs/working-tariff-document/>

48.10	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface–coloured, surface– decorated.
48.18	Toilet paper and similar paper, cellulose wadding or webs of cellulose fibres, of a kind used for household or sanitary purposes, in rolls of a width not exceeding 36 cm, or cut to size or shape; handkerchiefs, cleansing tissues, towels, tablecloths, serviettes, bed sheets and similar household, sanitary or hospital articles, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibres.
48.19	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibres; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.
48.21	Paper or paperboard labels of all kinds, whether or not printed.
89.03	Yachts and other vessels for pleasure or sports; rowing boats and canoes.
94.01	Seats (other than those of heading 94.02), whether or not convertible into beds, and parts thereof.
94.03	Other furniture and parts thereof.

118. Addressing the problem: this option covers New Zealand’s top 21 export Tariff code subcategories containing goods that are made from, or primarily made from or containing timber, by value over the previous five years from the following Tariff Chapters: 44-49, 89, 94, 95.

119. These Tariff codes represent approximately 98 percent of total exports, as well as exports to New Zealand’s top 10 export countries²⁸ and all 27 European Union member states over the previous five years. Note this is 98 percent of the exports under the Tariff Chapters described in the ‘Limitations, constraints, and non-feasible options’ section above.

120. The Tariff codes listed in this option capture over 66 percent of the total value of the goods under the relevant Tariff Chapters (as described in the ‘Limitations, constraints, and non-feasible options’ section above) over the previous five years.

121. Goods in any of these Tariff codes that do not contain timber are not regulated under the legal harvest system as they are automatically excluded because they do not meet the definition of specified timber products. It also excludes subcategories of goods exclusively made from recycled material due to the complexity of identification, and to encourage recycling.

²⁸ People’s Republic of China, Australia, Republic of Korea, Japan, United States of America, India, Indonesia, Thailand, Taiwan, Viet Nam.

Option Four – Tariff codes representing an additional one percent of total export value from goods made from, or primarily made from, timber

122. Key features: Tariff codes for timber, or any product made from or containing timber identified under the subheadings and Harmonised System (HS) codes in the Tariff set out in Table four (in addition to the subcategories listed in Table three in Option Three) will be identified in regulations as specified timber products.

Table four: additional Tariff codes to Table three representing timber products responsible for 99% of timber product total export value

Tariff reference (HS4 code)	Headings
48.11	Paper, paperboard, cellulose wadding and webs of cellulose fibres, coated, impregnated, covered, surface–coloured, surface–decorated or printed, in rolls or rectangular (including square) sheets, of any size, other than goods of the kind described in heading 48.03, 48.09 or 48.10.
48.20	Registers, account books, note books, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting–pads, binders (loose–leaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers, of paper or paperboard.
49.01	Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets.
49.11	Other printed matter, including printed pictures and photographs.
94.06	Prefabricated buildings.

123. Addressing the problem: this option ensures that 99 percent of exported goods by value are regulated under legal harvest assurance to support market access. It would also cover 80 percent of imported goods.

124. Table four represents the subsequent additional five subcategories to those identified in Table three in Option Three. This extends the identified timber products to New Zealand’s top 26 export subcategories containing goods made from, or primarily made from or containing timber, by value over the previous five years from the following Tariff Chapters: 44-49, 89, 94, 95.

125. These 26 subcategories represent approximately 99 percent of total exports (by value), as well as exports to New Zealand’s top 10 export countries and all 27 European Union member states over the previous five years. Note this is 99 percents of the Tariff Chapters (as outlined under ‘Limitations, constraints, and non-feasible options’ section above.

126. The Tariff subcategories listed in this option captures over 80 percent of the total value of the goods under the analysed Tariff Chapters (as outlined under ‘Limitations, constraints, and non-feasible options’ section) over the previous five years of imported goods into New Zealand.

127. Goods in any of these subcategories that do not contain timber are not regulated under the legal harvest system as they are automatically excluded because they do not meet the definition of specified timber products. It also excludes subcategories of goods

exclusively made from recycled material due to the complexity of identification, and to encourage recycling.

Option Five – Tariff codes representing 99% of total export value and 98% of total import value from goods made from, or primarily made from, timber

128. Key features: Tariff codes for timber goods, or any product made from or containing timber identified under the subheadings and Harmonised System (HS) codes in the Tariff set out in Table five below (in addition to the subcategories listed in Tables three and four in Options Three and Four) will be identified in regulations as specified timber products.

Table five: additional Tariff codes to Tables three and four representing timber products responsible for 99% of timber product total export value and 98% of timber product total import value

Tariff reference (HS4 code)	Headings
44.02	Wood charcoal (including shell or nut charcoal), whether or not agglomerated.
44.14	Wooden frames for paintings, photographs, mirrors or similar objects.
44.16	Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves.
44.19	Tableware and kitchenware, of wood.
44.20	Wood marquetry and inlaid wood; caskets and cases for jewellery or cutlery, and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling in Chapter 94.
44.21	Other articles of wood.
46.02	Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from goods of heading 46.01; articles of loofah.
48.01	Newsprint, in rolls or sheets.
48.02	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch-cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 48.01 or 48.03; hand-made paper and paperboard.
48.03	Toilet or facial tissue stock, towel or napkin stock and similar paper of a kind used for household or sanitary purposes, cellulose wadding and webs of cellulose fibres, whether or not creped, crinkled, embossed, perforated, surface-coloured, surface-decorated or printed, in rolls or sheets.
48.06	Vegetable parchment, greaseproof papers, tracing papers and glassine and other glazed transparent or translucent papers, in rolls or sheets.
48.13	Cigarette paper, whether or not cut to size or in the form of booklets or tubes.
48.23	Other paper, paperboard, cellulose wadding and webs of cellulose fibres, cut to size or shape; other articles of paper pulp, paper, paperboard, cellulose wadding or webs of cellulose fibres.
49.02	Newspapers, journals and periodicals, whether or not illustrated or containing advertising material.
49.09	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings.
95.04	Video game consoles and machines, table or parlour games, including pintables, billiards, special tables for casino games and automatic bowling

	equipment, amusement machines operated by coins, banknotes, bank cards, tokens or by any other means of payment.
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129. Addressing the problem: this option ensures that 99 percent of exported goods by value are regulated under legal harvest assurance to support market access. It also covers 98 percent of imported goods to support consistency in the legal harvest system and reducing the risk of New Zealand being a destination for illegally harvest timber.
130. Table five represents the subsequent additional 16 subcategories to those identified in Tables three and four in Options Three and Four. This extends the identified timber products to New Zealand's top 26 export and top 37 import subcategories containing goods made from, or primarily made from or containing timber, by value over the previous five years from the following Tariff Chapters: 44-49, 89, 94, 95.
131. This represents a total of 42 subcategories. Goods in any of these subcategories that do not contain timber are not regulated under the legal harvest system as they are automatically excluded because they do not meet the definition of specified timber products. It also excludes subcategories of goods exclusively made from recycled material due to the complexity of identification, and to encourage recycling.
132. These 42 subcategories represent approximately 99 percent of the total value of the goods exported from New Zealand and 98 percent for goods imported under the analysed Tariff Chapters (as outlined under 'Limitations, constraints, and non-feasible options' section) over the previous five years.

How do the options of identifying specified timber products compare to the status quo?

	Option One – Status Quo: No Tariff codes are identified	Option Two – All Tariff codes are identified	Option Three – Tariff codes representing 98% of the total export value from goods made from, or primarily made from, timber	Option Four – Tariff codes representing an additional one percent of total export value from goods made from, or primarily made from, timber	Option Five – Tariff codes representing 99% of total export value and 98% of total import value from goods made from, or primarily made from, timber
Consistency and proportionality	0	0 identifying all possible imported and exported goods is disproportionate to the risk of trading in illegally harvested timber.	+ exporters and importers are treated consistently.	+ exporters and importers are treated consistently.	++ exporters and importers are treated consistently. Option is proportionate to risk because it captures almost all goods that contain timber being imported or exported.
Minimal complexity and administrative cost	0	- this approach is clear what is regulated by Tariff code, but in practice would be complex and costly to manage because all goods would need to demonstrate either legality of harvest or that they do not contain timber of any kind or quantity.	- will increase administration and transaction costs. However, minimal complexity to support market access for the majority of goods containing timber.	- slight increase in complexity with greater number of goods regulated under a larger number of Tariff codes. There will be a proportionate increase in administration and transaction costs.	- increased complexity with greater number of goods regulated under largest number of listed Tariff codes. There will be a proportionate increase in administration and transaction costs.
Clarity and transparency	0	+ very clear on what timber products may be regulated, but potential difficulties in identifying the presence of timber in products where timber is a minor component.	+ would increase transparency about the legal harvest obligations that goods containing timber have met.	+ would increase transparency about the legal harvest obligations that goods containing timber have met.	+ would provide the greatest increase in transparency about the legal harvest obligations that goods containing timber have met by covering the vast majority of imported and exported goods containing timber,
Overall assessment	0	0	+	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

133. The preferred option is *Option Five – Tariff codes representing 99% of total export value and 98% of total import value from goods made from, or primarily made from, timber.*

This option treats imports and exports equivalently by covering the vast majority of imported and exported goods containing timber. This option best responds to the policy opportunities to provide:

- 1) consistency in the legal harvest assurance system, including reducing unintended gaps in coverage;
- 2) coverage that responds to the risk of illegally harvested timber entering the supply chain or losing market access;
- 3) a risk-based approach to the types of timber and timber products that are covered, to support the legal harvest assurance system to respond to emerging and/or reducing risks, which will change depending on the current forestry environment.

134. All options performed poorly compared to the status quo in terms of minimal complexity and administrative cost because the options would introduce regulation for goods in the identified Tariff Codes. However, adopting the status quo would not meet the policy intent and would frustrate the purposes of the legal harvest assurance part of the Act.

Section 2C: Legal harvest information

135. This section covers specifying legal harvest information for:

- exotic species of regulated timber;
- indigenous species of regulated timber; and
- specified timber products.

What is the policy problem or opportunity?

136. The legal harvest assurance system relies on information about the harvest passing through the supply chain. What information is relevant will depend on who is supplying the timber or timber product, and whether the timber is:

- regulated timber from the harvest of an exotic species in New Zealand;
- regulated timber from the harvest of an indigenous species in New Zealand;
- a specified timber product.

137. Note: If a person has decided to voluntarily comply with legal harvest requirements, the timber is treated as if it was regulated timber or a specified timber product as relevant.

138. For clarity, this section is split into sub-sections to address *regulated timber* and *specified timber products* separately.

Regulated timber

Context

139. For forests in New Zealand, obligations under the legal harvest assurance system begin from the point of harvest. The person responsible for harvest must provide legal harvest information when they supply regulated timber to another person in trade (the

recipient²⁹). In trade means that the regulated timber is supplied as part of a business transaction.

140. The responsible person must provide the legal harvest information to the timber recipient before or when the timber is supplied to the recipient (unless an exemption applies, section 2D below refers). They must also update the legal harvest information if it changes. For timber harvested in New Zealand, this begins the process of passing the legal harvest information along the supply chain.

141. A person that is registered for legal harvest assurance must receive legal harvest information from the supplier before they receive any regulated timber.

Problem and opportunity

142. For regulated timber, the Act requires separate regulations to be set depending on whether the regulated timber comes from harvest of an exotic or indigenous species.

143. For regulated timber from the **harvest of an exotic species in New Zealand**, legal harvest information means a legal harvest statement and any supporting evidence required by regulations or a registered person's due diligence system.

144. A legal harvest statement is a statement and an undertaking about the extent to which timber has been, or will be, legally harvested.³⁰ A legal harvest statement must:

- identify the timber to which it relates in accordance with any requirement or criteria in regulations (for example, by referring to location or by species of timber);
- include any information that is required by regulations; and
- be made in the form approved by the Secretary.

145. As described, legal harvest statements will not necessarily provide all of the information required to determine whether the timber has been legally harvested.

146. For regulated timber from the **harvest of an indigenous species in New Zealand**, legal harvest information must be set out in regulations. The Act does not require a legal harvest statement to be provided. Without regulations, no legal harvest information would be required to be supplied with regulated timber from an indigenous species. This may prevent recipients of the timber from applying their due diligence system or result in frequent information requests between traders for bespoke information and evidence.

147. There is a policy opportunity to use regulations to specify legal harvest information for regulated timber (for both exotic and indigenous species). Setting additional requirements for legal harvest information is expected to result in:

- ensuring consistency across responsible people in the information that they supply to the recipient of the timber. This is critical as it has flow on effects across the supply chain, and thus should help ensure consistency across all stakeholders.
- creating efficiency by standardising the information responsible persons will be required to supply, rather than providing bespoke information and evidence to each recipient of timber to satisfy the recipient's due diligence system;

²⁹ Note, 'recipient' in the term used in the Act. The recipient is most likely to be a registered person, addressed in section 2E below.

³⁰ Forests Act 1949, s 76, as inserted by the Legal Harvest Amendment.

- standardising the information recipients of timber will receive, to enable them to apply their due diligence system.

Specified timber product

Context

148. A person registered for legal harvest assurance must receive legal harvest information before they receive any specified timber products.

149. For importers of specified timber products, the obligation to receive legal harvest information sits with the New Zealand based importer. This is because New Zealand law cannot be applied outside New Zealand, to the exporter or harvester based offshore (outside New Zealand).

Problem and opportunity

150. Without regulations, a recipient of specified timber products would not have an obligation, in practice, to receive any specific information about the harvest of the timbers in the products they are receiving (note, timber in a single product may come from multiple species, locations, and/or harvests). This is inefficient for importers who would need to determine the information and evidence they require to apply their due diligence system and make bespoke requests for this information for each specified timber product they receive. It may also create additional administrative burden for traders dealing with these information requests.

151. There is a policy opportunity to use regulations to specify legal harvest information for specified timber products. This is expected to result in:

- consistency in the information that is being supplied to recipients of specified timber products;
- efficiency by standardising the information recipients of specified timber products will be required to receive, rather than providing bespoke information and evidence to each recipient to satisfy the recipient's due diligence system;
- standardisation of the information recipients of timber will receive, to enable them to apply their due diligence system.

Assumptions

152. We have made the following assumptions about legal harvest information:

- legal harvest information will be successfully passed along the supply chain;
- registered people may require suppliers to provide legal harvest information through commercial arrangements; and
- the information provided in a legal harvest statement will be sufficient to satisfy the due diligence system of the registered person receiving the information.

What do stakeholders think about the problem?

153. In issues paper two, we asked for feedback on legal harvest information. Feedback generally agreed with the assumptions. Points raised included that information requirements and the success of passing information along the supply chain may depend on the complexity and newness of the system.

154. Feedback from issues paper two suggested:

- The minimum information requirements on a legal harvest statement should be the identification of timber by its scientific/botanical name, and the location of harvest.
- Further information could include certification scheme details (if they exist), supplier details, supporting evidence to validate supplied information (prescribed through guidance).
- For information requirements on specified timber products, feedback suggested this should include product details including Tariff code, place of manufacture, supplier details including stamp or signature from senior leadership/management, details on all actors along supply chain from source, risk assessment on supply chain and supplier.

What objectives are sought in relation to the policy problem?

155. By setting what legal harvest information means, we are trying to ensure:

- people responsible for harvesting timber in New Zealand are collecting and storing relevant information about the harvest;
- people registered for legal harvest assurance receive the harvest information they need to carry out due diligence on the timber and timber products they are receiving;
- information requirements, particularly on imported goods, are not disproportionate to the risk.

What options are being considered for legal harvest information for regulated timber?

Limitations, constraints, and non-feasible options

156. For the purpose of exotic timber, legal harvest information includes supporting evidence if required by regulations or under the registered persons due diligence system. These options for legal harvest information are constrained to options for regulations only.

157. Legal harvest information is constrained to what 'legally harvested' as defined in the Act. Information requirements are constrained to relevant harvest laws if they are identified in a notice by the Secretary (addressed in section 2A above).

Legal harvest information requirements for regulated timber that results from the harvest of exotic species of New Zealand timber

Note: Options two to four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo: No legal harvest information set in regulations

158. Key features: the Act sets out that legal harvest information for regulated timber that results from harvest of an exotic species in New Zealand means a legal harvest statement and supporting evidence if required by regulations. A legal harvest statement must:

- identify the timber to which it relates in accordance with any requirement or criteria in regulations;
- any information required by regulations;
- be in the form approved by the Secretary.

159. Addressing the problem: if there are no legal harvest information requirements set in the regulations, there is no practical obligation for what a legal harvest statement must include.

160. This option means people responsible for harvesting timber in New Zealand are not collecting and storing relevant information, unless the due diligence system of the registered person receiving the regulated timber requires it.

161. This would mean legal harvest information was not available and risks frustrating the purposes of the legal harvest assurance part of the Act.

Option Two – Identify timber by taxonomy, harvest and geolocation

162. Key features: set the following legal harvest information requirements for regulated timber from exotic species in New Zealand:.

- The timber species must be identified using the taxonomic 'binomial nomenclature' system (genus and species in full), e.g., *Pinus radiata*, following the 'International Code of Nomenclature for algae, fungi, and plants',³¹ or the 'International Code of Nomenclature for Cultivated Plants'.³²
- The GPS coordinates (specifying the reference system used, e.g., WGS84) and physical address of the property from which the regulated timber has been harvested from.
- For each timber species, an indicative start and end time period between which the supplied regulated timber was harvested.
- For each timber species, the indicative quantity of timber to be harvested in cubic meters.

163. Addressing the problem: setting out requirements and criteria for the identification of timber by genus and species supports consistency in how regulated timber is identified within legal harvest statements. This identification approach is internationally recognised and consistent.

164. Location information, harvest timing information, and quantity of harvested timber provide further key information to support a registered person to carry out their due diligence on the timber or timber products they receive. This information is bound to the harvest in which the regulated timber came from.

Option Three – Declarations that the timber has been legally harvested

165. Key features: the following legal harvest information requirements and criteria would be set in regulations:.

- The name and contact details, business identifier (for example, a New Zealand Business Number) for the person responsible for harvest.³³
- A written and signed declaration by the person responsible for harvest that they have:

³¹ Turland, N. J., Wiersema, J. H., Barrie, F. R., Greuter, W., Hawksworth, D. L., Herendeen, P. S., Knapp, S., Kusber, W.-H., Li, D.-Z., Marhold, K., May, T. W., McNeill, J., Monro, A. M., Prado, J., Price, M. J. & Smith, G. F. (eds.) 2018: International Code of Nomenclature for algae, fungi, and plants (Shenzhen Code) adopted by the Nineteenth International Botanical Congress Shenzhen, China, July 2017. Regnum Vegetabile 159. Glashütten: Koeltz Botanical Books. DOI <https://doi.org/10.12705/Code.2018>

³² Brickell, C.D. & Alexander, C. & Cubey, Janet & David, John & Hoffmann, M.H.A. & Leslie, A.C. & Malécot, Valéry & Jin, Xiaobai. (2016). International Code of Nomenclature for Cultivated Plants.

³³ The New Zealand Business Number is a globally unique identifier available to New Zealand business. A register of all listed businesses can be found here: <https://www.nzbn.govt.nz/>

- the right to harvest the trees or woody plants from which the timber derives;
- all necessary legal authority to exercise the right to harvest; and
- outlining the relevant harvest laws of a place or country the regulated timber has been harvest in and that they have complied with these laws (relevant harvest laws are addressed in section 2A above).

166. Addressing the problem: providing declarations about how the regulated timber has met the definition of legally harvested minimises the risk of trading in illegally harvested timber.

167. This option provides assurance to the registered person receiving the regulated timber that the timber is legally harvested, and information to support the registered person to apply their due diligence system.

Option Four - Supporting evidence for legally harvested timber

168. Key features: regulations would require supporting evidence:

- that the person responsible for harvest has the legal right to harvest the timber; and
- of the legal ownership of the land from which the timber was harvested.

169. This option will be supported with guidance to identify what type of supporting evidence could be required.

170. Addressing the problem: setting requirements to identify and record this information about the regulated timber in the legal harvest statement means information that can be used to check that the timber has been legally harvested is available to be passed on from the responsible person to the registered person they supply the regulated timber to. Setting these requirements in regulation would enable consistent information requirements to provide certainty between regulated parties.

171. By leaving what type of supporting information to guidance to provide means there may be variation in the type of evidence provided. This may result in transparency issues for people receiving the information if they are unfamiliar with this type of information.

172. Supporting evidence may also be difficult to collect and interpret where land ownership, tree ownership, and cutting rights are held by different parties.

How do the options for legal harvest information for exotic species of regulated timber compare to the status quo?

	Option One – Status Quo: No legal harvest information set in regulations	Option Two – Identify timber by taxonomy, harvest and geolocation	Option Three – Declarations that the timber has been legally harvested	Option Four – Supporting evidence for legally harvested timber
Consistency and proportionality	0	++ information requirements are consistent between persons responsible for harvest and appropriate to support a registered persons due diligence system.	+ information requirements are consistent between persons responsible for harvest. A declaration that the timber has been legally harvested supports applying due diligence systems.	+ information requirements are consistent between persons responsible for harvest. This level of evidence may not always be required, and a registered persons due diligence system may already require this evidence.
Minimal complexity and administrative cost	0	+ minimal requirements on legal harvest information support reduced costs and minimal complexity. If a registered person requires further information to support their due diligence system to ensure the timber is legally harvested, this will be picked up through their due diligence system information requirements.	++ a declaration is the least complex and lowest administrative cost option for the person responsible for harvest to demonstrate that the timber has been legally harvested.	0 gathering and managing this information may be complex especially if it is commercially sensitive. This will lead to increased administrative costs if new supporting evidence is required to be produced.
Clarity and transparency	0	+ setting requirements in regulations makes it clear what is required.	+ although a declaration will highlight the relevant legal harvest laws that have been met, it relies on making false declarations being an offence to incentive honest declarations.	0 evidence is provided but relying on guidance to support what evidence requirements reduces transparency and increases ambiguity across the supply chain
Overall assessment	0	++	++	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

173. Options two and three are preferred. Incorporating these two options together means that a legal harvest statement sets out a minimum level of information about the harvest of the regulated timber that can be used by a registered person within their due diligence system to assess the legality of the regulated timber they receive.

174. Setting these requirements in regulations ensures information transferred from the responsible person to the registered person is in a consistent format on the regulated timber. Requiring a declaration provides further information and transparency to the registered person receiving the regulated timber on the laws that have been adhered to.

Options for legal harvest information requirements for regulated timber that results from the harvest of indigenous species of New Zealand timber

Limitations, constraints, and non-feasible options

175. Timber from indigenous species harvested in New Zealand only becomes regulated timber if it is identified in regulations or a person voluntarily complies with legal harvest requirements. Identifying indigenous species as regulated timber is addressed in section 2B above, the preferred option is not to make regulations to do this. In practice, the following options will only apply if a person voluntarily complies with legal harvest obligations.

Note: Options two and three are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo: No legal harvest information set in regulations

176. Key features: a person responsible for harvesting regulated timber of an indigenous species has no requirements to gather or pass on information about that timber as no information requirements are set in regulations. People trading in indigenous regulated timber will not need to provide any legal harvest information on the indigenous regulated timber they are trading in.

177. Addressing the problem: if there are no requirements set in the regulations, there are no obligations for a person responsible for harvesting indigenous regulated timber to provide a registered person with legal harvest information. This means that information about the harvest may not be available to the registered person to apply their due diligence system.

Option Two – Setting the same requirements for legal harvest information as for exotic regulated timber

178. Key features: set the same legal harvest information requirements for indigenous regulated timber as are set for exotic regulated timber (options above refer). In addition, if the indigenous regulated timber is from a forest managed under a sustainable forest management plan or permit, a copy of this plan or permit must be included in the legal harvest information.

179. Addressing the problem: indigenous regulated timber will face the same legal harvest information requirements as exotic regulated timber. This treats indigenous and exotic regulated timber in a consistent manner for ensuring registered persons are receiving legal harvest information to support them to apply their due diligence systems.

Option Three – require a legal harvest statement for indigenous regulated timber

180. Key features: require legal harvest information for indigenous regulated timber to be provided in the same form as a legal harvest statement (as set for exotic regulated timber, options above refer).
181. Addressing the problem: a person responsible for harvesting indigenous regulated timber would be required to provide legal harvest information to registered persons in a legal harvest statement. This sets the same information requirements for indigenous regulated timber as those set for exotic regulated timber.
182. Providing information on regulated timber in the same format ensures registered persons are receiving legally harvested timber in a consistent, and transparent manner which reduces complexity, supporting their due diligence requirements.

How do the options for legal harvest information for indigenous species of regulated timber compare to the status quo?

	Option One – Status Quo: No legal harvest information set in regulations	Option Two – Setting the same requirements for legal harvest information as for exotic regulated timber	Option Three – require a legal harvest statement for indigenous regulated timber
Consistency and proportionality	0	++ indigenous and exotic regulated timber have the same legal harvest information requirements, treating both types of timber consistently and proportionately with the risk.	+ providing a legal harvest statement for indigenous regulated timber ensures legal harvest information is provided in a consistent manner with exotic regulated timber. This supports registered persons due diligence systems and information requirements.
Minimal complexity and administrative cost	0	++ if all regulated timber information requirements are set the same, this reduces complexity and administration costs to all parties across supply chain. This would be especially important for registered persons managing mixed (exotic and indigenous) consignments.	-- unless the legal harvest information for the indigenous regulated timber is the same as that required for exotic regulated timber, it may not be compatible with the legal harvest statement. This would significantly increase the complexity across the supply chain with managing information within the legal harvest statement.
Clarity and transparency	0	++ requiring the same information between exotic and indigenous regulated timber enhances clarity and transparency for registered persons receiving this information.	-- unless the legal harvest information for the indigenous regulated timber is the same as that required for exotic regulated timber, a legal harvest statement will unlikely be able to present the information in a clear manner that is comparable with that provided for exotic regulated timber. .
Overall assessment	0	++	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

183. The preferred option is *option two - Setting the same requirements for legal harvest information as for exotic regulated timber.*

184. Requiring a person responsible for harvesting indigenous regulated timber to provide the same legal harvest information as exotic regulated timber ensures all people responsible for harvesting are collecting and storing relevant information about the harvest. Consistency in what information is being collected and stored between indigenous and exotic regulated timber supports the ability for registered persons to carry out their due diligence on the timber or timber products they receive.

What options are being considered for legal harvest information for specified timber products?

Note: Options two to four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo: No legal harvest information set in regulations

185. Key features: No requirements for legal harvest information are set in regulation.

Regulated people trading in specified timber products will not need to receive any legal harvest information on the specified timber product they are trading in.

186. Addressing the problem: if there are no requirements set in the regulations, there are no practical obligation for a registered person to receive information.

Option Two – Information on the timber and its harvest

187. Key features: for a specified timber product:

- where the harvest happened in New Zealand, require the same legal harvest information as for the regulated timber;
- for any timber within a specified timber product that has been imported or reimported, the following legal harvest information requirements and criteria would be set in regulations:
 - identify all timber in the specified timber product by the timber species using the taxonomic binomial nomenclature system (genus and species in full), e.g., *Pinus radiata*;
 - for each timber species in the specified timber product, identify the region and the country the timber has been harvested from;
 - for each timber species, the indicative start and end time period between which the timber was harvested.

