Submission to the Senate Illegal Logging Inquiry

Greenpeace Australia Pacific
May 2011

Submission to the Senate Standing Committee on Rural Affairs and Transport Exposure draft and explanatory memorandum of the Illegal Logging prohibition Bill 2011

Introduction

Greenpeace is pleased to make this submission to the Senate Standing Rural and Transport Committee's Inquiry into the draft Illegal Logging Prohibition Bill 2011.

Internationally, Greenpeace has worked for many decades to expose illegal logging operations from the Amazon to the Congo and closer to Australia in Indonesia and Papua New Guinea (PNG). Greenpeace, along with organisations such as the Environmental Investigations Agency and WWF, has also been seminal to the development of both the US Lacey Act's 2008 amendments and the development of the EU regulations to prohibit illegal timber.

In Australia, Greenpeace Australia Pacific has been an active proponent of laws to both criminalise and effectively restrict illegal logging imports for over a decade. We have a long history in PNG; both in undertaking solutions based work and investigating and exposing illegal logging.

We have been actively and closely involved with the development of the current government policy and are dedicated to seeing the passage of legislation that supports the initiatives underway in both Europe and the US and for Australia to become a leading country in fighting against the illegal timber trade.

With the benefit of assessing the US and EU models, Australia has a great opportunity to become the world's third market to introduce legislation to ban illegal timber imports and to develop the best legislation of its kind in the world. Australia's geographical, political and economic ties to South-East Asia and the Pacific, where illegal logging is a particular problem for many countries, makes this additionally significant.

Yet the Australian Government is in danger of squandering this opportunity with the unclear, narrow, unworkable and inefficient laws currently proposed.

Greenpeace is deeply disappointed with this Bill. It fails on a number of counts to live up to the standards set in either the US or EU. It fails to adhere to the stated policy objectives of the government and it will not effectively stop illegal timber coming into Australia.

It claims to be a co-regulatory approach but, in all but a few respects, it is a thinly disguised form for self-regulation. It is neither rigorous nor workable.

Greenpeace urges significant amendment to this Bill.

This submission includes a number of components, which reflects Greenpeace's interest and focus on this issue and the disappointment held in respect of this Bill.

Included in this submission:

1. A critique of the Bill listing the key problems and making recommendations for changes
2. An agreed 'Common Platform' from key environment, industry and social groups which includes ten key elements the government should include in its laws to end illegal timber imports as well as a recommendation on the government's procurement policy
3. A history of the policy commitments made by the Federal Labor Party from 2007
4. A paper commissioned by Greenpeace on codes of conduct and illegal timber imports

For further information please contact:

Jeremy Tager
Political and Projects Team Leader
Jeremy.Tager@greenpeace.org
(02) 6257 6516

Reece Turner
Forests Campaigner
Reece.turner@greenapce.org
(02) 9263 0362

Critique of the Illegal Logging Prohibition Bill 2011 (Cth)

While it is good to finally have the text of the Draft Bill, it is deficient in many ways and, when contrasted with the US Lacey Act and the EU Regulation 995/2010, is significantly narrow and weak. Greenpeace could not support it without some significant changes.

The key problems are addressed individually below and recommendations are made under the appropriate areas.

The key problems are:

1. The prohibition will not come into effect immediately
2. No requirement for a declaration
3. The definition of illegal logging is too narrow
4. No fine for the prohibition and no mandatory forfeiture
5. Process for approving certifiers and importers is unclear and weak
6. Weak penalties
7. No enforcement or monitoring for illegal timber
8. The prohibition is too narrow – restricted to the importation
9. Inefficiency and duplication
10. Due Diligence and Codes of Conduct.
11. Transparency and accountability provisions
12. Review provisions
13. Sustainability provisions
14. Government Procurement
15. Over-reliance on Delegated Instruments

---

1. The prohibition will not come into effect immediately

The federal government has made repeated commitments from 2007 to ban the import of illegal timber imports into Australia. In December 2010, Minister Ludwig promised that laws prohibiting illegal timber imports would become effective this year upon immediately once the legislation passes Parliament even if supporting regulations took some years to develop and become operative.[1]

The prohibition in section 6 that sets out the prohibition on importing illegal timber requires, as part of the offence, that the person imports a "regulated timber product" (s6 (1)(b)).

"Regulated timber product" is defined in the Draft Bill as "a timber product prescribed by the regulations" (s5). The prohibition is therefore contingent upon the regulations being created and coming into force. These regulations could take up to two years or even longer to come into effect. This is directly contrasts the commitment made by the federal government that a prohibition on illegal timber would become effective upon commencement of the legislation.[2]

[1] Ministerial Announcement made on Thur 9th December, Bunnings Store, Jandakot, WA.
[2] See (http://www.daff.gov.au/forestry/international/illegal-logging/q-and-a#when)

It is understandable that some details of the regime should be defined within the regulations, but leaving the definition of what timber is covered by the laws renders the Bill ineffective until the regulations come into force. The government has been very clear in both the Regulatory Impact Statement, Ministerial statements and in workshops about which products would be covered by the laws.[3] There is no reason why the Bill cannot prescribe a non-exhaustive list of regulated timber products that could be expanded upon in the regulations, as has been done in the EU.

Recommendations

1. Define regulated timber products in the Bill so that the prohibition for schedule 1 timber takes effect immediately.

2. Set out in the Bill the timeframe in which remaining regulated timber products will be subject to the section 6 prohibition.

2. No requirement for a declaration

The Bill does not include a declaration provision requiring importers to provide information of the timber products they seek to import into Australia. The US Lacey Act has a very clear declaration requirement which has helped drive much of the change in the timber supply chain, by forcing importers and traders to ask important questions of their suppliers. The EU Regulation also clearly states the kind of information that may be required from operators placing timber on the market for the first time. This information includes the species, the supplier, name and address of the recipient trader, the country of origin and even the concession of harvest (Article 6(1)).

Furthermore, Labor's stated election commitment was unambiguous: that it would require disclosure at point of sale.

> "Labor will work with regional governments and industry to: …
>
> Require disclosure at point of sale of species, country of origin and any certification"
>
> *Statement from Prime Minister Rudd, July 23, 2007*

There is no requirement in the Bill that there be any type of declaration or point of sale disclosure. The regulations allow such provisions to be imposed but this is entirely discretionary and in the hands of the certifiers. The Explanatory Memorandum also backs away from the point of sale commitment.

> *Preliminary consideration of this matter indicates that it would be costly for the final sellers to comply with this point of disclosure requirement. Enforcement of the disclosure requirement by government at point of sale would require working with a large set of stakeholders in addition to the group required to fulfil the due diligence obligation. It is therefore proposed that this information is disclosed at the first point of entry onto the Australian market." (EM p.13)*

[3] See page 33 of the Regulatory Impact Statement, http://www.daff.gov.au/__data/assets/pdf_file/0008/1872611/Final_regulation_impact_statement.pdf

The EM does not provide the basis for arguing that declaration at point of sale would be costly for final sellers.

A declaration or disclosure of information requirement is a fundamental element to both the US and EU regimes and is critical to any effort to control illegal timber imports. It has been seen by many as the key driver for change in the US alongside the deterrent element of the prohibition.

Recommendation

3. The Bill should require a declaration; both at point of entry and at points of sale, in line with the US Lacey Act and its timeline for implementation should be included in the regulations.

3. The definition of illegal logging is too narrow

The definition of illegal logging is very narrow under the definition of the Bill. It is restricted by the use of the term "harvested".

Section 5 Definitions
***illegally logged**, in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.*

The use of the term "harvested" could have the effect of ignoring significant cases of illegality – particularly where corruption, bribery or timber smuggling occurs -as well as ignoring disputes over land tenure where indigenous and/or traditional land rights are concerned.

In fact, the Explanatory Memorandum explains that this definition of "illegally logged" is designed explicitly to exclude "technical breaches" such as breaches of logging "codes of conduct" or "where there are disputes over land tenure".

This definition is particularly unsatisfactory because it will ignore, and in fact could legitimise, cases where the traditional landowners' land is logged against their wishes - even where national laws protect their rights.

As the Australian Institute of Criminology has noted, "The logging 'chain of custody' extends from assignment of concessions to extraction, processing and export, and each custodial point is susceptible to corruption." (The Illegal Trade in Timber and Timber Products in the Asia-Pacific Region, AIC 2009)

The narrow definition within the Draft Bill also contrasts starkly with the US Lacey Act, which is much broader:

§ 3372. Prohibited acts

(B) any plant—

(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area;

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants;..

The EU Regulation also uses the term "harvest" but then goes on to provide a broad definition of the "applicable legislation" that is relevant:

Article 2
Definitions
(g) 'illegally harvested' means harvested in contravention of the applicable legislation in the country of harvest
(h) 'applicable legislation' means the legislation in force in the country of harvest covering the following matters:
— rights to harvest timber within legally gazetted boundaries,
— payments for harvest rights and timber including duties related to timber harvesting,
— timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
— third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
— trade and customs, in so far as the forest sector is concerned

Recommendation

4. The definition of illegal timber must be broad and explicitly include all relevant laws such as those that are made clear in the US and EU laws.

4. No fine for the prohibition and no mandatory forfeiture

The penalty specified for the prohibition is five years imprisonment. This is a good deterrent, in line with the Lacey Act. However, there is no fine associated with the penalty, as is the case in the Lacey Act (US$500,000).

Currently, there are no forfeiture requirements. The EM suggests that forfeiture may occur under the Custom Act, but this is not mandatory and seems to leave open the possibility that illegal timber could conceivably be sold on the Australian market even after being identified as illegal.

Recommendations

5. An additional penalty of up to 5000 penalty units should be made available for an offence found under s6 (1) in line with the Lacey Act.

6. Forfeiture of goods should be mandatory and explicit for breaches of section 6, 7 and 8.

5. Process for approving certifiers and importers is unclear and weak

The proposed Bill sets out a process for approving certifiers who will certify importers of regulated timber products (Part 3). This structure is similar to the EU Regulations but is substantially weaker and more vague.

Key weaknesses:

I. There is no process to ensure the neutrality of certifiers. There is no legal reason why an importer could not certify itself under this section.

II. There is no provision that requires timber be checked or monitored by a certifier (or any other entity) at the border or any other place.

III. The Minister must be satisfied that the certifiers will comply with applicable certifier requirements (s9 (2)(a)) and applicable legal logging requirements (s9 (2)(b)), neither of which are mandatory (see sections 11(a) and 13(1)). Both sets of requirements are discretionary and without standards. This is a subjective and non-transparent test, which should be removed and delegated to an independent authority or at least made appealable on detailed criteria. Standards of certification must be part of the Bill, not the regulations.

IV. The Minister may cancel the industry certifier (s10). This is not satisfactory. An independent neutral body (court or tribunal) should be the arbiter for deciding whether a certifier has acted against the law. Determinations should be based on clear criteria in the legislation.

V. There is no assurance as to how certifiers will be audited, reviewed or checked, or by whom and how regularly. There is no complaint mechanism or government oversight.

VI. There is no requirement that certification be reviewed either in light of changing circumstances in other countries or simply in order to determine levels of compliance. As currently worded, certification may operate in perpetuity.

VII. The matters that “may” be included in the timber industry certifier requirements (s12) are discretionary. There are no minimum standards even if requirements on certifiers are imposed.

VIII. The requirements of timber certifiers (s12) should be specified more clearly and minimum mandatory standards are necessary. S12 (1) is couched in optional terms – what it “may” do, rather than requirements or obligations. There is no requirement that standards be developed or imposed.

IX. There are too many “mays” written into Part 3. eg ss 9(1), 10, 11(1), 12, 13(1) and 13(2). The laws should be definitive in prescribing the obligations of the certifiers and the categories of requirements that will be established, etc. Otherwise these are simply voluntary measures. While Greenpeace understands the need for flexibility in developing regulations that are suited to particular sectors and that recognise both the complexity and lack of knowledge of supply chains, flexibility in regulations must be framed within a regulatory structure that provides clear, enforceable standards and ensures that policy requirements are met.

X. S15 allows the Minister to approve an importer/processor independently, but there are no criteria for this approval.

The US Lacey Act has no provisions for accrediting certificating bodies; however, the EU Regulation clearly establishes "Monitoring Organisations" which are responsible for ensuring that companies which place timber on the market abide by a clearly set out "due diligence" framework.

Article 8 of the EU Regulations clearly establishes the monitoring organizations' roles and responsibilities in unambiguous language. It stipulates that monitoring organizations must not have a conflict of interest (Art 7(2)(c)) and requires that government authorities undertake "checks at regular intervals" to ensure monitoring organizations are fulfilling their role (Art 8(4)). There is no such requirement in the Draft Bill.

Under the EU Regulation monitoring organizations may lose their status if the Commission finds that they fail to fulfil clearly laid out functions. (Art 6).

In addition to checks upon the monitoring organizations, the EU Regulations also stipulate that authorities carry out checks to verify that timber operators comply with their requirements (Art 10 (1)) and keep records of such checks (Art 11(1)) which are made publicly available (Art 11(2)). Once again, the Draft Bill fails to set out any such requirements.

Recommendations

7. Amend section 9 so that only the Minister can only approve Certifiers if they have complied with applicable timber industry certifier requirement.

8. Delete section 9(2). Compliance with legal logging requirements should be managed and enforced by the government.

9. Delete section 10.

10. Make the timber industry certifier requirements (sections 11) mandatory and make clear that the regulations *will* (not *may*) set out minimum standards for certifiers, including level of expertise and experience, training requirements and integrity checks.

11. Require that certifiers must be independent and may not have actual or potential conflicts of interest with those they may be certifying.

12. Require regular yearly audits of certifiers and certifications by government and allow for random inspections or checks of certifiers by a government agency/agencies.

13. Made provisions in section 12 mandatory.

14. Make development of legal logging requirements in the regulations mandatory (s.13).

15. Ensure that the matters in section 14 that may be included in the legal logging requirements are made mandatory.

16. Amend section 15-17 so that an independent and expert body conducts approval and cancellation of imports or processing in the absence of a certifier.

17. Risk assessments not are the responsibility of importers or processors (s 14(1)(a)) but general country, timber, concession and sector risk assessment be conducted or commissioned by the government. Each sector may be required to develop a (single) more specific risk assessment for that sector depending on the complexity of the supply chain and the nature of the risks.

6. Weak penalties

The five years penalty for a breach of the prohibition (s6) is laudable; however, this should be accompanied with a penalty as in the Lacey Act. Elsewhere the penalties for breaches are very small (ss 7, 8) and will not act as an effective deterent.

For example, importing timber when not authorised to do so (s7) carries a maximum penalty of 100 penalty units ($11,000 AUD) which is not a sufficient deterrent given the potential value of the timber.

There are no penalties associated with the failure of certifiers to perform their functions.

A key deterrent within the Lacey Act is the strict liability element within the prohibition. Persons found guilty of unknowingly importing illegal timber imports are subject to forfeiture of the timber goods. This should be set out explicitly in the Act.

Recommendations

18. Include maximum fines of 5000 penalty units for a breach of section 6.

19. Illegal timber or timber products must be forfeited (as recommended above).

20. The failure of certifiers to fulfil their requirements or negligence in the carrying out of their obligations should be subject to a fine of up to 500 penalty units for an individual and 1000 penalty units for a corporation.

