



Senate Rural Affairs and Transport Legislation Committee
Inquiry into the Illegal Logging Prohibition Bill 2011

Supplementary Submission

15 December 2011

The Australian Forest Products Association (AFPA) appreciates the opportunity to provide this Supplementary Submission to the Rural Affairs and Transport Legislation Committee *Inquiry into the Illegal Logging Prohibition Bill 2011*.

This submission is in addition to our previous submission to the Committee's Inquiry into the Exposure Draft and Explanatory Memorandum of the *Illegal Logging Prohibition Bill 2011* in May 2011 and to our Opening Statement/Submission tabled at the Committee's hearing on 14 December 2011.

The draft Bill attempts to address a number of complex policy, monitoring, investigation and enforcement issues. The regulatory response to these issues will be developed by the Working Group in the two year period following the Act receiving Royal Assent. This two year period, as provided in the Bill, relates to the delayed coming into force of Sections 9, 12-14 and 17-18.

Nonetheless, important issues remain to be resolved *during* the 2 year period during which the above regulatory response is being developed, as a consequence of Sections 3-8, 10-11, 15-16 and 19-86 coming into force the day *after* the Act receives Royal Assent.

Essentially following Royal Assent it becomes an offence under the Act, if:

1. Under Section 8 a person imports a thing made from illegally logged timber and the thing is not prescribed by the regulation.
2. Under Section 11 the importation of goods is an offence under section 8 or 9 of the *Customs Act 1901*.
3. Under Section 15 a person processes a raw log into something other than a raw log and the raw log is illegally logged.

While AFPA has been assured that a "high-level" burden of proof will be required of prosecuting authorities to prove that a person "intentionally, knowingly or recklessly"

imported or processed an illegally logged timber product, there remains considerable and significant uncertainty as to what constitutes “intentionally, knowingly or recklessly”.

As the regulation prescribing the requirements for due diligence, under Section 14 for importing regulated timber products and under Section 18 for processing raw logs, is not yet developed and subsequently does not come into force until “after the end of a period of two years” following Royal Assent, the need for interim criteria to guide importers and domestic industry would appear apposite.

Of concern to AFPA is that processors and importers, while essentially operating in a policy and regulatory vacuum pending the development of the regulation, will be vulnerable to prosecution for an offence that has not been adequately defined by the Commonwealth, both in terms of what constitutes an offence and what they reasonably need to do to avoid committing that offence. Moreover, in the absence of such criteria, it will presumably also be difficult for the responsible agencies under the Act to adequately enforce the Act.

A related concern is that there would appear to be a need to adequately define what constitutes “illegally logged”. While the Bill defines this as meaning “harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested”, it is not clear what laws. Are these laws relating to harvesting of timber only? Do they include other factors? Where is the limit?

The Explanatory Memorandum notes that illegal logging is “recognised as a significant global problem due to its impacts on forest degradation, climate change, habitat loss and community livelihoods in developing timber countries. Deforestation and degradation of tropical forests in the Asia-Pacific through illegal logging also constitutes a threat to Australia promoting legal and sustainable forest management in countries of this region”.

From this it would appear that illegal would relate to factors that enable or facilitate the widespread clearing and destruction of forests in an illegal and unsustainable manner. Though it is recognised that the Bill aims to ensure legality, not sustainability which is a higher standard.

As such AFPA considers there is a need for greater clarity in the Bill and possibly for interim criteria to be developed that:

1. Accurately defines what constitutes “illegally logged”. For instance, should the definition be more tightly defined to “harvested in contravention of **forestry** laws in force in the place (whether or not in Australia) where the timber was harvested”?
2. Clarifies what other legal requirements industry needs to comply with e.g. what is required to comply with sections 8 or 9 of the *Customs Act 1901*.
3. States the threshold due diligence requirements beyond which a person could be found guilty of “intentionally, knowingly or recklessly” importing or processing a thing that “is made from, or includes, illegally logged timber”.

Alternatively, if greater clarity and/or interim criteria are unable to be easily defined at this point, would it be appropriate to simply amend that current Bill so that it comes into force, in its entirety, at the end of the period allowed for developing the regulation?

AFPA appreciates the complexity of the issues requiring to be addressed in implementing the Government’s policy, though it feels compelled to highlight the danger of moving to legislate in an area of policy complexity without adequate consideration of, and allowance for, the practicalities of compliance and enforcement.

The Australian forest and forest products industry is already compliant with the highest standards of legality and sustainable forest management. This is a bar far higher than anything being contemplated for imported product. Given the complexity of trade in timber and timber products, we believe that it is incumbent on Government to ensure that industry is provided with an efficient, transparent and low cost regulatory environment that facilitates rather than consternates.

A minor point would appear to be the omission of the words “or certifying” from section 18(5) (b) which are included in section 14(5)(b). As such section 18(5) (b) would read “rules or processes established or accredited by an industry *or certifying* body”.

Finally AFPA supports the Government’s efforts to develop effective policy on halting trade in illegally logged products and is committed to working with the Australian Government and other members in developing such a policy.

**Australian Forest Products Association
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