



Australian Government  
Department of Agriculture,  
Water and the Environment

# Sunset Review of the Illegal Logging Prohibition Regulation 2012: consultation paper



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# 1 Submissions

## 1.1 How to have your say

The Department of Agriculture, Water and the Environment is seeking feedback from stakeholders on the Illegal Logging Prohibition Regulation 2012 (the Regulation) and wider illegal logging laws. Your views will help inform the final recommendations provided to the Minister for Agriculture, Drought and Emergency Management and the Assistant Minister for Forestry and Fisheries.

We encourage you to read this paper before you submit. It details key issues to consider. You can provide feedback on some or all of these issues using the questions given as cues. We also encourage you to suggest any other areas that should be explored.

You can make a submission or complete a short online survey via the [online form](#) on the department's Have Your Say website. For those having problems accessing the form, submissions can also be sent by email to [IllegalLogging@awe.gov.au](mailto:IllegalLogging@awe.gov.au).

The deadline for receipt of all submissions is 5:00 pm (AEST) on Tuesday 31 August 2021.

Questions about the review or the submission process can be directed to the review secretariat at [IllegalLogging@awe.gov.au](mailto:IllegalLogging@awe.gov.au).

## 1.2 Publishing of submissions

All submissions will be published on the Department of Agriculture, Water and the Environment's website unless clearly marked as confidential, although the secretariat may redact parts of submissions. We will not publish confidential material but will record that such information is held. Confidential submissions may be subject to release under the provisions of the *Freedom of Information Act 1982* (FOI Act). Submissions will be published as soon as possible after the end of the public comment period.

If you are making a confidential submission, you may wish to indicate any grounds for withholding the information it contains. Reasons could include that the information is commercially sensitive or that you wish personal information, such as names and contact details, be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information if the department receives an FOI request.

The department will likely consult you in relation to determining whether to release information under an FOI request. Any decisions to withhold information requested under the FOI Act may be reviewed by the Office of the Australian Information Commissioner or other external review bodies.

The department reserves the right not to publish submissions.

## 1.3 Privacy

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable.

Sensitive information is a subset of personal information and includes any information or opinion about an individual's racial or ethnic origin, political opinion or association, religious beliefs or affiliations, philosophical beliefs, sexual preferences or practices, trade or professional associations and memberships, union membership, criminal record, health or genetic information and biometric information or templates.

By completing and submitting your submission you consent to the collection of all personal information, including sensitive information, contained in this form.

The department collects your personal information (as defined by the *Privacy Act 1988*) in this form for the purposes of completing the Illegal Logging Prohibition Regulation 2012 Sunsetting Review and for related purposes. If you fail to provide some or all of the personal information requested in this form, the department will be unable to contact you to discuss your survey responses, or respond to your submission.

The department will only use the personal information collected about you to enable us to contact you about your submission and may (where the disclosure is consistent with relevant laws, in particular the *Privacy Act 1988*) disclose it to specialists; other Commonwealth government agencies; state and territory government agencies or foreign government departments.

The department requests that, at a minimum, you provide your name and contact details with your submission. Please indicate if you do not wish to have identifying information published with your submission or disclosed to third parties.

The department will use and store all personal information it collects for the review in accordance with the Australian Privacy Principles as outlined in the *Privacy Act 1988*

See the department's [Privacy Policy](#) to learn more about accessing or correcting personal information or making a complaint. Alternatively, email the department at [privacy@awe.gov.au](mailto:privacy@awe.gov.au).

## **1.4 Next steps**

The department will consider all submissions and use them to assist in developing recommendations for the Minister for Agriculture, Drought and Emergency Management and the Assistant Minister for Forestry and Fisheries.

## 2 Consultation questions

### 2.1 Current Regulations

- 1) Is the Regulation delivering what was intended in an efficient and effective manner, and is it fit-for-purpose? If not, what could be improved?
- 2) Do you support the due diligence requirements in the Regulations continuing as the centrepiece obligations placed on timber importers and processors?

### 2.2 Due-diligence information and processes

- 3) What are your views on importers having to declare the timber species of a product, where the timber was harvested, and the risk of illegal harvest before it arrives in Australia?
- 4) Do you have any preferences for how due diligence information is provided to the department?

### 2.3 At-border powers and sampling technology

- 5) Do you support adding 'at-border' powers such as sampling, seizure and goods control to the Act?
- 6) Are there any significant costs associated with sampling, seizure and goods control that industry is likely to face in addition to those outlined?
- 7) What other measures could ensure that goods entering the country or intended for processing can be verified for due diligence claims?
- 8) Are there any particular timber-identification technologies that you support for integrating into the illegal logging legislation?

### 2.4 Regulatory provisions

- 9) Do you support removing the due-diligence system requirement for low-frequency importers and processors?
- 10) What other opportunities can you suggest for reducing the regulatory burden for low-frequency importers?
- 11) What additional measures can be introduced to ensure high-frequency importers and processors have adequate due diligence systems in place?
- 12) How can due diligence requirements for repeated imports be streamlined?
- 13) Should the potential 'deemed to comply' arrangements be introduced and how should they operate?
- 14) Do you support changing the scope of regulated products to add or remove any of the discussed products or other products?
- 15) Do you support adding any of the product exemptions discussed?
- 16) Do you have any suggestions for reducing requirements around lower-risk products without comprising the effectiveness of the laws?

## **2.5 Operational improvements**

- 17) What further terms need to be defined under the laws? Should the term 'processing' be defined?
- 18) Should the laws prevent logs entering the country from nations with a log export ban in place?
- 19) How can the department add flexibility to the legislation, including improving the use of guidance materials?

## 3 Introduction

Australia's *Illegal Logging Prohibition Act (2012)* (the Act) and *Illegal Logging Prohibition Regulation 2012* (the Regulation) were among the first of their kind internationally. The Australian Government's policy objective for the legislation is to combat illegal logging and associated trade by establishing systems that will promote trade in legally logged timber and, in the long term, trade in timber and wood products from sustainably managed forests.

Australia has an important role to play as a major market for timber products by supporting international efforts to combat illegal logging and its associated trade. By cooperating with other international efforts, Australia's laws seek to promote a strong, competitive, and sustainable international trade in legal timber products. The laws also seek to reduce the significant environmental, economic and social costs of illegal logging.

The Act requires a structured risk assessment and mitigation process before a business or individual imports a 'regulated timber product' (as defined by their customs tariff codes) into Australia or processes domestically grown raw logs. This is known as undertaking 'due diligence', the specifics of which are set out in the Regulation.

The Department of Agriculture, Water and the Environment is consulting on the Regulation, which will cease to have effect (aka 'sunset') on 1 April 2023. The government will consider whether to remake the instrument, and if it is remade whether any changes should be made.

Sunsetting compels rule-makers to consider whether the instrument continues to be 'fit-for-purpose'. It presents the opportunity to keep instruments in line with international best practice and reflect outcomes of appropriate consultation.

Part 4 of this paper outlines the purpose and scope of the Sunsetting Review of the *Illegal Logging Prohibition Regulation 2012* (the review). Part 4 also provides details on the regulation, including its objectives and current operation.

Part 5 of this paper discusses potential reforms to the regulation, which may also require changes to the Act. The key reforms to the illegal logging laws that are presented for stakeholder consideration include:

- streamlining due-diligence information received from importers
- strengthening at-border powers
- incorporating emerging timber identification technologies
- additional statutory powers
- optimising the regulatory burden
- optimising the products regulated
- additional operational improvements.

We encourage you to make a submission to inform the final recommendations. Submissions will inform government consideration on next steps.

## 4 Sunsetting of the Illegal Logging Prohibition Regulation 2012

### 4.1 Sunsetting of legislative instruments

Sunsetting provisions in legislation provide that the law ceases to have effect (aka ‘sunset’) after a specific timeframe unless further legislative action is taken to extend the law.