7. No enforcement or monitoring for illegal timber

A clear and central element to the government's stated election commitment was to:

"Identify illegally logged timber and restrict its import into Australia"
Statement from Prime Minister Rudd, July 23, 2007

While the Bill has created a prohibition on the import of illegally logged timber and wood products, there is no provision within the Bill for ongoing enforcement of this prohibition. The provisions that allow an officer to be appointed do not constitute an enforcement regime. Enforcement and monitoring are needed both in relation to point of import inspections and testing, and of certifiers.

The EM claims that the Bill "provides officers with necessary powers to investigate and collect evidence of suspected offences against the Bill. The purpose of this division is to ensure that adequate enforcement of the Bill takes place." (EM p57).

This is highly misleading. The provisions in the Bill that relate to the powers of officers will not ensure or require that any enforcement take place.

As currently worded, this legislation will not take effect until regulations defining regulated timber are passed. Once passed, there is effectively only one provision that is enforceable - the need to ensure that timber is certified before entering the country. The only mechanism of enforcement is certification from an approved certifier. Certification is of importers, not of imports, and remains valid for an indeterminate period. There is no requirement that even certification is checked at the point of import. There is no detail on whether the prohibition will be enforced, or the frequency or intensity of enforcing the prohibition, which depends solely upon diligence by the authorities.

As the Bill is currently drafted, the certifier could conceivably be an importer certifying itself without a single standard or criteria. Additionally, the only mandatory government involvement in this process is that the Minister must be satisfied that the certifiers will comply with applicable certifier requirements (s9 (2)(a)) or applicable legal logging requirements (s9 (2)(b)). It is not, however, mandatory to prepare either certifier requirements or legal logging requirements and, if prepared, there are no standards governing those regulations.

Equally, there are no obligations on the certifier to ensure that imported timber is legal. The Minister must only be satisfied that the certifier will comply with regulatory requirements that do not currently exist.

The primary enforcement role appears to be for an industry body, which will be responsible for enforcing the Codes of Conduct. At least that is what the EM suggests (EM p13), but there are no provisions in the Bill that create an industry body or charge it with any responsibilities or powers.

As the Australian Institute of Criminology has identified in its work on environmental crimes, “a weak chain of enforcement also opens the flow-through of illegal goods to corruption, in the form of fraudulent declarations, forged documents and bribery.” The AIC identifies forged documents as one of the simplest and primary methods for “propagating environmental crime” including illegal logging.

Without clear enforcement at the border that includes a requirement for declarations and the training of staff to be aware of and able to identify forged documents, the good intentions behind the bill may become worthless.

The law should also allow standing for private citizens to take up civil cases against individuals and corporations that can be shown to have committed an offence under the act. There are a number of examples within Australian legislation that explicitly provide for open standing. The Trade Practices Act 1974 (Cth) is one example. Most NSWs environmental legislation is similar – most notably, section 123 of that State’s Environmental Planning and Assessment Act 1979. The EPBC Act has limited open standing (s 475) which allows greater scope for public interest litigation than many other Acts.

Recommendations:

21. The Bill must identify that enforcement will occur at the point of import.

22. The enforcement regime will be established in regulations to be developed within six months of Royal Assent.

23. Open party standing for environmental organisations and individual citizens should be explicitly provided for to take action to remedy an offence under the Act.

24. All enforcement responsibilities will rest with government although remain open to third parties to additionally take up breaches.

8. The prohibition is too narrow

The prohibition in Section6 reads:

6 Importing regulated timber products

(1) A person commits an offence if:

a. *the person imports a thing; and*
b. *the thing is a regulated timber product; and*
c. *the thing is, is made from, or includes, illegally logged timber*.

While this legislation is rightfully targeted at importation, the prohibition does not extend to other links along the supply chain.

The prohibition should cover any trade in illegal timber or the placing of timber on the market. It should ensure that all those involved in and benefitting from a trade in timber and timber products are responsible for ensuring that all imported timber is legal.

For example, the US Lacey Act has a much broader prohibition:

§ 3372. Prohibited acts

…It is an unlawful for any person-
to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce –
(B) any plant—
(i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates—
(I) the theft of plants;
(II) the taking of plants from a park, forest reserve, or other officially protected area;
(III) the taking of plants from an officially designated area; or
(IV) the taking of plants without, or contrary to, required authorization;
(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or
(iii) taken, possessed, transported, or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants;

Greenpeace is concerned that the failure to include Australian logging and trading within the Bill will result in different standards and penalty regimes applying. This could raise WTO issues and will certainly raise equity issues.

The prohibition within the EU Regulations is narrower than the US Lacey Act but still captures all domestic timber as it intervenes when the timber is "placed on the market" for the first time.

> *Article 4*
>
> *Obligations of operator*
>
> *1. The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited.*

Although the prohibition in the EU applies only to the first handler of the timber, all subsequent traders in the supply chain are required to retain records of a "one-up, one- down, chain of custody" (Article 5 '*Obligation of traceability'*)

Recommendation
25. Amend section 6(a) so the prohibition covers any trade and not just importation, as in the Lacey Act.

9. Inefficiency and duplication

A significant percentage of the policy implementation proposed in this bill will be undertaken by the industry.

This includes risk assessements, audits, enforcement, certification and codes of conduct (although as we have noted, none of these implementation measure is actually required in the Bill).

There is significant potential for duplication and inefficiencies in this structure.

For instance, under section 12, Timber Industry certifier requirements (which are not mandatory) may include a requirement that the certifier develop and implement codes of conduct. It is unclear how many codes could be developed and how the standards might be harmonised. It could be imagined that circumstances would arise where importers shop around for the certifier offering the simplest code of conduct or the code that has the lowest standards.

Under section 13, regulations may be developed that may include requirements for importers or processors (s 14) to undertake risk assessments. Numerous risk assessment covering the same sector covering similar risks are entirely possible – and there are no measures to either avoid duplication or to ensure that there are standards to which all risk assessments must conform. Once again, this invites 'forum' shopping by businesses and may reward certifiers who offer the least rigorous code.

Some of these functions would be more efficiently addressed by government. In the case of potential requirements such as risk assessments, some specific and business specific level of assessment may be necessary, but risk assessements relating to specific countries, corporations, or concessions would more effectively and efficiently

be carried out by government or a third party commissioned by government. These risk assessments will require regular review. Risk assessments relating to particular sectors may be best done by industry, in which case there should be a single agreed risk analysis, to which all members of the sector are subject.

Recommendation
26. Ensure that processes required in the Bill are efficient and will not result in multiple, diverse or potentially conflicting provisions.

10. Due Diligence and Codes of Conduct.

The government has indicated in the EM that they see Codes of Conduct as being the mechanism for satisfying due diligence requirements under this Act.

The government in outlining their vision of a co-regulatory model, indicated that co-regulation "would contain two regulatory elements – a prohibition on illegal timber imports and a requirement for companies or other organisations placing timber on the market in Australia to be signatories to Commonwealth-accredited codes of conduct for undertaking due diligence in verifying the legal origins of timber products." (EM, p12). This latter 'regulatory element' is not contained in the current Bill.

The Codes would be the basis for satisfying a due diligence requirement. "As part of the code requirements, signatories would need to provide information on the species, country of harvest and any certification in their annual compliance reports." (EM, p13). This is not a requirement in the current Bill.

Further (p13) the EM notes that "To gain accreditation, codes would be administered by industry-run code administration bodies which would require individual signatories to have their due diligence systems assessed by third-party independent auditors each year and for those audit reports (and their recommendations) to be provided to the code administration body." This is not in the current Bill.

"On codes of conduct, it is intended that these will be developed by industry following introduction of the regulations. The intention of any code of conduct will be to set out legality verification requirements to aid industry to comply with legal logging requirements." (EM p52)

The EM claims that "similar to the EU due diligence regulation, this approach seeks to ensure that all suppliers of domestic and imported timber in Australia undertake assessments of the risks of sourcing illegally-harvested timber products and employing legality verification measures commensurate with the level of risk identified." (EM p27)

Greenpeace has several major concerns with the due diligence provisions in the Bill.

At a general level, Greenpeace would support co-regulation if the co-regulation properly recognizes the different and appropriate roles of government and industry in the process. It is critical that certain roles remain in the hands of government:

- Enforcement
- Monitoring

- Penalties
- Providing reliable data and information (this relates to things such as risk assessments)
- Avoiding duplication and inefficiencies

The government should be responsible for setting a number of minimum standards so that industry receives clear and unambiguous guidance in developing their due diligence provisions.

Industry should be responsible for developing the most efficient mechanisms to meet the policy objectives and standards that are clearly set out in legislation.

This Bill does not achieve this. In fact, the current Bill is much closer to a self - regulatory model.

It should be noted that none of the structural components that the EM outlines above in relation to codes are actually in the Bill. There is no due diligence requirement. There is no requirement that codes be produced, nor that they are of any particular quality or standard if they are drafted. There is no declaration requirement, relating to species etc.

Neither enforcement nor industry self-enforcement of the code is set out in the current bill. However, Greenpeace is deeply concerned that government would propose a self-enforcement scheme relating to the due diligence requirements. We attach work we have commissioned looking at codes of conduct and self-regulation.

This study calls into question the efficacy of self-regulation generally (and points out the almost total absence of analysis or auditing of the approximately 30,000 codes of conduct estimated to exist in Australia). It also sets out criteria by which self-regulatory models should be assessed. The trade in illegal timber and the policy objectives of the government are not conducive to a self-regulatory model (see section 5.4.1)

Recommendations

27. The due diligence requirement must be explicit and mandatory and must include basic due diligence requirements, such as a declaration and chain of custody and legality verification documentation.

28. The government is made explicitly responsible for investigating and securing up to date and accurate information on supply chains, timber product issues, etc so that risk analyses are accurate and current.

11. Transparency and accountability provisions

The Bill makes no provision for transparency or accountability.

Recommendation
29. The following matters should be subjects of both transparency and accountability provisions in the Bill
- Monitoring, eg annual reporting on inspections, accuracy of declarations, ascertaining certification, audits, reports etc
- Enforcement; eg annual report on enforcement measures undertaken
A real time registry of declaration forms
- Due diligence standards and codes of conduct should be published on the DAFF website
- Names and qualifications of certifiers should be available on the DAFF website

12. Review provisions

A review of the effectiveness of the legislation is a critical component missing from the current Bill. Review provisions must also provide for collection of data during the intervening period to properly inform the review. This might include more detailed analysis of imports, investigation of trends in illegal timber imports etc.

The EM flags the possibility of review within the EM, specifically of the due diligence requirements after 5 years (EM p28).

Recommendation
30. The entire Act is reviewed within five years of Royal Assent, specifically in terms of its effectiveness at reducing the import of illegal timber and timber products, identifying research needs and assessing costs of the programme.

13. Sustainability provisions

The Australian Government's policy objective 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*. (EM, p11) The Bill, however, makes no provision for sustainability.

At some future time, it would be possible to consider whether the legality verification requirement could be replaced with due diligence applied to the sustainability of the underlying forestry practices.

The EM suggests this could be done in a 5 year review of the due diligence requirement (EM pp28-29) but no provisions are included in the Bill.

31. The objects clause should reflect the policy objective of moving towards sourcing only sustainable timber.

32. The review provisions should require that improving the sustainability of timber is a standard against which performance and potential changes in the Bill should be measured and assessed.

14. Government Procurement

Government procurement policy is not mentioned in the EM nor contained in the Bill. The Australian Government is a major purchaser of timber and timber products and its leverage as a consumer in driving both legality and sustainability is substantial. Current procurement policies relating to timber are poor. There is no requirement that timber be legal or sustainable and there is no requirement that procurement contracts make any efforts to ensure that timber used in Australian Government funded projects is legal.

Recommendations

33. The Committee recommends that the government amend its procurement policy to explicitly include in procurement contracts a provision that requires suppliers demonstrate the legality of the timber and timber products that they use.

34. The Committee recommends that the government amend its procurement policy to be able to demonstrate a move towards procuring only sustainable timber and timber products and that progress must be audited every 5 years.

15. Over-reliance on Delegated Instruments

The extent to which the government's policy intent is being left to delegated or subordinate instruments is quite concerning. Regulations that may have significant effect on the affairs of industry, the efficacy of the legislative scheme and the trade in illegal timber are being left to delegated instruments. There is no clarity about whether such instruments will be created and no guidance in the legislation that gives any certainty to the public or industry that the government's policy intention will in fact be implemented. There is an indication from the explanatory memorandum that substantial responsibilities will be delegated under the regulations, although there is no clarity regarding the nature and scope of those delegated responsibilities.

Leaving the vast majority of obligations to subordinate legislation does not conform to best legislative practice, which recognises the importance of ensuring that the role of Parliament in reviewing and passing legislation is respected and maintained.

The Administrative Review Council, which has examined delegated legislation, has recommended (ARC Report 35, see Recommendation 2) that a number of matters be directly legislated and not left to subordinate instruments, including:

- *definitions which can be altered or, in some cases, established by regulations; and provisions which enable exemptions to be granted by regulation, or other legislative schemes which can be varied by regulation'. This principle has been frequently invoked by the Committee to draw attention to provisions which permit amendment of the empowering Act by delegated legislation, commonly known as Henry VIII provisions*
- *procedural matters that go to the essence of the legislative scheme; and*

Additionally, delegation of authority is not favoured in circumstances where the delegation

- *is vague or imprecise;*

- *goes beyond the mere filling of details; or*
- *deals with matters which are not in principle suitable to be dealt with otherwise than by parliamentary enactment. (ARC Report 35, pp11-12).*

Substantial definitional issues are unclear in the Bill and may well be defined, altered or established in a delegated instrument (eg the definition of illegal timber). The Bill contains so few enforceable provisions that the legislative scheme could be dramatically altered by regulations. The EM suggests that the due diligence scheme, which is the core of the scheme to eliminate imports of illegal timber, will be entirely defined, described, implemented and enforced in regulations. This completely bypasses Parliamentary processes and oversight.

The EU Regulation can be viewed in comparison as a legal instrument similarly designed to provide structure to further legal requirements but which goes much further in providing clarity as to what trade and behaviour will be regulated and what criteria and factors will be relevant.

Recommendation
35. The Committee recommend that the government include significantly more clarity and structure within the Bill so as to clearly define what activity the legal regime will regulate and how this will be monitored and enforced.

Summary of Recommendations:

1. Define regulated timber products in the Bill so that the prohibition for schedule 1 timber takes effect immediately

2. Set out in the Bill the timeframe in which remaining regulated timber products will be subject to the section 6 prohibition.
3. The Bill should require a declaration; both at point of entry and at points of sale, in line with the US Lacey Act and its timeline for implementation should be included in the regulations.
4. The definition of illegal timber must be broad and explicitly include all relevant laws such as those that are made clear in the US and EU laws.
5. An additional penalty of up to 5000 penalty units should be made available for an offence found under s6 (1) in line with the Lacey Act
6. Forfeiture of goods should be mandatory and explicit for breaches of section 6, 7 and
7. Amend section 9 so that only the Minister can only approve Certifiers if they have complied with applicable timber industry certifier requirement.
8. Delete section 9(2). Compliance with legal logging requirements should be managed and enforced by the government.
9. Delete section 10.
10. Make the timber industry certifier requirements (sections 11) mandatory and make clear that the regulations *will* (not *may*) set out minimum standards for certifiers, including level of expertise and experience, training requirements and integrity checks.
11. Require that certifiers must be independent and may not have actual or potential conflicts of interest with those they may be certifying.
12. Require regular yearly audits of certifiers and certifications by government and allow for random inspections or checks of certifiers by a government agency/agencies.
13. Made provisions in section 12 mandatory.