188. Addressing the problem: Setting requirements to identify and record this information on the specified timber products as legal harvest information can be used to check that the timber has been legally harvested. This enables uniform information gathering requirements to provide certainty and consistency in information passed between registered people in trade.

Option Three – Declarations on the legally harvested definition being met

189. Key features: regulations would set out that a registered person must receive a written and signed declaration confirming the person that harvested the timber:

- had the right to harvest the trees or woody plants from which the timber derives;
- had all necessary legal authority to exercise the right to harvest; and
- complied with the relevant harvest laws of the place or country of harvest for each species of timber in the specified timber product, or an explanation of any contravention.

190. Addressing the problem: providing a declaration setting out the relevant harvest laws to which the timber meets legality identifies the laws the timber has been assessed against. This provides assurance to the registered person receiving the specified timber product that the timber has been legally harvested. This information will support the registered persons due diligence system and assists to reduce international trade in timber that is not legally harvested.

Option Four – Supporting evidence for legally harvested timber

191. Key features: for any timber within a specified timber product, the regulations will require supporting evidence to demonstrate that the timber in the specified timber product has been legally harvested.

192. Addressing the problem: Providing evidence of the legality of the harvest supports transparency and the risk of importing or trading in specified timber products that contain illegally harvested timber. This information will support a registered persons due diligence systems. Supporting evidence may also be difficult to collect, interpret, or translate and may not provide any further benefit than a declaration.

How do the options for legal harvest information for specified timber products compare to the status quo?

	Option One – Status Quo: No legal harvest information set in regulations	Option Two – Information on the timber and its harvest	Option Three – Declarations on the legally harvested definition being	Option Four – Supporting evidence for legally harvested timber
Consistency and proportionality	0	++ information requirements are consistent between domestic suppliers and importers and appropriate to support a registered persons due diligence system.	+ information requirements are consistent between domestic suppliers and importers. A declaration that the timber has been legally harvested supports the due diligence requirements along the supply chain.	+ information requirements are consistent between domestic suppliers and importers.
Minimal complexity and administrative cost	0	+ minimal requirements on legal harvest information support reduced costs and minimal complexity registered persons.	++ a declaration is the least complex and lowest administrative costing option to declare that the timber has been legally harvested. There is a risk that without evidence, this would be difficult to confirm.	- information may be complex to collect, interpret, and/or translate.
Clarity and transparency	0	++ providing clear requirements in regulations provides certainty to regulated parties.	+ although a declaration will highlight the relevant legal harvest laws that have been met, it relies on making false declarations being an offence to incentive honest declarations	+ supports transparency and expectations with the source of the harvest.
Overall assessment	0	++	+	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

193. The preferred options are options two and three. This aligns with the preferred options for legal harvest information requirements for regulated timber so that importers, exporters, and domestic traders are treated similarly.

194. In the case of a specified timber product made from regulated timber, the information requirements will be met by passing on a copy of the legal harvest statement. This reduces the burden on registered persons for the information they must provide to subsequent registered persons.

195. For imported specified timber products the legal harvest information requirements are set to be as similar as possible to the information required for regulated timber. Keeping similar information requirements to that for specified timber products made from regulated timber means domestic and imported information is similar and comparable.

Section 2D: Responsible persons

196. This section covers specifying legal harvest information for:

- exemptions and exceptions for responsible persons needing to comply with legal harvest information requirements; and
- record keeping requirements for responsible persons.

What is the policy problem or opportunity?

Context

197. People responsible for harvest of regulated timber³⁴ in New Zealand, “responsible persons”, must:

- provide legal harvest information when they supply regulated timber as part of a business (in trade);
- update legal harvest information if it changes or becomes inaccurate; and
- keep records of legal harvest information they have provided.

198. A responsible person means the owner of the forest or other person with the right to harvest the trees or woody plants and includes a person acting on their behalf.

199. The description of responsible persons is wide reaching and does not have any de minimis thresholds or exemptions. Similarly, the record keeping requirements lack specificity.

Exemptions and exceptions

Problem and opportunity

200. The Act provides a blanket definition for responsible persons which will regulate a wider range and number of people than is required to meet the purpose of the legal harvest assurance system.

³⁴ The scope and meaning of regulated timber is covered in section 2B above.

201. The Act acknowledges this and provides a mechanism to create exemptions through secondary legislation. A responsible person will not have to comply with legal harvest information requirements if:

- they qualify for an exemption specified in regulations; or
- all of their regulated activities qualify for one or more activity exceptions.

202. The Act empowers the following types of exemptions and exceptions for responsible persons:³⁵

- A class of persons: an exemption may be made for a class of persons, meaning a group of persons that share a common characteristic.
- People based on the timber being supplied: an exemption may be made based on the kind of timber that a person supplies.
- People who supply regulated timber in circumstances, or for the purposes, specified in regulations. A circumstance refers to a specific situation or condition that applies when the regulated timber is supplied. A purpose refers to the reasons the regulated timber has been supplied and the intended use of the timber.
- People with an activity exception: an exception may be made for trading below a threshold level (if one is set). A threshold is the point at which something may occur, and may be set using volume, number of units, number of consignments, value, or any other measure.

203. There is a policy opportunity to set exemptions and exceptions through secondary legislation. Setting exemptions and exceptions is expected to result in a proportionate approach to addressing the risk of illegal harvest; balancing risk and compliance costs.

Record Keeping

Context

204. A responsible person must keep records of any legal harvest information they have provided.³⁶ This high-level obligation does not specify the details of how this is to be achieved.

Problem and opportunity

205. Without regulations, responsible persons may keep these records in any format and for any length of time. This may result in information not being available to confirm the legality of a harvest in the future after the timber has been supplied.

206. There is a policy opportunity to provide for a consistent approach to record keeping. This is expected to reduce the burden on responsible people from having to create bespoke record keeping practices, and ensure records are kept in an accessible³⁷ form for people regulated in the legal harvest assurance system and the Secretary to monitor compliance.

Assumptions

³⁵ Forests Act 1949, s 81, as inserted by the Legal Harvest Amendment.

³⁶ Forests Act 1949, s 80, as inserted by the Legal Harvest Amendment.

³⁷ Accessible in this context means that the records are both available and useable.

207. We have made the following assumptions about obligations and exemptions for people responsible for harvest:

- people responsible for harvest will have all the necessary legal harvest information that is required, and pass this along the supply chain;
- supplying timber in some circumstances and in small amounts will not pose a risk to market access;
- exemptions and exceptions should only apply if the information is not needed for the recipient to comply with their due diligence system.

What do stakeholders think about the problem?

208. In Issues paper two, we asked for feedback on exemptions and exceptions from legal harvest requirements for people responsible for harvest. Feedback suggested:

- no exemptions should be allowed for any reason;
- matters to consider when making exemptions should include:
 - thresholds;
 - the probable risk of breach and consequence of illegal harvest,
 - reputational damage to the wider industry;
 - risk of competitive distortions between businesses operating in the same field.

209. Feedback on thresholds for responsible persons included the following:

- setting the threshold for complying with legal harvest obligations as the yield from a one hectare block, or approximately 600 tons of logs in a calendar year;
- exempting small traders in regulated timber will add complexity and may generate non-compliance and costs from misunderstanding the rules;
- measurements should be relevant to the material/activity/good;
- measurements using volume based on the physical dimensions, or converted to volume based on published standards is easiest to report.

210. Feedback received on record keeping requirements for responsible persons included:

- restricting additional records to those required and readily available to fulfil international commitments concerning the illegal harvest of wood, that relate to the original ownership of the trees and the legal authorities, however expressed, to harvest them.
- records should be kept for around 5-7 years.
- aligning the maximum period records are kept with the requirements of the countries that we export to,
- minimising the retention time to probably a maximum of one year given the records are likely to include information subject to privacy law;
- the preferred storage method is electronic;
- keep the process simple, and for small or intermittent players, to develop electronic tools and process templates to enable compliance at minimum cost.

What objectives are sought in relation to the policy problem?

211. By setting obligations, exemptions, and exceptions for people responsible for harvest we are trying to:

- provide clarity on who has reporting obligations – including keeping legal harvest information up to date and keeping records of any legal harvest information they have provided;
- ensure regulatory requirements are proportionate to the risk; and
- only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

What options are being considered for exemptions and exceptions for responsible persons?

Limitations, constraints, and non-feasible options

212. Options for exemptions and exceptions are limited to responsible persons (as defined in the Act) who must comply with legal harvest information requirements. Where applicable, any exemptions for a responsible person will need to align with exemptions and exceptions for registered persons³⁸ and exemptions from export requirements,³⁹ to provide for consistency within the legal harvest assurance system.
213. Options are limited to exemptions and exceptions for businesses because responsible person requirements for legal harvest information only when timber is supplied 'in trade'. This means that activities not undertaken 'in trade' are not covered and therefore do not need to be exempt.
214. Options to exempt trade samples and research purposes were considered. However, these were considered non-feasible because they would not be necessary or desirable for the purposes of the legal harvest assurance part of the Act. Trade of regulated timber for these activities is anticipated to be low and may qualify for any activity exception thresholds (if any are set).

Options for exemptions for any class of persons, any kinds of timber supplied, or any circumstance or purpose timber is supplied in

Note: Options two to four below are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

215. Key features: There would be no exemptions from legal harvest information requirements for any class of persons, any kinds of timber supplied, or any circumstances or purposes timber is supplied in.
216. Addressing the problem: avoids creating any unintended gaps in the regulatory system by ensuring all responsible persons must comply with legal harvest requirements. This does not meet the objective to only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.
217. The status quo could result in low-risk harvest operations unnecessarily caught by the legal harvest information requirements, with an increase in compliance and administrative costs for both the regulated party and the Secretary that is not proportionate to the risk of trading in illegally harvested timber.

Option Two – Exemptions for classes of persons

218. Key features: create exemptions from legal harvest information requirements for the following classes of responsible persons:
- firewood merchants; and

³⁸ Forests Act 1949, s 86(b), as inserted by the Legal Harvest Amendment.

³⁹ Forests Act 1949, s 116, as inserted by the Legal Harvest Amendment.

- Christmas tree merchants.

219. Addressing the problem: Responsible persons within these classes of persons would not need to comply with the legal harvest information requirements. This option would partially meet the objective to only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

Option Three – Exemptions for any circumstance or purpose

220. Key features: create exemptions from legal harvest information requirements for regulated timber supplied in the following circumstances or for the following purposes:

- when the responsible person has changed since supply of the regulated timber began, and it is impossible or not practicable to ascertain the legal harvest information;
- when the regulated timber is supplied for customary or cultural use;
- when the regulated timber is harvested, used, and retained on the same property.

221. Addressing the problem: a responsible person supplying timber in these circumstances or for these purposes would not need to comply with the legal harvest information requirements. This option supports the objective to only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

How do the options for exemptions for any class of persons, any kinds of timber supplied, or any circumstance or purpose timber is supplied in compare to the status quo?

<i>Criterion</i>	Option One – Status Quo	Option Two – Exemptions for classes of persons	Option Three – Exemptions for any circumstance or purpose
Consistency and proportionality	0	- an exemption for these classes of persons is not considered consistent with other responsible persons or proportionate to the risk of trading in illegally harvested timber. Low level trade by these classes of persons may qualify for an activity exception threshold (if any are set).	+ considered proportionate to the risk of trading in illegally harvest timber because the timber is not entering the forestry and wood processing supply chain.
Minimal complexity and administrative cost	0	+ There would be reduced compliance and administrative costs for the class of persons exempt from the legal harvest information requirements.	+ There would be a reduced compliance and administrative cost for the responsible person exempt for the specified circumstances and/or purposes.
Clarity and transparency	0	- not clear or transparent for members of the public to understand why these classes of persons would not be subject to legal harvest requirements.	+ transparent about the obligations for responsible persons when they take over a business or are undertaking activities where the regulated timber is unlikely to enter the forestry and wood processing supply chain.
Overall assessment	0	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

222. The preferred option is option three - *exemptions for any circumstance or purpose*. This option performed well against the criteria and supports the objectives of ensuring that the legal harvest information requirements for a responsible person are proportionate to the risk of trading in illegally harvested timber and only regulating people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

223. Should any responsible person subject to these exceptions, still want to provide the legal harvest information requirements to demonstrate and provide assurance that the timber supplied has been legally harvested, they can do so on a voluntary basis.

Options for activity exceptions for thresholds

Limitations, constraints, and non-feasible options

224. Options in this section are constrained to those for responsible persons. Exceptions for low level activity, i.e., thresholds, for registered persons are considered in section 2E below.

225. A monetary threshold was considered for setting thresholds, but based on feedback in issues paper two, this was not considered feasible due to the impact of fluctuating market prices on regulatory obligations.

Option One – Status Quo: No threshold

226. Key features: there would be no threshold level set for a responsible person to not comply with legal harvest information requirements.

227. Addressing the problem: everyone undertaking harvesting of regulated timber must comply with legal harvest information requirements (providing they are not exempt, addressed above). This would support requirements for all persons responsible for harvest to keep the information up-to-date and keep records.

228. This option may capture low risk harvesting activity in the legal harvest system and create an administrative burden for those people and the Secretary, that is disproportionate to the risk of those people trading in regulated timber that has been illegally harvested.

Option Two – Set a low volume threshold

229. Key features: the threshold level would be set to 600 m³ per annum. This is approximately the harvest volume from one hectare of *Pinus radiata* forest. A one hectare threshold aligns with other regulatory systems in New Zealand that begin to regulate trees as commercial forests from a minimum one hectare size.⁴⁰

230. Addressing the problem: everyone above the set volume threshold must comply with legal harvest information requirements (providing they are not exempt, addressed

⁴⁰ For example, in the National Environmental Standards for Commercial Forestry.

above). However, for timber below the threshold, this timber will enter the supply chain with no legal harvest information.

231. Setting a threshold at this level is anticipated to reflect minimum levels of timber supplied in trade. Setting a threshold at this level supports the objectives of only regulating people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

232. For registered persons who receive timber or specified timber products that do not have legal harvest information, there is a risk that they will not receive the information required to apply their due diligence system. This would increase the administrative burden on registered persons receiving this timber and may increase the risk of illegally harvested timber being traded. A responsible person may voluntarily comply with the legal harvest information requirements even if otherwise exempt.

How do the options for thresholds for responsible persons compare to the status quo?

Criterion	Option One – Status Quo: No threshold	Option Two – Set a low volume threshold
Consistency and proportionality	0	+ consistent with other regulatory systems in New Zealand and proportionate to the risk of trading in illegally harvested timber.
Minimal complexity and administrative cost	0	+ reduced administrative burden for responsible persons trading in low volumes (below the threshold).
Clarity and transparency	0	0 clear when legal harvest obligations apply for responsible persons.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

233. The preferred option is *option two – set a low volume threshold*. This option supports the objectives to:

- ensure regulatory requirements are proportionate to the risk; and
- only regulate people trading in types of regulated timber and at levels that are at highest risk of losing market access and/or being illegally sourced.

234. This option also provides consistency between other regulatory systems for forestry in New Zealand.

What options are being considered for record keeping for responsible persons?

Limitations, constraints, and non-feasible options

235. Options are limited to record keeping requirements for responsible persons supplying regulated timber in trade. We have considered whether record keeping requirements

could be set by way of template, however, we do not consider this would be necessary or desirable for the purposes of the legal harvest assurance part of the Act.

Options for record keeping requirements

Note: Options two and three below are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

236. Key features: under the status quo, there would be no secondary legislation providing details on record keeping requirements, meaning there would be no practical obligation for a responsible person to keep records.

237. Addressing the problem: this may result in inadequate records being kept and information not being available or accessible when needed to confirm the legality of a harvest in the future, after the timber has been supplied. The responsible person may choose to keep records, however, these may not be sufficient to demonstrate legal harvest of regulated timber.

Option Two – specify what records need to be kept for legal harvest information requirements

238. Key features: require a responsible person trading in regulated timber to keep records of:

- the legal harvest information they have supplied, including any updates to this information (addressed in section 2C above);
- who the legal harvest information was supplied to, including the recipients' business identification information such as name or trading name and contact details, legal status of the business;
- when the legal harvest information was supplied, including any updates.

239. Addressing the problem: would set the details of the record keeping obligations for responsible persons, ensuring that sufficient records are kept confirming that the regulated timber has been legally harvested. This would be more efficient for responsible persons and the Secretary because records would be consistent and predictable.

Option Three - specify how records must be kept

240. Key features: specify that a responsible person trading in regulated timber must keep records:

- in writing, either electronic, paper, or both.
- current and accurate.
- retained in a retrievable form for seven years after the record is created.

241. Addressing the problem: ensures that the records are adequately stored, accessible (including in the future), and maintained for the required time period to confirm that the regulated timber has been legally harvested. This would create efficiency for responsible persons and the Secretary by providing a consistent approach to record keeping.

How do the options for record keeping for responsible persons compare to the status quo?

Criterion	Option One – Status Quo	Option Two –Specify what records need to be kept for legal harvest information requirements	Option Three – specify how records must be kept
Consistency and proportionality	0	+ There will be a consistent approach to record keeping for all parties, rather than each responsible person deciding what records to keep.	+There are consistent requirements for all responsible persons for storing and maintaining records in a retrievable form for seven years to support compliance with legal harvest information requirements.
Minimal complexity and administrative cost	0	+ Reduces the complexity for the regulated party as the responsible person does not need to decide what records to keep. Minimal cost as businesses are likely to already keep records.	+ Reduced complexity with uniform approach to for responsible persons keeping records. Minimal costs for businesses that have existing record keeping systems.
Clarity and transparency	0	+ Will provide clarity about the records that need to be kept.	+ Will provide clarity about the records that need t be kept.
Overall assessment	0	+	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

242. The preferred options are options two and three. These options performed well against the criteria and together support the objective of clarifying the legal harvest information record keeping obligations for a responsible person.

243. The additional administrative costs for the responsible person will be offset by the benefits of a consistent approach to record keeping. The administrative cost may be lower for responsible persons with existing record keeping systems that require only minor amendments to meet legal harvest assurance obligations.

Section 2E: Who needs to register

What is the policy problem or opportunity?

Context

244. Registration for legal harvest assurance applies to businesses, also known as a “person in trade”. Businesses could include:

- Sole traders;
- Companies;
- Trusts;
- Government agencies (national and/or local);
- Joint ventures and partnerships;
- Other organisations.

245. Businesses must register for legal harvest assurance before they:⁴¹

- buy 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;
- export New Zealand logs;
- process New Zealand logs they have grown themselves;
- carry out first processing of regulated timber;
- import or export a specified timber product for which they are the importer or exporter;
- any of the above activities as an agent of another person.

Problem and opportunity

246. The description of who needs to register for legal harvest assurance is wide reaching and does not have any de minimis thresholds or exemptions. The Act acknowledges this and does not require a person to register if:⁴²

- the only activity that they carry out relates to indigenous timber that is not regulated timber;
- they are within a class of persons who are exempted by regulations from the requirement to be registered; or
- all their regulated activities fall within one or more of the activity exceptions.

247. The Act empowers secondary legislation for the following types of exemptions and exceptions from registration:⁴³

- Exemptions for a class of persons: an exemption may be made for a class of persons, meaning a group of people that share a common characteristic.
- Activity exceptions: an exception may be made for trading below a threshold level (if a threshold level is set), or for any other specified class of activities.

248. Note: the Act already provides that the activity of shipping or transporting of regulated timber or specified timber products, or associated logistical activities, is an activity exception.

⁴¹ Forests Act 1949, s 84, as inserted by the Legal Harvest Amendment.

⁴² Forests Act 1949, s 86, as inserted by the Legal Harvest Amendment.

⁴³ Ibid.

249. There is a policy opportunity to set exemptions and exceptions through secondary legislation. This is expected to result in:

- a proportionate approach to addressing the risk of illegal harvest; balancing risk, and compliance costs; and
- trading partners having assurance that traded timber products are from legally harvested sources, while preventing disproportionate regulation of people who are at low risk of trading in illegally harvested timber.

Assumptions

250. We have made the following assumptions about exemptions from registration for legal harvest assurance:

- Exemptions that are proportionate to the risk are necessary to enable businesses to grow and continue to operate, particularly small businesses.
- The cost of regulating all parties is disproportionate to the risk.

251. We have made the following assumptions about activity exceptions for thresholds for registering for legal harvest assurance:

- Specified timber products are not a uniform class of products: they can vary from unprocessed logs through to highly processed products with non-timber elements.
- Thresholds that are proportionate to the risk are necessary to enable businesses to grow and continue to operate, particularly small businesses.
- The cost of regulating all parties is disproportionate to the risk.

What do stakeholders think about the problem?

252. In issues papers one and two we asked for feedback on exemptions and exceptions (thresholds) for registration.

253. We received the following feedback on exemptions from registration:

- natural health products should be exempt, as should processors in the natural health industry; and
- food, supplements, and medicines (including any ingredients or substances found in these product types) should not be regulated for legal harvest assurance.

254. Feedback we received that supported setting thresholds for registration suggested:

- thresholds could be used to avoid cost and complexities for small-scale businesses;
- different thresholds could be established for a range of sub-sectors along the supply chains; and
- thresholds could be aligned with other trading partner's legal harvest systems.

255. Feedback we received that did not support thresholds for registration suggested:

- that there is very low risk of illegal harvest in New Zealand and risk may only be associated with small operators; and they would add a layer of complexity to the system;
- everyone should register to ensure that chain of documentation custody is always available.

256. Feedback about the detail for setting thresholds suggested:

- setting different measurement types should vary depending on the risk of illegal harvesting;
- using the same measurement for all thresholds;

- setting the threshold at 1 hectare of harvesting or 600 tonnes of timber per year; and
- a threshold of 10,000,000,000 cubic meters per year.

What objectives are sought in relation to the policy problem?

257. By setting exemptions from, and activity exception thresholds for, registration requirements for legal harvest assurance, we are trying to:

- take a proportionate approach to addressing the risks of illegal harvest while enabling legal trade;
- exclude only those people from registration who do not pose a risk to New Zealand's trading reputation and/or market access.

What options are being considered for exemptions from registration?

Limitations, constraints, and non-feasible options

258. Options are limited to exemptions for businesses because registration applies to people 'in trade'. This means that activities not undertaken 'in trade' do not require registration, and therefore do not need to be exempt. For example, if a person is moving to or from New Zealand and moves their furniture in or out of New Zealand.

259. As legal harvest assurance applies to businesses, employees of those businesses are not required to register separately for legal harvest assurance. This is because they are acting for, or on behalf of, the business, and an exemption is not required.

260. If a registered person receives:⁴⁴

- regulated timber from a person responsible for harvest and that person was not required to comply with legal harvest information requirements (addressed in section 2D above); and/or
- regulated timber or timber from which a specified timber product was made where the timber was exempt from legal harvest information requirements;

then the registered person is not required to receive legal harvest information or conduct due diligence in relation to that timber. An exemption or exception is not needed for either of these situations.

261. An option to exempt research and development was considered. However, it was considered non-feasible because it would not be necessary or desirable to meet the purposes of the legal harvest part of the Act. An exemption for research and development would need to describe a wide range of activities which may lead to perverse outcomes and unintended consequences.

262. Options for exemptions for classes of persons were considered but did not present any feasible options.

Options for exemptions from registration

Note: options two – four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

⁴⁴ Forests Act 1949, s 88, as inserted by the Legal Harvest Amendment.

Option One – Status Quo

263. Key features: there would be no exemptions from registration requirements for legal harvest assurance beyond those already in the Act. These are that:
- all of the person's activities relate to indigenous timber that is not regulated timber; and/or
 - the person's activity is shipping or transporting regulated timber or specified timber products or associated logistical activities.

264. Addressing the problem: everyone undertaking relevant activities must register (providing they meet any threshold requirements discussed below). This may capture low risk activities in the legal harvest system and create an administrative burden for people that are regulated and the Secretary that is disproportionate to the risk of those people trading in timber that has been illegally harvested. It may also result in the legal harvest assurance system covering a broader set of activities and persons than is required to meet the purposes of the legal harvest assurance part of the Act.

Option Two – Class of activities: Cultural purpose activities

265. Key features: exempt activities that are for cultural purposes only. This could include carving and other cultural practices. The class of activities would include:
- preparing timber for carving or other cultural practice;
 - undertaking the cultural practice;
 - importing, exporting, or otherwise buying a finished cultural piece.

266. Note that this option would not provide an exemption from other legal requirements. For example, complying with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

267. Addressing the problem: a cultural purposes exemption would ensure that if indigenous species become/are regulated in the legal harvest assurance system, associated cultural practices would not automatically also be regulated.

268. This exemption would ensure that regulated timber in New Zealand used for cultural purposes is treated similarly to specified timber products that result from cultural practices. Section 2B above addresses Tariff codes being proposed to identify specified timber products. It is not proposed to identify Tariff codes for cultural goods.

269. Exempting cultural purpose activities is anticipated to result in a low risk of losing market access or damaging New Zealand's trading reputation. If proof of legality is required, a person undertaking cultural purpose activities may still register for legal harvest assurance voluntarily.

Option Three – Class of activities: activities regulated under the Food Act, Therapeutic Products Act, and Medicines Act

270. Key features: exempt activities and products that result from activities regulated under the Food Act 2014, Therapeutic Products Act 2023, Medicines Act 1981, and regulations and rules made under these Acts (or any future Acts regulating the same activities and products).

271. Addressing the problem: given the broad definition of timber in the Act, it is possible that activities and products that result from harvest of regulated timber will be regulated by the

legal harvest assurance system. As these products are not covered by the timber legality systems of trading partners, regulation of these products and activities would be disproportionate to the regulatory burden placed on importers and exporters for specified timber products.

Option Four – Class of activities: activities regulated as beauty or cosmetic products

272. Key features: exempt activities and products that are regulated as beauty and/or cosmetic products.

273. Addressing the problem: given the broad definition of timber in the Act, it is possible that activities and products that result from harvest of regulated timber will be regulated by the legal harvest assurance system. As these products are not covered by the timber legality systems of trading partners, regulation of these products and activities would be disproportionate to the regulatory burden placed on importers and exporters for specified timber products.

How do the options for exemptions from registration compare to the status quo?

Criterion	Option One – Status Quo: no exemptions from registration	Option Two – Cultural purpose activities	Option Three – Class of activities: activities regulated under the Food Act, Therapeutic Products Act, and Medicines Act	Option Four – Class of activities: activities regulated as beauty or cosmetic products
Consistency and proportionality	0	+ this is considered a proportionate response to achieving the objectives.	++ avoids disadvantaging people producing these products that are already regulated under other systems to promote health and safety and give confidence to consumers.	++ avoids disadvantaging people producing these products that are already regulated under other systems to promote health and safety and give confidence to consumers.
Minimal complexity and administrative cost	0	0 there may be some complexity in determining when an activity is carried out for a cultural purpose, however, these are not expected to result in a significant administrative burden.	+ Reduces the cost and administrative burden for people producing these products that are already regulated under other systems.	+ Reduces the cost and administrative burden for people producing these products that are already regulated under other systems.
Clarity and transparency	0	+ exempting cultural purpose activities provides transparency for regulated parties about respecting cultural purposes and maintaining indigenous practices and rights.	+ Provides clarity that regulatory systems in place to protect health and safety and product efficacy are paramount for these types of products.	+ Provides clarity that regulatory systems in place to protect health and safety are paramount for these types of products.
Overall assessment	0	+	++	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

274. Options two, three, and four are all preferred options. All three options perform well against the criteria. Providing exemptions for these activities is considered to pose a low risk of damaging New Zealand's trading reputation.