The Australian Government’s sunsetting regime is set out in the *Legislation Act 2003*. Section 50(1) repeals a legislative instrument on either 1 April or 1 October—whichever date occurs first on or after the tenth anniversary of the instrument’s registration on the Federal Register of Legislation (FRL). The Illegal Logging Prohibition Regulation 2012 is due to sunset on 1 April 2023 in line with these provisions.

Sunsetting provisions help the Australian Government implement policies that reduce red tape, deliver clearer laws, and align existing legislation with current government policy.

### 4.2 The sunsetting review process

Sunsetting compels rule-makers to consider whether the instrument is still necessary. This is referred to under Australian Government policy as the ‘fitness-for-purpose’ test and is central to the sunsetting review process. Rule-makers consider ways to make instruments more efficient using this test and if the instrument is still needed. This could be through different policy approaches, clearer drafting or means to reduce the regulatory burden for example.

Australian Government policy also requires rule makers to consider the operating context of the sunsetting legislation, and broader legislative and policy context. This includes broader domestic and international law developments and deregulation agendas.

A sunsetting review aims to produce a clear finding as to whether the sunsetting instrument continues to have a purpose and justify the finding to the public and Parliament. It also aims to identify changes required to ensure the replacement instrument is current, legally effective, drafted to a high standard and reflects the outcomes of appropriate consultation.

### 4.3 Scope of this sunsetting review

This sunsetting review aims to ensure the entire legislative framework (the Act and the Regulation) is strong and delivers on Australia’s commitment to reduce the harmful impacts of illegal logging. The review will focus on meeting the Regulation’s sunsetting requirements as outlined in the *Legislative Instruments Act 2003*. These requirements include considering the Regulation’s fitness-for-purpose and any potential reforms.

Some proposed reforms to the Regulation may require changes to the Act due to their close interaction. The Act’s fitness-for-purpose will not be considered as it was previously reviewed as part of the Statutory review of the *Illegal Logging Prohibition Act 2012* published in January 2019. The Statutory review determined that the Act is required and therefore its existence is not in question.

In October 2019, following the Statutory Review of the Act, the government announced that it would defer considering legislative amendments until the Sunsetting Review. This Review process has utilised the recommendations from the Statutory Review of the Act as the starting basis for the potential reforms presented here.

The potential review reforms discussed in this paper indicate the breadth of the reforms being considered by government. These cover due diligence requirements, compliance powers, the scope of regulated products and entities, and the regulated community's interface with the regulatory framework, among other matters.

Together with feedback from the regulated community, the government will consider international developments in combatting illegal logging, including other legislative frameworks, to inform the review process.

## **4.4 Overview of the Illegal Logging Prohibition Regulation 2012**

The Illegal Logging Prohibition Regulation 2012 was made under the *Illegal Logging Prohibition Act 2012*. As the only Regulation made under the Act, it contains essential provisions for the operation of Australia's illegal logging laws, including the due diligence obligations.

The Regulation prescribes the 'regulated timber products' under the illegal logging laws. This includes select products under chapters 44 (wood and articles of wood), 47 (pulp), 48 (paper and paperboard, articles of paper pulp) and 94 (wooden furniture) in Schedule 3 of the Customs Tariff Classification. Exemptions are specified for consignments worth under \$1000 or products made entirely from recycled material. These products are not regulated under the regulation.

The Regulation requires importers and processors of regulated timber products to establish a due diligence system. It sets out the due diligence requirements that they must follow ahead of importing or processing a regulated timber product. These requirements ensure that importers and processors assess the risk that a regulated timber product has been illegally harvested. They require the importer or processor to apply 'reasonable and proportionate' measures to mitigate risks deemed greater than 'low' ahead of importing or processing the product.

The Regulation also sets out the timber legality frameworks that importers and processors can use as part of the due diligence process. These are the third-party certification schemes of the Forest Stewardship Council and the Programme for the Endorsement of Forest Certification. Additionally, the Regulation lists the country specific guidelines (currently available for ten countries) that importers may use to undertake risk identification and assessment for regulated timber products. Similarly, there are also state specific guidelines that domestic processors can use to conduct due diligence. Finally, the Regulation covers some administrative matters. This includes the provision of information and recordkeeping in relation to due diligence.

## **4.5 Objectives of the Regulation**

The Regulation, along with the Act, aims to promote trade in legal timber products while reducing the significant environmental, economic and social costs of illegal logging. It does this through prescribing requirements for processors and importers that help them identify and avoid importing or processing illegally logged timber, which is prohibited by the Act.

Illegal logging is a global problem. The theft, laundering and trade of illegal timber occurs throughout the world and in all types of forest ecosystems, including natural forests, plantations, the tropics, and temperate and boreal forests.

The principal motivation behind these illegal activities is profit. Illegal operators avoid many costs associated with sustainable forest management. Examples include payment of royalties to governments and traditional owners, compliance with harvest controls, labour costs and other transaction costs. This has a negative impact on domestic market prices, which can affect business decisions, industry investment, businesses profitability and jobs in the Australian economy. It also impacts on the environmental objectives for sustainable forest industries and impedes governments in the use of taxes and royalties from those legal activities that support environmental objectives such as afforestation, reforestation and remediation.

The Regulation aims to support the government's strategy for a sustainable Australian domestic forest industry. The government is ensuring that sustainable and legal forest industries are not undercut by illegally logged timber products. This is done by deterring importers and domestic processors from introducing illegally sourced timber into the Australian market.

Australian consumers expect that the timber products they purchase have been harvested legally, and that claims about their origins are true. The due diligence requirements are designed to ensure that importers and processors can meet these consumer expectations through applying appropriate checks.

The Regulation is also intended to strengthen the credentials of Australia's timber sector as a supplier of legal and sustainable timber products. Overseas purchasers can have confidence that Australian timber products have been harvested legally. This is because Australian timber processors must have assured themselves that they are sourcing legally harvested timber under the laws. This facilitates 'market access' for Australian exporters to jurisdictions that recognise Australia's timber legality laws.

The illegal logging laws also aim to complement other key government priorities. This includes supporting action to mitigate climate change, combatting organised crime activities, supporting economic and social development across the region, and alleviating the costs of corruption in developing countries.