14. Make development of legal logging requirements in the regulations mandatory (s.13).
15. Ensure that the matters in section 14 that may be included in the legal logging requirements are made mandatory.
16. Amend section 15-17 so that an independent and expert body conducts approval and cancellation of imports or processing in the absence of a certifier.
17. Risk assessments not are the responsibility of importers or processors (s 14(1)(a)) but general country, timber, concession and sector risk assessment be conducted or commissioned by the government. Each sector may be required to develop a (single) more specific risk assessment for that sector depending on the complexity of the supply chain and the nature of the risks.
18. Include maximum fines of 5000 penalty units for a breach of section 6.
19. Illegal timber or timber products must be forfeited (as recommended above).
20. The failure of certifiers to fulfil their requirements or negligence in the carrying out of their obligations should be subject to a fine of up to 500 penalty units for an individual and 1000 penalty units for a corporation.
21. The Bill must identify that enforcement will occur at the point of import.
22. The enforcement regime will be established in regulations to be developed within six months of Royal Assent.
23. Open party standing for environmental organisations and individual citizens should be explicitly provided for to take action to remedy an offence under the Act.
24. All enforcement responsibilities will rest with government although remain open to third parties to additionally take up breaches.
25. Amend section 6(a) so the prohibition covers any trade and not just importation, as in the Lacey Act.
26. Ensure that processes required in the Bill are efficient and will not result in multiple, diverse or potentially conflicting provisions.
27. The due diligence requirement must be explicit and mandatory and must include basic due diligence requirements, such as a declaration and chain of custody and legality verification documentation.
28. That the government is made explicitly responsible for investigating and securing up to date and accurate information on supply chains, timber product issues, etc so that risk analyses are accurate and current.
29. The following matters should be subjects of both transparency and accountability provisions in the Bill:
- Monitoring, eg annual reporting on inspections, accuracy of declarations, ascertaining certification, audits, reports etc
- Enforcement; eg annual report on enforcement measures undertaken
- A real time registry of declaration forms
- Due diligence standards and codes of conduct should be published on the DAFF website
- Names and qualifications of certifiers should be available on the DAFF website
30. The entire Act is reviewed within five years of Royal Assent, specifically in terms of its effectiveness at reducing the import of illegal timber and timber products, identifying research needs and assessing costs of the programme.
31. The objects clause should reflect the policy objective of moving towards sourcing only sustainable timber.
32. The review provisions should require that improving the sustainability of timber is a standard against which performance and potential changes in the Bill should be measured and assessed.

33. The Committee recommends that the government amend its procurement policy to explicitly include in procurement contracts a provision that requires suppliers demonstrate the legality of the timber and timber products that they use.
34. The Committee recommends that the government amend its procurement policy to be able to demonstrate a move towards procuring only sustainable timber and timber products and that progress must be audited every 5 years
35. The Committee recommend that the government include significantly more clarity and structure within the Bill so as to clearly define what activity the legal regime will regulate and how this will be monitored and enforced.

Common Platform

On 21 March 2011, a number of timber industry organisations, timber importers, retailers and traders along with environment and social justice organisations held a Roundtable to discuss key components that should be included in effective legislation to ban illegal timber imports in Australia.

The organisations were all involved in the formation of the 'Joint Statement for Eliminating Illegal Forest Products in Australia', a position released in May 2009.[4] The 'Joint Statement' was used in part to urge the federal government to come good on its 2007 election commitment.

The Roundtable heard from experts on the Lacey Act and the EU Timber Regulations and also reviewed the Australian Government's commitment and the material presented in presentations earlier in the year.

The outcome is the 'Common Platform' (below).

Below is a review of the Bill as compared to the elements within the 'Common Platform'.

Comparison of the government's Illegal Logging Bill with the Common Platform

1. Objective of the Legislation Eliminating illegal logging is a critical first step towards achieving sustainable forestry globally. The Act should seek to help promote ecologically sustainable and socially just timber and wood products and to eliminate other forms of timber and wood products.This should be stated within the Act's object clauses.	X	There is no stated objective within the Bill.
2. Definition of Illegal Timber & Wood Products The term 'illegal timber and wood products' be defined broadly to capture all situations where timber has been harvested and traded in contravention of the laws of the country of origin or treaties in force in the country of origin or Australia.	X	The definition of illegal logging is very narrow. Much more so than the US Lacey Act or EU Timber Regulations.
3. Enforcement and Monitoring The Federal Government enforce the prohibition and due diligence requirements and not leave this responsibility to industry. Enforcement and monitoring should be substantially resourced.	X	There is no detail on how the Federal Government would enforce the prohibition or other requirements. There is great detail on the power of officials to enter premises, etc but no clarity on resourcing compliance.
4. Penalties Appropriate penalties be applied to provide an effective deterrent against those who knowingly or negligently break the law or fail to show due diligence.	1/2	The 5 year prison penalty for breaching the prohibition on illegal timber imports (s6) is laudable but requires a financial penalty as well. Other offences (ss7, 8) carry very small fines ($11,000 each)' which are insufficient to offer a deterrent.

[4] Available here: http://www.goodwoodguide.org.au/assets/docs/JointStatement.pdf

5. Risk Assessment The Federal Government commission an independent assessment of the risk levels of timber and wood products from export countries (or regions) to assist industry in satisfying due diligence. This should be updated as required.	X	S14 states that importers or processors may be required to assess the risk of importing timber products. There is nothing to indicate Government would assist or be involved in this assessment.
6. Public Standing The Act includes a provision allowing any interested party to take action against a breach under the Act.	X	There is no provision for public standing.
7. Review / Sustainability A review of the efficacy of the laws within 5 years from the commencement of the Act. The review should examine and make recommendations on how to move the required standard towards sustainability.	X	There is no provision for a review.
8. Industry Assistance The Federal Government provide resources to industry to assist with compliance.	?	There is no indication from the Bill on this but that is to be expected. Would require a commitment from the Minister.
9. Harmonisation To the extent possible, the laws should be harmonised with the US Lacey Act and EU Timber Regulations	X	The Bill is markedly different from the US and EU regimes in many ways. Most notably the definition of 'illegal timber' and the prohibition is targeted at 'imports'. There is a real lack of clarity for industry as to their responsibilities and what might constitute due diligence.
10. Government Procurement Policy The parties below also urge the Federal Government and other arms of government to take a leadership role in moving towards sustainable timber by adopting and implementing procurement policies that go beyond one requiring legal verification. Such procurement policies should require a documented chain of custody certification that contains standards concerning environmental sustainability and social justice.	?	There is no indication from the Bill on this but that is to be expected. Would require a commitment from the Minister.

Eliminating Illegal Forest Products in Australia

COMMON PLATFORM

A joint forest industry, wood product sector and civil society position

The following parties, who have been prominent in promoting an end to the importation and trade of illegal timber and wood products by advocating action from industry, consumers and the Federal Government, reaffirm the 2009 Joint Statement for the Elimination of Illegal Timber Imports and commit to this more detailed Common Platform.

We congratulate the Federal Government and the opposition parties for committing to measures that would ban the importation and trade of illegally procured timber and wood products. We also welcome requirements for importers to demonstrate due diligence.

We recommend the following elements be part of the Federal Government's approach, particularly in formulating the legislation. We urge that industry and civil society continue to be involved in formulating the laws.

Recommended Elements for Effective Laws

1. Objective of the Legislation

Eliminating illegal logging is a critical first step towards achieving sustainable forestry globally. The Act include, within its object clauses, an objective to help promote ecologically sustainable and socially just timber and wood products and to eliminate other forms of timber and wood products.

2. Definition of Illegal Timber & Wood Products

The term 'illegal timber and wood products' be defined broadly to capture all situations where timber has been harvested and traded in contravention of the laws of the country of origin or treaties in force in the country of origin or Australia.

3. Declaration of Timber & Wood Products

The laws contain a requirement for importers to disclose specified information at the point of importation. This information could be supplied electronically or included within existing customs forms. Such information would include the species, country of origin, quantity or value and any supporting documentation of legal verification or certification where available.

4. Enforcement & Monitoring

The Federal Government enforce the prohibition and due diligence requirements and not leave this responsibility to industry. Enforcement and monitoring should be substantially resourced.

5. Penalties

Appropriate penalties be applied to provide an effective deterrent against those who knowingly or negligently break the law or fail to show due diligence.

6. Risk Assessment

The Federal Government provide support to industry by commissioning an independent risk assessment program that considers risk levels of timber and wood products from export countries or regions. The risk assessment must remain independent of government and be updated as required.

7. Public Standing

The Act include a provision allowing any interested party to take action against a breach under the Act.

8. Review / Sustainability

A review of the efficacy of the laws within 5 years from the commencement of the Act. The review should examine and make recommendations on how to move the required standard towards sustainability.

9. Industry Assistance

The Federal Government provide resources to industry to assist with compliance.

10. Harmonisation

To the extent possible, the laws should be harmonised with the US Lacey Act and EU Timber Regulations.

11. Government Procurement Policy

The parties below also urge the Federal Government and other arms of government to take a leadership role in moving towards sustainable timber by adopting and implementing procurement policies that go beyond one requiring legal verification. Such procurement policies should be built on criteria that are consistent with and supportive of forest management and chain-of-custody certification and social justice.

AUSTRALIAN CONSERVATION FOUNDATION

FORESTRY

bda BUILDING DESIGNERS AUSTRALIA

BUNNINGS

DoubleHELIX It's in our nature

FANTASTIC FURNITURE

FSC FSC-SECR-0140

GREENPEACE

IKEA

Kimberly-Clark Innovative ideas by caring people

SCA

Simmonds Lumber Pty Limited

WWF

THE WILDERNESS SOCIETY

Uniting Church in Australia SYNOD OF VICTORIA AND TASMANIA

BRIEFING:
ALP Policy on Illegal Timber Imports

Greenpeace Australia Pacific
May 2011

A history of the Labor Government's policy since 2007

The ALP has made a series of policy and ministerial statements on stopping illegal timber imports, the first being in July 2007.

Below is a summary of the commitments made by the ALP since July 2007 and other key events, which helped influence the issue. An appendix includes the full details (where available) of relevant documents.

Chronology of ALP Policy

Appendices

ALP's election promise – July 2007

In July 2007, in the lead-up to the federal election, then opposition leader Kevin Rudd committed the ALP to a new policy to ban the import of illegal timber imports.

> *Labor will encourage sourcing of forest products from sustainable forest practices and seek to ban the sale of illegally logged timber imports.*

Importantly, Mr Rudd was explicit in how illegally-logged timber imports would be stopped from entering Australia by committing Labor to:

> *"Identify illegally logged timber and restrict its import into Australia"* and
>
> *"Require disclosure at point of sale of species, country of origin and any certification"*

Environment groups, including Greenpeace, congratulated the ALP on this policy at the time. The full text of this policy is included at the end of this briefing as Appendix 1.

Evidence of backsliding – 2008, 2009

In early 2009 Greenpeace became concerned that the Australian Government was not committed to following through on its commitment and that voluntary measures could be substituted for the promised 'ban' on illegal timber.

- A newspaper report in February revealed that members within the Department of Agriculture, Fisheries and Forestry (DAFF) are "seriously agitating" for a voluntary program.[1]
- In Senate Estimates on 25 May 2009 the General Manager of Forestry, John Talbot acknowledged that the Government is looking at:

  "…a range of things from no regulation through to black-letter law regulation."[2]
- A letter from Minister Tony Burke to Senator Bob Brown dated 27 May 2009 reveals that the Government was developing a draft code of conduct for timber product importers.

In response to these concerning developments, Greenpeace organized a Joint Statement with key industry groups and NGOs. US Congressmen also encouraged Prime Minster Rudd to follow through on his election promise.

Joint Statement on Eliminating Illegal Forest Products – June 2009

In June 2009 a Joint Statement from the timber industry, environment groups and faith-based and social organisations was publicly released calling for the Australian Government to take the lead in combating illegal timber imports. This alliance includes major retailers such as Bunnings, IKEA, Danks (Mitre 10) and Fantastic Furniture, timber importer Simmonds Lumber, timber lobby groups Timber Queensland and the Australian Plantation Products and Paper Industry Council and a wide range of environment and social groups from Greenpeace, WWF, Oxfam, to the Synod of the Uniting Church. A copy of the Joint Statement can be found attached to this briefing.

US Congressmen write to PM Rudd urging action on illegal timber – December 2009

In December 2009, 11 members of the US Congress wrote directly to Prime Minister Rudd encouraging him to follow through on his election promise.[3] In 2008 the US had brought in amendments to the Lacey Act making it an offence to trade in illegal timber, the first act of its kind anywhere in the world.

These developments and other campaign efforts by social groups, unions and a strong campaign by the Uniting Church led then Minister Burke to reject a report commissioned by DAFF to inform a Regulatory Impact Statement (RIS). The report, written by the Centre for International Economics (CIE), argued against regulatory measure to stop illegal timber imports.

---

[1] *Timber import restriction snagged in trade dispute*, The Age, February 23 2009, http://www.theage.com.au/national/timber-import-restriction-snagged-in-trade-dispute-20090222-8epu.html

[2] Rural and Regional Affairs and Transport Legislation Committee, Senate Estimates, Monday 25 May, 2009, http://www.aph.gov.au/hansard/senate/commttee/S12043.pdf

[3] *Stop importing illegal timber, US tells Rudd*, Fairfax News, Dec 14, http://www.brisbanetimes.com.au/environment/stop-importing-illegal-timber-us-tells-rudd-20091214-ksd4.html

The Labor Government rejects the CIE report and confirms its commitment to election promise – February 2010

A final report to inform the RIS commissioned by DAFF and produced by the CIE was released in mid-February 2010 recommending against regulatory measures to prevent the import of illegal timber.[4] This was despite criticism of the draft report released in October by a wide range of stakeholders including a damning submission from the European Commission that found serious deficiencies and inaccuracies within the economic analysis in the report.[5]

On 18 February, in response to fresh calls from Greenpeace and the timber industry for the government to deliver on its election promise, Minister Burke went on national radio to say that the government was intent on rejecting the final recommendation of the CIE Report and instead the government would seek to "make it an offence" to import illegal timber.[6]

Minister Burke then sought to focus on this issue by commissioning a number of reports and engaging with key stakeholders, including Greenpeace. In August 2010, in the lead-up to the federal election he re-committed to the 2007election promise, further refining what the government would do if it were re-elected. Greenpeace was present at this announcement and provided support based upon the strong relationship and trust built by Minister Burke and his office and the commitment announced in August 2010.[7]

ALP Election promise No.2 – August 2010

Minister Burke was clearer in defining exactly what Labor would do if it were re-elected. In his speech the Minister committed, amongst other things, to:

- Introduce "…*legislation which will carry with it criminal penalties for those who are involved in importing illegally logged timber*"[8]
- *"Require timber suppliers who place timber onto the Australian market at the first point of entry, being Australian timber importers and domestic processing mills, to undertake a process of due diligence to verify the legal origins of timber and to disclose species, country of harvest and any certification*;"[9]

The ALP returned to lead government, albeit a minority government, with the support of independents. In a cabinet re-shuffle, Mr Ludwig took over as the Minister for Agriculture, Fisheries and Forestry. Soon afterwards Minister Ludwig made an announcement in December where he launched the government's final RIS at a Bunnings store in Perth. The announcement was supported and welcomed by a broad range of industry, NGOs, unions and social groups.