275. Options three and four also ensure that domestic producers and importers are treated the same, as these products would only be captured as regulated timber (domestic) and not specified timber products (import and export) (addressed in section 2B above).

276. If a person undertaking any of these activities needed to demonstrate that inputs into their products were derived from regulated timber that was legally harvested, then they would be able to register for legal harvest assurance voluntarily.

Options for exceptions (thresholds) for registration

Limitations, constraints, and non-feasible options

277. Analysis of options is constrained by the nature of the data available about imports, exports, and domestic processing.

Note: Options two and four, or three and four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo: No threshold

278. Key features: there would be no threshold level set for who needs to register for legal harvest assurance.

279. Addressing the problem: everyone undertaking relevant activities must register (providing they meet any exemption requirements discussed above). This may capture low risk activities in the legal harvest system and create an administrative burden that is disproportionate to the risk of those people trading in timber that has been illegally harvested.

Option Two – Threshold levels set for regulated timber and specified timber products at \$5,000

280. Key features: there would be a threshold level for regulated activities set at \$5,000 (New Zealand dollars) per annum for who needs to register for legal harvest assurance.

281. Addressing the problem: everyone above the set threshold must register (providing they are not exempt, addressed above). This may create an administrative burden for people needing to register and the Secretary that is disproportionate to the risk of those people trading in timber that has been illegally harvested.

282. Exempting people trading below \$5,000 per annum is expected to pose a very low risk of illegally harvested timber entering the supply chain given the total size of the forestry sector, estimated as being between \$18 and \$25 billion New Zealand dollars per year.⁴⁵

⁴⁵ *Forest value lies far beyond logs*, Richard Rennie, April 22 2024:
<https://www.farmersweekly.co.nz/markets/forest-value-lies-far-beyond-logs/>.

283. Setting the threshold at this level would mean that approximately 42 percent of importers would need to register and 47 percent of exporters.

Option Three – Threshold levels set for regulated timber and specified timber products at \$10,000

284. Key features: there would be a threshold level for activity set at \$10,000 (New Zealand dollars) per annum for who needs to register for legal harvest assurance.

285. Addressing the problem: everyone above the set thresholds must register (providing they are not exempt, addressed above). Although \$10,000 is low given the estimated value of the forestry industry, this option balances the risk of the legal harvest assurance system covering a broader set of people than is required to protect New Zealand's trading reputation with the objective of maintaining market access for New Zealand exports.

286. Setting the threshold at this level would mean that approximately 30 percent of importers and 37 percent of exporters would be required to register.

Option Four – Threshold level for wood in the rough set at 2,000m³

287. Key features: there would be a threshold level for who needs to register set at 2,000m³ per annum for trading in wood in the rough. This threshold would apply to the activities of:

- buying New Zealand logs;
- processing New Zealand logs they have grown themselves;
- exporting New Zealand logs; and
- exporting or importing goods in Tariff HS code 4403.

288. Addressing the problem: people trading above the threshold would need to register (providing they are not exempt, addressed above). This would exempt low level trading as it is anticipated to pose a low risk to New Zealand's trading reputation and/or market access.

289. This threshold, 2,000m³, is approximately the yield from harvesting three hectares of commercial plantation *Pinus radiata*. This threshold is higher than the proposed threshold for responsible persons (addressed in section 2D above) to recognise the role of log aggregators in the market. Receiving less than 2,000m³ for the activities listed above is considered to pose a low risk of trading in illegally harvested timber.

290. Due to the low volumes of imported logs, this threshold would likely:

- exempt all imports of goods in HS code 4403 – this represents approximately 0.1 percent of total imports by value⁴⁶ of goods in Timber codes identified as containing timber (addressed in section 2B above);
- capture approximately 20 businesses exporting goods in HS code 4403 – this represents over 50 percent of goods exported by value in Timber codes identified as containing timber (addressed in section 2B above);
- reduce the number of domestic processes that need to register.

⁴⁶ Data is expressed in value because of limitations on information available for the volume imported or exported under each Tariff code.

291. A volume threshold is more appropriate for trading in logs, rather than a value threshold, given the size of New Zealand logs, and the quantity that needs to be traded to result in a viable commercial operation. This option treats import, export, and domestic processing in a similar manner.

How do the options for exceptions (thresholds) for registration compare to the status quo?

Criterion	Option One – Status Quo: No threshold	Option Two – Threshold levels set for regulated timber and specified timber products at \$5,000	Option Three – Threshold levels set for regulated timber and specified timber products at \$10,000	Option Four – Threshold levels set to: wood in the rough 2,000m3
Consistency and proportionality	0	+ exempts activities that proportionately have the lowest impact on the trade of illegally harvested timber. It disproportionately impacts the small traders in domestic logs who are likely to be low risk.	+ exempts activities that proportionately have a low impact on the trade of illegally harvested timber. It disproportionately impacts the small traders in domestic logs who are likely to be low risk.	+ exempts low risk small traders in domestic logs. Does not set any threshold for traders of non-log products.
Minimal complexity and administrative cost	0	- - requires monitoring of registered persons activities that increases costs across the supply chain.	- requires monitoring of registered persons activities that increases costs across the supply chain. A higher threshold reduces the number of people who must comply with legal harvest information requirements reducing the burden on these lower risk people. This system aligns with thresholds set by Australia so may provide some consistency in parties who operate in both countries.	- requires monitoring of registered persons activities that increases costs across the supply chain. Removes the administrative burden on lower risk domestic traders in logs.
Clarity and transparency	0	+ setting requirements in regulations ensures clarity.	+ setting requirements in regulations ensures clarity.	+ setting requirements in regulations ensures clarity.
Overall assessment	0	+	+	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

292. The preferred options are options three and four. Setting thresholds at these levels poses a low risk to losing market access or damaging New Zealand's trading reputation.

293. Setting a value threshold at \$10,000 per financial year reduces the burden on the Secretary and those undertaking activities by excluding the low-risk importers and exporters. Setting a volume threshold for logs in option four exempts small traders in domestic logs where there is a low risk of illegally harvested timber, and low risk to New Zealand's reputation or market access.

294. Reducing the number of people affected by increasing the monetary threshold and applying a volume threshold to logs, reduces the administrative costs to a significant number of people who are of lower risk. This also reduces the burden on the Secretary. Where legal harvest information is required for market access, they can voluntarily comply with legal harvest information requirements.

Section 2F: Getting registered

295. This section covers specifying legal harvest information for:

- matters to consider in the fit and proper person test;
- any other criteria to be satisfied before a person can be registered;
- information required with an application for registration.

What is the policy problem or opportunity?

Context

296. Registration aims to create visibility over who has obligations for maintaining due diligence systems under the Act. To be registered, a person must be a fit and proper person, have a due diligence system (addressed in section 2G below), and meet any other criteria set in regulations.⁴⁷ A person must provide information to satisfy these requirements when they apply to register. An applicant for registration may also be required to pay an application fee.⁴⁸

297. Some businesses carry out their activities in branches and/or divisions. Once a business is registered, it may decide it wants to also register its branches and divisions separately. A branch or division may be registered separately so long as:⁴⁹

- the "parent" business the branch or division is part of is also registered (the legal "person in trade");
- the branch or division carries out one or more of the regulated activities (listed above);
- the branch or division can be separately identified by its location or the nature of the activities it carries out; and

⁴⁷ Forests Act 1949, s 85, as inserted by the Legal Harvest Amendment.

⁴⁸ Forests Act 1949, s 91, as inserted by Legal Harvest Amendment. Relevant fees and/or charges are not considered in this impact assessment. Any fees or charges will be considered after decisions are made on the design of the basic system.

⁴⁹ Forests Act 1949, s 93, as inserted by the Legal Harvest Amendment.

- the branch or division can independently comply with the obligations of a registered person.

298. If a branch or division is registered separately it is responsible for complying with legal harvest obligations. The “parent” business does not need to comply for the activities the branch or division is carrying out.

299. If the branch or division fails to comply with its registration obligations, the “parent” business will ultimately be responsible for any liability or consequences that result. In this section we refer to a ‘person’ to mean the business, branch, or division that is applying to register, or is registered.

300. The lack of specificity in the Act means that submitting and processing applications may be inefficient for both applicants for registration and the Secretary.

Fit and proper person test

Context

301. Fit and proper persons tests are common in regulatory systems that assess or certify individuals and organisations based on conduct. In determining whether a person is fit and proper to be registered, the Act allows the Secretary to consider any matters set out in regulations and any other matter the Secretary considers relevant.

302. The Secretary’s discretion allows for fit and proper person assessment to evolve over time, to respond to industry needs, market requirements, and international policy developments.

Problem and opportunity

303. While the Secretary’s broad discretion allows for flexibility, it does not provide:

- certainty for people applying to register about how their application will be assessed;
- notice to applicants about the information that will be relevant to their application and should be provided;
- transparency to the wider public and trading partners about the standards registered people are expected to meet;
- consistency in how the Secretary will determine whether applicants are fit and proper persons to be registered.

Any other criteria to register

Problem and opportunity

304. The ability to set ‘any other criteria’ for registration in regulations provides an opportunity to ensure that registration is meeting the purpose of the legal harvest assurance system part of the Act. This power provides a mechanism to respond to changing market access requirements (in line with the purpose of the legal harvest assurance system part of the Act) beyond those captured by fit and proper and due diligence requirements.

Information requirements

Problem and opportunity

305. The Act requires a person applying for registration to apply in the form approved by the Secretary, identify the activity the registration relates to, and be accompanied by details of their due diligence system. This information is not sufficient for the Secretary to be satisfied the person has met the registration criteria. This could result in frequent further information requests which would be inefficient for both applicants and the Secretary.

Assumptions

306. We have made the following assumptions about getting registered for legal harvest assurance:

- Businesses that apply to register will have all the necessary information about the business, the legal harvest activities they carry out, and their due diligence systems to complete an application for registration.
- Businesses required to register for legal harvest assurance will be able to amend the systems they already have in place for limiting their risk of trading in timber that has been illegally harvested to meet due diligence requirements.
- “Parent” businesses will only register branches or divisions separately where it makes commercial sense to do so and understand that they are ultimately responsible for any liability or consequences if a branch or division fails to comply with its registration obligations.

What do stakeholders think about the problem?

307. In issues paper two, we asked about getting registered for legal harvest assurance.

308. Feedback challenged the assumption that “parent” businesses will understand that they are ultimately responsible for any liability or consequences if a branch or division fails to comply with its registration obligations. The feedback suggested that:

- company structures are the business of the companies themselves and deemed liability to a parent is cutting across company law.
- any system should permit the product owner to identify any entity to register. The entity that is registered will be responsible for meeting the requirements of this legislation.

Note, the ability for branches or divisions to register separately to the legal person (often a company) is contained in the Act and changes to this ability are out of scope for secondary legislation.

309. We also asked what matters should be taken into account to determine if an applicant is fit and proper to be registered for legal harvest. Feedback suggested that:

- criminal convictions should be included for consideration but not regarded as conclusive evidence that a person is improper or unfit for registration.
- other matters suggested for inclusion included:
- current claims of insolvency, or recent bankruptcy;
- recent or in progress fraud convictions or proceedings;
- a history of consistent recidivism in breaching laws directly or indirectly related to the conduct of a timber product exporting business.

310. Feedback suggested the following information should be provided with an application for registration:

- Name.
- Address.
- Contact details.
- General nature of business.

- Declaration about bankruptcy for individuals or liquidations for companies.
- Declaration about any fraud convictions or proceedings.

What objectives are sought in relation to the policy problem?

311. By setting requirements for getting registered for legal harvest assurance, we are trying to:

- strengthen oversight and create transparency in the supply chain;
- ensure applicants for registration know what information they need to provide for their application to be processed, including for the Secretary to assess whether the applicant business is fit and proper to be registered;
- reduce the risk of illegal timber or timber products entering or leaving the supply chain;
- take a proportionate approach to addressing the risk of illegal harvest while enabling legal trade.

What options are being considered for the fit and proper person test?

Limitations, constraints, and non-feasible options

312. Options in this section do not consider the due diligence requirements for people apply to register, or once registered, as these are considered in section 2G.

313. The fit and proper person test options are limited to a registered person as defined in the Act.

Options for matters to be taken into account when deciding is a person is fit and proper to be registered

Note: Options two and three are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

314. Key features: there would be no secondary legislation setting the matters that must be taken into account by the Secretary to determine whether a person is a fit and proper person to be registered for legal harvest. The Act allows the Secretary may take into account any matters the Secretary considers relevant.

315. Addressing the problem: the status quo addresses the problem of ensuring that the people who register for legal harvest are fit and proper persons, however, people applying to register are not informed about whether their previous conduct may be considered relevant to their application (or if successful, their subsequent registration).

316. This could result in an inconsistent, uncertain, and inefficient approach for applicants, registered persons, and the Secretary when undertaking and fit and proper person test.

317. The lack of transparency to the wider public and trading partners on the standards registered people are expected to meet, could undermine confidence in the fit and proper person test process.

Option Two – business matters

318. Key features: make regulations that require the Secretary to take into account the following business matters when deciding if a person is fit and proper to be registered for legal harvest assurance:

- the legal status of the applicant (for example, whether it is a company, sole trader, or some other form of business);
- that the person is legally permitted to operate in New Zealand;
- whether the applicant has been placed in receivership or liquidation, or is subject to any other insolvency proceeding or process.

319. Addressing the problem: taking into account these business matters would provide a consistent and efficient approach to determining whether a person is fit and proper to be registered and reduce the risk of registering businesses that should not be operating in the supply chain.

320. The fit and proper person assessment would be more efficient for the applicant and the Secretary as the information provided with an applicant would be clear and relevant. This would reduce further information requests for additional information, or provision of a large amount of information that may not be relevant.

Option Three – conduct matters

321. Key features: make regulations that require the Secretary to take into account the following conduct matters when deciding if a person is fit and proper to be registered for legal harvest assurance:

- whether the applicant or any decision maker has
 - any criminal convictions
 - any civil penalties imposed by a court or regulator.
- whether the applicant or a decision maker in the business has been or is—
 - disqualified from being appointed or holding office as a director of a company under the Companies Act 1993; or
 - banned from being a director or promoter of an incorporated or unincorporated body under the Takeovers Act 1993 or the Financial Markets Conduct Act 2013; or
 - disqualified from being appointed as a trustee under the Trusts Act 2019.

322. Addressing the problem: taking into account these conduct matters would provide a consistent and efficient approach to determining whether a person is fit and proper to be registered.

323. This option would require the Secretary to consider both the corporate conduct of the business that will be registered and the conduct of the people making decisions for operating the business.

324. The fit and proper person assessment would be more efficient for the applicant and the Secretary as the information provided with an applicant would be clear and relevant. This would reduce further information requests for additional information, or provision of a large amount of information that may not be relevant.

325. This option would set the matters to be taken into account, but not how the matters should be assessed. This provides flexibility for applicants to explain any previous offending and how their conduct has improved. It allows the Secretary to consider this explanation alongside the seriousness of the offending and the time since it occurred.

How do the options for matters to be taken into account in the fit and proper person test compare to the status quo?

Criterion	Option One – Status Quo	Option Two – business matters	Option Three - conduct matters
Consistency and proportionality	0	++ consistent between applicants and proportionate to risk of the risk of registering businesses that should not be operating in the supply chain.	+ consistent between applicants.
Minimal complexity and administrative cost	0	+ would reduce the complexity for both the Secretary and applicants by providing a consistent set of matters to be taken into account.	+ minimal complexity to explain any previous conduct that resulted in a conviction or civil penalty.
Clarity and transparency	0	+ clear about the matters the Secretary will take into account.	+ clear about the matters the Secretary will take into account.
Overall assessment	0	++	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

326. The preferred options are Option Two – business matters and Option Three - conduct matters. Both options performed well against the criteria and provide applicants with information about the matters the Secretary will consider. This supports certainty and transparency for applicants.

327. These options taken together support the objectives of:

- strengthening oversight and creating transparency in the supply chain;
- ensuring applicants for registration provide information to confirm they are fit and proper to trade timber and timber products;
- take a proportionate approach to addressing the risk of illegal harvest while enabling legal trade.

What options are being considered for any other criteria for registration?

Note: options two and three are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

328. Key features: no additional criteria for registration.

329. Addressing the problem: a person would only need to be fit and proper and have a due diligence system to be registered. As due diligence systems are the primary tool for eliminating or minimising the risk of trading in illegally harvested timber this is considered a proportionate approach to addressing the risk of illegal harvesting while enabling legal trade. However, it does not support the objective of strengthening oversight and creating transparency in the supply chain.

Option Two – Private certifications or memberships

330. Key features: require people applying to register to be a member of, or be certified by, a relevant industry body.

331. Addressing the problem: making membership a requirement may encourage collegiality within the supply chain and empower sections of the supply chain to set and maintain industry standards. However, a requirement of this kind could impinge on people's right to freedom of association.

332. Furthermore, private memberships and certifications are not a substitute for government assurance. This would require people to comply with standards that may not be necessary to achieve the purposes of legal harvest assurance.

333. Memberships and certifications may be relevant to due diligence requirements. The role of certification schemes for due diligence systems is considered in section 2G.

Option Three – additional criteria for branches and divisions registering separately

334. Key features: when a branch or division is applying to register separately to a parent entity,⁵⁰ the applicant must also have the express written consent of the parent entity to register separately. The applicant must describe how legal harvest obligations will be met separately from the parent entity (these will also be considered in the information requirements below).

335. Addressing the problem: as a branch or division is part (or sub-set) of a legal person, and does not have an independent identity, this option ensures the branch or division is acting with the consent of the legal person that will ultimately be responsible for legal harvest obligations. It will establish a clear authority for the branch or division to act, and clarity for both the branch or division and parent entity about which registered person will be meeting which legal harvest obligations.

⁵⁰ As described in Forests Act 1949, s 93, as inserted by the Legal Harvest Amendment.

How do the options for any other criteria for registration compare to the status quo?

<i>Criterion</i>	Option One – Status Quo	Option Two – Private certifications or memberships	Option Three - additional criteria for branches and divisions registering separately
Consistency and proportionality	0	- may be inconsistent as certifications or memberships may not be available for all aspects of the supply chain. The option would impose a requirement that is greater than what is required to address the problem (meaning is it a disproportionate response).	+ ensures a consistent approach to branches and divisions registering separately. Requiring the express consent of the parent entity is considered a proportionate response to the risk of branches or divisions acting without the authority of the parent entity.
Minimal complexity and administrative cost	0	-- risks imposing significant costs on applicants to join third party schemes, for the various certification and membership bodies to administer an influx of interest, and for the Secretary to ensure people are and remain certified or members of private systems.	+ although there may be some increased complexity in describing how legal harvest obligations will be met at the application stage, overall this option will minimise the complexity and administrative cost for registered persons and the Secretary on an ongoing basis by being clear about how obligations are to be met and which registered person will be responsible for meeting them.
Clarity and transparency	0	- it would not be clear or transparent what standards different registered people had met as these would differ with each certification and membership.	++ provides clarity about how obligations are to be met when a branch or division registers separately. Supports transparency and clarity about who has authority to act for a branch or division, and who is operating in the supply chain.
Overall assessment	0	--	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

336. The preferred option is *option three - additional criteria for branches and divisions registering separately*. This option is considered necessary to operationalise the ability for branches and divisions to register separately to the parent entity they belong to. As registration applies at the 'person in trade' level, branches and divisions registering separately are a part or sub-set of the person in trade, and therefore have no separate legal identity to the parent entity.

337. The other criteria for registration provided by option three provide a mechanism for checking that the branch or division has consent to register separately and to set out how obligations will be met. This will reduce the risk of duplication or gaps between the parent entity and branch or division in meeting legal harvest obligations.

338. This approach is anticipated to simplify compliance for registered persons and the Secretary.

What options are being considered for information requirements for applying to register for legal harvest assurance?

Limitations, constraints, and non-feasible options

339. We have considered options for information about thresholds and if the person is applying to voluntarily register. We consider these options are non-feasible because they are not necessary or desirable for the purposes of the legal harvest assurance part of the Act. Every person that is applying to register, or is registered, must meet the same obligations so differentiating on this basis is not needed.

Note: options two - four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

340. Key features: no information requirements set in regulations. An applicant must:

- apply in the form approved by the Secretary;
- identify the activity to which the registration relates (including any activity that qualified for an exemption);
- provide details of the due diligence system and an assessment report if it is not based on a template (due diligence requirements are covered in section 2G);
- pay any fee specified in regulations.

341. Addressing the problem: it is possible that information required to process an application may be required by the form approved by the Secretary. However, this may create doubt about the Secretary's lawful authority to collect personal information under the Privacy Act.

Option Two – Information required to be displayed on the public register

342. Key features: require people applying to register to provide the information required to be displayed on the public register for legal harvest that is not generated by the Secretary. This would cover:

- the person's name or trading name and contact details; and
- the name or designation of the person who is responsible for the day-to-day management of the business; and

- any other information to be displayed as set in regulations, covered in section 2K of this impact statement. The preferred option is to display:
 - website, if relevant;
 - the geographic regions the person operates in;
 - the activities they are registered for;
 - any activities they undertake that are exempt from registration requirements.

343. Addressing the problem: ensures information that must be publicly displayed is available to the Secretary to publish. This will support meeting the purpose of the registers as set out in the Act and is required for the Secretary to meet the obligation to keep and maintain a public register containing specified information.

Option Three – Business identity information

344. Key features: require people applying to register to provide information about the business that is to be registered. Information would cover:

- evidence of the legal status of the business, for example, a New Zealand Business Number for an organisation or an IRD number and photo identification for a sole trader;
- the name, contact details, and role of the person who is authorised to act on behalf of the business for its registration;
- previous trading names by which the business has been known;
- the names of people making decisions for operating the business;
- details of any previous registration by the business or senior managers in the business.

345. Addressing the problem: ensures information to identify the legal person to be registered is available. It also provides information to support identifying the natural person that has authority to represent the business and make decision about the business's application (and if successful, the business's ongoing registration).

Option Four – Fit and proper person information

346. Key features: require people applying to register to provide information for the Secretary to assess whether the person is fit and proper to be registered. The fit and proper person test is considered above. Based on the preferred option, the information required would be:

- an explanation of any criminal convictions or civil penalties received by the applicant (including that they have none);
- an explanation of any criminal convictions or civil penalties received by people making decisions for operating the business (including that they have none);
- an explanation about the matters listed in the preferred options for the fit and proper person test (addressed above).

347. Addressing the problem: ensures information is available to the Secretary to take into account the matters required by the fit and proper test (addressed above). The specific information required will depend on final decisions for the fit and proper person test. This supports the objectives of strengthening oversight and creating transparency in the supply chain, and ensuring applicants for registration know what information they need to provide for their application to be processed.

Option Five – further information for branches and divisions registering separately

348. Key features: when a branch or division is applying to register separately to a parent entity, the applicant must also provide:

- the name, trading name, and registration details for the parent entity;
- express written consent from the parent entity for the branch or division to register separately to the parent entity;
- a description of how the applicant is separately identifiable from the parent entity;
- a description of how the branch or division will meet the obligations of a registered person.

349. The applicant would also need to provide all application information for the branch or division in making the application.

350. Addressing the problem: ensures that branches and divisions are acting with the consent and approval of the parent entity that remains ultimately responsible for meeting obligations under the Act. This supports the objectives of strengthening oversight and creating transparency in the supply chain.

How do the options for information requirements for application for registration compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – Information required to be displayed on the public register	Option Three – Business identity information	Option Four – Fit and proper person information	Option Five – further information for branches and divisions registering separately
Consistency and proportionality	0	+ consistent between applicants and proportionate to the problem of needing information that must be displayed on the register.	+ consistent between applicants and proportionate to the problem of needing to know who is applying for recognition.	+ consistent between applicants and proportionate to the problem of needing information to assess whether an applicant is fit and proper to be registered.	+ consistent between applicants and proportionate to the problem of needing information to assess whether a branch or division has met the preferred option for any other criteria to apply for registration.
Minimal complexity and administrative cost	0	+ unambiguous and easy to provide.	++ information is basic identity / contact information to know who is applying. Will not require substantial collation or research to secure information to submit with an application, or for the Secretary to assess.	+ unambiguous and easy to provide. Using declaration and explanations is considered to have a lower burden than the status quo because information would be submitted with an application, rather than being requested through time consuming further information requests.	+ although there may be some increased complexity in describing how legal harvest obligations will be met at the application stage, overall this option will minimise the complexity and administrative cost for registered persons and the Secretary on an ongoing basis by being clear about how obligations are to be met and which registered person will be responsible for meeting them.
Clarity and transparency	0	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to process an application).	++ provides clarity about how obligations are to be met when a branch or division registers separately. Supports transparency and clarity about who has authority to act for a branch or division, and who is operating in the supply chain.
Overall assessment	0	+	++	+	++

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

351. The preferred options are:

- *Option Two – information required to be displayed on the public register*
- *Option Three – business identity information*
- *Option Four – fit and proper person information*
- *Option Five – further information for branches and divisions registering separately*

352. All four of these options are considered necessary to provide the information the Secretary will need to be satisfied a person is fit and proper to be registered. Requiring this information to be provided with an application is considered more efficient than the Secretary needing to ask for this information at a later time when processing each unique application.

353. These options are considered the least relevant information necessary for the Secretary to make a decision. Alternative options which would require evidence of the same matters a declaration or explanation is proposed for are considered unnecessary. Using declarations and explanations is considered reliable because it is an offence to provide false or misleading information in an application.⁵¹ The potential for penalties is considered a sufficient disincentive for applicants to provide false or misleading information to the Secretary.

⁵¹ Forests Act 1949, s 146, as inserted by the Legal Harvest Amendment.

Section 2G: Due Diligence systems

354. This section covers:

- information collection requirements;
- risk assessment, including information verification and risk mitigation and elimination;
- any other criteria a third party certification scheme must meet before being recognised for use in a due diligence system.

What is the policy problem or opportunity?

Context

355. Due diligence systems are the legal harvest assurance system's core tool for eliminating or minimising the risk of trading in illegally harvested timber, or timber products coming from an illegally harvested source.

356. Due diligence systems are focussed on the registered person (and their identification and mitigation of risks) instead of the product. Due diligence systems go beyond documenting risks and efforts; requiring the registered person to demonstrate that they have considered the potential and actual risks of trading in illegally harvested timber and have taken steps to eliminate and/or mitigate these risks.