## **4.6 Operation of the Regulation**

### **4.6.1 Implementation history and compliance context**

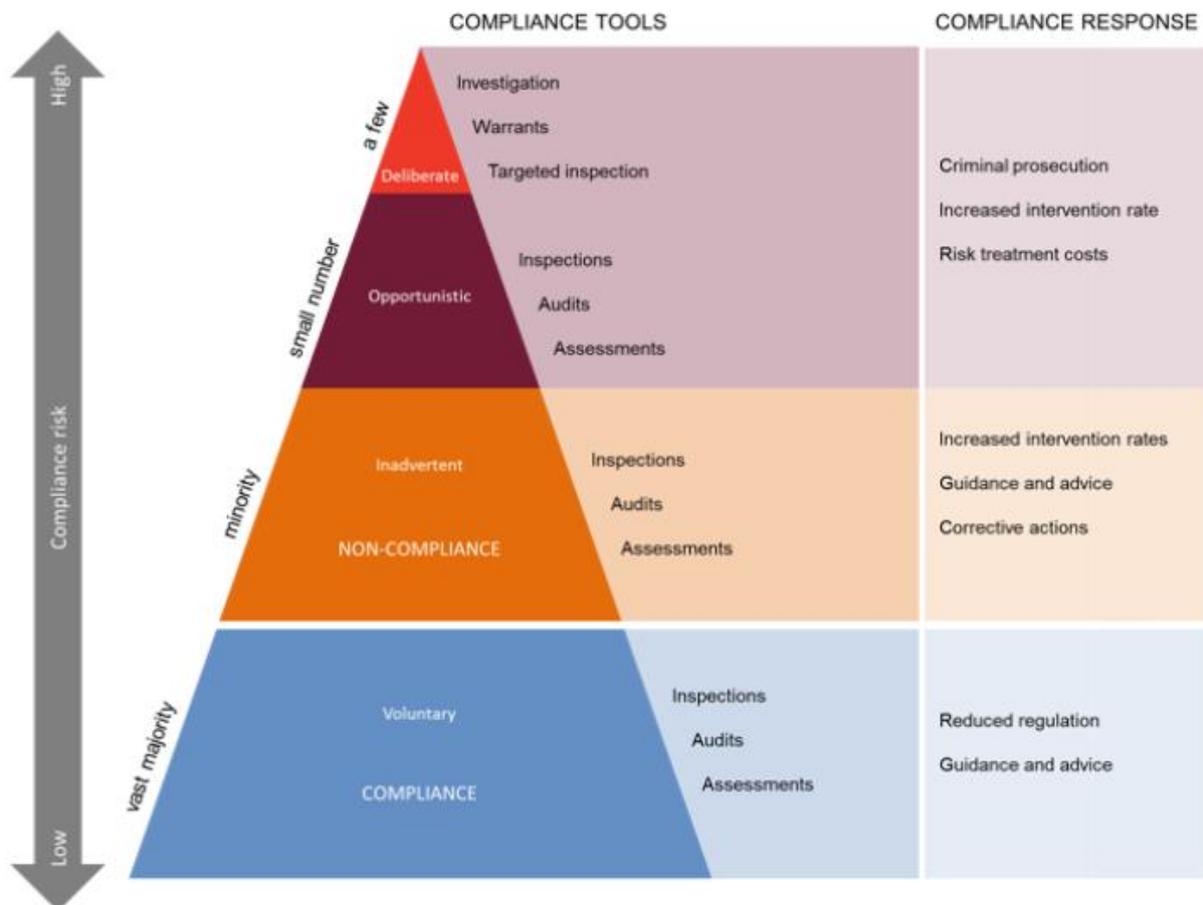
While parts of the Act and Regulation came into effect in late 2012, many of the provisions, including those in the Regulation concerning due diligence, did not commence until 30 November 2014. The Regulation was then subject to an initial 'soft-start' implementation period that continued until 1 January 2018. Businesses and individuals were subject to prosecution for offences established in the Act during this period, but not to civil penalties prescribed in the Regulation for undertaking due diligence.

The Department of Agriculture, Water and the Environment administers the Regulation and carries out compliance and enforcement functions for all of the department's key regulatory responsibilities, including its biosecurity functions.

#### 4.6.2 The department’s compliance approach

In administering the Act, the department uses principles to manage illegal logging compliance that are similar to those it uses for its broader biosecurity compliance responsibilities. The approach focuses on encouraging and prompting voluntary compliance while responding to non-compliance in a way that is commensurate with the behaviours involved (Figure 1).

**Figure 1 Department’s differentiated response to non-compliance**



Source: Department of Agriculture, Water and the Environment, 2018

The department’s illegal logging compliance model focuses on providing clear guidance and advice to all clients to facilitate compliance. In the instances where clients inadvertently fail to comply due to misunderstanding their due diligence requirements and responsibilities, the department may increase auditing of these entities until clear compliance is established. In the instances where an entity deliberately contravenes Australia’s illegal logging laws, the department will respond with stronger measures.

The department prioritises education and guidance to secure long-term voluntary compliance. We continue to enhance communication to the broader regulated community about the legislation and regulations, including any changes that eventuate. This involves adapting and improving our guidance material to assist importers in becoming aware and complying with the legislation. In addition, we continue to publish information to support importers in undertaking effective risk assessments.

#### **4.6.3 Administrative measures**

The department continues to use administrative measures to respond in a manner which is flexible, in proportion, and appropriate for contraventions. These measures are typically less expensive to apply than court-based measures, and often enable earlier resolution of the matter in question. Administrative measures lend themselves to achieving sound and timely outcomes in the public interest. Administrative measures do not need court action to initiate but failure to comply with the conditions of some administrative measures may result in court action.

#### **4.6.4 Criminal and civil penalties**

Criminal penalties are the most severe compliance measure available to the department. They will generally be used where an importer or processor has deliberately done something, or omitted to do something, that they know is in breach of legislation. The Act contains criminal penalties for importing illegally logged timber products or processing illegally logged raw logs of up to five years imprisonment and/or a fine up to 500 penalty units (\$111,000). The Act also contains criminal penalties, in the form of fines, for failing to comply with the due diligence requirements for regulated timber products or raw logs. Criminal penalties also apply for failing to make a Customs Declaration stating compliance with due diligence requirements.

Civil penalties typically take the form of a monetary fine, although they may take the form of injunctions, banning orders, licence revocations and orders for reparation and compensation. They do not include penalties of imprisonment. The Regulation contains several civil penalties for failing to comply with specific due diligence requirements, typically as fines of up to 100 penalty units (\$22,200).

#### **4.6.5 Regulated community**

The Regulation's regulated community is diverse, covering a range of timber and non-timber industry sectors and a wide range of business sizes. This includes a significant number of small businesses. In 2019–20, the regulated community was estimated to include about 20,000 importers and about 300 to 400 domestic processors.

The regulated import community has grown steadily since the laws' introduction (up from 17,000 importers in 2012). The community also sources its products from a wide range of sources (over 128 countries and territories in 2019–2020). It is also a relatively 'top heavy' community, with the top 500 to 600 companies importing and processing the majority of regulated timber products. About 40% to 45% of the community imports infrequently or on a non-commercial basis.

Under the regulatory framework, the most common direct interaction of importers (or their brokers) with government is answering whether they have undertaken their due diligence requirements. This is done through their Customs Declaration each time they import a regulated timber product. Importers and processors of regulated timber products may also be asked to provide information to the department about their due diligence systems and undertakings. This information, collected through targeted desktop audits, is used by the department to assess their compliance with the requirements of the Regulation.

#### **4.6.6 Regulatory impacts and behavioural changes**

The 2017 Regulatory Impact Statement on reforming Australia's illegal logging regulation estimated the entire regulatory burden of the illegal logging laws was 2.25 hours or \$139 per

product line imported, totalling \$28 million per year. It is believed that, since 2017, the regulatory costs have remained similar as the compliance requirements have not changed. The regulatory burden extends to about 20,000 importers, and 300 to 400 processors.

The bulk of the regulatory burden comprises undertaking due diligence assessments on each product line imported or processed. A relatively small component comprises completing the Customs Declaration for each import, establishing a due diligence system and providing information to the department where requested.

Compliance assessments completed by the department have revealed varied levels of compliance with the laws. Non-compliance can be attributed to several factors including ignorance of the laws, subjectivity of the due diligence process, perceived lack of consequences, and complexity of overseas forestry arrangements. Due diligence requirements are also relatively new globally, meaning stakeholders and their supply chains are still adjusting to the new regulatory requirements.