Ministerial statement – December 2010

The announcement by Minister Ludwig revealed little further detail but reaffirmed a number of commitments (once again) made by the Labor Government.
It is worth noting that the Minister reaffirmed that:

"Companies that first place timber products onto the Australian market will be required to undertake a due diligence procedure to verify the legal origins of their timber and to disclose species, country of harvest and any certification in accordance with the legislation."

---

[4] http://www.thecie.com.au/news.asp?nID=41

[5] *EU raps illegal-timber research*, Fairfax News, Jan 17, http://www.watoday.com.au/environment/eu-raps-illegaltimber-research-20100117-med1.html. Full text of the EU Submission here: http://www.thecie.com.au/RIS illegal logging/17 - EU submission.pdf

[6] Interview with Fran Kelly, Radio National Breakfast, 18 February: http://www.maff.gov.au/transcripts/transcripts/2010/february/tony_burke_-_interview_with_fran_kelly,_radio_national

[7] Transcript of the announcement made by Minister Burke, accompanied by Greenpeace CEO Linda Selvey, 10 August , 2010: http://www.alp.org.au/federal-government/news/transcript--tony-burke,-press-conference,-melbourn/

[8] Ibid

[9] Ibid. Also see talking points for Minister Burke for 10 Aug 2010 sent by Minister Burke's office on 9 August 2010

Release of the Exposure Draft Illegal Logging Prohibition Bill 2011 – March 2011
On 23 March, Minister Ludwig released the Draft Bill and the Senate referred it for an inquiry with the Senate Standing Committee on Rural Affairs and Transport.

The Bill falls short of the government's previous commitments on a number of fronts. Greenpeace has a full critique of the Bill under development but is disappointed that so many elements have failed to be included in the Bill. In brief the main problems are:

1. The prohibition will not come into effect immediately – it could take two or more years
2. No requirement for a declaration
3. The definition of illegal logging is too narrow
4. No fine for the prohibition
5. Process for approving certifiers and importers is unclear and weak
6. Weak penalties, no explicit forfeiture provisions
7. No enforcement or monitoring for illegal timber
8. The prohibition is too narrow – restricted to the importation

Greenpeace has produced a full, in-depth critique of the Draft Bill.

Appendix 1 - ALP Election Policy 2007

ALP ELECTION COMMITMENTS ON RESTRICTING IMPORTS OF ILLEGALLY LOGGED TIMBER.

Ensuring sustainable timber imports.

Labor will encourage sourcing of forest products from sustainable forest practices and seek to ban the sale of illegally logged timber imports.

Trade in illegally logged timber is a significant global problem and of considerable concern to environmentalists and industry alike. The Organisation for Economic Cooperation and Development estimates that 5-10 per cent of global industrial round wood trade is illegally harvested. This proposition is much higher in some high-risk countries where it accounts for between 20-90 per cent of timber production. This translated to a loss of assets and revenue in developing countries of up to US$23 billion every year.

Illegal logging occurs when:

- Timber is stolen
- Timber is harvested without the required approvals or in breach of a harvesting licence or law
- Timber is bought, sold, exported or imported and processed in breach of law, and/or
- Timber is harvested or trade is authorised through corrupt practices.

Illegal logging is responsible for considerable ecological damage, significant greenhouse gas emissions and the degradation of traditional lifestyles and local property rights. It also provides unfair competition to legitimate timber concerns, including the Australian industry.

Illegal products are thought to be responsible for around $400 million – or 9 per cent of Australia timber imports. These products are almost all from Southeast Asia, particularly Indonesia, Malaysia and possibly China.

The products include wooden furniture, paper and paperboard, wood based panels, sawn wood, doors and mouldings. Although some countries have polices and regulations that require sustainable practices, they have problems implementing them.

Some retailers - notably Bunnings in Australia – have policies to source “good wood’ in response to consumer concerns. However, it is currently difficult to identify illegal products and a credible certification system or chain of custody requirement is lacking in Australia.

Germany is seeking to ban illegal imports and the European Union is currently considering legislation that would extend the German ban across Europe.

Labor will work with regional governments and industry to:

- Build capacity within regional governments to prevent illegal harvesting
- Develop and support certification schemes for timber and timber products sold in Australia
- Identify illegally logged timber and restrict its import into Australia
- Require disclosure at point of sale of species, country of origin and any certification and
- Argue that market-based incentives aimed at reducing emissions from deforestation and forest degradation should be included in a future international climate change agreement

Appendix 2: Joint Statement for Eliminating Illegal Forest Products in Australia, June 2009

Eliminating Illegal Forest Products in Australia

A joint forest industry, wood product sector and conservation group statement

Illegal logging is a major driver of global deforestation. Global deforestation is responsible for approximately 20% of global emissions of greenhouse gasses and is a major cause of global biodiversity loss.

The import of illegal forest products into Australia contributes to tropical deforestation, the death of orangutans, Sumatran tigers and other tropical forest species, village poverty and other adverse social effects, and undermines the financial viability of the legal forest products industry. As a result, we strongly oppose the import and the use of illegally harvested and traded forest products in Australia.

Prohibiting illegally harvested forest products, in the ways outlined below, will benefit Australia's legal forest products industries; assist in improving producer countries' social, environmental and economic standards and well being; and show that Australia is responsibly addressing the problem.

We are committed to ecologically sustainable and socially responsible forestry - illegal logging is not sustainable and eliminating illegal logging is a critical first step towards achieving sustainable forestry globally.

Australian Government

The Government must take a leading role in stopping the importation of illegal forest products into Australia. This can be achieved through:

- Establishing regulations that require verification of the legality of forest product imports into Australia. The legal requirements should specify the minimum standards for legality, and the requirements for verification and compliance systems
- Committing to international and regional efforts to address illegal logging
- In the interim, ensure the Government's procurement policy requires that forest products are legal.

Importers, Processors and Retailers

In parallel with Government efforts, importers, processors and retailers have a key role and responsibility to eliminate trade in illegal forest products. They should do this progressively, and in compliance with an announced timetable, by requiring imported forest product suppliers to prove forest product legality. A third party verification process should be developed and phased in that demonstrates the:

- Forest product source is known and can be traced to the harvesting entity
- The harvesting entity has a legal right to harvest
- Legality of the chain of custody is not broken
- Forest product is legally traded (including compliance with CITES laws)

Australian Forest and Plantation Managers

Consistent with these goals, Australian forest and plantation managers will:

- Ensure they have evidence that they meet Australian legislative requirements
- Advise partners and associates on the position taken by Australia's forestry sector.

Australian Processors of Forest and Plantation Products

Consistent with these goals, Australian forest and plantation product processors will:

- Ensure plantation and forest product suppliers can provide evidence of legality of supply
- Provide information on legality of supply to customers when requested.

Public awareness of illegal logging

The parties to this statement will raise awareness of the problems and solutions associated with illegally sourced forest products to their members, associates and the wider public.

IKEA · PATIO · DANKS · BUNNINGS · AUSTRALIAN CONSERVATION FOUNDATION · THE WOODAGE · Simmonds Lumber · FANTASTIC FURNITURE · TIMBER · FSC · LifeStyle · WWF · Oxfam Australia · GREENPEACE

Appendix 3 - ALP ELECTION PROMISE 2010
Sent from Minister Burke's Office 8 August 2010

The Illegal Logging policy

The Australian Government will deliver on its 2007 election commitment to combat illegal logging by placing a restriction on the importation and sale of illegally logged timber within Australia.

The government intends to legislate to restrict the importation of illegally-logged timber.

Suppliers will be required to undertake due diligence to verify the legality of timber at the first point of entry onto the Australian market.

By restricting the entry of illegally-logged timber into Australia, this policy will:

- discourage illegal logging overseas;
- help create a level economic playing field for Australia's domestic timber producers and suppliers who are key employers in timber producing regions; and
- provide assurance to consumers that the products they purchase are legally sourced.

A trade description for legally verified timber products will be established to provide this assurance to local industry and consumers.

In delivering this framework the government consulted with a wide range of stakeholders including the European Union, United States senators, church groups, non-government organisations and industry.

Implementation

Companies which first place timber products onto the Australian market will be required to undertake a process of due diligence to verify the legal origins of their timber and to disclose species, country of harvest and any certification in accordance with the legislation.

It will be an offence to import any timber products into Australia that have not been verified as being legally harvested. Companies circumventing these laws will be subject to penalties under the legislation.

The legislation will apply to solid timber, manufactured and processed wood products, such as, sawn timber, wood panels, composite products, wooden furniture and pulp and paper.

The restriction of Australia's imports of illegal timber will come into effect immediately upon enactment of the legislation. It is proposed that the new legislation will be considered by Parliament in 2011.

Industry will be given a period of up to two years from enactment to establish their due diligence systems in accordance with the new legislation.

Part of a global approach

The new legislation and other measures form part of multi-faceted approach that will include continued bilateral cooperation with Asia-Pacific countries and multilateral engagement on forestry through existing forums to ensure a consistent global approach to eliminating illegal logging.

The Australian Government's policy on illegal logging will, in combination with EU and US action, play a significant role in the global battle against illegal logging and in promoting trade in legally sourced timber products.

Australia is well located in the Asia-Pacific region to influence forest governance practices in these countries.

Summary of the policy

The Australian Government will combat illegal logging and associated trade by introducing new legislation that will:

- Restrict the importation of illegally-logged timber products into Australia;
- Require timber suppliers who place timber onto the Australian market at the first point of entry, being Australian timber importers and domestic processing mills, to undertake a process of due diligence to verify the legal origins of timber and to disclose species, country of harvest and any certification; and

- Require timber suppliers to use and comply with the licence conditions of a trade description for legally verified timber products.
- Timber importers and domestic wood processing mill operators will be required to become signatories to Commonwealth accredited codes of conduct and to undertake due diligence verification of the legal origins of their timber products - before they can place their products on the Australian market.

Compliance with the legislation will be enforced through criminal and civil penalties for:

- importing illegally sourced timber products into Australia;
- placing timber products on the Australian market without being a signatory to a Commonwealth accredited code of conduct; and
- not undertaking due diligence of the legality origins of that timber.

Industry bodies (code administration bodies) will be established to develop and administer codes of conduct and to provide annual reports to the Commonwealth on compliance of timber importers and domestic timber processing mill operators with the code.

The Department of Agriculture Fisheries & Forestry will monitor and enforce compliance with the legislation for imported timber products at the border in conjunction with the Australian Customs and Border Control Service.

Compliance of domestic wood processing mill operators with the legislation will be monitored by the Department of Agriculture Fisheries & Forestry using annual audit reports and ongoing inspections conducted by code administration bodies.

The legislation will apply to solid timber, manufactured and processed wood products, such as sawn timber, wood panels, composites, veneer, wooden furniture and pulp and paper products.

Next steps

The Government will consult other government agencies, industry and NGOs during the legislation drafting process to address the necessary details of the legislation to ensure the government policy objectives are met.

In particular, the consultation during the drafting of the legislation will focus on:

- The development of industry codes of conduct;
- Setting up code administration bodies;
- Coverage of timber products requiring due diligence assessment; and
- Areas of support for industry to comply with the various provisions of the legislation.

It is proposed to introduce the new Bill to Parliament during the autumn sitting.

The restriction of illegally-logged timber products, both from overseas and domestically, will come into effect upon the enactment of new legislation.

To facilitate the transition to the new requirements, industry will be given a period of two years from enactment to establish their due diligence systems in accordance with the legislation.

Appendix 4 - Ministerial statement – December 9, 2010

Talking points received from Minister Ludwig's office

TALKING POINTS – ILLEGAL LOGGING POLICY

• The Australian Government will deliver on its 2010 election commitment to combat illegal logging by placing a restriction on the importation and sale of illegally-logged timber within Australia.

• Illegal logging is a serious problem which has significant economic, social and environmental costs.

• Globally, it damages trade in legitimate forest products, adds to environmental problems in tropical ecosystems and impedes economic development, particularly in developing countries.

• Domestically, it is a source of unfair competition on the domestic timber industry. Australia's timber producers should not have to compete with illegally imported products.

• The Australian Government believes in the sourcing of forest products from sustainably managed forests.

• The government will take direct action by introducing new legislation that will make it an offence to import any timber products into Australia that have not been legally harvested.

• Companies that first place timber products onto the Australian market will be required to undertake a due diligence procedure to verify the legal origins of their timber and to disclose species, country of harvest and any certification in accordance with the legislation.

• It will be an offence to import any timber products into Australia that have been sourced from illegally harvested timber. Companies circumventing these laws will be subject to penalties under the legislation.

• The legislation will apply to solid timber, manufactured and processed wood products, such as, sawn timber, wood panels, composite products, wooden furniture and pulp and paper.

• A trade description for legally verified timber products will be established to provide assurance to local industry and consumers that the timber they purchase is legally sourced.

• We propose to introduce legislation in Parliament in mid-2011.

• Industry will be given a period of up to two years from commencement to comply with the new legislation.

• By restricting the entry of illegally-logged timber into Australia, the policy will:
    § discourage illegal logging overseas;

§ help create a level economic playing field for Australia's domestic timber producers and suppliers who are key employers in timber producing regions; and
§ provide assurance to consumers that the products they purchase are legally sourced.

• The government has consulted with a wide range of stakeholders including industry, environmental non-government organisations, church groups and our overseas trading partners in the development of this approach.

• By restricting the entry of illegally-logged timber into Australia, this government's policy will:

- reduce unfair competition on the Australian market, and help create a level playing field for Australia's domestic timber industry ;

- provide assurance to local industry that uses imported wood and consumers who buy the end products that the products they purchase are legally sourced; and

- discourage illegal logging overseas and play a role in the global effort to eliminate illegal logging.

• The new legislation and other measures form part of a multi-faceted approach that will include continued bilateral cooperation with Asia-Pacific countries and multilateral engagement on forestry through existing forums to ensure a consistent global approach to eliminating illegal logging.

• The Australian Government's policy on illegal logging will, in combination with EU and US action, play a significant role in the global battle against illegal logging by promoting trade in legally sourced timber products.

• Australia is well located in the Asia-Pacific region to have a significant influence on bringing about reform in forest governance practices in these countries.

• Following this announcement the government will continue to consult closely with industry as the policy is implemented as effectively as possible, without any unnecessary burden on Australian industry.

• Shortly after this announcement we will also publicly release a series of reports that support this approach.