357. The Asia Pacific Economic Cooperation's (APEC) Experts Group on Illegal Logging and recent bi-lateral negotiations have shown the need for a supply chain (due diligence) assessment approach, based on the legislative instruments in a country, supported by an official assurance.

358. At the time of the policy development that led to the Legal Harvest Amendment, due diligence systems were considered the best tool to identify and manage the risk of timber being illegally harvested. This was consistent with due diligence systems being used domestically in other sectors as well in other international jurisdictions.

359. Once registered, a registered person must use their due diligence system to effectively eliminate or minimise the risk of dealing with timber or timber products that have not been legally harvested. Their due diligence system will need to be assessed at regular intervals dependent on the level of risk or if directed by the Secretary (assessments are carried by recognised assessors, covered in section 2J below).

360. Due diligence is important for people trading in:

- regulated timber – the system provides buyers with confidence that the timber they are purchasing is legally sourced regardless of business size and supports registered people to access overseas markets that require government assurance of legal harvest.
- specified timber products – the system reduces the risks that specified timber products are illegally harvested; reducing the risk of unfair competitive advantage from cheaper, illegally harvested timber.

361. The use of due diligence systems recognises that obligations cannot be imposed on the harvester or processor when the harvest and processing occurs outside of New Zealand. Instead, the obligations to have and apply a due diligence system must sit with the importer based in New Zealand.

Problem and opportunity

362. The Act establishes that a registered person must have a due diligence system and act in accordance with that system when they undertake a regulated activity. However, the Act does not provide direction or specificity about the form or content, or how to act in accordance with, a due diligence system.

363. There is a policy opportunity to set further details for due diligence systems in secondary legislation. This is expected to result in:

- consistency in the approach to identifying and mitigating risks and undertaking due diligence;
- efficiency for registered persons and the Secretary by standardising approaches to due diligence, including in the information people will be asked to collect and provide, rather than providing bespoke information and evidence to each recipient of timber to satisfy the recipient's due diligence system;
- make it clearer for registered persons about how to meet their requirements and comply with obligations in the legal harvest assurance system;
- greater efficiency for the Secretary to monitor compliance with legal harvest obligations;
- reduce the risk of trade of illegal timber, through a practical system that reflects market conditions and risk.

Due diligence requirements

Problem and opportunity

364. The Act empowers regulations for due diligence system requirements.⁵² There is an opportunity to provide clarity and certainty for regulated people about how they can comply with their obligations. It would promote transparency with the public and trading partners about the expectations on registered people.

365. The requirements in regulations are an opportunity to provide direction on how a person may assess and mitigate the risks of dealing in illegally harvested timber.

Templates for due diligence systems

Context

366. The Act enables the Secretary to approve a due diligence system template, created by the Secretary or a third party. Registered persons can choose to use an approved template rather than develop a bespoke due diligence system. Any decisions on templates will follow final decisions on due diligence requirements covered in this impact statement.

Recognising certification schemes

Context

367. The Act enables the Secretary to recognise a certification scheme as one that may be used in a due diligence system. Certification schemes are created and administered by private organisations.

⁵² Forests Act 1949, s 99, as inserted by the Legal Harvest Amendment.

368. The Secretary may only recognise a certification scheme where they are satisfied the scheme:

- has requirements that eliminate or minimise the risk of dealing in timber that is not legally harvested; and
- satisfied any other criteria set in regulations.

Problem and opportunity

369. There is an opportunity to recognise certification schemes so that a registered person that is a member of that scheme may partly rely on the due diligence done for that scheme, when undertaking due diligence for legal harvest.

370. Although this will not replace the need to undertake due diligence, it is expected to result in the following opportunities:

- a registered person may choose to use activities required by the scheme to reduce duplication and cost in their operations;
- recognising the existing role of certification schemes in the market and for market access.

Assumptions

371. We have made the following assumptions about due diligence systems for registered people:

- Registered persons will be able to accurately assess the risks associated with the legality of the harvest of their timber and/or specified timber products.
- Registered persons will have information about legality of harvest available for their timber and specified timber products.
- legal harvest information (addressed in section 2C above) will be passed along the supply chain.
- People required to register for legal harvest assurance will already have processes in place for limiting their risk of trading in timber that has been illegally harvested. However, these processes will vary in detail and may be informal or difficult to verify.
- People required to register for legal harvest assurance will be able to amend the processes they already have in place for limiting their risk of trading in timber that has been illegally harvested to meet due diligence system requirements.

What do stakeholders think about the problem?

372. In issues papers one and two we asked for feedback about due diligence systems.

373. Feedback that agreed with the assumptions suggested:

- that while they agree that for their own business, they are able to access information to assess the risk associated with the legality of the harvest, MPI will need to consider whether all operators in the supply chain have the capability to assess risk.
- guidance will be needed to support businesses to meet regulatory requirements.

374. Feedback that disagreed with the assumptions suggested:

- rather than due diligence, MPI should assist exporters to comply with the deforestation regulations under the European Union Deforestation Regulation;
- considering using the Forestry Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification (PEFC) certifications instead of due diligence systems;
- aligning due diligence requirements with Australian legal harvest requirements;

- not limiting assurance to any single certification process; and
- amending existing systems within a business is not easy and requires additional time and resources.

375. Feedback on the first issues paper, suggested that due diligence systems should:

- meet overseas regulations;
- align with the Australian approach;
- be similar to FSC certification;
- not use international certification schemes like the FSC or PEFC because they are not a solution to demonstrate legality of harvest since these organisations are not the New Zealand government (and therefore cannot provide government assurance) and apply different standards to New Zealand laws.

376. Further feedback on the second issues paper included that:

- it will be difficult to accurately assess supply chain risk so risk will be deemed high if information is incomplete or unavailable;
- consideration of country/municipality specific risks should be included in a risk assessment;
- the transition period should be sufficient to ensure that operators have time to adapt to the new regime.

377. We asked for feedback on the use of private certification schemes. Most of the feedback supported the concept of recognising certification schemes, particularly FSC and PEFC, for use in due diligence systems. Feedback included:

- that recognition could avoid duplicating requirements and reduce costs.
- that before being recognised, a private certification scheme should have:
 - relevancy to New Zealand's forest industry,
 - measurable and relevant standards,
 - transparent processes, compliance focused, globally recognised as legitimate and credible,
 - chain-of-custody, robustness,
 - proof of legality for legal harvest,
 - International Social & Environmental Accreditation & Labelling (ISEAL) code compliant, and
 - provide comprehensive and publicly available audit reports.
- questions about how to manage the situation of an entity losing its certification for reasons unrelated to the legality of the timber harvested.

378. Feedback that did not support recognising private certification schemes suggested that while certification schemes can support the due diligence process, they should not be the sole mechanism for due diligence or strictly prescribed, and not all certification schemes are equal. There are other tools and technologies that can be used in a due diligence system and the regulations should allow for freedom within a framework.

What objectives are sought in relation to the policy problem?

379. By setting requirements for due diligence systems, we are trying to:

- minimise disruption to trade by giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business;

- empower registered people to identify all sources of timber they receive and design a risk management system proportionate to the risks that the timber may be illegally sourced.

What options are being considered for due diligence requirements?

Limitations, constraints, and non-feasible options

380. The options for due diligence systems are limited to registered persons. Options therefore cannot require traceability⁵³ or chain of custody⁵⁴ for the product. Any options that impose obligations on a part of the supply chain that is not regulated under the Act would not be enforceable.

381. Phytosanitary treatments⁵⁵ that occur after the harvest are out of scope for the purposes of determining when timber has been legally harvested.

382. The Act empowers regulations to set requirements for other methods to satisfy a due diligence requirement. However, these are out of scope as they would rely on the decisions about requirements for due diligence systems covered by this impact statement.

383. Options in this section do not explicitly consider requirements for keeping records as part of a due diligence system. Options for information collection may identify records a registered person may need to keep when acting in accordance with their due diligence system. Record keeping as an obligation for registered persons is also considered in section 2H Obligations once registered.

384. The options for due diligence requirements are address below in the following order:

- Information collection.
- Risk assessment (including verification of Information and risk mitigation or elimination).
- Additional criteria for recognising certification schemes.

What options are being considered for information collection requirements?

Option One – Status Quo

385. Key features: a due diligence system must effectively eliminate or minimise the risk of the person dealing in any timber that has been illegally harvested. Detailed requirements on when supporting evidence will be required and what information must be collected by the registered party will not be in regulations.

⁵³Traceability in the supply chain context refers to the ability to identify, track and trace elements or a product or substance as it moves along the supply chain from raw goods to finished products. It is a broader concept that encompasses tracking of items.

⁵⁴Chain of custody refers to the chronological documentation or paper trail that records the handling and transfer of a product. It is the process of following materials through every step of the supply chain as they go through various stages of sourcing, production, processing, and shipping among others. It establishes a clear record of who has had custody or control of the commodity being traced.

⁵⁵Phytosanitary treatments are measures to prevent the introduction and spread of pests.

386. Addressing the problem: this does not provide consistency for registered persons or the Secretary. Each registered person would decide what information they would collect, this would be inefficient for registered persons to determine what is relevant and for the Secretary to monitor compliance.

Option Two – Targeted approach by activity

387. Key features: the regulated activities that the registered person undertakes will determine the details for when supporting evidence is required and what specific information must be collected. This means that importers, exporters, and other processors will each collect different information with requirements targeted by the activity undertaken.

388. An example of an approach targeted by activity is the information collection based on activity under the Illegal Logging Prohibition Regulation 2012 (ILPR) of Australia. The specific information to be gathered by importers and processors is indicated in the ILPR.

389. Information collection requirements would be as follows:

For the activity of importing specified timber products (including acting as an agent for someone importing specified timber products)

390. The registered person must take all reasonable steps to obtain:

- the relevant legal harvest information (addressed in section 2C above); and
- if a practice standard applies, information to demonstrate compliance with that practice standard (note, practice standards are out of scope for this impact statement).

For the activities of buying New Zealand logs, first processing of regulated timber, and exporting specified timber products (including acting as an agent for someone doing one of these activities)

391. The registered person must take all reasonable steps to obtain the following information about the regulated timber or specified timber products:

- the legal harvest information as it applies to the regulated timber or specified timber product (addressed in section 2C above);
- to the extent not included in the legal harvest information, a description of the regulated timber or specified timber product, including:
 - for specified timber products only, the Tariff Code;
 - a common description of what the product is;
 - the common name, genus or scientific name for the timber/s included in the product.
 - the area in which the regulated timber was harvested;
- the name, address, trading name, business and company registration number (if any) of the supplier of the regulated timber;
- the quantity of the regulated timber or specified timber product being supplied, expressed in the measurement relevant for any threshold for the relevant activity (thresholds for registration are addressed in section 2E);
- if a practice standard applies, information to demonstrate compliance with that practice standard (note, practice standards are out of scope for this impact statement).

392. Addressing the problem: gathering this information is considered reasonably practicable for the registered person to obtain as it is specific to the activity they undertake and will increase their ability to verify the legality of harvest of the regulated timber and/or specified timber products they receive.

393. This supports the objective to empower registered people to identify all sources of timber they receive and design a risk management system proportionate to the risks of the timber being illegally harvested.

394. Registered persons will need to rely on other people in the supply chain that may not be regulated to provide the relevant information. Regulations cannot require people that are not regulated under the legal harvest assurance system to provide information. Registered person will need to rely on commercial arrangements and agreements to manage this risk.

Option Three – uniform approach

395. Key features: set uniform requirements for all registered persons for what information must be collected and when supporting evidence is required. It does not differentiate the information that must be collected based on the activities being undertaken by the registered person.

396. Examples of approaches that do not differentiate by activity in the information collection requirements are Japan's Clean Wood Act and the EUDR (note, at the time of publishing this had not yet come into effect). The information requirements for these systems, and as proposed here, are unique and reflect the legal and operating systems in effect in the relevant jurisdictions.

397. Registered persons must take all reasonable steps to collect the following information:

- the legal harvest information (addressed in section 2C above);
- for specified timber products only, the Tariff Code;
- a common description of what the product is;
- the common name, genus or scientific name for the timber/s included in the product.
- the quantity of the regulated timber or specified timber product being supplied, expressed in the measurement relevant for any threshold for the relevant activity (thresholds for registration are addressed in section 2E);
- the place of country of harvest for the regulated timber or timber/s included in a specified timber product;
- the name, postal address and email address of any business or person that has supplied the registered person with the regulated timber or specified timber products;
- the name, postal address and email address of any business, operator, or trader to whom the registered person supplies the regulated timber or specified timber product.

398. Addressing the problem: This may create efficiencies for the registered person as they would need to collect the same information for each activity. This would support uniformity in their operating systems. It would also be clear for the Secretary about the information each registered person should be collecting.

399. Setting uniform requirements provides greater clarity and transparency than the status quo. It supports the objectives for due diligence systems, including to empower registered people to identify all sources of timber they receive, regardless of the activity they are undertaking when they receive the timber.

400. This option also supports the objective to empower registered people to identify all sources of timber they receive and design a risk management system proportionate to the risks of the timber being illegally harvested.

Option Four – domestic due diligence approaches

401. Key features: gathering information would be based on other New Zealand laws, systems, and practices that require due diligence to be undertaken. In this option, we have considered the information collection for due diligence in the following:

1. Proposed Modern Slavery Legislation
2. Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AMLCFT)
3. Procurement - Government Procurement Rules

402. The following information requirements draw on the themes and requirements from these three systems to present an option for due diligence information collection for the purposes of the legal harvest assurance system. The information that must be collect would be as follows.

403. The registered person must collect:

- identity information about the person the registered person is receiving the regulated timber or specified timber product from (the supplier):
 - the first time the registered person receives regulated timber or specified timber products from the supplier:
 - the legal and business names, and contact details, of the person supplying the regulated timber or specified timber product;
 - the full name and contact details of the natural person authorised to act for the legal person supplying the regulated timber or specified timber product;
 - any updates to this information over time, and
- how the registered person has verified the identity requirements above.
- conduct information:
 - how the registered person has checked the compliance of the supplier with relevant harvest laws, and the results of those checks.
- Legal harvest information:
 - Legal harvest information for the regulated timber or specified timber product (legal harvest information is addressed in section 2C above).

404. Addressing the problem: This option supports a cohesive approach to developing New Zealand systems and practices. It may create efficiencies for registered persons as these are consistent with other regulatory systems registered persons are subject to when operating a business in New Zealand.

405. This option supports giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business. This option also specifically requires registered persons to consider the conduct of the businesses they trade with, making this information available to contribute to the registered person's risk assessment (considered below).

Option Five – Non-binding guidance

406. Key features: guidance would describe the information that registered persons should consider collecting.

407. Addressing the problem: this option would balance flexibility for registered persons to meet their obligations in the legal harvest assurance system. However, since guidance is non-binding, registered persons may choose not to follow the guidance. This may lead to an inconsistent approach to information collection.

408. Guidance can be updated quickly to respond to changing market expectations. However, this risks less certainty for registered persons if guidance changes frequently. This may not meet the objective of minimising disruption to trade by giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business.

How do the options for information collection compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – targeted approach by activity	Option Three – uniform approach	Option Four – domestic due diligence approaches	Option Five – non-binding guidance
Consistency and Proportionality	0	+ collecting detailed information targeted to the activities of the registered person will provide proportionality to the risk. However, it may not provide consistency between the activities that registered person un undertakes.	++ collecting the same information from registered persons even if their roles are different in the supply chain will still provide consistency. Collecting this information is proportionate to the risk of training in illegally harvest timber.	+ collecting the same information from registered persons even if their roles are different will still provide consistency. There could be some disproportionality as some information collected may not be necessary for a particular role.	+ this will provide consistency and proportionality to risk as registered persons will follow the same guidance
Minimal complexity and administrative cost	0	- there could be some complexity when collecting information particularly when the registered person undertakes multiple activities. There may be a higher administrative cost to apply different requirements based on activity rather than adopting a single business process.	0 there could be some complexity when collecting information particularly when the person providing the information is not regulated. Minimal administrative cost is expected when gathering information	0 there could be some complexity when collecting information particularly if the person providing the information is not regulated. Minimal administrative cost is expected when gathering information.	+ there will be minimal complexity as regulated parties adjust existing processes to follow guidance. There will be some administrative cost for the Secretary to prepare and update guidance.
Clarity and transparency	0	+ Information collected based on role will provide more clarity and transparency to registered persons about their obligations.	+ Information collected will provide clarity and transparency to registered persons involved in the supply chain. However, the rationale for collecting all of this information may not be clear for some regulated activities.	+ Information collected will provide clarity and transparency to registered persons involved in the supply chain. However, the rationale for collecting all of this information may not be clear for some regulated activities.	0 Since guidance is non-binding it is up to the registered person to interpret and follow it. Their approach may be different from that of the Secretary and therefore not clear and transparent.
Overall assessment	0	0	++	+	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

409. The preferred option is *option three – uniform approach*. This option ensures that all registered persons are collecting information relevant for applying a due diligence system. By setting uniform requirements, registered persons will have consistent information they are collecting which will allow for greater efficiency (by only having to create one business system) and reduce the risk of information being inadvertently missed or not collected.

410. Although other options performed well against the criteria, option three is preferred because it performed the best against the consistency and proportionality criteria (trade-offs between criteria when option perform equally are addressed in section 2: Deciding on an option above). The Secretary may consider guidance to assist registered persons to understand their information collection obligations.

Options for risk assessment (including verification of information and risk mitigation or elimination)

Option One – Status Quo

411. Key features: detailed requirements on risk assessments will not be in regulations.

412. Addressing the problem: this does not provide consistency for registered persons or the Secretary. Each registered person would need to develop their own approach to risk assessment and information verification. This would be complex and costly for the registered person, and it may be unclear whether their risk assessment and verification of information will be sufficient to meet their obligations. It will also make monitoring and compliance more difficult for the Secretary.

Option Two - targeted approach by activity

413. Key features: risk assessment and verification of information requirements will depend on the regulated activities that the registered person undertakes.

414. An example of an approach targeted by activity is the risk assessment and information verification based on activity under the Illegal Logging Prohibition Regulation 2012 (ILPR) of Australia. The specific information to be gathered by importers and processors is indicated in the ILPR.

For the activity of importing specified timber products (including acting as an agent for someone importing specified timber products)

415. The registered person may choose which of the three following risk assessment processes they will apply (they must use one of them).

Method one: relying on government assurance (where it exists)

416. If there is a government assured legal harvest system in effect in the place or country of harvest, then the registered person:

- may rely on that government assurance to determine the risk that the specified timber product contains timber/s that may have been illegally harvested.
- must take reasonable steps to verify the information is correct.
- make a written record of the identification and assessment undertaken they have undertaken.

Method two: undertake risk assessment

417. If the specified timber product contains timber/s that were harvested in a place or country that does not have a government assured legal harvest system, then the registered person must:

- identify and assess the prevalence of the following factors;
 - illegal harvesting in general in the area in which the timber in the product is harvested;
 - illegal harvesting in the area of the species of tree from which the timber in the product is derived;
 - armed conflict in the place or country of harvest;
 - the complexity of the product;
 - the number of countries the timber is processed in before being received by the registered person;

- any other information the importer knows, or ought reasonably to know, that may indicate whether the product is, is made from, or includes, illegally harvested timber;
- outline the steps taken to mitigate the risks identified;
- quantify the residual risk after mitigation steps are in place;
- make a written record of the assessment and risk identification process they have undertaken.

For the activities of buying New Zealand logs, first processing of regulated timber, and exporting specified timber products (including acting as an agent for someone doing one of these activities)

418. Before receiving the regulated timber or specified timber product, the registered person must:

- identify and assess the risk that the timber was illegally harvested considering the following factors:
 - the prevalence of illegal harvest in general in the area in which the timber was harvested;
 - the prevalence of illegal harvesting in the area of the species of tree from which the regulated timber or specified timber is derived;
- any other information the registered person knows, or ought reasonably to know, that may indicate whether the regulated timber or specified timber product has been derived from an illegally harvested source; and
- outline the steps taken to mitigate the risks identified;
- quantify the residual risk after mitigation steps are in place;
- make a written record of the assessment and risk identification process undertaken in accordance with this section.

419. Addressing the problem: the approach targeted by activity provides options for registered persons to follow based on their trading activity or role. It is up to the registered person to choose which option is applicable to them based on the activity they undertake to ensure that their processes eliminate or minimise the risk of dealing in timber that is not legally harvested.

420. This supports the objective to empower registered people to identify all sources of timber they receive and design a risk management system that responds to the activities they undertake.

Option Three – uniform approach

421. Key features: all registered persons follow the same approach to risk assessment and verification of information.

422. The registered person must:

- take reasonable steps to verify and analyse the accuracy of the information collected and any other relevant documentation.
- assess the risk the regulated timber or timber/s in a specified timber product has come from an illegally harvested source taking into account the following matters:
 - the risk of illegal harvest in the place or country of harvest, sources of information to make this assessment may include:
 - information produced or published by the country, regional authorities, operators, non-government organisations and third parties, including indigenous peoples, local communities, and civil society organisations;

- agreements and other instruments made by the country or place of harvest;
 - whether the country or place of harvest has national or subnational laws in place to address the risk of illegal harvest;
 - whether the country or place of harvest makes relevant data publicly available;
- the risk of corruption, prevalence of document and data falsification, lack of law enforcement, violations of international human rights, armed conflict, or presence of sanctions in the country or place of harvest.
- the complexity of the relevant supply chain and the stage of processing of the relevant products, in particular difficulties in connecting relevant finished products to the place of harvest;
- any other information that would point to a risk that the regulated timber or timber/s in a specified timber product have come from an illegally harvested source.
- outline the steps taken to mitigate the risks identified, steps may include:
 - requiring additional information, data or documents; and/or
 - carrying out independent surveys or audits;
- quantify the residual risk after mitigation steps are in place;
- document and review the risk assessments at least on an annual basis.

423. Addressing the problem: all registered persons would take a consistent approach to risk assessment, however the complexity, time, and cost of carrying out the risk assessment would differ depending on the activities of the registered person.

424. Some of the steps in this option may be considered prescriptive as they are not flexible or adaptive for the registered person.

425. Where relevant information is not publicly available, some registered persons may have a disproportionate burden to consider all of the listed matters. This approach does not support the objective to empower registered people to identify all sources of timber they receive and design a risk management system proportionate to the risks that the timber may be illegally sourced.

Option Four - domestic due diligence approaches

426. Key features: risk assessment and information verification would be based on other New Zealand laws, systems, and practices that require due diligence to be undertaken (we have considered the same systems as for information collection options above).

427. The following information requirements draw on the themes and requirements from these three systems to present an option for due diligence information collection for the purposes of the legal harvest assurance system.

- For each supplier of regulated timber or specified timber products, the registered person must consider:
 - the supplier's code of conduct
 - Corporate social responsibility reports about the supplier
 - Supplier terms and conditions
 - Certification schemes, either in-house or by private third parties held by the supplier
 - nature, size, and complexity of its business
 - products and services the supplier offers
 - methods by which the supplier delivers products and services to its customers

- types of customers the supplier deals with
- countries the supplier deals with
- the registered person must take reasonable steps to satisfy itself that the information obtained is correct;
- document the measures they will take to prevent or mitigate the identified risks, measures may include:
 - planning procurement,
 - market research, and
 - negotiating and entering contracts.

428. Addressing the problem: implementing this option may be difficult for registered persons and the Secretary because information to satisfy the requirements may be commercially sensitive, trade secrets, or otherwise unavailable.

429. By including measures that include the registered person's conduct, this option provides clarity on the role and practices of registered persons in the supply chain when they are undertaking regulated activities.

430. These considerations risk being broader than are required to assess the risk of trading in illegally harvest timber. As a result, this option does not meet the objectives for setting due diligence requirements.

Option Five – non-binding guidance

431. Key features: guidance would describe methods for registered persons to undertake risk assessment.

432. Addressing the problem: this option would balance flexibility for registered persons to meet their obligations under the legal harvest assurance system. It provides the greatest opportunity for registered persons to amend or update existing business processes to meet the Act's requirement to eliminate or minimise the risk of trading in illegally harvested timber.

433. This approach best meets the objective of minimising disruption to trade by giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business.

434. Guidance can be updated quickly to respond to changing market expectations and emerging risks. However, this risks less certainty for registered persons if guidance changes frequently. This may not meet the objective of minimising disruption to trade by giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business.

How do the options for risk assessment compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – targeted approach by activity	Option Three – uniform approach	Option Four – domestic due diligence approaches	Option Five – non-binding guidance
Consistency and Proportionality	0	0 Having a specific risk assessment process depending on the activity is not consistent between registered persons but may be more proportionate to the risks of illegal harvest.	0 Having the same risk assessment process would be consistent for all registered persons but may be disproportionate for some registered persons depending on the nature of their business.	- May be disproportionate as the matters to take into account risk being broader than are required to assess the risk of trading in illegally harvest timber	+ This option will promote a consistent and proportionate approach since all registered persons can use the same guidance prepared by the Secretary.
Minimal complexity and administrative cost	0	+ less complex than the status quo because registered persons can select a method (rather than developing one themselves).	- may be complex and difficult to apply where information is not publicly available.	-- may be complex and difficult to apply where information is not publicly available or include commercially sensitive information.	+ This is reduced administrative burden because this option allows registered persons to amend existing due diligence systems they may already have in place. The Secretary will have a cost and administrative burden to create the guidance and make it publicly available.
Clarity and transparency	0	+ This option will provide transparency about risk assessment processes.	+ This option will provide transparency about risk assessment processes.	0 This option will provide transparency about risk assessment processes but is not clear about the relevance of all of the matters that must be considered.	0 Since guidance is non-binding it is up to the registered person to interpret and follow it. Their approach may be different from that of the Secretary and therefore not clear and transparent.
Overall assessment	0	+	0	-	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

435. The preferred option is *option five – non-binding guidance*. This option provides the greatest flexibility for registered persons to amend existing systems and practices to meet their obligations, supporting the objectives for due diligence systems. It recognises that each registered person’s business activities will be unique, and that prescriptive or ‘one size fits all’ approaches will not reflect the diversity of the supply chain.

436. Although other options performed well against the criteria, option five is preferred because it performed the best against the consistency and proportionality criteria (trade-offs between criteria when option perform equally are addressed in section 2: Deciding on an option above)

What options are being considered for additional criteria a certification scheme must meet before being recognised for use in a due diligence system?

Limitations, constraints, and non-feasible options

437. The Act empowers the Secretary to recognise a certification scheme as one that may be used in a due diligence system. Before making a notice, the Secretary must be satisfied that the requirements of the scheme are sufficient, in terms of eliminating or minimising the risk of dealing in timber that is not legally harvested, to justify it being used in a due diligence system and the scheme satisfies any other criteria set by regulations.

Options for setting additional criteria a certification scheme must meet

Note: Options two and three are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One –Status Quo

438. Key features: no additional criteria for recognising a certification scheme.

439. Addressing the problem: could result in an inconsistent and inefficient process for the Secretary to recognise certification schemes. This could increase the risk of requests for recognition for inappropriate certification schemes. Requestors may also provide unnecessary information to support their request, leading to administrative burden for the person making the request and the Secretary.