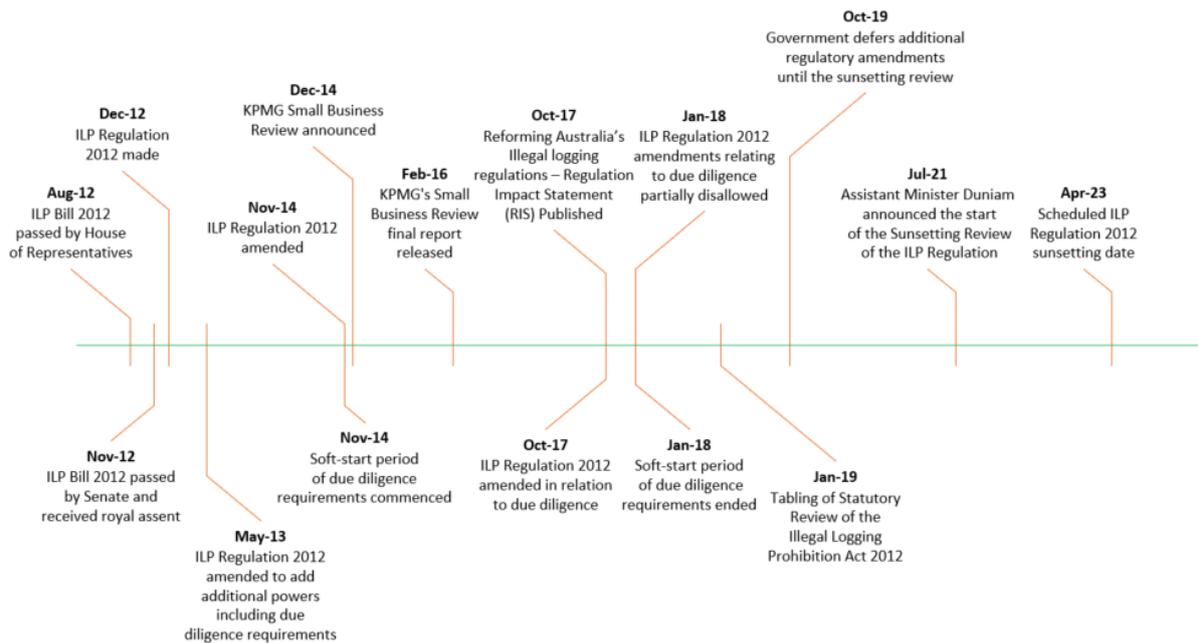
The regulated community has taken proactive steps to comply with the illegal logging framework. Some industry groups have prepared and distributed information on how to comply with the laws to their members and employees. Industry groups, such as the Australian Timber Importers Federation (ATIF), previously organised and ran seminars on the laws with interested stakeholders.

Since 2014, the department has run extensive outreach and engagement on implementing the laws, including hosting in-country workshops with relevant foreign governments, exporters and timber manufacturers overseas. The department also hosted a series of webinars in 2018 when the soft-start arrangements had ended to help stakeholders better understand their legal obligations. Continued education and outreach activities, combined with an effective and targeted ongoing compliance program, are essential to ensuring ongoing compliance.

Some illegal logging frameworks from overseas also feature due diligence requirements aimed at reducing the risk of sourcing illegally logged timber products. The European Union Timber Regulation places due diligence requirements on operators that are similar to those under Australia's laws. A recent report published by the non-government organisation Forest Trends, titled *'How is the European Union Timber Regulation impacting industry due diligence and timber sourcing practices?'*, examined the European system. Key findings include that 97% of operators surveyed had hired dedicated staff to ensure European Union Timber Regulation compliance and 92% collect more information on their timber products than they did before implementation of the laws. This highlights the importance of due diligence and the positive impacts it has on raising awareness and reducing the risks of sourcing illegally logged timber products.

#### **4.6.7 Previous reviews and Regulatory Impact Statement process**

Australia's illegal logging legislative framework has been subject to two reviews since its commencement, in 2014 for its impacts on small business and in 2019 as required by section 84 of the Act. In 2017, a Regulatory Impact Statement was developed and released, supporting amendments to the Regulation concerning due diligence that were partially disallowed in 2018. A timeline of the key developments in the implementation of the Act and the Regulation is presented below.

**Figure 2 Timeline of implementation of Australia’s illegal logging legislation**

## 4.7 Broader context

### 4.7.1 Advances in timber legality frameworks overseas

Australia's illegal logging prohibition laws were among the first of their kind internationally when they commenced in 2012. They were preceded only by the United States' Lacey Act, which from 2008 has prohibited the import of illegally harvested or traded plant material. The European Union Timber Regulation were introduced in 2013, which is similar to Australia's laws in its approach. The European System focuses on requiring operators to undertake due diligence to assess and mitigate the risk of illegal harvest ahead of importing timber products.

Japan introduced their largely voluntary Clean Wood Act in 2017. Under this law, businesses can voluntarily establish their own processes for determining the legality of imported or domestically produced timber products, and where registered, may advertise their products as legally sourced. The Republic of Korea also introduced laws in 2017 that feature prohibitions effectively requiring that operators do not import, distribute, produce, or sell illegal timber. This framework is based on pre-import controls, with importers required to submit declarations and supporting evidence to regulatory authorities prior to import, and at border checks conducted to ensure imports match the documentation.

Malaysia introduced a timber import legality framework in 2017, which is based on providing certificates or other legality-related documents for each import. Indonesia similarly introduced a system based on demonstrating legality through certification or other legality documents, which, in addition, features due diligence requirements. Since November 2017, Indonesia's system has allowed them to issue Forest Law Enforcement, Governance and Trade licenses in accordance with the EU's Voluntary Partnership Agreement arrangements. Vietnam has recently introduced similar laws based on demonstrating legality through Forest Law Enforcement, Governance and Trade licenses, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) permits, or through self-declaration following due diligence undertakings. China,

New Zealand, Chinese Taipei and Thailand are all understood to have timber import legality frameworks in development.

Each of these frameworks, most of which have only been established in the last five years, have brought their own nuances to regulating timber legality. Australia engages regularly with these nations and economies through forums such as the *APEC Experts Group on Illegal Logging and Associated Trade* and the *Timber Regulation Enforcement Exchange* to share information. This includes on technological and regulatory developments, and lessons learnt.

The sunsetting review provides an opportunity to consider the learnings from international experiences and inform the remaking of the Regulation. Several of the potential reforms presented in this paper are informed by broader international developments, and the Australian Government will continue to engage its international colleagues over the course of the review to further inform recommendations.

The EU is also undertaking 'fitness checks' of its timber and licensing Regulation. This is to evaluate if the legislation has been effective, efficient, remains relevant and has added value to the EU. This approach is similar to Australia's sunsetting requirements and reiterates the importance of periodically reviewing our illegal logging framework. It also highlights the importance of aligning with international best practice to promote international cohesion, improve awareness and understanding of our laws, and limit burden where possible.

## 4.8 Broader legislative changes

The Regulation and the overarching Act have been amended multiple times since they were first made in 2012, to reflect changes to the broader legislative context.

- In 2017, Schedules 1 and 2 of the Regulation were amended to reflect international amendments to Harmonised System tariff codes.
- In 2018, the Regulation was amended to repeal existing provisions providing for a regulatory regime and to instead apply the standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014*.
- The *Regulatory Powers (Standard Provisions) Act 2014* provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as civil penalties and infringement notices.
- The Act was also amended in 2018 to apply the standard provisions of the *Regulatory Powers (Standard Provisions) Act 2014*.
- Earlier consequential amendments were made to the Act to reflect changes to the *Customs Act 1901* and changes stemming from the *Federal Circuit Court of Australia Legislation Amendment Act 2012*.
- Country specific guidelines, which outline the legal frameworks used in other countries to regulate timber harvesting, along with state specific guidelines are also periodically updated. The Regulation is updated periodically to reflect these changes.

## 5 Potential reforms

The department seeks input on both the overall ‘fitness-for-purpose’ of the Regulation, and the following potential reforms to strengthen the laws and improve their efficiency. Estimates throughout this section of regulatory burden or savings of the potential reforms have been developed based on the hourly cost to business estimate of \$73.05. This is as per the government’s Regulatory Burden Measurement Framework in accordance with ABARES trade data from 2016 to 2020. Current regulatory effort has been calculated using the costing model developed for the 2017 Regulatory Impact Statement supporting changes to due diligence requirements. This reflects the effort involved with complying with the current legislative requirements, which has not changed substantially since those calculations were developed.