• These reports include:

1. A final Regulation Impact Statement
2. An economic analysis undertaken by ABARE
3. An assessment of compliance costs
4. A review of the social costs
5. A generic code of conduct
6. A framework for differentiating systems of legality verification
7. A report on methods to estimate the legality risks of timber imported into Australia.

• These will be publicly available on the internet.

Review of Voluntary Codes of Conduct: would a voluntary code stop illegal timber imports in Australia?

Greenpeace Australia Pacific
Dr Carol Booth
May 2011

Table of Contents

SUMMARY

Australian Government policy stipulates that self-regulation, including voluntary codes of conduct, be among the first options considered when reform is needed. While codes of conduct are undoubtedly one of the tools for improving environmental practices, there are important questions about when and what sorts of codes of conduct are effective, and the best mix of regulatory and voluntary measures to promote better practices and ensure compliance.

At their best, voluntary codes seem to provide the potential for normative change in industries, with companies maximising innovation in cost-effectively designing their own solutions to problems, and sparing governments the expense and difficulty of imposing change. But at their worst they are little more than self-serving rhetoric for industries striving to give the appearance of environmental responsibility to avoid regulation:

> Self-regulation is frequently an attempt to deceive the public into believing in the responsibility of an irresponsible industry. Sometimes it is a strategy to give the government an excuse for not doing its job (Braithwaite 1993).

What this report addresses: We have assessed the effectiveness of voluntary industry codes of conduct by reviewing the literature, summarising published case studies of codes and related mechanisms of self-regulation, and identifying the conditions under which codes are likely to be effective. We have developed a checklist for code effectiveness and applied this to a proposal for self-regulation as a measure to prevent the importation of timber and timber products deriving from illegally logged forests.

What voluntary codes of conduct are: Codes of conduct set out agreed principles, standards and/or rules for an organised body, such as an industry association, to regulate or guide the behaviour of its members. They are one of the main mechanisms of industry self-regulation. Codes of practice, guidelines or voluntary agreements are very similar or equivalent mechanisms.

Industry proponents have argued that self-regulation is a more efficient and cost-effective way to achieve public policy goals and engenders cooperative rather than adversarial relationships between business and government. Regulation is characterised as frequently regressive, burdensome and expensive. However, the government's 2007 *Best Practice Regulation Handbook* defines only a limited list of circumstances under which self-regulation should be considered, including when there is no strong public interest concern and the problem is low risk and low in impact or significance.

Voluntary codes of conduct and motivations: Debates about the relative effectiveness of laws and codes of conduct rest on disagreement over empirical questions: what motivates companies to comply with expected environmental standards, specified either in laws or codes of conduct, and how widespread and reliable are these motivations? For an industry code of conduct to be effective, industry participants have to be motivated to develop a rigorous code that addresses identified problems, comprehensively adopt the code and then comply with it. Different motivations may apply for different steps and for different companies. Likely gaps and conflicts in motivation are the main reasons for widespread skepticism about voluntary codes.

Broad categories of motivation applying to regulation and/or codes of conduct include the following:

Calculated – arising from desires to maximise self-interest (such as lower costs, higher profits)
Normative – arising from internal values and norms
Social – arising from desires for respect and approval from significant others
Mimetic – arising from tendencies to follow industry leaders or trends.

Major merits of voluntary codes are thought to be normative: their capacity to build an industry morality by setting out principles and practices that define right conduct, and their capacity to institutionalise responsibility. Other merits are social: the capacity for industry leaders to influence industry laggards and the capacity for the public to use greater industry transparency to hold businesses more accountable. However, when reform requires measures that are inconvenient or costly to some degree, calculated motivations are likely to lead to rejection of or non-compliance with voluntary codes by some proportion of companies. Non-compliers may then gain free-riding advantages that undermine the motivation of other companies to comply. In these circumstances, the compulsion potential and universal application of government regulations offer substantial advantages over voluntary measures.

Evidence regarding the effectiveness of codes of conduct: Regardless of the theoretical attractiveness of promoting greater self-regulation, policy decisions about when codes of conduct should apply instead of regulation should be based on evidence about their effectiveness under different circumstances. However, there has been very little empirical assessment of existing voluntary codes of conduct.

We collected 24 qualitative and quantitative case studies of codes and similar self-regulatory measures from the academic and grey literature, with an emphasis on those relevant to the environment. We sought to collect as many relevant case studies as possible, but the codes assessed represent a very small proportion of the many thousands of codes in existence; most case studies are from North America; and about half are for polluting industries. This latter bias in the literature is probably because there is quantifiable data by which to assess the performance of polluting industries due to some countries requiring public reporting of emissions. Performance data are lacking, undisclosed or unreliable for most other industry codes.

The evidence provided in the academic and grey literature, scant though it is, suggests that industry codes of conduct and similar self-regulatory measures have not been effective except under limited circumstances. For the 17 case studies for which performance of a voluntary measure could be objectively measured, about 90% failed to make much difference or did not meet targets. There are clear commonalities amongst the case studies: a lack of rigorous measurable standards by which company performance can be assessed, lack of enforcement and auditing of codes, and incapacity to achieve compliance across an entire industry.

Limitations of codes: To be effective, a code has to (i) specify rigorous standards, (ii) be widely adopted, (iii) compel or attract compliance and (iv) be independently verified to be effective.

Code development is likely to be lacklustre when reforms in the public interest conflict with private business interests. Agreement to high standards is likely to be difficult in industries with multiple and heterogeneous players, and result in lowest common denominator codes. Codes often lack specific measurable performance standards.

Code adoption is likely to be piecemeal if the reforms required are difficult or costly, unless there are strong external pressures. The companies with weakest standards may be those least willing to voluntarily reform, particularly if they have limited resources. Free-riders may undermine code effectiveness by dragging down overall industry performance and reducing the motivation of other companies to adopt a code, particularly if there is a competitive advantage in not doing so.

Code compliance is likely to be uneven unless there is rigorous monitoring and enforcement and meaningful sanctions, which are lacking in many codes. If compliance mechanisms are weak, breaches will occur when code provisions become costly or inconvenient, and capacity to compel laggards or recalcitrants to reform will be lacking. Compliance can be compromised unless monitoring is conducted by an independent entity.

Code transparency and accountability will be lacking unless there is collection and disclosure of performance data and independent verification of performance. Governments cannot credibly promote codes as alternatives to regulation unless there is empirical evidence of their effectiveness.

That voluntary codes are often ineffective should not be surprising in the light of motivations at play. Many company managers are undoubtedly motivated to adopt codes and improve business practices beyond legal compliance. But it is not enough that these motivations exist in some companies: they have to be of sufficient strength and comprehensiveness across an industry to engender widespread adoption of and compliance with codes. The motivations of high performers can be undermined if other companies breach standards, particularly if the latter gain a competitive advantage.

Summary of motivational limitations

Motivations for reform may have limited industry coverage.	Normative or social motivations for high performance may be strong in particular companies but are unlikely to apply to all companies in an industry. They may be sufficient under favourable economic circumstances but not when conditions are tougher. Motivational variability limits the capacity for an entire industry to voluntarily agree to high code standards and also achieve high adoption and compliance rates, unless there are strong external pressures. There is inevitable tension between specifying high standards and achieving high adoption and compliance rates.
Motivations for code development may not be motivations for high standards.	The motivation for development and adoption of many industry codes is the calculated one of staving off state regulation, but such motivations may also result in low standards and low compliance unless there are strong counteracting influences. There is no guarantee that calculative motivations for self-regulation will evolve into normative motivations over time, and little understanding of the processes by which such changes occur.
Low-performing companies are likely to be least motivated.	Companies most in need of reform – those with low performance standards – are least likely to voluntary adopt and comply with high-standard codes unless they are calculatedly motivated through compulsion or potential for gain.
Motivations will decline when compliance is costly or inconvenient.	Some proportion of companies in an industry will inevitably be calculatedly motivated to resist or breach codes when reforms are costly or inconvenient, unless there are stronger counteracting calculative reasons for adoption and compliance. There is much less likelihood of compliance when there is conflict between private business interests and public interests.
Free-riding undermines	Free-riders will undermine motivations of other companies to adopt and comply with codes: calculative motivations are undermined if free-riders gain

motivations of other companies.	competitive advantages, normative motivations if adoption is too low to achieve industry targets, and mimetic motivations if adoption is piecemeal.
Weak sanctions will limit motivations for compliance.	Many codes lack mechanisms to compel laggards and recalcitrants to comply. They may be immune to sanctions available under codes and can opt out of codes if sanctions are threatened. Industry bodies are often reluctant to impose strong punitive sanctions. Cooperation and peer relations in industry associations may foster social motivations for code adoption but undermine authority for enforcement, which lowers calculative motivations for compliance.
Low visibility will limit compliance motivations.	Calculated motivations for compliance are limited when breaches are unlikely to be detected. This is a particular problem for environmental codes, where impacts are often invisible to consumers. Where compliance is poor, industries will seek to limit transparency.

Conditions under which codes may be effective: In general, various degrees of self-regulation are most likely to work when there are not major conflicts between private business interests and public interests, when reform is a high priority for the industry as a whole, when there is good capacity within the industry for development and implementation of codes of conduct and when there are mechanisms to ensure compliance and transparency. Regulation is generally needed to strengthen or supplement codes. As one commentator (Pengilley 1990) has put it: "Society cannot expect miracles from self-regulation when the substantive law is weak. … In many ways the best thing government can do for self-regulation is to provide for effective general laws."

Elements of effective codes	**Industry characteristics and conditions under which codes are most likely to be effective**
CODE DEVELOPMENT Rigorous measurable performance standards that address problems	Cost-benefit: Private business interests are not substantially in conflict with public interests (eg. reforms are necessary for industry viability or will lead to cost-savings or enhanced reputation and profits) and benefits of reform exceed costs.
	Priority: Substantive reform is a high priority, sufficient to overcome reform resistance by some companies and limit lowest common denominator outcomes.
	Industry structure: Industry is relatively cohesive, participants are large and few, and there is a strong industry association with wide industry coverage.
	Industry capacity: Most companies are economically strong with a long-term focus and have technical and logistical capacity to address problems.
CODE ADOPTION Adoption by a sufficient number of businesses to meet industry-wide goals and to limit free-riding	Extent of support: Support for the code is sufficiently comprehensive across the industry to ensure wide adoption and to limit the drop-out rate, or there are strong industry leaders to exert pressure on other companies to adopt the code.
	Weakest performers: There are compelling reasons for the weakest performers in an industry to adopt the code.
	Free-riding: Companies which do not participate will not gain a competitive advantage (ie. free-riding potential is limited).
CODE COMPLIANCE Monitoring, enforcement and sanctions to compel compliance	Enforcement capacity**:** An industry body is likely to be granted the authority and resources necessary to monitor company performance and enforce compliance.
	Detectability: There is a high likelihood that code breaches will be detected by external parties and reported (eg. by independent monitoring or consumers).

	Reputation: Industry viability and company profitability are reputation-sensitive.
	History: There is a history of compliance in the industry.
	External sanctions: State laws apply as a backup to codes.
CODE TRANSPARENCY & ACCOUNTABILITY Collection and disclosure of performance data and independent verification of performance	Community oversight: A powerful or substantial community sector has a strong interest in monitoring industry performance.
	Data collection: There are viable methods of data collection by which industry performance can be assessed.

Is a voluntary code of conduct likely to be effective in preventing the importation into Australia of products deriving from illegally logged forests?

It has been estimated that about 9% of Australia's imported forest products incorporate illegally logged timber. The Australian Government made a 2007 election commitment to "encourage sourcing of forest products from sustainable forest practices and seek to ban the sale of illegally logged timber imports". The commitment included (i) requiring disclosure at point of sale of species, country of origin and any certification and (ii) identifying illegally logged timber and restricting its import into Australia. The Australian Government is considering options for implementing its commitment, including a voluntary industry code of conduct.

The problem of illegal logging is recognised within the industries that import timber and wooden products, including in codes of ethics and guidelines. But most importers do not have formal processes to ascertain the origin or legality of imported products. The companies involved in importation of timber products are very diverse – in size and products sold (there are more than a dozen industry associations involved) – and there is intense competition between companies.

The Australian Government commissioned The Centre for International Economics to assess regulatory and non-regulatory options to inform a Regulatory Impact Statement. Based on a cost-benefit analysis, TheCIE recommended that the Australian Government "consider only non-regulatory policy options to combat illegal logging". This was despite acknowledging the likely ineffectiveness of a voluntary code of conduct:

> The main disadvantage is that those importing most of the products incorporating illegally logged timber are unlikely to be signatories to a voluntary code. These will also tend to be those facing the highest potential compliance costs and they will face incentives to opt out.

TheCIE's cost-benefit analysis relied on the assumption that any economic benefits derived from illegal logging were equivalent in status to benefits derived from legal logging. On TheCIE's logic, the higher the level of illegal activity and the more profitable it is, the less reason there is for Australian Government intervention. TheCIE found that the benefits of illegal logging – lower prices for consumers and increased revenue for companies involved in illegal logging or trading in products from illegally harvested timber – came close to outweighing its costs. Using their method, the least-cost intervention, whatever its effectiveness, results in the highest benefit:cost ratio. Reliance on a voluntary code of conduct in Australia would contrast with the regulatory approach being taken in other countries, including in the US and Europe.

The following checklists, derived from analysis of existing codes, were applied to the importation of timber products to assess the likelihood of a voluntary code being effective.

1. Code development – are the conditions likely to result in a code with rigorous measurable performance standards that address the problem of imports of illegal timber products?