Option Two – set the following additional criteria for recognising a certification scheme

440. Key features: provide the following additional criteria that a certification scheme must satisfy, to be included as a recognised certification scheme in a due diligence system:

- that the certification scheme has standards and processes that are transparent;
- that the due diligence requirements of the certification scheme meet or exceed the any requirements for a due diligence system set in regulations;
- that the auditing process (including how the certification scheme deals with non-compliance), meets or exceeds the regulatory due diligence requirements in the legal harvest assurance system.

441. Addressing the problem: would provide clarity, transparency and consistency on the criteria that must be satisfied before a recognised certification scheme is recognised for use in a due diligence system, including making sure the certification scheme meets all requirements in regulations

442. Recognition of the certification scheme would not automatically mean that any assessment or audit of the certification scheme would satisfy the requirement to have a due diligence system assessed. It may be possible to recognise audit and assessment of certification schemes through mutual recognition of assessors for both the certification scheme and the legal harvest assurance system. Recognised assessors are addressed in section 2J below.

How do the options for additional criteria for recognising certification scheme compare to the status quo?

Criterion	Option One – Status Quo	Option Two – set the following additional criteria for recognising a certification scheme
Consistency and proportionality	0	+ would provide clarity, transparency and consistency on the criteria that must be met to become a recognised certification scheme.
Minimal complexity and administrative cost	0	0 there will be some burden in demonstrating a recognised certification scheme meets the criteria.
Clarity and transparency	0	+ would provide clarity and transparency on the criteria that must be met to become a recognised certification scheme.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

443. *Option two - set the following additional criteria for recognising a certification* is the preferred option. It will address the problem of ensuring that there are sufficient criteria for the Secretary to use when assessing whether a certification scheme is suitable for recognition.

444. The option supports the objective of minimising disruption to trade by giving registered people flexibility in how they determine the most effective means for minimising risk and verifying the legality of harvest for their specific business.

Section 2H: Obligations once registered

445. This section covers:

- record keeping for registered persons
- information in an annual compliance declaration.
- restrictions on the conditions that can be imposed on registration

What is the policy problem or opportunity?

Context

446. A registered person has obligations they must comply with to remain registered. A registered person must:⁵⁶

- meet due diligence requirements (covered in section 2G above);
- continue to be fit and proper to be registered;
- provide legal harvest information that they hold for regulated timber and specified timber products to another registered person, if requested;
- not receive regulated timber or specified timber products unless they receive legal harvest information or exceptions apply;
- comply with any applicable export requirements imposed;
- adhere to the practice standards for legal harvest (if any); and
- keep their details up to date, including notifying MPI about any significant changes in circumstance.

Problem and opportunity

447. There is an opportunity to create regulations that set obligations for a registered person to:

- keep records;
- report to the Secretary; and
- comply with any other obligations in the Act or regulations.

Record keeping

Problem or opportunity

448. The Act requires a registered person to keep records,⁵⁷ however, it does not describe what those records are or how they must be kept.

449. There is a policy opportunity to provide for a consistent approach to record keeping. Setting record keeping requirements is expected to result in:

- efficiency by standardising the records and format of records for registered persons, so that each registered person is not creating bespoke business processes;
- records being accessible both for assessing compliance with a registered person's due diligence system, and for monitoring and compliance purposes.

Reporting to MPI

⁵⁶ Forests Act 1949, s 86, as inserted by the Legal Harvest Amendment.

⁵⁷ Forests Act 1949, ss 87 and 99, as inserted by the Legal Harvest Amendment.

Problem or opportunity

450. The Act makes it a contingent obligation for a registered person to report to the Secretary as required by regulations.⁵⁸ For reporting to become an obligation, regulations must first be made.

451. There is an opportunity to create regulations for reporting where these will support achieving the purpose of the legal harvest assurance part of the Act, and flexibility to respond to changing market needs.

Other obligations in the Act or regulations

Annual compliance declaration

Problem and opportunity

452. The Act places an obligation on registered people to declare their continuing compliance with obligations.⁵⁹ However, it does not include sufficient detail to explain when the declaration must be made, or the information it must include.

453. There is an opportunity to create regulations for when the annual compliance declaration must be made, and the information it must include where these will support achieving the purpose of the legal harvest assurance part of the Act, and flexibility to respond to changing market needs.

454. Note: fees and/or charges are not considered in this impact assessment. Any fees or charges will be considered after decisions are made on the design of the basic system.

Conditions

Context

455. The Secretary may impose conditions on the registration of a person for legal harvest assurance and modify the conditions at any time, in compliance with regulations. The Secretary may impose conditions if:⁶⁰

- satisfied that the registered person has as failed to comply with any of their obligations, and
- they consider that it is necessary or desirable for the purpose of the legal harvest assurance part of the Act.

Problem and opportunity

456. There is an opportunity to create regulations to set out restrictions on the conditions that the Secretary may impose, or on how they may be imposed or modified. Regulations may provide clarity and certainty for registered people about the types of conditions that may be imposed and when conditions will come into effect, they may also create efficiency for the Secretary by limiting the broad discretion in the Act.

Assumptions

⁵⁸ Forests Act 1949, s 87, as inserted by the Legal Harvest Amendment.

⁵⁹ Forests Act 1949, s 90, as inserted by the Legal Harvest Amendment.

⁶⁰ Forests Act 1949, s 94, as inserted by the Legal Harvest Amendment.

- Registered people will have the necessary information about their business operations to keep records and report to the Secretary.
- Annual compliance declarations will provide a mechanism for a registered person to make a declaration where non-compliance has occurred and they are remedying the non-compliance.
- Annual compliance declarations will only be used for monitoring compliance (and any associated compliance actions), they will not be used for statistical or trend analysis.

What do stakeholders think about the problem?

457. In issues paper two, we asked for feedback about obligations for people once they are registered.

458. Feedback about what records a registered person should keep, the level of detail and how long records should be kept suggested:

- records should include a documented agreement in whatever form is appropriate which gives authority to take possession of, buy, or sell the trees to a third party;
- lists/databases of in-scope timber products, location of harvest, timber legality risk assessments, documentation to validate chain of custody, and evidence of the due diligence system relied on;
- details should be kept to the absolute minimum required to bridge the documentary gap between tree ownership and sale;
- records should be kept for 7 years similar to other requirements for information storage, or as short a time period as possible to meet the objectives of the scheme.

459. Feedback about reporting to the Secretary suggested:

- no more frequently than a year, possibly longer for smaller, lower volume participants.
- not sure if further reporting is needed given the existing reporting requirements in the annual declaration of continuing compliance with obligations and when notifying the Secretary of any significant change in circumstances.
- that a registered person should report non-compliances (i.e. where illegal logging is identified).

460. Feedback about compliance declarations suggested:

- a declaration is just, a declaration, nothing more.
- the system should provide a proforma declaration that is automatically generated on an anniversary date and sent to the registered person to confirm they have read the declaration and sign it with an electronic signature.
- showing that all reasonable efforts have been taken to maintain compliance with the regulation and that the due diligence system has been implemented/maintained, including convictions under the RMA, bankruptcy (for individuals) and liquidation (for companies).

461. Feedback about restrictions on the conditions that can be put on a person's registration suggested:

- there would need to be very good reason to impose restrictions outside of those related to a history of fraudulent or insolvent trading or recidivism in relation to laws relating directly or indirectly to the business of trading /exporting wood products;
- favouring a simple system and that any conditions on a registration would relate to matters such as providing evidence on a more regular basis than would be the case if there were no issues.

What objectives are sought in relation to the policy problem?

462. By setting obligations for registered persons, we are trying to:

- provide clarity and certainty for registered people about their obligations;
- strengthen oversight and create transparency in the supply chain;
- reduce the risk of illegal timber or timber products entering or leaving the supply chain;
- take a proportionate approach to addressing the risk of illegal harvest while enabling legal trade.

What options are being considered for record keeping?

Limitations, constraints, and non-feasible options

463. The reporting requirements in the Act (e.g., due diligence, declaration of compliance) already provide sufficient information to support the Secretary in monitoring compliance of registered persons with their obligations. We considered additional reporting requirements for registered persons. However, at this time, we concluded that there are no additional reporting requirements that are necessary or desirable for purposes of the legal harvest assurance part of the Act.

464. The Act allows regulations to set any other obligations that apply to registered persons, whether imposed by this Part or by regulations. We considered additional obligations for registered persons. However, at this time, we have concluded that there are no additional obligations that are necessary or desirable for purposes of the legal harvest assurance part of the Act.

Options for what records must be kept, how they must be kept and for how long

Note: Options two and three below are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

Key features:

465. There would be no secondary legislation providing further details on record keeping requirements for registered persons. Unless regulations are made, there is no obligation to keep records in practice.

466. Addressing the problem: without secondary legislation providing details for record keeping requirements, would be up to each registered person to decide what records to keep, how to store them, and for how long.

467. This may be inefficient for registered persons if they keep more records than they need, and for longer than they need, to demonstrate they are meeting their obligations. The status quo may make it more difficult for the Secretary to monitor compliance with obligations if registered persons have not kept sufficient records.

Option Two – specify the records a registered person must keep

468. Key features: The secondary legislation would specify that a registered person must keep records of:

- The legal harvest activities relevant to the registration.

- How they are applying their due diligence system, including keeping records of information collected and risk assessments undertaken as part of their due diligence system (refer to Section 2G above).
- Legal harvest information they receive, including any updated to the legal harvest information (Addressed in section 2C above), and who provided the legal harvest information;
- If relevant, how they have complied with any exporter requirements.

469. Addressing the problem: setting record keeping requirements would improve efficiency by clarifying what records must be kept for registered persons, so that each registered person is not creating bespoke business processes. It will also ensure that records are available for monitoring compliance and/or for responding to assessments of due diligence in the future.

470. Setting these record keeping requirements would support the objectives of providing clarity and certainty for registered people about their obligations and strengthening oversight and creating transparency in the supply chain.

Option Three - additional records relevant for branches and divisions registering separately

471. Key features: if a branch or division is registered separately (addressed in section 2F above), the parent entity and the branch or division must keep the following records:

- express written consent of the parent entity for the branch or division to register separately;
- a description of how legal harvest obligations will be met separately by the parent entity and branch or division, and any changes to these arrangements over time.

472. Addressing the problem: Ensures that adequate records are kept to describe how both the parent entity and the branch or division are meeting their obligations as registered persons. This would support the objectives of providing clarity and certainty for registered people about their obligations and strengthening oversight and creating transparency in the supply chain.

Option Four - specify how records must be kept

473. Key features: specify that a registered person must:

- keep records in writing, either electronic, on paper, or both. Note: not all persons have internet access or are familiar with using electronic resources.
- keep records current and accurate, and maintain previous versions of the records.
- retain the records in a retrievable form for at least seven years after the date the record was created.

474. Addressing the problem: would provide a consistent approach to record keeping to ensure records will be available in the future. Accessible records support the registered person to demonstrate compliance with their obligations, for recognised assessors to assess the extent the registered person is acting in accordance with their due diligence system, and for the Secretary to monitor compliance.

475. This would support the objectives of providing clarity and certainty for registered people about their obligations and strengthening oversight and creating transparency in the supply chain.

Option Five – Provide a record keeping template

476. Key features: The Secretary would develop a compulsory template for keeping records. The template would need to include all the record keeping requirements specified in the secondary legislation (if there is any).

477. Addressing the problem: would reduce the administrative burden for registered persons to create record keeping processes. However, a template may not respond to the specific needs to each registered person. This would not support the objective of strengthening oversight and creating transparency in the supply chain because a template would not respond to all circumstances that may arise.

How do the options for record keeping compare to the status quo?

Criterion	Option One – Status Quo	Option Two – specify the records a registered person must keep	Option Three - additional records relevant for branches and divisions registering separately	Option Four – specify how records must be kept	Option Five – Provide a record keeping template
Consistency and proportionality	0	+ There will be a consistent approach to what records a registered person needs to keep, rather than each registered person deciding what records to keep.	+ There will be a consistent approach to what records need to keep when a branch or division registers separately.	+ There are consistent requirements for all registered persons for storing and maintaining records	+ Provides a consistent approach to how the records are presented.
Minimal complexity and administrative cost	0	0 Increases the administrative burden by introducing a new obligation (record keeping), however registered persons are likely to already hold most of the information required in these records.	- Increases the administrative burden by introducing a new obligation (record keeping) to record how obligations will be met.	+ Reduced the complexity and administrative cost associated with each registered person deciding how the records will be stored and for how long.	- While a template may simplify the record keeping process, it will introduce complexity because registered persons businesses are not uniform, and the template may not capture all the necessary records to meet the requirements on the Act. There would be a cost to the Secretary to develop the template.
Clarity and transparency	0	+ Will provide clarity for the regulated party and the Secretary on what records need to be kept.	+ Provides clarity for the registered persons and the Secretary on what records need to be kept, and also on how obligations will be met by parts of the same legal person.	+ It will be clear to both the registered person and the Secretary what the record keeping requirements are.	- The template is likely to create confusion, particularly for those businesses that may need to keep two sets of records, one for businesses purposes and one to meet the template's requirements.
Overall assessment	0	+	+	+	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

478. The preferred options are options two, three and four. They performed well against the criteria and can work together to ensure that registered persons keep appropriate records.

479. These options will ensure that records can be made available to the Secretary for assessing compliance with obligations, and for recognised assessors to assess compliance with due diligence systems.

480. These options together support the objectives to:

- provide clarity and certainty for registered people about their obligations;
- strengthen oversight and create transparency in the supply chain;
- reduce the risk of illegal timber or timber products entering or leaving the supply chain;
- take a proportionate approach to addressing the risk of illegal harvest while enabling legal trade.

481. While option five has some merit, it is considered a disproportionately prescriptive approach to record keeping requirements. There is also the risk of introducing complexity and confusion into the record keeping system as registered person's businesses' are diverse and it would be challenging to develop a template that could capture all the record keeping requirements. However, the Secretary may consider creating a record keeping template as part of non-binding guidance.

What options are being considered for compliance declarations?

Note: Options two to four below are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

482. Key features: the Act requires a registered person to provide an annual declaration of compliance to the Secretary.⁶¹ Under the status quo, there would be no additional information required beyond a bare declaration. However, the declaration must be made in the form approved by the Secretary.⁶²

483. Addressing the problem: While the status quo achieves the purpose of confirming at least once a year that the registered person is complying with their obligations under the legal harvest assurance part of the Act, it does not include sufficient detail to explain when the declaration must be made, or the information it must include.

484. Using a form approved by the Secretary may go some way to addressing the problem but it may not be clear that the Secretary has the lawful authority to seek the information the form requires without regulations to support the content requirements.

485. With a bare declaration of compliance, there is no way for the registered person to declare when non-compliance has occurred and how it has been remedied.

Option Two – specify information to be included in the compliance declaration

486. Key features: the following information would be included in the declaration of compliance by the registered person declaring that:

- they are complying with their obligations as a registered person; or
- if any non-compliance has occurred, which obligations have not been complied with and how they are remedying the non-compliance
- note the date of, and recognised assessor who undertook, the most recent assessment of their due diligence system.

487. Addressing the problem: this option would provide registered persons that have had a non-compliance the opportunity to make an annual declaration without providing false or misleading information (which is an offence).

⁶¹ Forests Act 1949, s 90, as inserted by the Legal Harvest Amendment.

⁶² Forests Act 1949, s 90,(2)(c), as inserted by the Legal Harvest Amendment.

How do the options for compliance declarations compare to the status quo?

Criterion	Option One – Status Quo	Option Two – specify information to be included in the compliance declaration
Consistency and proportionality	0	+ Specifying the information to be included in the compliance declaration will provide a consistent approach for all registered persons.
Minimal complexity and administrative cost	0	+ It would reduce the complexity of registered person providing different information in the compliance declaration and reduce the administrative burden on both the Secretary and the registered person.
Clarity and transparency	0	+ It would be clear to all parties on what information must be included in the compliance declaration.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

488. Option two - specify information to be included in the compliance declaration is the preferred option. This option performed well against the criteria and provides registered persons with the opportunity to return to compliance after a breach. This best supports the purposes of the legal harvest assurance part of the Act and supports the objective of providing clarity and certainty for registered people about their obligations.

What options are being considered for restrictions on conditions?

489. Regulations may impose restrictions on the conditions that the Secretary may impose on a registered person, and on how any conditions may be imposed or modified.

Limitations, constraints, and non-feasible options

490. Conditions may only be imposed if a registered person has failed to comply with the obligations of a registered person, and must be necessary or desirable for the purposes of the legal harvest part of the Act. Options to restrict conditions to only those “relating to a history of fraudulent or insolvent trading or recidivism in relation to laws relating directly or indirectly to the business of trading /exporting wood products” as suggested by feedback are considered unnecessary.

491. We considered an option to restrict when (new or modified) conditions come into effect. Although the Act allows regulations to impose restriction on how the Secretary imposes or modifies conditions, it is unlikely that this power was intended to make changes to when a condition will come into effect. This is because the Act already specifies that a new or modified condition has effect on and from the sate specified in the notice, or if no date is specified, the date of the notice.

Note: Options two to four are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

492. Key features: no restrictions relating to conditions set in regulations. The Secretary would be able to impose (or modify) any conditions that meet the requirements of the Act. In particular, that:

- the registered person has failed to comply with any of their obligations;
- the conditions are necessary or desirable for the purposes of legal harvest assurance; and
- the conditions are reasonable.

493. Addressing the problem: the Secretary would have full discretion to impose conditions that meet the requirements above. This would provide flexibility to impose conditions that respond to the specific non-compliance of the registered person.

Option Two – Restrict conditions relating to commercial matters

494. Key features: prevent the Secretary from imposing conditions that are properly a matter for commercial agreement between parties.

495. Addressing the problem: provides certainty that the Secretary will not be stepping into commercial arrangements between parties. This will assist in providing clarity and certainty for registered people about their obligations for legal harvest, as compared to any liability they may face as part of a commercial or private undertaking.

496. Without this restriction, the Secretary may impose conditions that are commercial in nature. As the Secretary must only impose conditions in response to non-compliance by a registered person, conditions of a commercial nature could have unintended consequences for other parties in the supply chain, and therefore may not meet the objective of taking a proportionate approach to addressing the risk of illegal harvest while enabling legal trade.

Option Three – Restrict conditions to providing information on a more regular basis

497. Key features: restrict conditions to only requiring a registered person to report or provide information (referred to as evidence in feedback) to the Secretary more often than would otherwise be required if the person had been compliant.

498. Addressing the problem: restricting conditions to providing information would provide clarity and certainty to registered persons about the types of conditions that may be imposed. Providing information may allow the Secretary to monitor whether the register person has remedied the non-compliance that led to the condition. However, if there is continued or subsequent non-compliance, conditions relating to providing evidence are likely to be ineffective.

499. To ensure the integrity of the legal harvest assurance system, it is important that the Secretary maintains compliance tools that can respond to different types and magnitudes of non-compliance as they arise. The Secretary should provide guidance about the compliance model being implemented. Limiting conditions to providing information may create a perverse incentive for the Secretary to exercise more interventionist powers to ensure compliance.

How do the options for restricting conditions compare to the status quo?

Criterion	Option One – Status Quo	Option Two – prevent conditions relating to commercial matters	Option Three – Restrict conditions to providing information on a more regular basis
Consistency and proportionality	0	++ treats all registered persons consistently and avoids unintended outcomes for the people the registered person is trading with.	- may disproportionately restrict the Secretary’s ability to respond to non-compliance and may result in conditions that are too stringent or too lenient depending on the circumstances of the non-compliance giving rise to the condition.
Minimal complexity and administrative cost	0	0 in some circumstance it may be complex to determine whether a condition is relates to a commercial matter.	- may require novel and unexpected approaches to ensure a condition can respond to the particular non-compliance that the person has engaged in that has necessitated the condition.
Clarity and transparency	0	+ would provide clarity and transparency about the role of the Secretary being to administer the legal harvest assurance system, not to step into supply chain matters that are governed by other laws.	+ clear that the types of conditions imposed would be the same for all registered persons.
Overall assessment	0	+	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

500. The preferred option is *option two – prevent conditions relating to commercial matters*. Although this option could be achieved through guidance, an operational policy, or non-regulatory means, these approaches would be non-binding on the Secretary and therefore not meet the objectives of:

- providing clarity and certainty for registered people about their obligations; and
- strengthening oversight and creating transparent in the supply chain.

501. A regulation is preferred to provide certainty for registered persons and also the wider supply chain about the types of conditions that the Secretary will not impose.

502. Although options three and four have some merit in addressing the policy problem, they did not perform well against the criteria. Both options risked creating perverse incentives that would undermine the ability for the Secretary to use conditions to meet the purpose of the legal harvest assurance part of the Act and objectives for setting obligations for registered persons (as set out above).

Section 2I: Export requirements

What is the policy problem or opportunity?

Context

503. Although a person will be able to demonstrate they are registered for legal harvest assurance, this does not automatically provide evidence that the person is applying their due diligence system or meeting the export requirements for any specific market.

504. Some markets require a government assurance that timber has been legally harvested, including when the timber has been processed or is part of a product (including when timber is only one component of the product).

505. Currently, government assurance is required for market access for Indonesia and the Republic of Korea. Changes to the Clean Wood Act in Japan are also aiming to strengthen legality requirements. We anticipate that trading partner expectations for legality will continue to evolve.

506. In addition, some overseas buyers are also seeking evidence of government assurance. This may occur where the overseas buyer is further processing the timber and re-exporting the new product to a market that requires government assurance of the harvest. Furthermore, some buyers may be seeking government assurance as a way to mitigate risks of trading in illegally harvested timber as part of their own due diligence systems.

Export requirements

507. The Secretary may impose export requirements for a market, or markets, by notice.⁶³ Before imposing export requirements, the Secretary must be satisfied they directly relate to ensuring that a specified timber product is, or is made of, timber that is legally harvested. The Secretary may also grant an exemption from any export requirements, if any are set, by notice.

508. Options for export requirements are not considered in this impact statement. Any notice for export requirements (and any exemptions from the export requirements) will be consulted on prior to being made, including with the trading partners that the notice applies to.

Exporter Statements

Context

509. The Act empowers the Secretary to issue Exporter Statements. Exporter Statements are a government assurance given by New Zealand to overseas countries that a registered person is complying with their legal harvest obligations and any export requirements (if any have been set). Exporter Statements may be issued to people registered for legal harvest for the purpose of:⁶⁴

- facilitating trade in legally harvested timber;

⁶³ Forests Act 1949, s 114, as inserted by the Legal Harvest Amendment.

⁶⁴ Forests Act 1949, s 108, as inserted by the Legal Harvest Amendment.

- facilitating trade in products wholly or partly made from legally harvested timber; and
- supporting access to overseas markets of specified timber products.

510. Each Exporter Statement will generally be valid for 12 months (unless stated otherwise).

Problem and opportunity

511. The Act allows a person to apply to the Secretary for an Exporter Statement at any time. The application must:⁶⁵

- specify the countries to which the specified timber product is intended for export; and
- include a statement from the applicant that they are complying with all applicable export requirements; and
- include information specified in regulations; and
- be in the form approved by the Secretary; and
- be accompanied by payment of any fee specified in regulations.⁶⁶

512. There is an opportunity to create regulations to specify further information required from the applicant to support the Secretary to process and decide on an application for an Exporter Statement.

Assumptions

513. We have made the following assumptions about Exporter Statements and export requirements:

- Exporter Statements will replace the existing administrative arrangements for countries that require government assurance for market access.
- Exporters will be consulted on new requirements set by the New Zealand Government, but not for requirements set by overseas markets.
- Exporter Statements will meet the requirements of overseas countries to provide Government assurance of legal harvest.
- Exporter Statements will only be issued where Government assurance of legal harvest is required.

What do stakeholders think about the problem?

514. In issues paper one, we asked for feedback on export requirements and Exporter Statements. Most feedback agreed with the assumptions, but noted that:

- the requirements of other jurisdictions will be non-negotiable.
- there should be a mechanism in the system for exporters to advise the Secretary about any issues they may experience in any specific export market, which would enable Exporter Statements to be kept up to date;
- Exporter Statements should be generic enough to satisfy the requirements of all export markets.

⁶⁵ Forests Act 1949, s 111, as inserted by the Legal Harvest Amendment.

⁶⁶ Note: fees and/or charges are not considered in this impact assessment. Any fees or charges will be considered after decisions are made on the design of the basic system.

515. We asked about the details for setting exporter requirements and Exporter Statements.

Feedback suggested:

- having an Exporter Statement will mean less need for FSC wood which is limited in supply;
- the bulk of these export requirements are market specific and the assurance that the Secretary gives will differ depending on the export market that the assurance is provided for;
- meeting export requirements must be the responsibility of the exporter, however, they would be relying on the assurances of others downstream in their value chain;
- to support market access, feedback suggested:
 - a letter or certificate from the New Zealand Government is needed;
 - deforestation assurance is required which is similar to the EUDR and Australian Illegal Logging Act requirements;
 - other than an assurance of legality of harvest, there is no need to have a large volume of information provided to support access to overseas markets;
 - they are often asked to provide assurance that the raw materials used to make their products do not come from illegally harvested forests; practices that violate traditional, indigenous, or civil rights; or the conversion of natural (native) forest to plantations etc.
- there were no comments on substantive exemptions from export requirements.

What objectives are sought in relation to the policy problem?

516. By setting exporter requirements and issuing Exporter Statements, we are trying to:

- facilitate trade in legally harvested timber by assisting exporters to meet market access requirements of overseas markets;
- provide importing countries with confidence that specified timber products have been produced from legally harvested timber;
- respond flexibly to changes in market access requirements.

What options are being considered for Exporter Statements?

Limitations, constraints, and non-feasible options

517. Options are limited to the existing laws in the place or country the timber was harvested, at the time the timber was harvested. We cannot impose law retrospectively, for example, if the law changes during a harvesting operation or after timber is supplied.

518. Phytosanitary treatments for timber and timber products being imported or exported are out of scope for legal harvest assurance considerations.

519. Options that would impose chain of custody, traceability, deforestation-free, and/or degradation-free standards are considered non-feasible options as they are not specifically empowered by the Act. Setting standards of these kinds are unlikely to be necessary or desirable for the purposes of the legal harvest part of the Act because they go beyond the explicit focus on registered persons and due diligence systems.

520. Options are constrained to direct market access matters. Subsequent market access matters are out of scope, for example, where a specified timber product is exported to one market, further processed, and then exported to another subsequent market. The market access needs of the subsequent market are out of scope of the powers relating to export requirements and Exporter Statements.

Options for application information for an Exporter Statement

Note: Option two is compatible with either option three or four, i.e. they are not mutually exclusive and may be chosen to work together, however options three and four are considered mutually exclusive and cannot both be chosen.

Option One – Status Quo

521. Key features: no information requirements beyond what is in the Act. An application must.⁶⁷

- specify the countries to which the specified timber product is intended for export;
- include a statement from the applicant that they are complying with all applicable export requirements;
- be in the form approved by the Secretary; and
- be accompanied by payment of any fee specified in regulations (out of scope for this impact assessment).