### 5.1 Overall fitness-for-purpose

A fitness-for-purpose test must consider the objectives of the legislative instrument being reviewed. The Regulation’s objective is to reduce illegal logging activities by establishing the requirement for a structured risk assessment and mitigation steps (for risks classified above a low rating), before importing a ‘regulated timber product’ into Australia or processing raw logs grown in Australia. This process is known as due diligence.

The Regulation establishes:

- the due diligence requirements
- the types of products subject to the due diligence requirements
- exemptions to the due diligence requirements
- systems or processes that satisfy elements of the due diligence requirements.

While alternative methods to achieve similar compliance outcomes are possible, the current process of setting due diligence requirements is the preferred approach. The framework provides flexibility for importers and processors to conduct their risk assessments, including through the use of timber legality frameworks, regulated risk factors, country specific guidelines or state specific guidelines. Other international frameworks are more rigid with only specific documents accepted for proving legal harvest. This has the potential to create a larger regulatory burden.

Establishing due diligence requirements for illegal logging is also aligned with the EU and UK’s frameworks. These frameworks are considered among international best practice for reducing illegal logging activities. While the EU is currently reviewing its Timber Regulations, due diligence requirements are not likely to be removed or reduced.

The department considers that the Regulation is required for imposing due diligence obligations on importers and processors. The status quo due diligence compliance costs are estimated to be 0.48% of the total value of regulated timber imports annually. This review will assist the department in determining whether the due diligence process set out in the Regulation is fit-for-purpose, and if not, what reforms need to be made. Potential options for reform are explored in the sections below.

**Question 1**

Is the Regulation delivering what was intended in an efficient and effective manner, and is it fit-for-purpose? If not, what could be improved?

**Question 2**

Do you support the due diligence requirements in the Regulations continuing as the centrepiece obligations placed on timber importers and processors?

## **5.2 Provision of due-diligence information to government**

There are opportunities to improve the due diligence information collected and provided to the department. Importers are currently required under section 10 of the Regulation to collect a range of information about the regulated timber products they are importing. This information informs a risk assessment concerning the legality of the timber harvest. This information must be provided to the department within 28 days when requested.

Some of this information could be provided to the department ahead of importation, such as at the time of making the Declaration to Customs that due diligence has been undertaken as per section 7 of the Regulation. The United States' illegal logging legislation, the Lacey Act, requires importers to submit a declaration that includes the harvest origin, species, and risk of illegal logging rating ahead of importation. Requiring this information ahead of importing regulated timber products, at the time of the Customs Declaration, would help compliance target efforts around products that pose higher risk of illegal harvesting.

As this information is currently required to be gathered by importers prior to importation, requiring that it is also submitted ahead of importation would be expected to add minimal burden. We estimate that this would require 5 to 10 minutes of effort from an administrative officer undertaking data entry for most imported products. Most complex products in terms of species composition taking up to 15 to 20 minutes, due to a larger number of species and origins to provide information on. For example, assuming an average time cost of 7.5 minutes per consignment to provide due diligence information upfront, the regulatory burden cost is expected to increase by 4.9% for the entire regulatory community annually. That's an increase from \$1,935 to \$2,029 per entity and an increase from \$188 to \$197 per consignment.

Importers and processors could also be required to notify the department when they become aware of harvest legality issues from due diligence checks. This would encourage a cooperative approach to compliance between the department and regulated entities.

**Question 3**

What are your views on importers having to declare the timber species of a product, where the timber was harvested, and the risk of illegal harvest before it arrives in Australia?

**Question 4**

Do you have any preferences for how due diligence information is provided to the department?

## **5.3 Strengthening at-border powers**

Adding powers to deal with goods at the border could enable the department to better target its compliance efforts and minimise burden for low-risk importers. For example, sampling powers

can help verify claims about the harvest origin and species of imported products. Other at-border powers that could be incorporated into the illegal logging laws include seizure and detention powers.

Illegal logging frameworks overseas, including in the United States, European Union, United Kingdom and Republic of Korea, and several frameworks regulating Australian imports, feature 'at-border' powers. These powers mean regulators can intervene to inspect goods on a systematic or targeted basis, and where necessary hold them for further action. These powers encourage compliance efforts ahead of goods arriving at the border. They would allow regulators to protect the Australian market from the arrival of potentially problematic or high-risk goods where claims about the products are yet to be verified. Adding these powers would ensure consistency between Australia's laws and approaches overseas.

The department's intention is that these powers would generally be used on a targeted basis, where there are clear indications of risk. It is estimated that holding goods worth \$6500, the average value of a product line imported, for two weeks whilst awaiting sampling results would result in \$20 of delay costs to the affected business. The department is currently considering any other associated costs, such as storage and transport of goods. This estimate considers that the importer would not be able to fulfil supply contracts whilst awaiting release of their held goods. The lost income associated with clearance of the goods is calculated as interest paid on the value of the goods during the time the goods are held. An interest rate of 8% is used in the calculations based on the average of recent business overdraft interest rates for the four major banks. Its estimated holding goods at the border would also cost the affected entity an hour of business time or \$73.05 in dealing with the logistical implications. That's a total of \$93.05 of regulatory burden per product line held per two weeks.

Where goods are sampled, but not held by authorities, it is estimated that it would cost half an hour of business time to the entity involved. This equates to \$36.53 per sample taken. This would amount to \$7306 of total regulatory burden per annum across the entire community if 200 samples were taken per year.

The emphasis will remain on desktop assessments as well as educational and collaborative efforts with industry. This helps to ensure broad compliance within the regulated community and reduces the need for at-border compliance interventions. Information collected under the potential reforms to due diligence ahead of importation, would allow the department to best target 'at-border' powers. For example, basic information about the product type, species and claimed area of harvest can identify imports that pose relatively higher risks or appear misrepresented.

Combining sampling powers with seizure and control powers to detain goods would help prevent goods being sold while claims are verified. It is anticipated that seizure and control-order powers would also only be used on a very targeted basis, typically to address higher-risk imports. Most sampling techniques would not require goods to be detained but may require the destruction of a minimal amount of material. The possibility of having goods seized or detained for a period provides a strong incentive to importers to adequately undertake due diligence and ensure they are importing from low-risk pathways.

#### Question 5

Do you support adding 'at-border' powers such as sampling, seizure and goods control to the Act?

**Question 6**

Are there any significant costs associated with sampling, seizure and goods control that industry is likely to face in addition to those outlined?

**Question 7**

What other measures could ensure that goods entering the country or intended for processing can be verified for due diligence claims?

### **5.3.1 Emerging timber identification (sampling) technologies**

Timber identification technologies can support the verification of timber claims, assisting governments and industry to manage compliance with the illegal logging laws. Their use can also support education and outreach with the regulated community and promote legal trade.

A list of commercially available sampling techniques is provided at [Annex 1](#). These techniques could be integrated into the regulatory framework if the legislation was amended to broadly provide for their use. Sampling costs are likely to be borne by the department. Alternatively, importers may wish to undertake their own sampling efforts to ensure the legitimacy of the products they are importing and improve the effectiveness of their due diligence systems. Some importers under overseas timber legality frameworks are already using sampling technologies within their due diligence systems.

**Question 8**

Are there any particular timber-identification technologies that you support for integrating into the illegal logging legislation?