Checklist questions	Response	Meets code condition
1. Conflict of interests: Is there a conflict between public interests in preventing imports of illegal timber products and private business interests in minimising business costs?	Yes. Some larger, reputation-sensitive companies support a rigorous approach. But because products from illegally logged timber are likely to be cheaper, the market is competitive and implementing compliance will involve some expense, there would be conflict for some businesses between private and public interests.	NO
2. Priority: Are the proposed reforms a high priority for most companies in the industry?	No. Reform is a priority for some large retailers in the industry, some of whom have adopted measures against illegal logging and want to reduce the competitive advantage of those who don't take such measures. Traders with less profile have little incentive to reform and stand to become more competitive on price when others invest in higher standards.	NO
3. Industry structure: Is the industry cohesive? Are participants relatively large and few? Is there a strong industry association with wide coverage?	No. The industry is heterogeneous, with a large number of participants of different size with divergent agendas. There are multiple industry associations and coverage is likely to be uneven.	NO
4. Industry capacity: Do most companies have a strong capacity to enact reforms, including financial, informational and logistical capacity?	*No. Because the trade is international, and supply chains are often complex, it is difficult for individual companies to set up their own voluntary system of verification. Some large companies already take steps to ensure their products are legal, eg. through certification. But there are many small to medium businesses with limited capacity to establish their own compliance regime.	NO

2. Code adoption – is adoption likely to be comprehensive?

Checklist questions	Response	Meets code condition
5. Extent of support: Is there likely to be industry-wide support for a strong code? Are industry leaders that are supportive of the code able to exert pressure on other companies to adopt it?	No. The industry is highly heterogeneous and there is limited capacity for industry leaders to exert pressure on other businesses to adopt voluntary high standards.	NO

6. Laggard companies: Is there good potential for compelling or attracting* laggard companies to adopt a code?	No. Apart from the potential for an industry body to require adoption of a code as a condition of membership, there is little potential to compel or entice laggards. Membership of an industry body may not be important for many businesses.	NO
7. Free-riding: Will companies that do not adopt the code gain a competitive (free-riding) advantage?	Yes. There are likely to be price differences between products derived legally and those derived illegally that some companies could exploit.	NO

3. Compliance – conditions likely to permit monitoring and enforcement sufficient to compel compliance

Checklist questions	Response	Meets code condition
***8. Industry enforcement capacity:** Is an industry body administering the code likely to be granted the authority and resources to monitor and enforce compliance**?**	No. Because of the disparate nature of businesses and industry bodies involved, it is highly unlikely they would grant an administering body sufficient authority or resources to effectively monitor compliance, and there are limited sanctions available for such a body.	NO
9. Detectability of breaches: Would breaches of the code be easily detected by external parties?	*No. Because the trade is international, external parties would find it very difficult to detect breaches. Unless they have due diligence processes in place, businesses themselves may be unaware they are importing illegally derived products.	NO
10. Reputation sensitivity: Are most companies in the industry sensitive to loss of reputation should code breaches be exposed publicly?	No. Only some of the biggest companies with brand recognition are likely to be sensitive to reputation. There are many companies focused largely on price differentials.	NO
11. Compliance ethos: Is there a history of good compliance in the industry?	Unknown.	?
12. Legal backup: Can existing laws provide an effective backup to a code should there be non-compliance?	There are no relevant existing laws.	NO

4. Transparency and accountability – are the conditions such as to permit independent verification of performance?

Checklist questions	Response	Meets code condition
13. External verification: Is there a strong community sector able to monitor and assess industry-wide code performance?	No. Trade in timber products is too difficult for the community sector to monitor.	NO
14. Data collection: Are there viable methods of data collection by which to independently assess industry performance?	No. There are currently no methods of data collection by which to assess industry performance, hence the lack of certainty over the extent of trade in illegally derived products.	NO

Conditions specified by Government policy under which codes are appropriate

The following checklist was derived from the Government's 2007 *Best Practice Regulation Handbook,* which specifies conditions under which voluntary codes and various forms of regulation are appropriate. Some questions overlap with those above.

Checklist questions	Response	Meets code condition
1. Public concern: Is there strong public concern about the problem?	Yes. It is regarded as a high priority environmental issue. The Government considered the level of concern sufficiently high to make it the subject of an election commitment.	NO
2. Market role: Can the problem be fixed by the market?	No. Australian consumers have demonstrated some willingness to pay for wood products from certified sources. But the level is not high enough to address the problem. Many purchasers are motivated mainly by price.	NO
3. Need for sanctions: Are legal sanctions necessary to achieve the desired outcome?	Yes. Many of the companies importing products derived from illegal logging are those least likely to adopt voluntary measures.	NO
4. Need for universality: Is universal application across the industry required to achieve the desired outcome?	Yes. Even if there was 90% compliance with a voluntary code it may not capture the estimated 10% of imports estimated to be derived from illegal logging.	NO
5. Compliance issues: Is there a systemic compliance problem within the industry?	Unknown.	?

The industries involved in import of timber and timber products fail to satisfy the conditions under which a voluntary code of conduct might be effective, failing at least 13 of the 14 criteria tested here. They also fail to satisfy the conditions specified by the Australian Government for

determining whether a voluntary code is appropriate, failing four of five criteria. Major barriers include:

- there are conflicts between private business interests in minimising cost/maximising profit and the public interest in not supporting illegal logging;
- many companies are unlikely to agree to a strong code if it involves costs or inconvenience above a low threshold;
- the industries are too heterogeneous and involve too many businesses with diverse interests to expect comprehensive adoption of and compliance with a voluntary code;
- there is little potential to compel or attract adoption by laggard companies;
- there is a high probability of free-riding, which will give some companies a competitive advantage and discourage others from adopting a code; and
- breaches are not easily detected by third parties, and there are no current methods of data collection by which to assess the level of compliance.

All the evidence suggests that a voluntary code of conduct would fail to stop, or even substantially reduce, importation of products deriving from illegally logged timber.

1. Introduction

Laws are a powerful instrument for environmental protection, changing the behaviour of people and businesses under threat of sanction. But the 'command and control' approach of 'black letter' law is also criticised as inflexible, expensive and unnecessary in many circumstances. Policy-makers have sought other ways to supplement or replace government regulation. Voluntary industry codes of conduct and other forms of self-regulation are increasingly favoured, with Australian Government policy stipulating that self-regulation be among the first options considered when reform is needed.

At their best, voluntary codes seem to provide the potential for normative change in industries, with companies maximising innovation in cost-effectively designing their own solutions to problems, and sparing governments the expense and difficulty of imposing change. But at their worst they are little more than self-serving rhetoric for industries striving to give the appearance of environmental responsibility to avoid regulation:

> Self-regulation is frequently an attempt to deceive the public into believing in the responsibility of an irresponsible industry. Sometimes it is a strategy to give the government an excuse for not doing its job (Braithwaite 1993).

Codes of conduct are undoubtedly one of the tools for improving environmental practices. But there are important questions about when and what sorts of codes of conduct are effective, and the best mix of regulatory and voluntary measures to promote better practices and ensure compliance. These questions are relevant to a current policy being developed by the Australian Government to restrict the importation of illegally harvested timber and timber products, with a voluntary industry code of conduct as one of the options.

Here, we assess the effectiveness of voluntary industry codes of conduct, by (i) reviewing the literature, (ii) summarising published case studies of codes and related mechanisms of self-regulation, and (iii) analysing the conditions under which codes are likely to be effective and ineffective. We (iv) develop checklists of conditions for code effectiveness and (v) apply this to a proposal for self-regulation by companies importing timber or timber products to determine whether a voluntary code of conduct is likely to be effective in preventing the importation of products deriving from illegally logged forests.

2. What codes of conduct are

Regulation can be defined as "state intervention in private spheres of activity to realise public purposes" (Francis 1993). Codes of conduct can also be designed to realise public purposes, by setting out agreed principles, standards and/or rules for an organised body, such as an industry association, to regulate or guide the behaviour of its members. They are one of the main mechanisms of industry self-regulation. Voluntary codes of practice, guidelines or agreements are very similar or equivalent mechanisms.

In Australia, there are also mandatory codes, prescribed in laws such as the *Trade Practices Act 1974*. See Box 1 for a brief description of prescribed codes. The focus in this review is on voluntary industry codes and similar mechanisms of self-regulation.

Box 1. Prescribed codes of conduct

The Australian Government's policy guidelines for prescribed codes under the *Trade Practices Act 1974* say the government is committed to industry self-regulation, but if self-regulation fails, "codes prescription offers an attractive alternative to industry-specific legislation" (The Treasury 1999). The policy states that a prescribed code can be developed under the following circumstances:

- If the code would remedy an identified market failure or promote a social policy objective; and
- the code would be the most effective means for remedying that market failure or promoting that policy objective; and
- the benefits of the code to the community as a whole would outweigh any costs; and
- there are significant and irremediable deficiencies in any existing self-regulatory regime (eg. inadequate industry coverage or failure to address problems); and
- a systemic enforcement issue exists because there is a history of breaches of any voluntary industry codes; and
- a range of self-regulatory options and 'light-handed' quasi-regulatory options has been examined and demonstrated to be ineffective.

There are currently four mandatory industry codes of conduct under the Trade Practices Act (Section IVB): the Franchising Code, Horticultural Code, Oilcode, and Unit Pricing Code. A breach of these codes is also a breach of the Trade Practices Act. Remedy and penalty options include injunctions, damages, setting aside or variation of contracts, orders for corrective advertising and enforceable undertakings (ACCC 2009).

Voluntary codes of conduct can also be prescribed under the Act, making them legally binding on any signatories to the code. They are initiated and administered by the relevant industry. No voluntary codes have yet been prescribed (ACCC 2009).

Other mandatory industry codes of conduct are prescribed under laws specific to particular industries, such as for the telecommunications industry under the *Telecommunications Act 1997*.

2.1 Policy background and context

The Australian shift towards codes of conduct is part of a broader trend of governments in OECD countries promoting greater industry self-regulation as the means to achieve public good outcomes (Carroll and McGregor-Lowndes 2002). In the 1980s, policy-makers in many countries sought alternatives to government regulation on the basis that regulations were often too inflexible and costly. In what are known as 'second-generation' approaches, there was a

shift to market instruments with governments setting broad targets, such as pollution thresholds, and allowing businesses to develop their own ways of meeting these goals. This was designed to foster innovation and minimise costs. During the past couple of decades there has been a move to 'third-generation' approaches, which provide a much greater role for corporate self-regulation. Policy instruments include mandatory information disclosures, voluntary government-industry agreements and voluntary codes of conduct.

See Box 2 for an outline of five major environmental policy categories. The various options are increasingly being hybridised, and can be characterised as lying on a continuum from least to most interventionist. Although there are now many more policy options available and the notion of 'generations' implies replacement of older methods, environmental policy in OECD countries is still dominated by laws.

Box 2. Policy categories

(Prakash and Kollman 2004)

1st generation: *state regulation*	Legally binding performance standards and/or methods
2nd generation: market instruments	Designed to encourage business to internalise the costs of environmental externalities through price signals.
3rd generation: self-regulation & voluntary measures	Mandatory information disclosure: designed to increase the amount of environmental information available to shareholders, consumers and other stakeholders eg. emissions inventories and product labels.
	Government-business partnerships: voluntary agreements between individual businesses and regulators with incentives for companies to meet higher environmental standards than specified in law
	Voluntary codes of conduct: designed to create uniform standards of practice and advertise participation to external stakeholders.

Forestalling government regulation is a frequent reason given for industries to develop a code of conduct (Welch et al. 2000; Stoeckl 2004; Antweiler and Harrison 2007). Code development in Australia has also often occurred in response to enforcement actions (Parker 2004). According to Gabrosky (1995, quoted in Stoeckl 2004), the preference for self-regulation results from a "natural tendency amongst individuals and organisations to prefer to act on their own initiative rather than be forced into a particular course of action." However, in some cases it is seen as a strategy to avoid reform (Braithwaite 1993).

Industry proponents have argued that self-regulation is a more efficient and cost-effective effective way to achieve public policy goals and engenders cooperative rather than adversarial relationships between business and government. The Australian Chamber of Commerce and Industry (ACCI 2005) characterises government regulations as frequently regressive, burdensome and expensive, costing the Australian economy $86 billion per year (10.2% of GDP). The Chamber advocates regulation as a "last resort" option, only to be used after education, publicity, moral suasion, competition, self-regulation and other approaches have been determined to be ineffective. According to the Chamber, self-regulation offers the following benefits (ACCI 2005):

- it allows industry to respond to concerns raised by consumers and identify solutions to problems by using resources and expertise unavailable to government;
- it empowers users, whether business or householders, through market mechanisms;

- ongoing management of a self-regulatory mechanism is likely to be more flexible and responsive if industry members retain ownership of it, leading to a simpler and less costly scheme and one that has wide acceptance from the public; and
- it offers a more flexible and cost-effective alternative to government regulation.

Since 1998, it has been Australian Government policy to require that "self-regulation be one of the first options considered in reviews of regulation and in Regulation Impact Statements" (Office of Regulation Review 1998; Australian Government 2007). Due in large part to "government policy and persuasion", by 1997 there were an estimated 30,000 codes of conduct and related instruments operating in Australia (Carroll and McGregor-Lowndes 2002, citing Stenning and Associates).

In its *Best Practice Regulation Handbook*, the Australian Government (2007) identifies four categories of regulatory approaches ranging from least to most interventionist:

- Self-regulation, eg. by voluntary codes of conduct;
- Quasi-regulation, whereby government exerts pressure on businesses to comply with rules that are not legally binding, eg. by endorsing, promoting or being directly involved in voluntary codes of conduct;
- Co-regulation, whereby government provides legislative backing to enable industry arrangements to be enforced, eg. by delegating power to industry to regulate and enforce codes, or requiring industry to have a code and in its absence imposing one;
- Explicit government regulation, including prescribing a code of conduct into law.

However, the Government's handbook defines a limited set of circumstances for which self-regulation should be considered, including when there is no strong public interest concern and the problem is low risk and low in impact or significance, and the problem can be fixed by the market. In contrast, government regulation is recommended for problems of high risk and/or high impact or significance, and when the certainty of legal sanctions is required. See Box 3 outlining the circumstances for which different levels of government intervention are recommended by the Australian Government (2007).

Box 3. Checklist for the assessment of regulatory forms for their suitability in the *Best Practice Regulation Handbook*

(Australian Government 2007).

Self-regulation should be considered where:

- there is no strong public interest concern, in particular, no major public health and safety concern;
- the problem is a low-risk event, of low impact or significance; and
- the problem can be fixed by the market itself. For example, there may be an incentive for individuals and groups to develop and comply with self-regulatory arrangements (industry survival, market advantage).

Quasi-regulation should be considered where:

- there is a public interest in some government involvement in regulatory arrangements and the issue is unlikely to be addressed by self-regulation;
- there is a need for an urgent, interim response to a problem in the short term while a long-term regulatory solution is being developed;
- government is not convinced of the need to develop or mandate a code for the whole industry;
- there are cost advantages from flexible, tailor-made solutions and less formal mechanisms, such as access to speedy, low-cost complaints handling and redress mechanisms; and
- there are advantages in the government engaging in a collaborative approach with industry, with industry having substantial ownership of the scheme.

Explicit government regulation should be considered where:

- the problem is high risk and/or of high impact/significance, for example, a major public health and safety issue;
- the government requires the certainty provided by legal sanctions;
- universal application is required (or at least where the coverage of an entire industry sector or more than one industry sector is judged as necessary);
- there is a systemic compliance problem with a history of intractable disputes and repeated or flagrant breaches of fair trading principles, and no possibility of effective sanctions being applied; and
- existing industry bodies lack adequate coverage of industry participants, are inadequately resourced or do not have a strong regulatory commitment.

2.2 Code contents

The Australian Competition & Consumer Commission (ACCC 2005) has developed guidelines for voluntary industry codes of conduct to improve voluntary compliance with the *Trade Practices Act 1974*. They recommend codes should provide for the following:

- Objectives that reflect specific stakeholder/business concerns and rules that address common complaints and concerns about industry practices
- A code administration committee with functions defined in the code
- A complaints handling scheme and an independent review mechanism when a complainant is dissatisfied with an outcome

- Commercially significant sanctions for code breaches
- Relevant data collection
- Regular reviews
- Performance indicators

See Box 4 for more details. Note the ACCC guidelines are focused on consumer rather than environmental protection.

Box 4. ACCC guidelines for effective industry voluntary codes of practice

(ACCC 2005)

Objectives – Explain why the code was established and what it intends to achieve. "A clear statement of objectives can be written in such a way that it is measurable. This means that when the code is reviewed its success or failure can be accurately assessed."

Definitions – Explain technical and legal terms.

Code rules – Set out the rules necessary to achieve the objectives. They specify industry standards and may establish best practice. They inform interested parties of their rights and obligations under the code.