522. Addressing the problem: it is possible that information required to process an application may be required by the form approved by the Secretary. However, this may create doubt about the Secretary's lawful authority to collect personal information under the Privacy Act.

Option Two – Administrative information about the applicant

523. Key features: an application for an Exporter Statement would need to include information to identify the applicant as follows:

- name;
- trading name;
- contact details;
- name, contact details, and role of the person who is authorised to act on behalf of the business for its Exporter Statement application (and, if successful, any subsequent compliance and monitoring);
- registration identifier.

524. Addressing the problem: this provides the basic information the Secretary will need to process an application for an Exporter Statement. It also provides information to support identifying the natural person that has authority to represent the registered person and make decision about the application (and if successful, the registered person's ongoing obligations in relation to the Exporter Statement).

Option Three - Compliance declarations about the applicant

525. Key features: an application for an Exporter Statement would need to include declarations about compliance as follows:

- a declaration the registered person is complying with the obligations of registration or an explanation of how any non-compliance has been remedied;
- a declaration the registered person is complying with any relevant export requirements or an explanation of how any non-compliance has been remedied.

⁶⁷ Forests Act 1949, s 111, as inserted by the Legal Harvest Amendment.

526. Addressing the problem: would provide clarity about what a “statement from the applicant that they are complying with all applicable export requirements” means as required by the Act. By allowing an explanation of how any non-compliance has been remedied, this provides a mechanism for a registered person that has had previous non-compliance to fix any issues and be able to receive an Exporter Statement to continue exporting in the future. This supports the objective of facilitating trade in legally harvested timber by assisting exporters to meet market access requirements of overseas markets.

527. These declarations and/or explanations would provide greater assurance for the Secretary to be satisfied that the applicant should receive an Exporter Statement. As there may be a time lapse between an application for an Exporter Statement and the registered person’s annual compliance declaration, including a declaration on compliance would provide information for the Secretary to be satisfied the applicant is complying with their obligations as a registered person (which must be stated on an Exporter Statement⁶⁸).

Option Four - Evidence of compliance with exporter requirements

528. Key features: if a notice setting out exporter requirements for the country the product is being exported to has been made, evidence the person has met those exporter requirements. Note this would only apply if a notice specifying export requirements had been made.

529. Addressing the problem: providing evidence would support the Secretary to be satisfied the registered person is entitled to receive the Exporter Statement. It would support the objectives of facilitating trade in legally harvested timber and providing importing countries with confidence that specified timber products have been produced from legally harvested timber.

530. The specific evidence required with an application would depend on the export market and the specific export requirements set for that market. As notices for export requirements are out of scope for this impact statement, this option would seek to future proof the regulations to ensure application information requirements can meet the objective of responding flexibly to changes in market access requirements (i.e. so that if a notice is made, a consequential change to the regulations is not automatically required).

⁶⁸ Forests Act 1949, s 109, as inserted by the Legal Harvest Amendment.

How do the options for application information for Exporter Statements compare to the status quo?

	Option One – Status Quo	Option Two – Administrative information about the applicant	Option Three – Compliance declarations about the applicant	Option Four – Evidence of compliance with exporter requirements
Consistency and proportionality	0	+ consistent between applicants and proportionate to the problem of needing to know who is applying for an Exporter Statement.	+ allows for a compliant mechanism for registered persons with previous non-compliance to be able to apply for an Exporter Statement once any non-compliance is remedied. It would be disproportionate to prevent a registered person applying for an Exporter Statement if they cannot state they have complied.	++ providing evidence will assure the Secretary that it is appropriate to issue an Exporter Statement. This is considered proportionate to the risk of issuing an Exporter Statement to a person that has not complied with relevant obligations, providing importing countries with confidence about the standards exporters have met, and to protect the integrity of the legal harvest assurance system.
Minimal complexity and administrative cost	0	++ information is basic identity / contact information to know who is applying. Will not require substantial collation or research to secure information to submit with an application, or for the Secretary to assess.	+ there may be some complexity involved in explaining how non-compliance has been remedied, and for the Secretary to assess the explanation. However, this is considered to perform better than the status quo because information will be provided at the application stage, rather than being potentially subject to further information requests from the Secretary which may add time and cost to the application process (for both the applicant and the Secretary).	-- implementation would be complex for both applicants and the Secretary as the evidence requirements would differ depending on the export requirements and market the Exporter Statement is intended for. Gathering evidence will have a cost and administrative burden for applicants to collect and submit, and for the Secretary to process and assess. It may also require disclosure of commercial information that is not strictly required to demonstrate that timber has been legally harvested.
Clarity and transparency	0	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to satisfy the Secretary the registered person is complying with relevant obligations).	0 the information that would be required would not be clear as it would differ depending on the export market, export requirements, and nature of the applicant's business. However, this is balanced with increased transparency about what it means for a registered person to hold an Exporter Statement.
Overall assessment	0	++	+	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

531. Options two and three are the preferred options. *Option two - Administrative information about the applicant* is considered necessary for the application system to function. Without adopting this option, there is a risk that the Exporter Statement system could be frustrated, undermining the purpose of the legal harvest assurance part of the Act.

532. Options three and four are seeking to achieve the same outcome through different means. *Option three - Compliance declarations about the applicant* is preferred because it performs better against the criteria overall. Declarations about compliance are considered sufficient to satisfy the Secretary that a person is complying with their obligations without requiring a comprehensive assessment of the evidence that supports that compliance.

533. Option three is considered to have a lower administrative cost (than option four) as applicants will only need to provide an explanation if there has been previous non-compliance, rather than every applicant having the burden of providing evidence proactively. If there are matters in the declaration or explanation provided by the applicant that trigger concerns for the Secretary, the Secretary may ask for more information to be satisfied whether an Exporter Statement should be issued.⁶⁹

534. Declarations and explanations are considered reliable because it is an offence to provide false or misleading information in an application.⁷⁰ The potential for penalties is considered a sufficient disincentive for applicants to provide false or misleading information to the Secretary. In addition, the Secretary may withdraw an Exporter Statement at any time if it was inappropriately or incorrectly issued, or is no longer true.

⁶⁹ Forests Act 1949, s 141, as inserted by the Legal Harvest Amendment.

⁷⁰ Forests Act 1949, a 146, as inserted by the Legal Harvest Amendment.

Section 2J: Recognition (assessors and agencies)

535. This section covers:

- competency requirements for recognised assessors;
- specified convictions for the fit and proper person test;
- any other criteria before recognising a class of individuals as recognised assessors; and
- information in an application for recognition.

What is the policy problem or opportunity?

Context

536. People that are registered for legal harvest assurance must have their due diligence systems assessed by a recognised assessor.

537. The Secretary may recognise the following:

- **Individuals (natural persons)** as recognised assessors who are deemed competent and will assess the due diligence systems.
- **Classes** of individuals as recognised assessors who are deemed competent and will assess due diligence system. Classes will either be recognised on an application of a recognised agency, or on the application of a class of individuals.
- **Agencies** – organisations that will manage assessors (engaged by the agency). This involves operating the systems required for the assessment of due diligence systems and recognising assessors from within the agency.

538. An individual does not need to be employed, contracted, or otherwise engaged by a recognised agency to act as a recognised assessor. If a recognised assessor is not engaged by a recognised agency, they will need to comply with the duties of a recognised agency.

539. Once recognised, an assessor may assess a registered person's due diligence system.

540. The recognition framework is similar to other existing systems administered by MPI, such as those under the Food Act 2014 and the Wine Act 2003. In these systems, individuals and agencies are recognised to carry out certain functions under those Acts.

541. At the time of the policy development that led to the Legal Harvest Amendment, the recognition framework approach was chosen to be consistent with these other systems administered by MPI. Adopting a recognition system approach was expected to enable choice in the market for registered persons to choose who would assess their due diligence systems.

Recognition of assessors

Context

542. A person can apply to the Secretary to be recognised as an assessor. The Secretary may recognise an individual (also called a 'natural person') as an assessor if that person is a fit and proper person to be an assessor.

543. When deciding if a person is fit and proper to be a recognised assessor, the Secretary must consider the following matters:⁷¹

- the competencies and resources of the person to manage and carry out the functions of an assessor;
- any conviction of a kind specified in regulations that is entered against the person;
- the person's character and reputation;
- the person's ability to maintain an appropriate degree of impartiality and independence in managing and carrying the functions of an assessor;
- any applicable requirements set in regulations.

544. The Secretary must also be satisfied the person's system for undertaking assessments of due diligence systems is fit for purpose.

545. When a person applies for recognition, they will need to provide information about each of the matters listed above and pay any relevant fees when they apply for recognition. Any fees will be consulted on before they are set through regulations.

Problem and opportunity

546. There is a policy opportunity to use regulations to specify further matters to support the Secretary in considering if a person is fit and proper person. Without intervention there is a risk that the information provided with an application will not be relevant or sufficient for the Secretary to be satisfied the person is fit and proper to be recognised as an assessor. This could result in a large volume of further information requests which would be inefficient for both applicants and the Secretary.

547. Setting requirements for competencies, specified convictions, and application information is expected to improve consistency of decision making, and greater quality and competency of those being recognised as assessors. It will also help reduce the risk of recognising unsuitable people.

Recognition of agencies

Context

548. An organisation can apply to the Secretary to be a recognised agency. A recognised agency will be some form of business entity. The business will manage assessors it engages who are carrying out assessments of due diligence systems. The assessors could be employees, contractors, or some other arrangement.

549. Before recognising an organisation as a recognised agency, the Secretary must be satisfied that the organisation:⁷²

- is fit and proper to be a recognised agency;
- has fit for purpose systems for undertaking assessments of due diligence systems; and
- has effective systems to ensure that each of their assessors is a fit and proper person.

⁷¹ Forests Act 1949, s 119, as inserted by the Legal Harvest Amendment.

⁷² Forests Act 1949, s 120, as inserted by the Legal Harvest Amendment.

550. When deciding if an organisation is fit and proper to be a recognised assessor, the Secretary must consider:⁷³

- the competencies and resources of the organisation to manage and carry out the function of a recognised agency;
- any specified conviction entered against the organisation or any director or manager of the organisation;
- the organisation's character and reputation, including, if appropriate, the character and reputation of the organisation's directors or those responsible for its management or control;
- any applicable requirements set in regulations.

Problem and opportunity

551. There is a policy opportunity to use regulations to specify further matters to support the Secretary in considering whether an agency is fit and proper to be recognised.

552. Without regulations, there is a risk that the information provided with an application will not be relevant or sufficient for the Secretary to be satisfied the agency is fit and proper to be recognised. This could result in frequent further information requests which would be inefficient for both applicants and the Secretary.

553. Setting requirements for specified convictions and application information is expected to improve consistency of decision making, and greater quality and competency of those being recognised as agencies.

Recognising a class of individuals

Context

554. The Secretary may recognise a class of individuals as assessors upon an application from a recognised agency, person seeking recognition as an agency, or class of individuals.

555. Before the Secretary recognises a class of individuals that are engaged by a recognised assessor (or someone applying to be a recognised assessor), the Secretary must be satisfied:⁷⁴

- the group of individuals is engaged by the applicant;
- the applicant has the systems and capacity to ensure each individual is a fit and proper person;
- the applicant complies with applicable requirements; and
- the group of people being recognised are appropriate and capable to carry out assessments of due diligence systems.

556. Before the Secretary recognises a class of individuals on the application of the class of individuals, the Secretary must consider:⁷⁵

⁷³ Ibid.

⁷⁴ Forests Act 1949, s 121, as inserted by the Legal Harvest Amendment.

⁷⁵ Ibid.

- whether the individuals within the class have the competencies, training, qualifications, and experience suitable for undertaking assessments; and
- any other criteria specified in regulations.

Problem and opportunity

557. There is an opportunity to use regulations to set any other criteria for determining whether a class of individuals should be recognised. Setting additional criteria may help the Secretary to process applications for recognition by a class of individuals, particularly to ensure individuals are treated equitably and must meet the same fit and proper person requirements, regardless of whether they are engaged by a recognised agency.

Duties of recognised assessors and agencies

558. The Act sets out the duties of recognised assessors and agencies.⁷⁶ The Act empowers regulations to set out reporting requirements. For reporting to become an obligation, regulations must first be made.

559. There is an opportunity to create regulations for reporting where these will support achieving the purpose of the legal harvest assurance part of the Act, and flexibility to respond to changing market needs.

560. Although the Act makes it a duty to comply with any other requirements set under the legal harvest assurance part of the Act or regulations, this does not enable regulations to be made that are not already authorised by the Act.

Assumptions

561. We have made the following assumptions about recognising and setting requirements for assessors and agencies:

- Although MPI can recognise MPI staff to act as assessors, it is preferable that MPI does not recognise MPI assessors because:
 - as the regulator, MPI should ensure independence of its regulatory function from the market for assessing due diligence systems;
 - private providers will likely respond to market changes more quickly than government and set appropriate competitive pricing for their services;
 - if MPI does recognise MPI assessors, there may be a risk that MPI may have an unfair competitive advantage due to the real or perceived value of a government assessment, that could become a barrier to private sector providers entering the market;
 - MPI should not compete in a competitive market unless there is evidence of market failure or need.

What do stakeholders think about the problem?

562. In issues paper two, we asked about recognition of assessors and agencies.

563. Feedback on our assumptions suggested:

⁷⁶ Forests Act 1949, s 117, as inserted by the Legal Harvest Amendment.

- decisions about recognition should wait until the nature and degree of complexity of the system are understood. Assumptions that private providers are preferable and that MPI should not compete in a competitive market are premature;
- the system should not be overly onerous and caution against development of a new assessor industry which will impose significant costs on operators;
- there are numerous professional bodies involved in third party arms-length auditing of a multitude of business functions throughout NZ. There can be expected to be a range of parties from forestry consultancy firms to out of sector audit firms to current certification bodies all of whom could perform the functions sought;
- there are a wide range of operators in the forest industry and all of these need to be carefully considered.

564. Feedback on the details of recognition included:

- these issues are of little relevance to the practicing entities in the forest sector as a whole;
- MPI as the lead government agency needs to be responsible for appointment and overseeing of agencies involved in assurance, plus any associated documentation and due diligence systems;
- the system should be simple and cheap to implement and audit;
- an assessment report should be all that is required to be reported to MPI. An assessment report should include verification of presence of key functionality items and steps, verification of sample flow/links through the system, compliance/non-compliance, issues/recommendations.

What objectives are sought in relation to the policy problem?

565. By recognising and setting requirements for assessors and agencies, we are trying to:

- ensure consistency and competency in assessors, ensuring assessments are fair and equal for registered people in the legal harvest system and that registered people are undertaking appropriate due diligence checks;
- provide flexibility for registered people by allowing choice about who they seek to assess their due diligence systems;
- provide flexibility for agencies to manage employment relationships with their employees carrying out assessments;
- ensure due diligence systems remain fit for purpose on an ongoing basis.

What options are being considered for recognition of assessors and agencies?

Limitations, constraints, and non-feasible options

Systems for assessing due diligence systems

566. When determining whether an applicant is fit and proper to be recognised, the Secretary must be satisfied the applicant's system for undertaking assessments are fit for purpose. To be fit for purpose, the applicant's system will need to enable them to carry out an assessment in accordance with any regulations and/or rules for practice standards that are set. We are not considering regulations or practice standards for how the applicant's system must do this at this time. This provides flexibility for applicants to demonstrate how they will comply with their obligations without making prescriptive business processes by secondary legislation.

Cost recovery: fees and/or charges

567. Relevant fees and/or charges are not considered in this impact assessment. Any fees or charges will be considered after decisions are made on the design of the basic system.

Reporting to the Secretary

568. Recognised assessors must notify the outcome of an assessment of a due diligence system to the Secretary.⁷⁷ We have not identified any further reporting requirements for recognised assessors that are necessary or desirable for the purposes of the legal harvest assurance part of the Act.

569. Once recognised, there is no obligation for recognised assessors or agencies to update the Secretary if a matter their recognition was based on changes. We have considered whether it is appropriate to create a reporting obligation to update the Secretary about any changes. We have concluded that an obligation to update the Secretary should apply to all types of recognition and not only for recognised assessors. As a result, we have considered it inappropriate to create a regulation that would only affect recognised assessors. The Secretary may consider conditions on recognition to require a person to notify the Secretary of any changes.

Secondary legislation is not empowered for the following matters

570. The following matters are set out in the Act and are outside the scope of matters options will consider.

Recognition without application

571. The Secretary may recognise the following groups without receiving an application:

- MPI or any group within MPI as a recognised agency; and
- any officer or employee of any department (as defined in section 5 of the Public Service Act 2020).

Conditions on recognition

572. The Secretary may impose any conditions on a recognition that the Secretary thinks fit. Conditions may also be modified, with steps to bring these to the affected person's notice set in the Act.

573. The conditions that may be imposed are kept open for flexibility so that they can be set according to the specific circumstances and needs of the individual, class of individuals, and/or agency being recognised.

Duration

574. Recognition continues indefinitely unless the Secretary decides to limit the recognition to a period. If the recognition is for a specified period:

- the person may apply to the Secretary for renewal of recognition no later than one month before the specified period ends; or
- the Secretary may renew the recognition without application.

Ending recognition: suspension, withdrawal, and surrender

⁷⁷ Forests Act 1949, s 106, as inserted by the Legal Harvest Amendment.

575. To ensure the regulatory system for recognition remains current and recognised assessors and agents are fit and proper, the Act sets out how recognition can be ended.

576. In situations where the person is no longer carrying out the duties of a recognised assessor or agency, or is no longer fit and proper, the Secretary has powers to suspend or withdraw recognition. The Act sets out the procedural requirements for the Secretary to exercise these powers.

577. A person may also surrender their recognition.

What options are being considered for competency requirements for recognised assessors?

578. A recognised assessor must maintain any applicable competency requirements set in regulations. The Secretary must take these into account when determining whether the person is fit and proper to be recognised (the regulations may not set out *how* the Secretary takes the competencies into account).

Option One – *Status Quo*

579. Key features: no competencies are set in regulations.

580. Addressing the problem: this approach will allow applicants for recognition and recognised assessors to demonstrate any competencies they think are relevant to their application. It will also give the Secretary discretion to consider all competencies and their relevance to the duties of a recognised assessor. However, this option performs poorly in terms of improving consistency in recognising assessors and reducing the risk of recognising unsuitable people.

Option Two – non-binding guidance

581. Key features: in this option, guidance would be used to set out the competencies that the Secretary considers relevant for a recognised assessor.

582. Addressing the problem: applicants for recognition and recognised assessors, would be informed of the competencies the Secretary will consider relevant, however, this guidance would be non-binding. This would allow flexibility for applicants to demonstrate how they meet the competency requirements. It will also allow the system to be more responsive to changing over time, particularly as market expectations change.

583. There is a risk for both applicants and the Secretary that competency requirements are applied inconsistently, and that guidance is not followed as it is non-binding. There is also a converse risk that if guidance is applied too rigidly it could be treated as a requirement rather than each application being treated on its merits.

Option Three – General description of competencies

584. Key features: in this option, regulations would set out that a recognised assessor must demonstrate knowledge and understanding of:

- the applicable regulatory requirements;
- particular industries and processes in the forestry and wood processing supply chain as relevant to the duties of a recognised assessor;
- the role of the Secretary and what it means to carry out a regulatory function on the Secretary's behalf; and
- requirements relating to due diligence systems.

585. Addressing the problem: this approach provides direction for applicants for recognition, recognised assessors, and the Secretary about the types of matters that should be considered as relevant competencies. The general description of these competencies provides flexibility for applicants and recognised assessors to demonstrate how they meet these competencies. It also recognises that the skills and knowledge to assess a due diligence system may vary depending on the part of the supply chain the due diligence system relates to.

Option Four – Prescriptive set of competencies

586. Key features: in this option, regulations would set out a more prescriptive set of competencies that applicants for recognition and recognised assessor must meet. It would require:

- successful completion of a relevant NZQA qualification in risk identification and assessment;
- successful completion of a relevant NZQA qualification in carrying out an audit;
- understanding of New Zealand Standards relating to performing inspections (in particular, AS/NZS ISO/IEC 17020:2013 *Conformity assessment - Requirements for the operation of various types of bodies performing inspection* and AS/NZS 3842:1998 *Guide 62: General requirements for bodies operating assessment and certification/registration of quality systems*);
- an NZQA Level Five or higher qualification, or international equivalent, in a subject relevant to the forestry and wood processing sector;
- two years of experience assisting to prepare or assess due diligence systems for legal harvest assurance.

587. Addressing the problem: this option makes it clear what competencies a recognised assessor must have and maintain. However, it is likely to be too restrictive and result in people with relevant skills and experience being unable to be recognised. It would also require review and potentially updating every time any of the underlying requirements changed.

How do the options for competencies for recognised assessors compare to the status quo?

	Option One – Status Quo	Option Two – non-binding guidance	Option Three – General description of competencies	Option Four – Prescriptive set of competencies
Consistency and proportionality	0	+ supports consistency between applicants and recognised assessors.	+ supports consistency between applicants and recognised assessors. Guidance would likely be required to explain how the Secretary is applying the regulations.	- while the approach would support consistency between applicants and recognised assessors, it is considered disproportionate to the problem. Prescriptive requirements are likely to limit the number of recognised assessors beyond those that would have the appropriate skills.
Minimal complexity and administrative cost	0	+ lower administrative burden for applicants, recognised assessors, and the Secretary as applications can focus on the matters set out in guidance, limiting the amount of information that may be provided or processed.	+ lower administrative burden for applicants, recognised assessors, and the Secretary as applications can focus on the matters set out in guidance, limiting the amount of information that may be provided or processed.	- will impose a higher cost and administrative burden on applicants for little measurable gain, for example to complete formal study which may serve little benefit if the person already has appropriate skills and knowledge (e.g., if a qualified auditor working in the forestry sector has to undertake further forestry study to be able to be recognised).
Clarity and transparency	0	+ provides clarity about what competencies the Secretary will consider relevant.	+ provides clarity about what competencies the Secretary will consider relevant.	++ provides clarity and transparency about the precise standards the recognised assessor has met.
Overall assessment	0	+	+	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

588. *Option two – non-binding guidance* is the preferred option. Options two and three perform equally well against the criteria. In this situation the most important factor is how well the option supports the purpose of the legal harvest assurance part of the Act.

589. Option two better supports the purposes of the legal harvest assurance part of the Act because it allows for more flexibility in responding to evolving demands for government assurance that New Zealand's timber and timber products come from legally harvested sources. It provides the same benefits as option three without formalising requirements in regulations which may be difficult, costly, and/or time consuming to change.

590. In addition, guidance would be required for option three to function in practice, increasing the administrative burden for applicants and recognised assessors to understand and respond to both the regulations and the guidance. The Secretary would have an administrative burden to create the guidance, and to apply it alongside regulations in decision making.

591. Although there is a risk that guidance can be applied inconsistently or too rigidly, operational policy can be developed to assist the Secretary to appropriately consider each application on its merits.

What options are being considered for fit and proper person requirements: specified convictions?

592. When determining whether a person is fit and proper to be recognised, the Secretary must take into account any specified convictions. Specified convictions can relate to:

- individuals applying to be recognised as assessors or to remain fit and proper to be a recognised assessor;
- agencies that are applying for recognition as an agency or to remain fit and proper to be a recognised agency;
- individuals that are managers or directors of agencies that are applying for recognition as an agency or to remain fit and proper to be a recognised agency.

593. For the purposes of this analysis, the options are described as applying to applicants, but are also intended to apply to maintaining recognition, i.e. the same convictions will be relevant to an application for recognition as will be relevant to maintaining recognition.

Limitations, constraints, and non-feasible options

594. Options are limited to convictions, and therefore to the criminal law. Options may not include enforcement actions that do not result in a conviction (for example, infringement notices), or actions where a breach does not result in a conviction (for example, civil offences that result in civil penalties).

Option One – Status Quo

595. Key features: convictions are not specified in regulations.

596. Addressing the problem: this option allows the Secretary to consider all convictions, and assess the relative importance based on factors such as the seriousness of the offending and how long ago it occurred. However, it may not provide applicants for recognition with fair warning about the convictions that may be considered relevant.

597. This may increase the cost and administration for applicants and the Secretary if further information is sought to process an application, or if more information than is required is provided with an application.

598. The Secretary may still consider convictions even if they are not specified because the Secretary has the ability to consider any other relevant matters when deciding on an application.

599. There is a risk with this option that people may become recognised inappropriately if information about convictions is not available when the Secretary makes a decision on recognition. This risk may be partially addressed by creating application information requirements to ensure all relevant information is available to the Secretary when assessing an application for recognition.

Option Two – all relevant criminal convictions

600. Key features: specify that the Secretary must take into account any criminal convictions the Secretary considers relevant. This option would apply to people applying to be recognised assessors, the directors or managers of people applying to be recognised agencies, and the agency applying to be the recognised agency.

601. Addressing the problem: this option provides the greatest flexibility for the Secretary to consider all relevant criminal convictions, leaving the weighting given to each conviction to the Secretary.

602. The Secretary may support implementation with guidance to provide applicants with information about what the Secretary will consider relevant and how any convictions will be considered. This provides for flexibility for each application to be considered on its merits. This approach would ensure that all convictions are brought to the Secretary's attention which would reduce the risk of delay and further information requests.

603. This approach balances providing people with information to predict how the Secretary will assess an application, and how context (like the seriousness of the offending and the time since the conviction) will be considered.

Option Three – Convictions for individuals relating to business conduct

604. Key features: specify convictions in regulations that relate to a person's ability to maintain independence and impartiality, and conduct in business. This option would apply to people applying to be recognised as assessors and the directors or managers of recognised agencies. Convictions relating to the following conduct for individuals would be specified in regulations:

- insider trading;
- fair trading and fair dealing;
- fraud;
- theft and embezzlement;
- money laundering;
- tax evasion;
- bribery and corruption;
- anti-trust and anti-competitive behaviour.

605. Addressing the problem: this option would limit the range of convictions the Secretary may consider, providing clarity to applicants about the convictions that will be relevant. However, it would not provide transparency over how the Secretary would assess any relevant convictions. It may also mean that the Secretary does not consider other convictions that may be relevant, resulting in people being inappropriately recognised.

Option Four - Convictions for individuals relating to personal conduct

606. Key features: specify convictions in regulations that relate to a person's personal conduct. This option would apply to people applying to be recognised assessors and the directors or managers of recognised agencies. Convictions relating to the following conduct for individuals would be specified in regulations:

- aggressive behaviour;
- use, preparation, or distribution of controlled drugs (being illicit drugs and prescription only medications);
- bullying and harassment;
- sexual harm;
- abuse and domestic violence;
- driving offences.

607. Addressing the problem: while this option would provide people with clarity about what the Secretary will consider relevant, it is disproportionate to the problem of ensuring that a person is fit and proper to assess a due diligence system.

Option Five – Convictions for agencies relating to agency conduct

608. Key features: specify convictions in regulations that relate to an agency's conduct. This option would apply to agencies applying to be recognised agencies, that is, where the legal identity of the agency has been convicted of a relevant crime. Convictions relating to the following conduct for agencies would be specified in regulation:

- insider trading;
- fair trading and fair dealing;
- fraud;
- money laundering;
- tax evasion;
- anti-trust and anti-competitive behaviour;
- health and safety;
- criminal negligence;
- employment.