### **5.3.2 Publication powers**

The power to publicise findings around the verification of claims of species and harvest origin, as well as around compliance with due diligence obligations, could be added to strengthen the laws. These powers would help compel compliance from the regulated community. Such powers would only be used where there are repeated or serious instances of non-compliance, from which publicising the issues would compel a constructive response. Such instances would be where an entity repeatedly refuses to undertake due diligence or continues to import a species that sampling has found to be misrepresented, without undertaking further checks or adjusting practices. This provides a compliance response alternative to pursuing criminal or civil sanctions, while also bringing renewed attention to the importance of the laws. These powers have no anticipated regulatory burden, as publication would only reflect the outcome of previously completed compliance activities.

Similar powers already exist in the Commonwealth. For example, the *Renewable Energy (Electricity) Act 2000* gives the Clean Energy Regulator the power to publicise where businesses report shortfalls in renewable energy certificates. Additionally, provisions in the department's *Recycling and Waste Reduction Act 2020* mean the Minister must table in Parliament a list of business they consider should be members of product stewardship arrangements but are yet to join. Such powers are exercised consistently with privacy law protections to ensure identifying information remains protected. Information law protections also ensure that commercial-in-confidence information is protected.

### **5.3.3 Injunction and enforceable undertaking powers**

The Act triggers most of the powers available under the *Regulatory Powers (Standard Provisions) Act 2014* with the exception of injunctions and enforceable undertakings. Enforceable undertakings and injunctions are compliance tools utilised under several analogous regulatory regimes by the department. Although it is anticipated that the powers would only be used in very specific circumstances, they provide regulatory flexibility to both the department and the regulated community. An example would be where an importer has failed to undertake due diligence as required for a regulated timber product. The importer may agree to an enforceable undertaking with the department to complete due diligence in future rather than face other immediate compliance measures. The agreement would set out specific consequences for failing to adhere to the undertaking that are enforceable in a court of law.

## **5.4 Optimising the regulatory burden**

There may be opportunities to further balance the due diligence requirements for low-frequency importers, repeated imports, and low-risk pathways.

### **5.4.1 Low-frequency importers**

The Regulation currently requires importers and processors to establish a due diligence system, then to implement that plan for each product by following one of the risk assessment and mitigation pathways established by the Regulation.

For importers and processors that rarely import or process regulated products, it may be unnecessarily burdensome to establish a due diligence system. The regulation could set out that only businesses with more than a specified number of annual imported or processed product lines must establish a due diligence system. Low frequency importers would still be required to undertake a risk assessment when importing or processing, but not to establish a due diligence system. For example, removing the requirement for one-off importers to establish a due diligence system is expected to reduce the regulatory burden for affected importers by up to \$449 or 23% per annum. This equates to an annual cost saving of roughly 8% across the entire regulated community.

Conversely, stronger requirements could be put in place for more frequent exporters and processors. Strengthened requirements would be aimed at ensuring higher frequency importers have adequate systems in place to undertake due diligence on a regular basis. A third-party auditing approach for due diligence systems, or a licensing system could be instituted for importers or processors dealing in regulated timber products or processing above a certain volume threshold. This would move away from the current reliance on departmental audits and requests for information to identify and resolve issues.

Under the European Union Timber Regulations, third-party 'monitoring organisations' can be accredited by the European Commission and offer off-the-shelf due diligence systems for industry to implement. The monitoring organisations audit industry groups using their due diligence system to verify proper use. Monitoring organisations can act if the due diligence system is not being used correctly, including referring the industry group to the EU Member State's regulatory authority. The regulatory authorities conduct audits of both the monitoring organisations and industry groups, whether they use an off-the-shelf system or their own due diligence system. There is the possibility to implement a similar approach in Australia or to

simply have accredited third-party organisations audit importers' or domestic processors' own due diligence systems.

Licensing is not yet used for illegal logging due diligence systems internationally. The department does implement a licensing system for importing certain ozone depleting substances and synthetic greenhouse gases under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Given the large size of the regulated community, and need to minimise regulatory burden and cost, any strengthened measures will need to be administrable on a wide scale, whilst imposing minimal burden on the regulated community. Careful optimisation allows for streamlining of requirements for regulated entities that may provide for reduced regulatory burden in certain circumstances without fundamentally reducing the outcomes delivered by the laws.

**Question 9**

Do you support removing the due-diligence system requirement for low-frequency importers and processors?

**Question 10**

What other opportunities can you suggest for reducing the regulatory burden for low-frequency importers?

**Question 11**

What additional measures can be introduced to ensure high-frequency importers and processors have adequate due diligence systems in place?

### 5.4.2 Repeated imports

The Regulation currently requires importers to establish a due diligence system, gather information, and undertake a risk identification and assessment process before each import. Requiring an importer to repeat the due diligence process may be unnecessarily burdensome where an importer intends to import the same product from the same supplier, made from the same timber species that was harvested from the same area. This is known as an import pathway.

There is an opportunity to reform the due diligence requirements, and only require one due diligence assessment for an identical import pathway within a set period (e.g. 12 months). Minimal obligations could be imposed to ensure that the importer checks no pertinent elements of the supply chain have changed ahead of each repeat import. A repeated due diligence process would still be required where the importer cannot provide such assurance.

By removing the requirement for due diligence on repeated imports other than a brief check to ensure nothing has changed, there will be a regulatory saving. This reduction is from \$188 to \$92 per consignment and \$1,935 to \$944 per entity. This is a 48% regulatory saving annually.

**Question 12**

How can due diligence requirements for repeated imports be streamlined?

### 5.4.3 Deemed to comply arrangements

Adding 'deemed to comply' arrangements to the Regulation could reduce regulatory burden. A particular import pathway, or certification system could be 'deemed to comply' with the due diligence requirements, meaning the importer has no further due diligence obligations from any product imported or processed under the pathway. Entities could rely on these frameworks to entirely satisfy due diligence requirements.

The Regulation currently allows importers and domestic processors to use certain third-party timber legality frameworks to assess risks associated with a regulated timber product. Two frameworks are recognised under the Regulation, the Forest Stewardship Council and Programme for the Endorsement of Forest Certification systems. A deemed to comply arrangement would mean importers or processors do not need to undertake the additional due diligence steps. A similar proposal was previously disallowed by the Australian Senate in 2018.

A further option is to add a 'deemed to comply' arrangement for products with CITES certification for the applicable species. CITES certification could alternatively be added to the regulations as a third timber legality framework (alongside Forest Stewardship Council and Programme for the Endorsement of Forest Certification).

All these approaches carry inherent risks that need to be carefully managed. This is particularly important for ensuring claims relating to timber species and harvest origins are underpinned by authentic and verifiable documentation, including any applicable certifications. Care is required to ensure that the pathways are not used as an absolute mandate to ignore clear and obvious signals of illegal logging risk. For example, where conflict has broken out in a 'deemed to comply' area, paragraph 12(2)(c) of the existing Regulation is aimed at moderating this risk.

The 2017 Regulatory Impact Statement predicted that establishing deemed to comply arrangements for timber legality frameworks would amount to an annual cost savings of 14% across all imports. The predicted annual cost savings from establishing deemed to comply arrangements for country specific guidelines and state specific guidelines was estimated at 8%. The predicted annual cost savings from establishing deemed to comply arrangements for low-risk countries was estimated to be between 6% to 11%.

#### Question 13

Should the potential 'deemed to comply' arrangements be introduced and how should they operate?

## 5.5 Optimising the products regulated

There may be opportunities to optimise the regulated product's scope. There are currently between 1 million and 2 million annual imports across 20,000 importers captured, as well as Australian-grown raw logs processed by the domestic industry.

As an international leader in implementing illegal logging laws, Australia will look to learn from the types of products other nations have moved to regulate since Australia's laws were first introduced. Concurrently, the ability to deliver effective monitoring and compliance activities across any expanded coverage of products will be carefully considered. There may be opportunities to offset increased product coverage with reduced regulation around lower risk products alongside other earlier discussed potential regulatory savings.