Code administration – Explain the administrative mechanism by which the code rules will be promoted and implemented. A code should specify the establishment and operation of an administration committee. This committee should have representatives of all stakeholder groups and, "where appropriate, complaints handling strategies".

Coverage – Measure the number of code signatories against potential signatories within the industry and the coverage of the issue the code attempts to address.

Complaints handling – Define a procedure for addressing complaints first with signatories, then with the administration committee or independent decision-making, with performance criteria for effective complaints handling.

Independent review of complaints handling decisions - Define a review mechanism when a member of the public or industry member is dissatisfied with initial attempts to resolve a complaint. "If all internal industry efforts fail to resolve the complaint then the industry should sponsor an independent complaint body to review it."

In-house compliance system – Specify procedures for ensuring compliance.

Sanctions for non-compliance – Specify sanctions that reflect the "nature, seriousness and frequency" of breaches. "Commercially significant sanctions will be necessary to achieve credibility with and compliance by participants, and also engender stakeholder confidence in the industry code."

Consumer awareness – Outline a strategy to raise consumers' awareness of the code and contents.

Industry awareness – Specify requirements for employees and agents to be instructed in the principles and procedures of the code.

Data collection – Specify the collection of data about the origins and causes of complaints, and the identification of systemic and recurring problems.

Monitoring – Define a system for monitoring compliance by the administrative committee.

Accountability – Require the production of annual reports on the code operations and assessment of its effectiveness, available to all stakeholders and interested parties.

Review – Require regular reviews of whether the objectives and community expectations are being met.

Performance indicators – Specify indicators to measure the code's effectiveness. "The measurements may either be qualitative or quantitative but should be objective so that another person in similar circumstances would obtain the same measurement."

2.3 Comparing codes of conduct and regulation

Codes of conduct and laws are generally characterised as a dichotomy: voluntary and self-regulatory versus mandatory and state-regulated. However, there are various interactions between codes and regulations that modify these contrasts. It is more realistic to consider different codes as standing along a spectrum from voluntary self-regulation to quasi-regulation

or co-regulation. Codes may be weak, ineffective substitutes for law or they may be used to achieve policy objectives defined in law or to stimulate business to exceed regulatory compliance. Courts may use voluntary codes to define standards for duties of care and governments may require that businesses supplying services to government adopt a particular code. Attempts to regulate self-regulation in such ways are known as meta-regulation: "that is, regulation that is aimed at working with self-regulation to make it open – and to marry entities' capacity to self-regulate with the need to do so accountably in line with publicly defined standards and goals" (Parker 2007). Gunningham (2007) paints an alluring vision of potential synergies between regulatory and non-regulatory measures such that "government regulation might be viewed less as a system of hierarchically-imposed, uniformly-enforced rules than as a coordinative mechanism, routinely interacting with other sources of pressure for socially responsible corporate behaviour".

To achieve this requires evidence about the relative merits of state regulation and industry self-regulation under different circumstances. Webb and Morrison (2004) identify the following broad advantages and disadvantages of regulation and codes of conduct.

Advantages	**Disadvantages**
Government regulations	
Visibility	Highly formal
Credibility	May be expensive to develop and operate
Accountability	Fosters legalistic, adversarial relations between regulator and regulated
Compulsory application to all	Limited scope (jurisdictional limits)
Greater likelihood of rigorous standards	May not encourage innovation and beyond-compliance behaviour
Shared costs of operationalisation	Difficult to develop and amend
Diversity of sanctions	
Codes of conduct	
Flexibility	Lower visibility
Lower cost	Lower credibility
Speed in establishing and amending	Difficulty in applying to those not wishing to participate
Minimise jurisdictional concerns	May have less rigorous standards
Potential for harnessing non-state, non-coercive energies (eg. use of market and peer pressure and internalisation of responsibility)	Uncertain public accountability
Informality and accessibility to government, private sector and civil society actors	Potentially weaker enforcement capacity

3. Business motivations for reform

Debates about the relative effectiveness of laws and codes of conduct rest on disagreement over empirical questions: what motivates companies to comply with expected environmental standards, specified either in laws or codes of conduct, and how widespread and reliable are these motivations?

For an industry code of conduct to be effective, industry participants have to be motivated to develop a rigorous code that addresses identified problems, comprehensively adopt the code and then comply with it. Different motivations may apply for different steps and for different companies. Likely gaps and conflicts in motivation are the main reasons for widespread skepticism about voluntary codes. There is very limited empirical information about the comparative motivational features of codes and laws. It is very difficult to know, as Cohen (2004) says, "whether the net regulatory benefits of the voluntary codes … are more or less than those that might have been generated by more traditional government action" (he says this is unknowable). The empirical evidence to date consists of analysis and case studies of only a few different industries and codes.

In contrast to motivations for voluntary measures, likely motivations for compliance with laws have seemed relatively straightforward. The traditional motivational model has characterised businesses as "amoral calculators" with decisions based on a "rational calculation of costs and opportunities" (Kagan and Scholz 1984). Under this model, costly measures to meet public policy goals would be implemented only when non-compliance was likely to be harshly penalised. However, there is increasing recognition that business motivations are more complex and variable than this. Companies are driven by self-interest but:

> it is also the case that they are motivated by ideals, principles, and values. They embody contrary tendencies – the push of self-serving economic (or political) interests and the pull of moral aspirations (Gunningham 2007).

Broad categories of motivation applying to regulation and/or codes of conduct include the following:

Calculated – arising from desires to maximise self-interest
Normative – arising from internal values and norms
Social – arising from desires for respect and approval from significant others
Mimetic – arising from tendencies to follow industry leaders or trends

Calculated motivations seem the most straightforward, based on the idea that entities in rational pursuit of their self-interest comply with standards in regulations or codes when the benefits of compliance exceed their costs (Burby and Paterson 1993). On this model, 'rational polluters' maximise profits by shifting as many costs as possible to society (Spence 2001), and are deterred only by measures that increase costs relative to benefits of pollution. Compliance can also be motivated by potential profit impacts of loss of reputation associated with public exposure of poor environmental performance.

Some research suggests that the perceived risk of detection is more important in motivating compliance than the likelihood and severity of sanctions (Burby and Paterson 1993; Winter and May 2001). Gunningham et al. (2005) found that for many small-medium enterprises in the US electroplating industry, the 'implicit general deterrence' of laws was powerful in developing a culture of compliance: "they appeared to use a general rule of thumb: if you violate the regulations, you will eventually get caught, the penalty could put you out of business, and resistance is futile."

Normative motivations derive from internalised values, when companies accept the legitimacy of standards or feel a moral obligation to comply (Burby and Paterson 1993; Winter and May 2001). Proponents of codes of conduct cite the diffusion of new values and norms as a powerful advantage of self-regulation, with public values internalised so that compliance is based on doing the right thing rather than on fear of enforcement (King and Lenox 2000, citing Meyer and Rowan 1977; Cohen 2004). Normative motivations are particularly important when there is a low probability of detecting non-compliance. However, normative motivations are difficult to verify and "may not be as widespread as one might naively hope" (Cohen 2004). Gunningham et al. (2005) found that normative reasons for compliance were frequently cited by US chemical and electroplating companies – many thought of themselves as "good guys" – but normative motivations were difficult to disentangle from instrumental motivations and companies "wrestled with the temptation to backslide when environmental improvements proved very expensive." Regulation was important to underpin good intentions.

Social motivations derive from desires to earn the approval and respect of significant people or groups with whom companies interact, including local communities, NGOs, other companies, trade associations, the media and family and friends (Winter and May 2001, citing Grasmick and Bursik 1990). Concern for social reputation is recognised as a strong human motivator, and some companies are more concerned about the embarrassment of being exposed as non-compliant than about any fine imposed (Spence 2001). Social motivations can lead to normative commitments if the values of significant others are internalised.

One driver for industry self-regulation is that the performance of some companies can affect the reputation of the entire industry. For the chemical industry, the Bhopal disaster was a major impetus for the Responsible Care program, as the Dow Chemical vice president said, "It brought home to everybody that we could have the best performance in the world but if another company had an accident, all of us would be hurt, so we started to work together" (quoted in Rees 1997). Such peer pressure could be exerted through codes of conduct.

Mimetic motivations arise from various pressures to conform with the practices of other companies – to increase competitiveness or legitimacy, for example. Companies tend to imitate the successful practices of other companies, leading to similar structures and strategies in organisations in the same field (DiMaggio and Powell 1983). The willingness of some companies to adopt and comply with a code will be contingent on whether other companies do so (just as taxpayer compliance is greater when larger percentages of other taxpayers are believed to pay what they owe) (May 2005). Codes may help to increase the adoption of behaviours practiced by leaders in the field by promoting them as an industry standard.

Other factors influencing motivation include the technical and financial capacity of companies to comply, and knowledge of rules.

If voluntary codes are to play an effective role in regulatory systems, it is important to understand their motivational strengths and weaknesses compared to other regulatory options. Major merits are thought to be normative: their capacity to build an industry morality by setting out principles and practices that define right conduct, and their capacity to institutionalise responsibility (Gunningham 2007). Other merits are social: the capacity for "industry leaders to exert leverage on industry laggards" and the capacity for the public to use greater industry transparency to hold businesses more accountable (Overdevest 2004). However, when reform requires adoption of new practices or investment in new technologies that are costly or inconvenient to some degree, calculated motivations are likely to lead to rejection of or non-compliance with voluntary codes by some proportion of companies. Non-compliers may then gain free-riding advantages that undermine the motivation of other companies to comply. In these circumstances, the compulsion potential and universal application of government regulations offers substantial advantages over voluntary measures.

4. Effectiveness of self-regulation

Regardless of the theoretical attractiveness of promoting greater self-regulation instead of, or to supplement, government regulation, decisions about which approaches to use should be based on evidence about their effectiveness under different circumstances. However, there has been very little empirical assessment of voluntary codes of conduct. Evaluation is difficult because the "monitoring of voluntary programs rarely extends past the number of participants enrolled or is plagued by problems of data availability, credibility, self-selection, or poor design" (Wiley et al. 2007). Generalisations have limited validity when drawn from just a few case studies, and it is difficult to compare code outcomes with those that might have been obtained under regulation or other measures.

4.1 Evidence from case studies

We have collected 23 qualitative and quantitative case studies of codes and similar self-regulatory measures from the academic and grey literature, with an emphasis on those relevant to the environment. Environmental provisions differ from others such as consumer-protection provisions, because environmental impacts are often invisible to consumers, who in any event are less likely to complain about impacts that do not directly affect them. Each case study is described in Appendix 1, and summarised in Table 1. We have sought to collect as many relevant case studies as possible, but the codes assessed represent a very small proportion of the many thousands of codes in existence; most case studies are from North America, and about half are for polluting industries. This latter bias in the literature is probably because there is quantifiable data by which to assess the performance of polluting industries due to some countries requiring public reporting of emissions. Performance data are lacking, undisclosed or unreliable for most other industry codes.

The evidence provided in the academic and grey literature, scant though it is, suggests that industry codes of conduct and similar self-regulatory measures have not been effective except under limited circumstances. For the 17 case studies here for which performance of a voluntary measure could be objectively measured, about 90% failed to make much difference or did not meet targets. Just one case study could be found in the academic literature that seems to be an unambiguous example of effective industry self-regulation with some relevance to the environment (case study 5): the US Institute of Nuclear Power Operators, described by Rees (1997) as a "rare regulatory species – an industrial association that is an effective regulator". Set up after the Three Mile Island nuclear accident, the industry association develops standards, conducts inspections, and investigates accidents. However, the circumstances in this industry were exceptional: there was the potential for catastrophic accidents that would affect the future of the entire industry (providing strong incentive to improve standards), a relatively small number of facilities, and a lack of competition among the utilities. Success was attributed to the rigour of the standards and inspections and the industry association gaining sufficient authority to force change on recalcitrant plants by reporting serious non-compliance to regulatory authorities, resulting in a plant shutdown in one case (Rees 1997, citing Rees 1994).

The other environmental example often cited as a success or partial success is the chemical industry's Responsible Care program. However, while emissions from chemical manufacturers have substantially declined, there are doubts about how much this can be attributed to the voluntary program rather than regulation and other trends. Case study 3A shows the improvement rate of adopters in the US did not increase after they joined the program, and the program is weakened by lack of enforcement (case study 3B).

A non-environmental code is also often cited as successful – case study 17, the Australian Code of Practice for Computerised Checkout Systems in Supermarkets – with success attributed to a "substantial coincidence of interest between that of consumers in not paying misleading prices and that of large supermarket chains in protecting their reputation"

(Gunningham 2004). Another code relevant to supermarket pricing – the Unit Pricing Code – was recently made mandatory under the Trade Practices Act 1994 (Emerson 2009), due to there being a conflict of interest between consumers and supermarkets. The code, which requires supermarkets to price items by reference to common units of measure, had been "vigorously opposed" by most supermarkets in both a voluntary and mandatory form (Consumers' Federation of Australia 2009).

One set of case studies (7A-7B) on the effectiveness of codes to reduce provision of free plastic bags by retailers in Australia can be contrasted with the effectiveness of a regulatory ban (see case study 7B). A code voluntarily adopted by retailers in 2002 in lieu of regulation failed to achieve the 50% targeted reduction in plastic bag provision by 2006, but nonetheless did achieve a 43% reduction. However, the use of plastic bags increased by 17% in the year after the trial was over (Hyder Consulting Pty Ltd 2008) and investigations found that supermarkets frequently breached the code (Total Environment Centre 2007). In contrast, a ban in South Australia showed an immediate very large drop in use of plastic bags, with just 1% of people interviewed using only store-provided bags (Ehrenberg-Bass Institute 2009).

There are undoubtedly differences between countries that influence the effectiveness of regulation and self-regulation – eg. governmental authority is more accepted in Scandinavia than in the United States – but there are finer distinctions more relevant to industries and social and economic factors than nationality (May 2005). The available data are insufficient for sound generalisations across industries and countries.

There have been few empirical analyses of the effectiveness of Australian codes of conduct. Gunningham (2004) in a book chapter entitled 'Codes of conduct: the Australian experience' provided just one Australian case study (the supermarket checkout code, case study 17) and mentioned one other (a code for the fruit juice industry). The effectiveness of most codes is difficult to assess because there is no systematic collection or publication of data. The Australian case studies here on plastic bags, packaging, food marketing and supermarket checkouts (case studies 7, 14, 16, 17) indicate that voluntary measures were not functioning well to address problems in the first three cases. The two non-environmental case studies (case studies 16, 17 on food marketing to children and supermarket checkout scanning) were included because of the lack of environmentally focused studies.

There has been considerable criticism of voluntary codes in Australia, and in some cases governments have responded by making a code mandatory or replacing it with regulation. Moves to strengthen or replace self-regulation include the Federal Government making four codes mandatory under the Trade Practices Act and enacting regulations on some aspects of direct marketing; the Queensland Government regulating farm practices to prevent pollution of the Great Barrier Reef after five years of voluntary measures failed (Brodie et al. 2008); and the South Australian Government banning plastic bags (described in case study 7B). Even with strong government and community focus and the potential for regulation should voluntary measures fail, voluntary codes for plastic bags and waste packaging failed to meet targets (case studies 7, 14).