609. Addressing the problem: this option would seek to ensure that corporate liability for entities is taken into account when determining if an agency is fit and proper to be recognised. This would support consistency in decision making by making sure the Secretary considers the same matters for each applicant. It would also be expected to result in greater competency for agencies that are recognised because agencies that do not comply with the law would be less likely to be recognised.

How do the options for fit and proper person requirements: specified convictions compare to the status quo?

	Option One – Status Quo	Option Two – all relevant criminal convictions	Option three – convictions for individuals relating to business integrity	Option Four - convictions for individuals relating to personal conduct	Option Five – convictions for agencies relating to agency conduct
Consistency and proportionality	0	+ provides a proportionate response to allow the Secretary to consider all criminal convictions in light of their specific context.	0 provides consistency about what convictions will be considered relevant but may not be proportionate if convictions that may have a bearing on a person’s fitness to be recognised are not considered.	-- disproportionate to what is required to ensure a person is fit and proper to assess a due diligence system because it goes beyond conduct in business to the person’s personal life.	0 provides consistency about what convictions will be considered relevant but may not be proportionate if convictions that are historic or happened when the agency was under different management are considered.
Minimal complexity and administrative cost	0	+ minimal complexity for applicants as they will need to explain any criminal conviction for the Secretary to then determine relevance.	- increases complexity by making the listed convictions relevant regardless of the magnitude of the offending or the time that has elapsed since the offending.	- complex to determine when an offence in a person’s personal life is relevant to their conduct in business.	- increases complexity by making the listed convictions relevant regardless of the context of the offending, and the whether the management and/or structure of the agency has changed since the offending.
Clarity and transparency	0	0 provides some clarity that all criminal convictions are relevant.	+ provides clarity about what convictions the Secretary will consider.	+ provides clarity about what convictions the Secretary will consider.	+ provides clarity about what convictions the Secretary will consider.
Overall assessment	0	+	0	-	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

610. *Option two – all relevant criminal convictions* is the preferred option. This option best provides for flexibility for each application to be considered on its merits. This provides the most flexibility for the Secretary to ensure the magnitude and time since the offending took place can be considered in deciding whether a person is fit and proper to be recognised, allowing people to demonstrate when their behaviour has improved and have an opportunity to become fit and proper despite previous offending.

What options are being considered for other criteria for recognising classes of individuals?

Option One – Status Quo

611. Key Features: no additional criteria to recognise a class of individuals, on the application of a class of individuals. The Secretary must be satisfied the class of individuals have the competencies, training, qualifications, and experience for undertaking assessments.

612. Addressing the problem: this option would not address the opportunity to help manage the risks in recognising a class of individuals that are not engaged by a recognised assessor. It would also not meet the objective of ensuring consistency and competency in assessors because the Secretary would not need to consider all aspects of the fit and proper person test applied to people applying to the Secretary to be recognised as an assessor (an individual applying) when the application is made by a class of individuals.

Option Two – character of class of individuals

613. Key features: set criteria that the Secretary must take into account the character of the class of individuals, including:

- any convictions of members of the class of individuals;
- the character and reputation of members of the class;
- the ability of members of the class of individuals to maintain an appropriate degree of impartiality and independence in managing and carrying out the functions of an assessor;
- how the class of individuals will ensure members of the class continue to meet the criteria to be recognised; and
- any other matter the Secretary considers relevant.

614. Addressing the problem: this would align the matters taken into account for recognition of assessors regardless of the method the person uses to apply to be recognised. This will promote consistency between recognised assessors and help to maintain the minimum standard expected of a person before they become recognised. This will assist in managing the risks of recognising a class of individuals that are not engaged by a recognised agency (where the recognised agency would be responsible for ensuring the recognised assessors it engages remain fit and proper).

How do the options for any other criteria for recognising classes of individuals compare to the status quo?

	Option One – Status Quo	Option Two – character of class of individuals
Consistency and proportionality	0	+ ensures all recognised assessors must meet the same character, reputation, independence, and impartiality requirements.
Minimal complexity and administrative cost	0	- may have a raised administrative burden for classes of individuals applying for recognition to collect information about the character of the members in the class of individuals and to have a mechanism to ensure members of the class continue to meet the criteria for recognition.
Clarity and transparency	0	+ makes it clear that all recognised assessors must meet the same character requirements before being registered. Provides transparency about the requirements a class of individuals must meet before being recognised.
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

615. *Option two – character of class of individuals* is the preferred option. This option best supports the objectives of ensuring consistency and competency in assessors, while maintaining flexibility for registered people to have choice about who they seek to assess their due diligence systems. If this option was not adopted, then it is possible that there would be two standards applied to recognised assessors, depending on whether they belong to a class of individuals or are recognised through another mechanism (e.g. they applied directly to the Secretary or are engaged by a recognised agency).

616. This option also provides the Secretary to take into account any other relevant matters. The Act provides the Secretary this ability for all other types of application for recognition. This is considered necessary to make it clear the Secretary has express authority to consider all relevant matters.

What options are being considered for application information for recognition?

Note: Options two to five are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

617. Key features: no information requirements set in regulations. An applicant must:

- apply in the form approved by the Secretary;
- pay any fee specified in regulations.

618. Addressing the problem: Without information requirements being known by the applicant, it may be impossible for people to know how to make an application for recognition and what it should include. It is possible that information required to process an application may be required by the form approved by the Secretary. However, this may create doubt about the Secretary's lawful authority to collect personal information under the Privacy Act. It may also lead to a lengthy and administratively burdensome process of further information requests for both the Secretary and applicants, for the Secretary to be satisfied the person is fit and proper to be recognised.

Option Two – Identity information

619. Key features: information to identify the applicant would be required. For all individuals (including people applying to be recognised assessors, as well as managers and directors of agencies), this would mean:

- each individual's name and contact details; and
- photo identification for each individual.

620. For agencies, this would mean:

- name and trading name of the agency;
- evidence of the legal status of the agency; and
- the name and contact details of the person who is authorised to act on behalf of the agency in relation to recognition.

621. For a class of individuals, this would mean:

- a description of the class of individuals,
- names of the people that are members of the class of individuals; and
- the name and contact details of the person who is authorised to act on behalf of the class of individuals in relation to recognition.

622. Addressing the problem: this information is needed to identify who is applying to be recognised, and if successful, will be recognised as a recognised assessor or agency. It supports the objective to ensure consistency and competency in assessors. This information is needed for the legal harvest assurance system to function.

Option Three – Information required to be displayed on the public register

623. Key features: require people applying to be recognised to provide the information that must be displayed on the public register for recognised assessors and agencies that is not generated by the Secretary. This would cover:

- the person's name or trading name and contact details and;
- if they are engaged by a recognised agency, the agency's trading name and contact details.

624. Addressing the problem: ensures information that must be publicly displayed is available to the Secretary to publish. This will support meeting the purpose of the public register as set out in the Act and is required for the Secretary to meet the obligation to keep and maintain a public register containing specified information.

Option Four – conduct information

625. Key features: require people applying to register to provide information for the Secretary to assess whether the person is fit and proper to be registered. Specified convictions and competency requirements are considered above. This option includes the information required for those preferred options to operate, as well as the matters the Secretary must take into account as set in the Act. The information required would be:

- for each individual, an explanation of any criminal convictions and/or civil penalties they have received;
- for agencies, an explanation of any criminal convictions and/or civil penalties the agency has received;
- for all individuals, details of whether they have ever been disqualified from being appointed or holding office as a director of a company, banned from being a director or promoter on an incorporated or unincorporated body, or disqualified from being appointed as a trustee;
- for agencies, a declaration that the agency is not in administration, insolvent, bankrupt or similar.

626. Addressing the problem: ensures information is available for the Secretary to assess whether the person is fit and proper to be registered. Without this information, the applicant and the Secretary may face the administrative burden of providing and assessing a large amount of information that is not necessary, or responding to information requests to provide further information to process an application.

Option Five – system and process information

627. Key features: require people applying to be recognised as an assessor or as an agency to provide a description of:

- the competencies, qualifications, training, experience, and resources they have to undertake assessments of due diligence systems;
- the processes and procedures they have in place to maintain impartiality and independence in carrying out the functions of a recognised assessor or recognised agency;
- their proposed system for undertaking assessments of due diligence systems;
- for agencies and classes of individuals only, the system the applicant has in place to ensure that each of the assessors they engage or members of the class of individuals is a fit and proper person.

628. Addressing the problem: ensures information is available for the Secretary to assess whether the person is fit and proper to be registered. Without this information, the applicant and Secretary may face the administrative burden of providing and assessing a large amount of information that is not necessary, or responding to information requests to provide the information needed to process an application.

How do the options for application information for recognition compare to the status quo?

	Option One – Status Quo	Option Two – identity information	Option Three – information required to be displayed on the public register	Option Four – conduct information	Option Five – system and process information
Consistency and proportionality	0	+ consistent between applicants and proportionate to the problem of needing to know who is applying for recognition.	+ consistent between applicants and proportionate to the problem of needing information that must be displayed on the register.	+ consistent between applicants and proportionate to the problem of needing information to assess whether an applicant is fit and proper to be registered.	+ consistent between applicants and proportionate to the problem of needing information to assess whether an applicant is fit and proper to be registered.
Minimal complexity and administrative cost	0	++ information is basic identity / contact information to know who is applying. Will not require substantial collation or research to secure information to submit with an application, or for the Secretary to assess.	+ unambiguous and easy to provide.	+ unambiguous and easy to provide. Using declaration and explanations is considered to have a lower burden than the status quo because information would be submitted with an application, rather than being requested through time consuming further information requests.	+ requiring an explanation of systems and processes may carry some administrative burden, but this is considered a lower burden than the status quo because information would be submitted with an application, rather than being requested through time consuming further information requests.
Clarity and transparency	0	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to process an application).	+ clear what information is required and why (to process an application).
Overall assessment	0	++	+	+	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

629. The preferred options are:

- *Option Two – identity information*
- *Option Three – information required to be displayed on the public register*
- *Option Four – conduct information*
- *Option Five – system and process information*

630. All four of these options are considered necessary to provide the information the Secretary will need to be satisfied a person is fit and proper to be recognised. Requiring this information to be provided with an application is considered more efficient than the Secretary needing to ask for this information at a later time when processing each unique application.

631. These options are considered the smallest amount of relevant information necessary for the Secretary to make a decision. Alternative options which would require evidence of the same matters a declaration or explanation is proposed for are considered unnecessary.

632. Using declarations and explanations is considered reliable because it is an offence to provide false or misleading information in an application.⁷⁸ The potential for penalties is considered a sufficient disincentive for applicants to provide false or misleading information to the Secretary.

Section 2K: Public registers

What is the policy problem or opportunity?

Context

633. The Act requires the Secretary to ensure that there is a public register of persons registered for legal harvest and a public register of persons recognised as assessors and recognised agencies.⁷⁹

634. The purpose of the public registers is to provide transparency for the public so that they know who is registered or recognised, how they can be contacted and to assist with compliance and enforcement of the legal harvest assurance system.

Problem and opportunity

635. The Act establishes the basic information that must be included on the public registers, including:

- the person's name or trading name and contact details;
- the date the person was registered or recognised; and
- details of any suspension or withdrawal of registration or recognition.

636. There is an opportunity to make regulations to require further information to be displayed on the public registers.

⁷⁸ Forests Act 1949, s 146, as inserted by the Legal Harvest Amendment.

⁷⁹ Forests Act 1949, ss 133 and 134, as inserted by the Legal Harvest Amendment.

637. Including further information on the public registers must meet the purposes of the registers, and may also result in:

- reducing the administrative burden for registered persons of having to source and provide the information on the register to each individual requestor;
- providing the public and businesses with accessible proof of government assurance;
- allowing members of the public to easily contact and verify registered persons, recognised assessors and recognised agencies; and
- assist with monitoring and compliance for the legal harvest assurance system.

Assumptions

638. We have made the following assumptions about the public registers:

- Consumers will find the transparency of the registers increases their trust in the forestry industry.
- To fulfil their function, the public registers need to show a range of information, including information relating to compliance.
- The public registers are for providing assurance and should not be used as a marketing tool to allow advertising.

What do stakeholders think?

639. In issues paper two we asked for feedback on the public registers.

640. Feedback on the assumptions was balanced. Feedback included:

- The notion of a public register is likely an important factor for overseas clients utilising New Zealand supplied wood. There would be reason to doubt much effect within New Zealand as it will become rapidly recognised most of the industry is on the register and slip-ups are rare thus providing little basis for checking.
- Only as much information as is necessary to meet the purpose of the register and details set out in the Act should be provided on the register.
- Revocation of registration and a request for removal from the registered person should be the only basis for removal from the register.

641. Feedback on the information to be displayed on the public registers included:

- the register itself should contain little more than a registration code linked to a registered responsible person or entity. This link enables a client receiving timber products to confirm the identity of the party in the first link in the supply chain and they are registered, and registration is current.
- If a client receiving timber products wished for more information, they would track the supplier and request further information about the timber products purchased.
- A public register is supported, based on it containing no confidential or commercially sensitive detail that could be accessed by competitors to gain a commercial advantage or used for activist activities.
- We do not consider any additional information about Exporter Statements is necessary.
- We do not consider that there it is appropriate to voluntarily display information on the register, otherwise it runs the risk of being used as a marketing tool.

What objectives are sought in relation to the policy problem?

642. By setting further information requirements for the public registers, we are trying to:

- enable the public to know who is registered or recognised and how to contact them;
- provide transparency in the forestry and wood-processing supply chain;

- allow overseas buyers to quickly check on the status of an exporter; and
- allow consumers to check that the people they are dealing with are registered and have not been suspended.

What options are being considered for the public registers?

Limitations, constraints, and non-feasible options

643. The range of options is constrained by privacy considerations and meeting both the purpose of the legal harvest assurance part of the Act and the purposes of each register.⁸⁰

644. Table six sets out options have been considered non-feasible, and the rationale why.

Table six: non-feasible options for public registers

#	Description	Why was this option considered?	Why is this option considered not feasible?
1	Displaying people exempt from registration on the register for legal harvest.	To provide evidence that a person is operating lawfully despite not being registered.	<p>People that are exempt from registration do not need to apply for, or notify MPI, that they are exempt. Displaying exempt operators on the register would create an administrative burden to provide these details to MPI that is outside the intent of the Act.</p> <p>Furthermore, displaying people that are exempt from registration would defeat the purpose of the register to enable members of the public to know whether a person is registered and how to contact registered persons.</p>
2	Displaying information about people that are no longer registered or recognised on the public register.	To provide historic information about people that may have been operating, to allow members of the public to verify historic records.	<p>As the registers are for registered and recognised people, displaying people that are no-longer registered or recognised is considered out of scope (not empowered by the Act).</p> <p>The policy intent, as developed at the time the Act was passed, is for people to remain on the registers for a period of time after they stop trading to allow for customers to check whether the person was registered or recognised at a certain point in time in order to comply with their obligations (such as when someone is carrying out due</p>

⁸⁰ Forests Act 1949, ss 134 and 135, as inserted by the Legal Harvest Amendment.

#	Description	Why was this option considered?	Why is this option considered not feasible?
			<p>diligence in relation to a product that was harvested some time ago).</p> <p>The policy intent was not for people to be displayed on the register in perpetuity.</p> <p>However, the Act does not empower regulations to set a time period for retaining people on the register for a period of time after they have retired, or become inactive, revoked, or withdrawn from registration or recognition. The Secretary may consider other options to achieve the policy intent without including historic information on the public registers.</p>
3	Exclude people that are recognised as assessors as part of a class of individuals or without application	To reduce the administrative burden for the Secretary as there is no mechanism for the names of these people to be provided to the Secretary. It would also reduce the ongoing burden for these people to be displayed on the register in perpetuity despite no longer providing the services of a recognised assessor (similar to non-feasible option 2 above).	The Act does not empower regulations that reduce the information displayed on the register. Regulations are only empowered for providing additional information.

Options for the public registers

Note: Options two to five are compatible, i.e. they are not mutually exclusive and may be chosen to work together.

Option One – Status Quo

645. Key features: only the information specified in the Act would be displayed on the register.

646. For registered people, the information specified in the Act is:

- the person's name or trading name and contact details;
- the date on which the person was registered;
- if the person holds an Exporter Statement,—
 - any information specified in regulations relating to the Exporter Statement; and
 - the history of any previous Exporter Statements;

- details (including dates) of any suspension or withdrawal of registration;
- the name or designation of the person who is responsible for the day-to-day management of the business; and
- any other information required by regulations.

647. For registered assessors and agencies, the information specified in the Act is:

- the person’s name or trading name and contact details and, if they are engaged by a recognised agency, the agency’s trading name and contact details; and
- the date on which the person became recognised as an assessor; and
- details of any suspension, withdrawal, or surrender of recognition; and
- any other information required by regulations.

648. Addressing the problem: each register would show a limited amount of information to meet the purpose of each register. This would limit the amount of personal and/or commercial information collected and provide simplicity and uniformity in the information made publicly available.

Option Two – Operational information

649. Key features: additional operational detail would be displayed about each person.

650. For registered people the operational detail would be:

- website, if relevant;
- the geographic regions the person operates in;
- the activities they are registered for;
- any activities they undertake that are exempt from registration requirements.

651. For recognised assessors and agencies the operational detail would be:

- website, if relevant;
- the geographic regions the person operates in
- for a class of individuals, any categories of members of the class that are excluded from recognition.

652. Addressing the problem: the additional information supports members of the public to understand the role of the registered person or recognised assessor or agency in the supply chain, and to help those members of the public contact operators relevant to their needs. Table seven provides the rationale for each matter to be included on the public register.

Table seven: rationale for operational information

#	Matter	Rationale for inclusion
1	Website	Provides clear authority to display a website, if the person has one. This provides a link for a member of the public to better understand the services provided by the person listed on the public register. It balances making it easy for members of the public to find information with making sure the register is not a marketing platform.
2	Geographic region of operation for registered persons and	Many aspects of the forestry supply chain are inherently land and location based. Including geographic region of

	recognised assessors and agencies	<p>operation will better enable members of the public to seek the services of people in their area.</p> <p>While contact information must already be displayed, this information may indicate only the head office location and not assist people to connect with operators in their area.</p> <p>Setting geographic information at a regional level balances complexity of more specific geo-location with helping people find operators in their area.</p>
3	For registered persons only, the activities they are registered for	<p>To enable members of the public, prospective clients, and overseas buyers to know what services a person is registered to provide. This information would be useful for people to decide who they want to trade with. It may also be used by other registered people and/or overseas buyers as a step in their due diligence systems to ensure a person they are trading with is authorised to undertake the activities they are offering to the market.</p>
4	For registered persons only, any activities they undertake that are exempt from registration requirements	<p>Some registered people may also undertake activities that are exempt from registration requirements. Including this information on the public register would provide transparency about when they are using these exemptions, and therefore when their clients and the public cannot rely on the registered person meeting legal harvest assurance requirements for those activities (as it is not required).</p> <p>This may also be used by other registered people and/or overseas buyers as a step in their due diligence systems to assess the risk of trading with a registered person for these activities that are not regulated by the legal harvest assurance system.</p>
5	For a class of individuals, any categories of members of the class that are excluded from recognition	<p>To enable members of the public to know when a person is recognised as an assessor. There is a risk that the public register will be misleading if a class of individuals is recognised and any exemptions from that recognition are not also displayed.</p> <p>This option applies at the category level to lower the risks of unintended 'name and shame' consequences from naming individuals (addressed in option three below).</p>

Option Three – Compliance information

653. **Key features:** In this option, compliance information would be displayed about each person. This information would only be displayed after a decision is made. Unsuccessful compliance actions and/or updates about progress of pending compliance actions would not be displayed because of the risk of negative impacts on the business if the non-compliance is not substantiated.

654. For registered people the compliance information detail would be any:

- conditions on their registration;

- penalties they have received for non-compliance.

655. For recognised assessors and agencies the compliance information would be any:

- conditions on their recognition;
- penalties they have received for non-compliance;
- for classes of individuals only, any members of the class that are excluded from recognition.

656. Addressing the problem: this would assist with monitoring and compliance for the legal harvest assurance system. It may also help to build credibility for the legal harvest system by demonstrating that compliance is the norm, and non-compliance is identified and responded to. Although this option supports the objective of transparency in the forestry and wood-processing supply chain it also risks unintended consequences if compliance information is misinterpreted or remains on the register for a period of time after the person has remedied the non-compliance. It may also present privacy issues for individuals exempt from recognition as a member of a class of individuals.

Option Four – whether the person is registered voluntarily

657. Key features: the legal harvest assurance register would show whether a person has registered voluntarily. The Act allows for a person who does not have to register for legal harvest to choose to do so.⁸¹

658. Addressing the problem: this would support the objective of providing transparency in the forestry and wood-processing supply chain. However, once a person is registered, complying with legal harvest obligations is compulsory so it is unclear what value this information may provide. In addition, it may be complex and administratively burdensome for the registered person and the Secretary to update the register if the person shifts between voluntary and compulsory registration.

Option Five – Voluntary information

659. Key features: In this option, regulations would not be made to require additional information to be displayed on the public registers, however, additional information could be voluntarily displayed. This would give registered persons and recognised assessors and agencies the choice about whether information was displayed.

660. The range of information that could be displayed voluntarily would be at the discretion of the Secretary. To ensure a consistent approach, an operational policy would be required to support the decision about what information would be displayed, when, and for how long. The types of information that may be displayed voluntarily include third party certifications, and/or relevant professional memberships or associations.

661. Addressing the problem: the additional information supports members of the public to understand who is registered or recognised and how to contact them. This is balanced by the voluntary nature of the information, giving people greater control over the information about them that is made publicly available.

⁸¹ Forests Act 1949, s 86(3), as inserted by the Legal Harvest Amendment.

How do the options for the public registers compare to the status quo?

	Option One – <i>Status Quo</i>	Option Two – Operational information	Option Three – Compliance information	Option Four – whether the person is registered voluntarily	Option Five – voluntary information
Consistency and proportionality	0	+ listing exempt activities is a proportionate response to reducing the risk of a person relying on the registered person carrying out due diligence activities because they are registered when the registered person is not obligated to.	- may result in disproportionate adverse effects if compliance information is misunderstood and members of the public avoid using operators that have compliance information listed on the register.	0 consistent between registered persons.	0 the opportunity to display voluntary information would be consistent between people but may not be proportionate to the policy problem if lots of voluntary information is displayed (and becomes in the nature of marketing).
Minimal complexity and administrative cost	0	0 details are provided with an application for registration or recognition so will be available for display.	-- complexity for the registered person or recognised assessor or agency, and the Secretary to explain what listed information means. Complex for members of the public to understand the information, and cost for the Secretary to maintain.	- may be complex for the registered person and the Secretary to determine whether the registration is voluntary or compulsory on an ongoing basis if a person's activities change.	- administrative burden for people on the public register and the Secretary to keep the information up to date.
Clarity and transparency	0	++ aids in ensuring appropriate information is made publicly available to support the purposes of the registers. Provides clarity about activities a person is not registered for, and therefore when a member of the public may need to carry out their own checks about the way the person is operating rather than rely on registration or recognition.	+ supports transparency about the performance of a person displayed on a public register. May help to demonstrate that compliance is the norm, promoting the credibility and integrity of the legal harvest assurance system.	0 supports transparency but may reduce clarity if a person shifts between voluntary and compulsory registration.	+ may support greater transparency about the role of the registered person or recognised assessor or agency, and the services they provide.
Overall assessment	0	+	-	-	0

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

662. The preferred option is *option two – operational information*. This option supports the purposes of the registers by providing additional information about where the registered person or recognised assessor or agency is operating. It also provides members of the public with reasonable notice that a registered person may be undertaking activities for which registration is not required, and that the member of the public cannot rely on the person meeting legal harvest obligations for those activities. This supports members of the public to understand when they may need to make further enquires because the activity may not have been subject to a due diligence system.

663. Although *option three – compliance information* supports transparency, it performs poorly against the other criteria and so it is not a preferred option. In addition, publishing compliance information can be used as a punitive tool where it amounts to 'naming and shaming', it also does not recognise any improvements or mitigations that the person may have made since the non-compliance occurred. There is a risk that without proper explanation, publication can have a disproportionately punitive affect for the named party.

664. The risk of disproportionately punitive affects can be heightened where a system is new and regulated people are becoming aware of their obligations and the system is being clarified through operation. As the legal harvest assurance system matures, the Secretary may consider publishing compliance information about operation of the system separately to the public register. This would provide a more flexible approach for the Secretary to withhold or anonymise information where there is a risk of disproportionately punitive outcomes, or of revealing information that should be considered commercial and in confidence.

665. At this time, *option five – voluntary information* is not preferred. It is possible that as the legal harvest assurance system matures there will be information that would be valuable to allow people to display on a voluntary basis. As a regulation is not required to allow voluntary information, the Secretary must remain open to this option on an ongoing basis. Any decision on displaying voluntary information in the future will need to support the purposes of the relevant register and of the legal harvest assurance part of the Act.

Section 2L: Overarching holistic assessment of 2A – 2K

What is the policy problem or opportunity? What objectives are sought in relation to the policy problem?

666. This section provides a summary of all of the preferred options to demonstrate how they work together and address the policy problems and opportunities set out in section 1.

What options are being considered?

699. The analysis for the preferred options is set out in the relevant substantive sections (2A to 2K). The preferred options are set out here as a list of proposals.

Section 2A: when is timber legally harvest

- 1) Specify land-use laws in a notice: specify in a notice the land-use laws considered relevant to harvest in New Zealand. Laws would cover the listed Acts and any regulations, rules, or other requirements made under the Act as they relate to harvest:
 - i. Resource Management Act 1991;
 - ii. Forests Act 1949;
 - iii. Biosecurity Act 1993;
 - iv. Heritage New Zealand Pouhere Taonga Act 2014.
- 2) Do not make any notices for overseas laws at this time.

Section 2B: legal harvest scope

- 3) make regulations to exclude leaves from exotic species in New Zealand from the definition of regulated timber.
- 4) specify Tariff codes in regulations representing 99% of total export value and 98% of total import value from goods made from, or primarily made from, timber to regulate goods imported and/or exported under these Tariff codes as specified timber products.