### 5.5.1 Updating the products regulated

Several product types are not currently captured by Australia’s illegal logging laws. One example is musical instruments, which are sometimes manufactured from species at a high risk of illegal logging, including species listed under CITES. CITES listed products are already managed under existing at-border arrangements but their inclusion under the illegal logging laws would aid compliance and monitoring efforts. Another example of a high-risk product not currently regulated is charcoal. While these products’ inclusion will increase regulatory burden, the associated risks may warrant their inclusion.

Other nations are considering adding print media to their regulated imports. Under Australia’s laws, due diligence does not need to be performed on imports of print media goods but must be performed on logs intended to be processed and manufactured into print media products within Australia. This may create an uneven playing field for the domestic industry. The inclusion of print media products would significantly increase the regulated community’s size and throughput. In 2019–2020, by value about 10% of all timber products imported to Australia were printed articles (\$899 million). This would increase the regulatory burden, however, it could assist in achieving compliance and benefit the domestic print media industry.

Due consideration will need to be given to these arrangements to ensure the illegal logging framework remains fit-for-purpose in its product scope. This is important to meet both domestic and international expectations, while ensuring a balance is struck with respect to regulatory burden and delivering a fair market environment.

#### Question 14

Do you support changing the scope of regulated products to add or remove any of the discussed products or other products?

### 5.5.2 Broadening exemptions and reducing burden for low-risk products

Under the United States’ Lacey Act, any product with less than 5% wood content is exempt from their illegal logging regulatory framework. This is referred to as the *de minimis* exemption and is estimated to have reduced the products captured by 10% to 20%. A similar exemption could be introduced to Australia’s framework. It is anticipated the number of products exempted would be far lower in Australia though, due to Australia’s smaller scope of regulated product.

The Regulation currently provides a value-based due diligence exemption for consignments under \$1,000. Raising this exemption from \$1,000 to \$5,000 for example, would reduce the imports subject to due diligence requirements by around 85,000 product lines (6%) annually and the regulatory burden by \$4.2 million (11%) annually. If the exemption was raised to \$10,000, the imports subject to due diligence requirements would reduce by around 163,000 product lines (12%) annually. The regulatory burden would also reduce by \$6.7 million (18%) annually.

Raising the exemption threshold would create a disconnect between the import declarations, set at \$1000, that would need to be addressed. While low-value imports do not necessarily correlate to low-risk, this exemption has the benefit of reducing the regulatory community’s size, which assist in compliance and monitoring efforts.

Improved focus on compliance and monitoring efforts has the potential to improve integrity of the illegal logging laws and deliver improved outcomes in support of its overarching objectives.

There are currently no exemptions for importation of goods for personal use, usually classified by private use (food imports) and the requirement to not sell or supply goods to any other person (therapeutic goods imports). Personal use is accompanied by an import limit. These are most likely to be low volume and low frequency importers that are less capable of undertaking due diligence processes. For example, there is an opportunity to raise the value exemption from \$1000 to \$5000 for personal use imports. Additionally, there is the option to raise the exemption to \$5000 for commercial entities and \$10,000 for personal use.

Increasing exemption thresholds will require changes to the customs declaration. All legal goods other than alcohol and tobacco products, valued at or below \$1000 can be imported without submitting a customs declaration. Having a different threshold for goods regulated under the illegal logging laws will therefore add regulatory burden for brokers and other individuals submitting information through the customs system.

Any regulated product type under 100 years old is currently captured by the framework and importers must meet due diligence requirements for them. There may be scope to reduce this to a more reasonable historical limit for which due diligence is possible to complete. It is not known how much this would reduce the regulatory scope as information about product age within trade flows is not available. The bulk of imports are presumed to be recently harvested and manufactured goods, so the reduction in scope would likely be small.

**Question 15**

Do you support adding any of the product exemptions discussed?

**Question 16**

Do you have any suggestions for reducing requirements around lower-risk products without comprising the effectiveness of the laws?

## **5.6 Additional operational improvements**

### **5.6.1 Clarifying when processing occurs**

Under section 15 of the Act, it is an offence to 'process' a 'raw log' that has been illegally harvested. There are no definitions of 'processing', 'raw log' and 'timber' within the Act. Timber processors are also required to undertake the due diligence requirements ahead of processing raw logs.

Further clarity within the legislation of when processing occurs would benefit the regulated community and administrators. This is due to the breadth of activities that could be considered as processing. Examples include from immediately stripping the branches of a harvested tree onsite to processing at a sawmill. Adding a definition of 'raw log' may also help clarify when processing is taken to occur.

Where processing occurs onsite, the harvester and processor may be the same entity. The current framework effectively requires processors to perform a risk assessment process on their own legal compliance. While this reinforces the importance of good records management, provisions could be added to the framework to clarify obligations in such circumstances.

**Question 17**

What further terms need to be defined under the laws? Should the term 'processing' be defined?

**5.6.2 Addressing further issues of illegality in the supply chain**

At present, both the import and processing prohibitions, and due diligence requirements focus on whether a timber product or log was legally harvested. Along the timber supply chain there are other points where laws of another nation may be breached that also have environmental, social and economic consequences.

Several nations have implemented log exports bans. Export bans may be implemented for various reasons, including to help protect certain tree species against illegal harvesting or overharvesting. Illegally exported logs also often indicate other legality risks associated with the greater supply chain.

Due to the focus on illegal harvesting, the current Act and Regulation are not positioned to ensure products exported from other countries in contravention of such bans are prohibited from importation to Australia.

While there are associated complexities, the regulation could be reworked to ensure that importers are required to check compliance with log export bans through the due diligence process. The Act could also be reworked to prohibit the importation of logs exported in contravention of export bans. A similar prohibition exists under the US Lacey Act.

It is estimated it would take approximately two minutes of effort to check if a country has a log export ban in place for each product line. This information would be made readily available to the regulated community. This would increase the regulatory burden across all imports by \$2.9 million annually or \$14 per consignment subject to due diligence requirements based on 2020 trade data.

**Question 18**

Should the laws prevent logs entering the country from nations with a log export ban in place?

**5.6.3 Adding administrative flexibility**

The Regulation currently incorporate a particular publication version of the country specific guidelines and state specific guidelines in a schedule. Each time these documents are updated in cooperation with the relevant country or state, the Regulation must be updated to incorporate them. This process delays the provision of up-to-date information to the regulated community. The Regulation could be reworked so that updated guidelines are automatically incorporated under the framework, without needing to amend the Regulations on each occasion.

**Question 19**

How can the department add flexibility to the legislation, including improving the use of guidance materials?

# Glossary

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<b>Term</b>	<b>Definition</b>
Country specific guidelines (CSG)	A document developed by the department in partnership with key trading partners that assists importers to understand the legal frameworks governing timber harvesting in the country of supply.
Domestic processor	An entity that processes domestically grown raw logs into another form.
Due diligence	In the context of Australia's illegal logging laws, the process of assessing and managing the risk that a timber product includes, or is derived from, illegally logged timber.
Illegally logged	Defined in the <i>Illegal Logging Prohibition Act 2012</i> as timber that has been 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.
Importer	A business or individual who imports regulated timber products into Australia.
Regulated community	Businesses and individuals affected by the <i>Illegal Logging Prohibition Act 2012</i> and its associated regulation. It is generally made up of importers of wood, pulp and paper products into Australia and processors of domestically grown raw logs.
Regulated timber product	A timber product that is regulated under Australia's illegal logging laws. For timber imports, this is defined by their customs tariff code. This includes most timber and wood-based products, such as sawn timber, pulp, paper, veneer, mouldings, wood panels, flooring, medium-density fibreboard, particle board, plywood and furniture.
Regulated risk factors	An evaluation method, as set out in the <i>Illegal Logging Prohibition Regulation 2012</i> , that allows an importer to assess the likelihood of a product containing illegally logged timber.
State Specific Guideline (SSG)	A document negotiated by the department with Australian state counterparts that assists domestic processors to understand the legal frameworks governing timber harvesting in that state.
Statutory Review of the <i>Illegal Logging Prohibition Act 2012</i>	A review of the first five years of operation of the <i>Illegal Logging Prohibition Act 2012</i> was required to be provided to the responsible Minister by 29 November 2019.
Timber legality framework	An independent third-party certification scheme, or licence, that is listed in Schedule 2 to the <i>Illegal Logging Prohibition Regulation 2012</i> .
Timber products	For the purposes of this document, includes all timber and wood-based products.