Section 2C: legal harvest information

- 5) make regulations to define legal harvest information:
 - i. for exotic species of regulated timber:
 - The timber species must be identified using the taxonomic 'binomial nomenclature' system (genus and species in full), e.g., *Pinus radiata*, following the 'International Code of Nomenclature for algae, fungi, and plants', or the 'International Code of Nomenclature for Cultivated Plants'.
 - The GPS coordinates (specifying the reference system used, e.g., WGS84) and physical address of the property from which the regulated timber has been harvested from.
 - For each timber species, an indicative start and end time period between which the supplied regulated timber was harvested.
 - For each timber species, the indicative quantity of timber to be harvested in cubic meters.
 - The name and contact details, business identifier (for example, a New Zealand Business Number) for the person responsible for harvest.
 - A written and signed declaration by the person responsible for harvest that they have:

- the right to harvest the trees or woody plants from which the timber derives;
 - all necessary legal authority to exercise the right to harvest; and
 - outlining the relevant harvest laws of a place or country the regulated timber has been harvest in and that they have complied with these laws (relevant harvest laws are addressed in section 2A above).
- ii. for indigenous species of regulated timber:
- specify the same matters as legal harvest information as for exotic regulated timber.
- iii. For specified timber products:
- Where the harvest happened in New Zealand, require the same legal harvest information as for the regulated timber.
 - For any timber within a specified timber product that has been imported or reimported, the following legal harvest information requirements and criteria would be set in regulations:
 - Identify all timber in the specified timber product by the timber species using the taxonomic binomial nomenclature system (genus and species in full), e.g., *Pinus radiata*.
 - For each timber species in the specified timber product, identify the region and the country the timber has been harvested from.
 - For each timber species, the indicative start and end time period between which the timber was harvested.
 - A registered person must receive a written and signed declaration confirming that the person that harvested the timber:
 - had the right to harvest the trees or woody plants from which the timber derives;
 - had all necessary legal authority to exercise the right to harvest; and
 - compliance with the relevant harvest laws of the place or country of harvest for each species of timber in the specified timber product, or an explanation of any contravention.

Section 2D: responsible persons

- 6) make exemptions (by regulations) for responsible persons supplying regulated timber in the following circumstances and/or purposes:
 - i. when the responsible person has changed since supply of the regulated timber began, and it is impossible or not practicable to ascertain the legal harvest information.
 - ii. when the regulated timber is supplied for customary or cultural use;
 - iii. when the regulated timber is harvested, used, and retained on the same property.
- 7) set the activity exception threshold for responsible persons at 600 m³ of regulated timber supplied per annum.
- 8) specify in regulations that a responsible person must keep records:
 - i. of the legal harvest information they have supplied, including any updates to this information (addressed in section 2C above);
 - ii. who the legal harvest information was supplied to, including the recipients' business identification information such as name or trading name and contact details, legal status of the business;

- iii. when the legal harvest information was supplied, including any updates.
- iv. in writing, either electronic, paper, or both.
- v. current and accurate.
- vi. retained in a retrievable form for seven years after the record is created.

Section 2E: who needs to register

- 9) make exemptions (by regulations) from registration for the following classes of activities:
 - i. exempt activities that are for cultural purposes only. This could include carving and other cultural practices. The class of activities would include:
 - preparing timber for carving or other cultural practice;
 - undertaking the cultural practice;
 - importing, exporting, or otherwise buying a finished cultural piece.
 - ii. activities and products that result from activities regulated under the Food Act 2014, Therapeutic Products Act 2023, Medicines Act 1981, and regulations and rules made under these Acts (or any future Acts regulating the same activities and products).
 - iii. activities and products that are regulated as beauty and/or cosmetic products.
- 10) set the activity exception threshold for registration at:
 - i. \$10,000 (New Zealand dollars) per annum, or
 - ii. for wood in the rough (HS code 4403), at 2,000m³ per annum.

Section 2F: getting registered

- 11) specify in regulations that the Secretary must take into account the following matters when deciding if a person is fit and proper to be registered:
 - i. the legal status of the applicant (for example, whether it is a company, sole trader, or some other form of business);
 - ii. that the person is legally permitted to operate in New Zealand;
 - iii. whether the applicant has been placed in receivership or liquidation, or is subject to any other insolvency proceeding or process.
 - iv. whether the applicant or any decision maker has
 - any criminal convictions
 - any civil penalties imposed by a court or regulator.
 - v. whether the applicant or a decision maker in the business has been or is—
 - disqualified from being appointed or holding office as a director of a company under the Companies Act 1993; or
 - banned from being a director or promoter of an incorporated or unincorporated body under the Takeovers Act 1993 or the Financial Markets Conduct Act 2013; or
 - disqualified from being appointed as a trustee under the Trusts Act 2019.
- 12) set additional criteria for registration in regulations so that when a branch or division is applying to register separately to a parent entity, the applicant must also have the express written consent of the parent entity to register separately. The applicant must describe how legal harvest obligations will be met separately from the parent entity (these will also be considered in the information requirements below).

- 13) Make regulations to require the following information with an application for registration:
- i. the information to be displayed on the public register:
 - the person's name or trading name and contact details; and
 - the name or designation of the person who is responsible for the day-to-day management of the business; and
 - any other information to be displayed as set in regulations, covered in section 2K of this impact statement. The preferred option is to display:
 - website, if relevant;
 - the geographic regions the person operates in;
 - the activities they are registered for;
 - any activities they undertake that are exempt from registration requirements.
 - ii. business identity information:
 - evidence of the legal status of the business, for example, a New Zealand Business Number for an organisation or an IRD number and photo identification for a sole trader;
 - the name, contact details, and role of the person who is authorised to act on behalf of the business for its registration;
 - previous trading names by which the business has been known;
 - the names of people making decisions for operating the business;
 - details of any previous registration by the business or senior managers in the business.
 - iii. Fit and proper person information
 - an explanation of any criminal convictions or civil penalties received by the applicant (including that they have none);
 - an explanation of any criminal convictions or civil penalties received by people making decisions for operating the business (including that they have none);
 - an explanation about the other matters to be taken into account when determining a person is fit and proper to register apply.
 - iv. Further information for branches and divisions registering separately:
 - the name, trading name, and registration details for the parent entity;
 - express written consent from the parent entity for the branch or division to register separately to the parent entity;
 - a description of how the applicant is separately identifiable from the parent entity;
 - a description of how the branch or division will meet the obligations of a registered person.

Section 2G: due diligence systems

- 14) make regulations to specify a registered person must collect the following information as a requirement of a due diligence system:
- i. the legal harvest information (addressed in section 2C above);
 - ii. for specified timber products only, the Tariff Code;
 - iii. a common description of what the product is;
 - iv. the common name, genus or scientific name for the timber/s included in the product.
 - v. the quantity of the regulated timber or specified timber product being supplied, expressed in the measurement relevant for any threshold for the relevant activity (thresholds for registration are addressed in section 2E);

- vi. the place of country of harvest for the regulated timber or timber/s included in a specified timber product;
 - vii. the name, postal address and email address of any business or person that has supplied the registered person with the regulated timber or specified timber products;
 - viii. the name, postal address and email address of any business, operator, or trader to whom the registered person supplies the regulated timber or specified timber product.
- 15) create non-binding guidance, not regulations, for risk assessment (including verification of information and risk mitigation or elimination).
- 16) specify in regulations that before a private certification scheme can be recognised for use in a due diligence system, the Secretary must be satisfied that:
- i. the certification scheme has standards and processes that are transparent;
 - ii. the due diligence requirements of the certification scheme meet or exceed the any requirements for a due diligence system set in regulations;
 - iii. the auditing process (including how the certification scheme deals with non-compliance), meets or exceeds the regulatory due diligence requirements in the legal harvest assurance system.

Section 2H: obligations once registered

- 17) specify in regulations that registered persons must:
- i. keep records of:
 - the legal harvest activities relevant to the registration.
 - how they are applying their due diligence system, including keeping records of information collected and risk assessments undertaken as part of their due diligence system (refer to Section 2G above).
 - legal harvest information they receive, including any updated to the legal harvest information (Addressed in section 2C above), and who provided the legal harvest information;
 - If relevant, how they have complied with any exporter requirements.
 - ii. if a branch or division is registered separately (addressed in section 2F above), the parent entity and the branch or division must keep the following records:
 - express written consent of the parent entity for the branch or division to register separately;
 - a description of how legal harvest obligations will be met separately by the parent entity and branch or division, and any changes to these arrangements over time.
 - iii. keep records in writing, either electronic, on paper, or both.
 - iv. keep records current and accurate, and maintain previous versions of the records.
 - v. retain the records in a retrievable form for at least seven years after the date the record was created.
- 18) specify in regulations that a compliance declaration contain the following declarations by that registered person:
- i. they are complying with their obligations as a registered person; or
 - ii. if any non-compliance has occurred, which obligations have not been complied with and how they are remedying the non-compliance
 - iii. note the date of, and recognised assessor who undertook, the most recent assessment of their due diligence system.

- 19) make regulations that prevent the Secretary from imposing conditions on a registered person that are properly a matter for commercial agreement between parties.

Section 2I: Export requirements

- 20) specify in regulations that the following information must be included with an application for an Exporter Statement:
- i. information about the applicant:
 - name;
 - trading name;
 - contact details;
 - name, contact details, and role of the person who is authorised to act on behalf of the business for its Exporter Statement application (and, if successful, any subsequent compliance and monitoring);
 - registration identifier.
 - ii. Compliance declarations about the applicant:
 - a declaration the registered person is complying with the obligations of registration or an explanation of how any non-compliance has been remedied;
 - a declaration the registered person is complying with any relevant export requirements or an explanation of how any non-compliance has been remedied.

Section 2J: Recognition (assessors and agencies)

- 21) create non-binding guidance, not regulations, for competency requirements for recognised assessors.
- 22) specify that the Secretary must take into account any criminal convictions the Secretary considers relevant.
- 23) make regulations that set the following additional criteria that the Secretary must take into account before recognising a class of individuals to be recognised as a class of individuals:
- i. any convictions of members of the class of individuals;
 - ii. the character and reputation of members of the class;
 - iii. the ability of members of the class of individuals to maintain an appropriate degree of impartiality and independence in managing and carrying out the functions of an assessor;
 - iv. how the class of individuals will ensure members of the class continue to meet the criteria to be recognised; and
 - v. any other matter the Secretary considers relevant.
- 24) specify in regulations that the following information must be included with an application for recognition:
- i. identity information about the applicant:
 - For all individuals (including people applying to be recognised assessors, as well as managers and directors of agencies), this would mean:
 - each individual's name and contact details; and
 - photo identification for each individual.
 - For agencies, this would mean:
 - name and trading name of the agency;
 - evidence of the legal status of the agency; and

- the name and contact details of the person who is authorised to act on behalf of the agency in relation to recognition.
- For a class of individuals, this would mean:
 - a description of the class of individuals,
 - names of the people that are members of the class of individuals; and
 - the name and contact details of the person who is authorised to act on behalf of the class of individuals in relation to recognition.
- ii. Information to be displayed on the public register:
 - the person's name or trading name and contact details and;
 - if they are engaged by a recognised agency, the agency's trading name and contact details.
- iii. Conduct information:
 - for each individual, an explanation of any criminal convictions and/or civil penalties they have received;
 - for agencies, an explanation of any criminal convictions and/or civil penalties the agency has received;
 - for all individuals, details of whether they have ever been disqualified from being appointed or holding office as a director of a company, banned from being a director or promoter on an incorporated or unincorporated body, or disqualified from being appointed as a trustee;
 - for agencies, a declaration that the agency is not in administration, insolvent, bankrupt or similar.
- iv. system and process information:
 - the competencies, qualifications, training, experience, and resources they have to undertake assessments of due diligence systems;
 - the processes and procedures they have in place to maintain impartiality and independence in carrying out the functions of a recognised assessor or recognised agency;
 - their proposed system for undertaking assessments of due diligence systems;
 - for agencies and classes of individuals only, the system the applicant has in place to ensure that each of the assessors they engage or members of the class of individuals is a fit and proper person.

Section 2K: Public registers

25) specify in regulations that the following information will be displayed about each person on the public registers:

- i. For registered people the operational detail would be:
 - website, if relevant;
 - the geographic regions the person operates in;
 - the activities they are registered for;
 - any activities they undertake that are exempt from registration requirements.
- ii. For recognised assessors and agencies the operational detail would be:
 - website, if relevant;
 - the geographic regions the person operates in
 - for a class of individuals, any categories of members of the class that are excluded from recognition.

How do the preferred options compare to the status quo?

	Option One – Status Quo	Option Two – All preferred options
Consistency and proportionality	0	<p>++ the preferred options taken together are considered a proportionate response to strengthening market access certainty for New Zealand’s forestry exports and demonstrating New Zealand’s commitment to reducing international trade in illegally harvested wood.</p> <p>Identification of regulated timber, specified timber products, exemptions and thresholds have been considered together to ensure that coverage of the system is similar between importers, exporters, and domestic operators. This responds to feedback about ensuring the legal harvest system avoids creating market distortions and reduces the risk of illegally harvested timber entering the supply chain.</p> <p>Non-binding guidance is proposed for some matters, particularly risk assessment for due diligence systems and competency requirements for recognised assessors. While there is a risk that this does not best support consistency between people by treating them all the same, it does support consistency in outcomes by allowing the Secretary to consider the specific circumstances of those people when monitoring compliance with the legal harvest assurance system.</p>
Minimal complexity and administrative cost	0	<p>- the legal harvest assurance system is a new regulatory system that will impose obligations on regulated people where they didn’t previously exist. It is likely that compliance with those obligations will also have impacts on people that are not regulated, especially where they are asked for further information or to provide assurances to regulated people. Feedback has suggested that most people operating in the system already have systems in processes in place that may be adaptable to meet new regulatory requirements. For this reason, the cost and administrative burden is higher than the status quo but is not anticipated to be significant.</p> <p>Implementing the legal harvest assurance system will have a cost and administrative burden for the Secretary.</p>
Clarity and transparency	0	<p>+ the preferred options are anticipated to provide clarity for regulated people about what their obligations are and how to meet them. To further assist with clarity and transparency, the Secretary should consider providing guidance and, where appropriate, publishing operational policies about how to comply with obligations set in secondary legislation and those in the Legal Harvest Amendment.</p>
Overall assessment	0	+

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

667. The preferred options taken together provide a package of secondary legislation and guidance to give effect to the Legal Harvest Amendment. Without these options, the Legal Harvest Amendment would not be able to be implemented and the will of Parliament would be frustrated. These options are considered necessary and desirable for the purposes of the legal harvest assurance part of the Act to bring the legal harvest assurance system into effect.

668. As the purpose of this impact statement is to support consultation, the preferred options are subject to change based on feedback. A final impact statement will accompany recommendations for final policy decisions.

What are the marginal costs and benefits of the option?

Limitations and constraints on analysis

669. The limited period between enactment of the Legal Harvest Amendment and development of secondary legislation has meant that MPI has had reduced opportunity to undertake additional analysis to that included in the impact assessment supporting the Legal Harvest Amendment.⁸² As a result, this cost benefit analysis should be read in conjunction with the cost benefit analysis for the Legal Harvest Amendment itself. It is provided to support consultation and will be updated to reflect feedback and final advice before secondary legislation is recommended. Care has been taken not to pre-empt matters that will be considered for cost recovery following decisions on the initial legal harvest assurance system.

670. The impacts in this table are estimates only. The actual costs will depend on final decisions on the matters covered in this impact statement, and decisions on operationalising the regulatory system. This analysis builds on the cost benefit analysis that supported the Legal Harvest Amendment (completed in 2021). It estimated that:⁸³ “Considering the implementation and operational costs of the regulatory system, a conservative benefit estimate, from avoided losses, was calculated at \$97.3 million/annum), and the revised estimated New Present Value is \$690 million, over ten years”.

⁸² [Updated Regulatory Impact Assessment: Proposed Legal Harvest Assurance System, MPI website, 2021.](#)

⁸³ Updated Regulatory Impact Assessment: proposed Legal Harvest Assurance System, 2021, <https://www.mpi.govt.nz/dmsdocument/49054-Updated-Regulatory-Impact-Assessment-Proposed-Legal-Harvest-Assurance-System>.

Table eight: estimated marginal costs and benefits of the preferred options

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups: responsible persons	<p>The cost for responsible persons will be in terms of providing legal harvest information and keeping records of the legal harvest information provided.</p> <p>Costs are expected to be lower where the person responsible for the harvest is also required to be registered.</p> <p>Assumes that responsible persons are already providing information and keeping records and the changes required to meet legal harvest obligations will be minor</p>	Low - less than \$1000 per annum for each responsible person	Medium
Regulated groups: Registered persons	<p>Establishment costs are expected to cover the changes needed to establish due diligence systems to meet legal harvest obligations and apply for registration. Costs will vary widely depending on the size, complexity, and resources of each business.</p> <p>Costs are expected to be lower where the registered person is also responsible for the harvest.</p> <p>Ongoing costs of complying with obligations, including complying with due diligence systems and making compliance declarations are anticipated to be low.</p> <p>Assumes that registered people are already undertaking due diligence and changes required to meet legal harvest obligations will be minor to medium.</p>	<p>Establishment: Medium – less than \$10,000 one-off for each registered person</p> <p>Ongoing: Low – less than \$5000, spiking in years when due diligence systems are assessed – for each registered person</p>	Medium

Regulated groups: Recognised assessors and agencies	Cost for recognition and ongoing operation. Assumes that people that seek to be recognised are already involved in audit and assurance type businesses and becoming recognised will not be a significant change.	Establishment: Low – less than \$5,000 one-off for each recognised assessor or agency Ongoing: Low – less than \$5000 for each recognised assessor or agency	Low
The Secretary (the regulator)	Establishment covers development of guidance, operational policies, business processes, training and warranting, and developing a delivery platform. The establishment cost will depend on decisions about a manual, digital, and/or automated delivery platform following policy decisions on the design of the regulatory system. Ongoing cost includes operational staff, guidance and regulatory stewardship, delivery platform support.	Establishment: High – over \$6 million Ongoing: High – over \$1 million This is a cost to the Crown but may be at least partially covered by cost recovery, which will be considered after final policy decisions resulting from this impact statement.	Medium
Others (eg, wider govt, consumers, etc.)	Assume the cost of compliance will be passed through to customers. This cost is anticipated to be low on a per customer basis.	Low	Medium
Total monetised costs		High	Medium
Non-monetised costs		<i>Medium</i>	<i>Medium</i>
Additional benefits of the preferred option compared to taking no action			

Regulated groups: responsible persons	Benefits reflect analysis of the benefits in the previous impact statement for small growers, large growers, and forest management companies. Benefits largely reflect the benefit of ongoing market access.	High – over \$10 million per annum to the industry	Medium
Regulated groups: Registered persons	Benefits include market access, reduced price suppression due to reduced illegally harvested timber in the market, improved customer trust, and improved trading reputation.	High – over \$10 million per annum to the industry	Medium
Regulated groups: Recognised assessors and agencies	Benefits relate to creating a new market for businesses to offer services and charge fees. Assumes all costs will be covered and a profit made from providing relevant services.	Medium – more than \$10,000 per annum for each recognised assessor	Low
The Secretary (the regulator)	Whether services provided by the regulator will be cost recovered will be considered after decisions on the details of the legal harvest assurance system have been decided.	Low	Medium
Others (eg, wider govt, consumers, etc.)	Wider benefits include New Zealand maintaining market access and meeting its international commitments to reduce the global trade in illegally harvested timber and timber products.	High	Medium
Total monetised benefits		High	Medium
Non-monetised benefits		<i>High</i>	<i>Medium</i>

Section 3: Delivering an option

How will the new arrangements be implemented?

671. The regulator for the legal harvest assurance system is the Secretary. The Secretary is the chief executive of the Ministry, being the Director-General of the Ministry for Primary Industries (MPI).⁸⁴ In this impact statement ‘the Secretary’ has been used to describe exercise of these powers and functions. In practice, the Secretary will delegate these powers and functions to named decision-makers within MPI.

672. MPI will retain regulatory stewardship for the legal harvest assurance system as the agency that administers the Forests Act 1949.

673. MPI will be responsible for the operation of the system, and compliance, monitoring, and enforcement for all regulated parties. Some compliance and monitoring functions are delegated to recognised assessors and agencies as established in the Act. While these roles are undertaken by recognised assessors and agencies, enforcement functions will be maintained by MPI. MPI is also responsible for oversight of the performance of the recognised assessors and agencies.

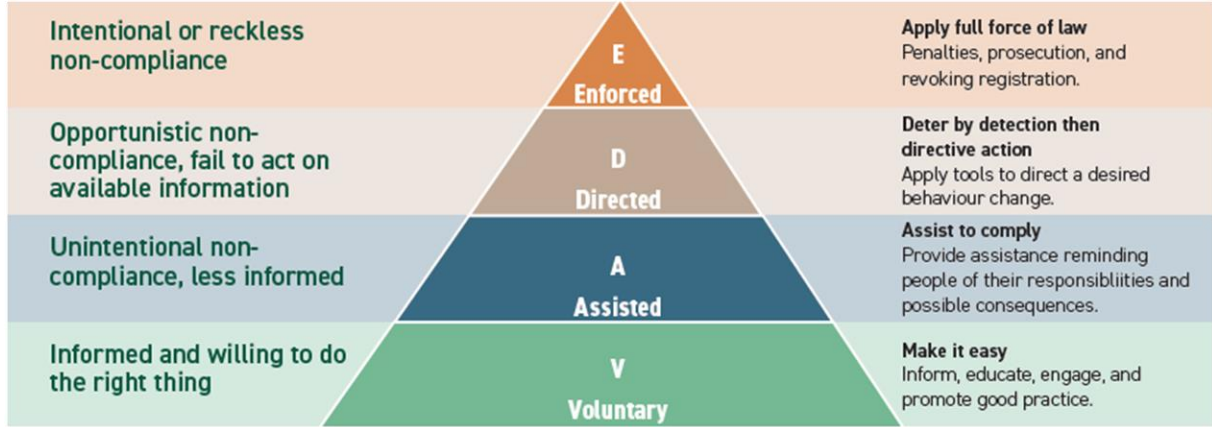
674. While MPI may delegated clearly identified functions or powers to a person outside the public service⁸⁵ this is not currently envisaged.

675. Internal operational policies and public facing guidance will be used to guide operation of the legal harvest assurance system.

676. Final decisions on the matters covered by this impact statement will enable MPI to begin operationalising the system. This will include developing a compliance delivery model to give effect to MPI’s VADE model of compliance delivery as it will apply to the legal harvest assurance system.

677. VADE stands for voluntary, assisted, directed, and enforced. MPI as an agency uses the VADE model for all of its compliance delivery across all regulatory systems.

Figure one: VADE model for compliance delivery



⁸⁴ Forests Act 1949, s 2.

⁸⁵ Public Service Act 2020, Schedule 6.

Timeframe for implementation

678. The analysis in this impact statement has been prepared to support public consultation on preferred options for the initial legal harvest assurance system. Following consultation, the analysis will be updated to reflect the feedback received. A final impact statement will accompany advice to Cabinet on final decisions for regulations, and the Secretary for notices and other types of secondary legislation.
679. Further consultation on additional secondary legislation is anticipated to be needed before the legal harvest assurance system comes into effect. This will include on regulations for cost recovery and infringement offences, which rely on decisions made on the options covered in this impact statement.
680. Final decisions on secondary legislation will also enable MPI to begin operationalising the system (as noted above). It will also enable design of a change management approach to assist regulated parties to understand and comply with their obligations in line with the VADE model of compliance delivery.
681. The package of secondary legislation will come into effect no later than August 2027, when the enabling legislation (the Legal Harvest Amendment) commences. This will bring the legal harvest assurance system into effect together, providing regulated parties time to prepare to meet their obligations.
682. The timeframe for implementation will also provide time for notifying the legal harvest assurance system with the World Trade Organisation and negotiating international acceptance of the legal harvest assurance system by trading partners. Acceptance by trading partners is required for the legal harvest assurance system to meet its purpose of safeguarding and enhancing market access for the forestry sector.

Implementation risks

683. Reliance on existing institutional structures assumes that implementation of the system will be able to be absorbed by the relevant agencies. While this risk is primarily borne by MPI, there may be slight increases for other related agencies that administer legislation that interfaces with the legal harvest assurance system, such as Customs or Police.
684. As a large package of secondary legislation will be drafted and implemented at the same time, there is an increased risk that parts may not work together in the optimum way. This risk is mitigated by the lead time for implementation providing an opportunity for fixing issues that arise through implementation.
685. MPI will need to make decisions about the delivery mechanism for the system, in particular, whether a manual, digital, automated, or hybrid system is adopted. These decisions will depend on the final policy decisions, and each type of delivery mechanism poses different risks that will need to be assessed when final decisions are made.
686. As the legal harvest assurance system seeks to balance domestic and international market requirements, there is a risk that expectations between these markets may not be aligned. To mitigate this risk, domestic consultation and international notification will be undertaken simultaneously. Where there is divergence, or where expectations change, responses will be prioritised in order of achieving the purposes of the legal harvest assurance system, i.e., in the following priority order:
1. strengthen the international reputation of the forestry sector;
 2. safeguard and enhance market access for the forestry sector;

3. reduce the risk of importing timber that is not legally harvested;
4. help reduce international trade in timber that is not legally harvested.

687. There is a risk that trading partners will not accept the legal harvest assurance system as providing sufficient evidence that timber has been legally harvested. This risk is partially mitigated by conducting domestic consultation and international notification simultaneously. This provides the opportunity to balance domestic and international needs in the final policy decisions resulting from this process.

How will the new arrangements be monitored, evaluated, and reviewed?

Monitoring and evaluation

688. MPI has the responsibility as part of its regulatory stewardship role to monitor, review, and report on regulatory system performance. MPI organises the legislation it has regulatory stewardship responsibility for into six regulatory systems, of which, forestry is one.⁸⁶

689. The performance of each regulatory system is reassessed every four years. The assessments help MPI to determine how well each regulatory system is working, and the changes that may be made to make the regulatory system better. Performance is assessed against the following measures: efficiency, effectiveness, durability and resilience, and fairness and accountability.

690. Operation of the legal harvest assurance system will be monitored and reviewed as part of MPI's regulatory stewardship review of the forestry system. This includes monitoring the ongoing performance of the settings in secondary legislation, supporting delivery platform, non-regulatory supports, and incentives outside of legislation. This best enables all parts of the regulatory system to be assessed together, and to identify gaps and duplications in operation, as well as 'right fit' interventions where issues and opportunities are identified.

Review

691. Review of the legal harvest assurance system will be conducted by MPI as part of its responsibilities for the Forests Act 1949. Information gathered in the first years of operation of the system will form a baseline to measure future performance. Compliance rates and stakeholder feedback (regulated parties, trading partners, and the public) will be used to measure the effectiveness of the system in meeting the objectives and purpose of the legal harvest assurance system.

692. Matters that may trigger an earlier review of the system include:

- market access is reduced or additional evidence is required to meet market access requirements of trading partners;
- poor or declining compliance rates over time;
- inefficiencies meaning the system is not operating in a cost effective manner;
- international agreements changing expectations of government assurance systems;
- changing international market expectations.

⁸⁶ MPI Regulatory Systems Map (non-exhaustive), MPI website: <https://www.mpi.govt.nz/dmsdocument/48661-MPI-Regulatory-Systems-Map>.

693. In addition, the Act requires the Minister to review the operation and effectiveness of the legal harvest system no later than five years after it commences. The Minister must present a report of the review to Parliament as soon as practicable after it has been completed.⁸⁷ The latest point in time this review may begin is August 2032. The terms of reference and process for this review will be determined by the Minister.

⁸⁷ Forests Act 1949 s 164, as inserted by the Legal Harvest Amendment.