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# Abbreviations

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<b>Term</b>	<b>Full name</b>
the Act	<i>Illegal Logging Prohibition Act 2012</i>
ATIF	Australian Timber Importers Federation
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DART-TOFMS	Direct Analysis in Real Time (Time of Flight) Mass Spectrometry
FLEGT	Forest Law Enforcement, Governance and Trade
FPL	Forest Product Laboratory
FSC	Forest Stewardship Council
GTTN	Global Timber Tracking Network
PEFC	Programme for the Endorsement of Forest Certification
SSG	State Specific Guideline
WWF	World Wildlife Fund

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# Annex 1: Timber ID Technologies

## Wood anatomy analysis

A form of analysis that can be conducted macroscopically or microscopically. Macroscopic wood anatomy analysis is a relatively quick process that assesses the wood grain and larger anatomical features using a hand lens or the naked eye. Microscopic analysis relies on using a microscope to assess small anatomical structures, such as tracheids and vessels, of timber and some composite products (NEPCon 2017).

Various studies on possible improvements to these methodologies and their utility have occurred internationally (Pillet & Sawyer 2015; WWF 2011). The Thünen Centre of Competence on the Origin of Timber in Germany, part of the Thünen Institute, in Germany uses both types of wood anatomy analysis extensively. It acts as a central contact facility for government agencies, timber trade, consumers and associations to verify the wood species and its origin. The Centre hosts the world's third largest wood sample reference library, known as a Xylotheque.

The US Forest Products Laboratory has the world's largest Xylotheque, followed by the Royal Museum of Central Africa in Tervuren, Belgium and the Thünen Institute. The Naturalis Biodiversity Centre in the Netherlands in collaboration with Leiden University are currently setting up a wood anatomy reference collection of ebony woods to build a timber identification tool for customs officers and other stakeholders.

## DNA analysis

Involves comparing the genetic sequences of timber samples and can be used for species identification, population identification and individual log identification (NEPCon 2017). The genetic material in timber can be analysed in several ways to reveal both the species and origin of a sample. DNA barcoding involves isolating a specific DNA strand that is unique to a species and comparing that sequence to a known sample in a reference database (Kaldjian, Cheung & Parker-Forney 2015). The genetic material of timber can also be used to find similarities between closely related samples and samples of similar origin (Kaldjian, Cheung & Parker-Forney 2015). DNA analysis relies on the extraction of enough quality genetic material, typically from untreated and sawn wood products, and the availability of appropriate reference databases.

The International Barcode of Life Consortium and Global Timber Tracking Network (GTTN) are prioritising the development and expansion of timber genetic sequence databases (NEPCon 2017). The University of Adelaide is among a select few institutions internationally that offer timber DNA testing and has piloted the technology for the department. Currently, the tree genera that can be identified using DNA analysis include several highly traded species (NEPCon 2017).

The Thünen Institute of Forest Genetics currently develops methods and reference data for genetic testing of timber as regulatory effort in Germany. The TRACE Wildlife Forensics Network (UK) currently employs DNA analysis as a tool in wildlife law enforcement to find out the species, origin of illegally traded wildlife.

## **Stable isotope testing**

This methodology can be used to identify the origin of a timber sample, rather than the species. Isotopes are differing forms of the same element (e.g., carbon, hydrogen, oxygen and nitrogen) that are absorbed by trees as they grow. The distribution and pattern of stable isotopes in the environment differ between geographical locations and the scientific analysis of them within a timber product can reveal the origin of the sample (Kaldjian, Cheung & Parker-Forney 2015). This technique was used by the Environmental Investigation Agency to produce evidence that illegally logged products were being sold in the United States and the European Union (EIA 2013). It was also employed as part of World Wildlife Fund's (WWF) 'Forests Campaign' to identify products with misrepresented origins traded in the UK (WWF 2015).

The Agroisolab in the UK have been applying their expertise in stable isotope testing to timber for origin identification for the last decade. They continue to apply this methodology to verify the origin of a range of products including furniture, flooring and musical instruments (Agroisolab 2018).

## **Fibre analysis**

DNA and Isotope analysis cannot be used on composite products (such as paper products or pulp) due to the heavy processing necessary for productions. In lieu of such analyses, fibre analysis can determine whether fibres within a composite product are softwood or hardwood, the genus (species in some cases) and the pulping process used. Analysis can involve treating the fibre with a particular chemical to observe and compare reactions, or comparing the samples using a high-powered microscope (WRI 2015). The World Resource Institute is known to use fibre analysis to ensure the paper they buy is legally sourced.

## **TSW Trace Technology**

Source Certain International (SCI) in Western Australia have developed a scientific method for establishing the origin of a product, known as TSW Trace Technology. This technology was originally used to identify the origin of gold in the 1970s. It is now used routinely as a forensic tool and to verify the integrity of supply chains for clients and can be applied to timber and wood product samples. This technology is used to determine the chemical profile of a product, which reflects the geographical location a product was grown as well as the system it was produced in (SCI 2020).

The following are emerging identifying technologies that could be considered for incorporating to the framework at a future point in time.

## **Direct Analysis in Real Time (Time of Flight) Mass Spectrometry (DART-TOFMS)**

This type of analysis requires minimal sample preparation if any, analysing a wide variety of samples in situ. Using a DART-TOFMS machine on site, a timber sample is exposed to heated helium ions that volatilize chemicals on and near the surface. The process provides the chemical composition of the sample, known as a mass spectrum and from this, chemicals can be identified by comparing it to a reference database (Robb-McCord 2016).

The National Fish and Wildlife Forensic Laboratory in the United States curates the largest DART-TOFMS database currently available. This database focuses on the species identification of CITES-listed species and commercially significant timber species, with a softwood specific database currently being refined for genus-level identification (ed. Schmitz, N 2020). Research is continuing to understand the full capability of DART-TOFMS for geographical source identification of wood and wood products.

## **Xylotron platform**

The Forest Product Laboratory (FPL) in the United States Department of Agriculture has developed a machine-vision system to analyse the biological structure of timber. The system uses specific processing algorithms to form a reference database of woods. Human subjectivity is removed from the data acquisition process but is still required for system oversight (FPL 2014). The system known as the Xylotron uses a custom hand-held device, known as a Xyloscope, image analysis and statistical processing software to identify the species of wood samples.

Each of the above-mentioned testing technologies are reliant on comprehensive reference databases and/or wood sample collections to compare unknown samples with known reference samples. There are a multitude of different reference databases and collections held around the world, some more comprehensive than others and most of which are continually growing. It is important to use the right tool for the job, as each technology has a specific use case and there is no one size fits all solution.

Some organisations are working towards a collaborative approach to building global reference databases. The GTTN has created a global network of wood identification experts to find and share information on wood samples and reference data for any wood identification method. A consortium consisting of Agroisolab (UK), Royal Botanical Gardens, Kew (UK), Forest Stewardship Council (Germany), US Forest Service International Programs and the World Resources Institute are currently developing a geo-referenced, open source, global forest sample collection known as WorldForestID. This collection is to be used to investigate claims of timber species and origin to tackle fraud, illegal logging and deforestation.

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