Without systematic analysis of codes of conduct across industries, it is difficult to generalise about their limitations. But there are clear commonalities emerging from the case studies: a lack of rigorous measurable standards by which company performance can be assessed, lack of enforcement and auditing of codes, and incapacity to achieve reforms across an entire industry.

Table 1. Self-regulation – summary of case studies

Regulatory measure	Case study	Industry/ country	Reference	Overall perfor-mance	Results
A Statement by Banks on the Environment and Sustainable Development	1	Banks / UK	Cowton & Thompson (2004)		No substantial differences in lending practices/policies between signatory & non-signatory banks. Many signatory banks were in breach of the code.
Sustainable Slopes Environmental Charter	2	Ski resorts / US	Rivera & de Leon (2000)		No improved performance in participating ski resorts & participants had lower environmental performance than non-participants.
Responsible Care code	3A	Chemical manufacturers / US	King & Lenox (2006)		Signatories improved their performance on toxic emissions more slowly than non-signatories. Their rate of improvement did not increase after adopting the program.
	3B		Rees (1997)		Results of adoption uneven. Industry association had insufficient authority to deal with poor performers.
Sustainable Development framework	4	Mining industry / international	Sethi & Emelianova (2005)		Code fails to meet the preconditions of effectiveness. Principles, implementation, resources and monitoring are all inadequate.
Institute of Nuclear Power Operations self-regulation	5	Nuclear power plants / US	Rees (1997)		The Industry Association succeeded in institutionalising responsibility among its members by developing high standards and enforcement authority.
ISO 14001	6A	Manufacturing facilities / US	Toffel (2005)		There was no difference in the hazard represented by adopters and non-adopters. Overall emissions by adopters were reduced, but toxicity increased.
	6B		Potoski & Prakash (2007)		Certified facilities had larger reductions in emissions than non-certified facilities –

					attributed to 3rd party audits. (But the method of this study was criticised as unreliable.)
	6C	Pulp & paper plants / Quebec	Barla (2007)		Certification had no effect on most effluent parameters. Only 16% of companies improved.
Code of Practice for the Management of Plastic Bags and a legislative ban.	7A	Retailers / Australia	Total Environment Centre (2007)		Supermarkets in Sydney failed to implement practices to reduce plastic bag use. Free bags were automatically provided in about 70% of transactions.
	7B		Hyder Consulting Pty Ltd (2008); Ehrenberg-Bass Institute (2009)		Plastic bag use by Australian retailers declined by 43% from 2002-06, but increased by 17% in 2007. When stores charged a levy, 27% of transactions involved a plastic bag compared to 72% when they were free. In contrast to the code, a South Australian ban on plastic bags from May 2009 resulted in 90% of shoppers surveyed taking their own bags for shopping compared to 60% before ban.
Guidelines/codes for commercial cetacean watching	8A	Commercial whale watching / US	Wiley et al. (2007)		There were frequent & substantial breaches of guidelines regarding vessel speed around whales.
	8B	Commercial dolphin watching /Australia	Allen et al. (2007)		The code was ineffective in minimising impacts on dolphins in part because some operators were non-compliant. Distance breaches occurred 35% of the time. There was need for broader application of provisions and enforcement.
33-50 pollution prevention program	9A	Manufacturing companies / US	Gamper-Rabindran (2006)		The voluntary program did not reduce emissions of participants in most of the top 8 polluting industries compared to non-participants.
	9B		Vidovic & Khanna (2000)		The program accounted for only 0.1% of decline in emissions. Most reductions were the effect of prior reforms.

Climate Challenge program	10	Electric utilities / US	Welch et al. (1999)		Participation did not affect levels of CO_2 emissions.
Accelerated Reduction/ Elimination of Toxins Challenge	11	Polluting companies / Canada	Antweiler & Harrison (2007)		The program may have improved emissions for 29% of pollutants, worsened it for 12% & made no difference for 59%.
Strategic Goals Program	12	Metal-finishing companies	Brouhle et al. (2009)		Participation in the voluntary program had little effect on emissions, but the threat of regulation had a significant effect.
Various international codes of conduct	13	Various / international	Kolk et al. (2008)		Most of the 24 codes assessed lacked prescription, had low measurability and no monitoring or enforcement mechanisms.
Environmental Code of Practice for Packaging	14	Packaged goods / Australia	West & TEC (Moffet et al. 2004)		Targets are unlikely to be achieved and the code is failing to drive change. There is very poor reporting. Regulation is needed for some types of waste packaging.
Voluntary program to reduce sale of weeds	15	Plant nurseries / Florida	Caton (2005)		The program failed to reduce trade in plants on a voluntary 'do not sell' list.
Codes of practice for food marketing to children	16	Food advertisers / Australia	King et al. (2009)		Codes of practice have been ineffective in preventing inappropriate advertising of unhealthy foods to children. Regulation is required.
Code Code of Practice for Computerised Checkout Systems in Supermarkets	17	Supermarkets / Australia	Gunningham (2004)		The code was reasonably effective and covered 83% of the industry. The reason for effectiveness was probably the coincidence in consumer interests and supermarket interests in protecting their reputation.

4.2 The limitations of codes of conduct

To be effective, a code has to (i) specify rigorous standards, (ii) be widely adopted, (iii) compel or attract compliance and (iv) be independently verified to be effective. Here we consider the barriers to achieving these outcomes.

4.2.1 Code development

Code standards - private vs public interests: There is a difficult balance with voluntary codes: if standards are set too high, businesses will be reluctant to participate, but if standards are low, codes will be ineffective (Moffet et al. 2004). Some codes specify high standards to help distinguish between higher and lower performers – such as Forest Stewardship Council certification – but are unlikely to gain wide industry coverage. Although governments can be influenced by industry lobbyists to legislate only weak obligations, they are directly accountable to the pubic whereas industry associations are primarily beholden to their members (Webb and Morrison 2004). Unlike governments and regulations, industry associations have to gain the agreement of those who will be regulated by code standards.

The Australian Taskforce on Industry Self-Regulation (2000) concluded that "generally self-regulation needs to be in the self-interest of industry" to occur. Code standards are likely to be higher when there is confluence between private business interests and public interests, such as when profits are sensitive to reputation or adoption of new practices increases viability or profits. Standards for self-regulation of the US nuclear power industry were said to be high because there were compelling and self-interested reasons for the entire industry to avoid accidents (see case study 5). Similar self-interest may engender high standards of occupational health and safety when it can improve profits, avoid catastrophes or protect reputation. Otherwise, "the track record of self-regulation [in health and safety] is a poor one," Gunningham (2004) found.

Code specificity: Unless codes specify measurable performance standards, they are unlikely to drive change. Kolk et al. (1999) found that most of the 24 international industry codes they assessed lacked specificity (see case study 13). Code vagueness helps to attract signatories but reflects the "'lowest common denominator' principle". While codes might have some value in raising awareness, Kolk et al. concluded that they tended to be "alibis against more drastic steps, rather than active means to increase corporate social responsibility." The Australian Environmental Code of Practice for Packaging (case study 14) has been criticised as consisting mostly of motherhood statements, as has the mining industry's Sustainable Development Framework (case study 4).

Although ISO 14001 requirements are specific, the focus of the environmental management systems they mandate are on process goals rather than performance targets. This focus has failed to improve performance by polluting companies in the US and Canada (case studies 6A, 6C). In contrast, regulatory pressure in Australia, New Zealand, and some parts of Canada and the United States resulted in paper and pulp mills investing in expensive control technologies to achieve large reductions in pollution (Gunningham 2007, citing Gunningham et al. 2003).

Industry structure: Code standards are influenced by the structure and composition of the subject industry. Agreement on specific standards is more likely to be gained in an industry with fewer and larger companies backed by a mature and well-funded industry association (Taskforce on Industry Self-regulation 2000) and when "like minded/motivated participants [are] committed to achieving the goals" (Parker 2007). The US nuclear industry association had few

members and was extremely well-resourced with a budget of $US 54 million and 400 staff in the early 1990s (case study 5). A large number of heterogeneous or small business players makes it more difficult to reach industry-wide agreement, resulting in either lowest common denominator standards or low adoption rates. According to the Australian Service Providers Industry Association, a self-regulatory model is inappropriate when there are conflicting commercial interests and when bargaining power and information available to parties are unbalanced (Taskforce on Industry Self-regulation 2000).

4.2.2 Code adoption

One of the potential advantages of voluntary codes is that businesses will regard them as more legitimate than state regulation because they are developed internally. Under self-regulation, businesses can “experiment and innovate to meet public policy goals and the (legitimate) goals of the entity at the same time” (Parker 2007). This could help motivate widespread adoption, particularly if there was a looming threat of state regulation. However, voluntary measures inevitably come with the risk of piecemeal adoption and free-riding.

Extent of commitment: Companies cannot be compelled to adopt a voluntary code. Unless the code is undemanding or beneficial to business interests, or there is some degree of compulsion, there is unlikely to be universal adoption. Pressures or incentives for adoption can include that it is necessary for participation in an industry association, to gain certain types of business, to reduce compliance pressure from governments or to enhance public reputation.

Adopters can abandon a code if compliance becomes difficult or costly. The Motor Trades Association of Australia criticised voluntary franchising and petroleum retail codes because offending parties could “simply `drop out' of the scheme and continue the offending behaviour” (Taskforce on Industry Self-regulation 2000). State regulation has the advantage of applying to all members of a regulated industry regardless of willingness.

On the other hand, codes are thought to be advantageous when technology or circumstances are changing rapidly, when business has greater expertise than can be acquired by government or when there is diversity and innovation in the sector that should be encouraged (Parker 2007). Self-regulation could “achieve public policy goals in ways that are sensitive to their particular circumstances and concerns, utilise their particular expertise and capacities, and are as minimally prescriptive as possible”. For these reasons, internally developed codes are likely to be regarded by companies as having greater legitimacy than externally imposed regulations. But this may not be sufficient to engender comprehensive adoption.

Willingness and capacity: Code effectiveness is most likely to be undermined by the weakest industry performers, and it is that industry subset which may be least willing or least able to adopt a strong code. However, in some cases governments exert extra pressure on the worst performers to participate and the worst performers may have more to gain from voluntary programs (Stoeckl 2004). Companies that registered for a voluntary pollution reduction program in the US were more likely to have high emissions (Vidovic and Khanna 2007).

However, willingness to adopt a code does not necessarily mean it is a high priority for a company, and non-mandatory obligations may be neglected when other issues command resources or attention. Rules in well-enforced regulations are likely to be accorded a higher priority than rules in a voluntary code. Some businesses would find it economically or technically difficult to participate, particularly small businesses, which may also have had little capacity to influence the contents of a code (Taskforce on Industry Self-regulation 2000). Some

small businesses prefer the certainty of regulation (Taskforce on Industry Self-regulation 2000, citing Australian Business Limited).

Free-riding: There is a high risk of free-riders undermining code effectiveness. Free-riding occurs when companies which do not adopt a code or do not comply with it nonetheless gain benefits through enhanced reputation or reduced government oversight and greater cost-competitiveness. As explained by Gunningham and Rees (2002):

> [A]lthough each individual enterprise may benefit from collective action if other enterprises also participate, (as when all agree to participate in a self-regulatory scheme which will enhance the reputation and competitive position of the entire industry), each will benefit even if it does not participate, provided that others do. It is rational therefore, for individual enterprises to 'free ride'; to defect or engage only in token compliance, in effect seeking to benefit from the collective scheme without paying, or by imposing costs on others without compensation.

This undermines the effectiveness of codes not only because the overall industry performance suffers, but because it creates an incentive for others to also not adopt or comply with standards. The risks of free-riding are greatest in industries with "numerous, geographically dispersed, relatively unsophisticated, small businesses"(Gunningham and Rees 2002).

Compliant companies benefit from regulation when free-riding occurs. The industry importing hydrochlorofluorocarbons (chemicals that deplete the ozone layer) lobbied the Australian Government for legislative backing for an agreement they had drafted to apply a quota to imports because they feared that a voluntary agreement was not sufficient for some industry members to "withstand the commercial pressure to import excess quantities" and that one breach would "probably encourage all licensees to act in their commercial self-interest and follow suit" (Australian Parliament 1998). Regulation has the advantage of "reassuring corporate environmental leaders that their less-committed competitors also will be compelled to spend the money to achieve environmental outcomes that the leaders have demonstrated are technologically and economically feasible" (Gunningham 2007). Investments by pulp mills in expensive pollution control technologies due to regulation was facilitated by the "implicit promise that all competitors would be obliged to make the same investment" (Gunningham 2007, citing Gunningham et al. 2003). Statutory schemes can serve the interests of businesses that have already taken measures by reducing the potential for other businesses to tarnish the reputation of their industry.

4.2.3 Code compliance

Compliance mechanisms consist of monitoring, enforcement and sanctions, as well as reporting and auditing (discussed next section). As Kolk et al. (1999) have said, "monitoring and sanctions remain the most important test for the seriousness of the codes' implementation." Codes cannot be effective unless there is "a synergy between punishment and persuasion" Gunningham and Rees 2002). The most common criticism of voluntary codes is a lack of monitoring and enforcement. Kolk et al. (1999) found that fewer than 10% of 24 international industry codes assessed had clear processes for compliance (case study 13).

Cost and convenience barriers: If rules, whether in codes or regulations, are not enforced, there is incentive to breach them when compliance involves cost or inconvenience. Wiley et al. (2007) found it "troubling" that commercial whale-watching operators in the US frequently breached voluntary speed limits because they "seemed an ideal candidate for the successful use of the voluntary approach to management." Operators were ignoring limits when they were

inconvenient because they were under time pressure (see case study 8A). Likewise, an Australian assessment of a voluntary code for dolphin watching found it to be of limited value without broader application and enforcement (Allen et al. 2007) (see case study 8B). With voluntary codes failing to prevent potentially harmful behaviours in many locations, the International Whaling Commission's Subcommittee on Whale Watching expressed concern at the trend towards voluntary codes and recommended that they be backed up by regulation (IWC 2004). Although regulations are often poorly enforced, they are usually considerably more enforceable than codes of conduct and have stronger sanctions. There may also be a stronger compliance ethos for laws than for voluntary codes (Webb and Morrison 2004).

A particular difficulty for environmental codes is the frequent invisibility of poor practices unless there are independent monitors. In contrast, breaches of consumer-related codes are self-policing to some extent because the victims of breaches can complain (although there are often barriers to this).

Enforcement entities: When codes specify monitoring, their effectiveness often depends on the degree of independence of monitors. Kolk et al. (1999) identified six levels of independence in monitoring entities:

1st party: the companies themselves;
2nd party: business support groups such as trade and industry associations;
3rd party: external professionals paid by the firm monitored;
4th party: combinations of different actors (eg. business support groups and social interest groups);
5th party: social interest groups only, without involvement of the company;
6th party: legal authorities.

Industry codes are often administered and monitored by industry associations (2nd party). However, the role of industry associations as service providers and advocates for their members, and their interest in attracting and retaining members, can compromise code monitoring and enforcement roles. Cooperation and communal persuasion by an industry association can promote compliance but also undermine authority when enforcement action is necessary. As Rees (1997) found in his analysis of the chemical manufacturing industry, the members were very reluctant for their industry association to assume anything other than a facilitative role (case study 3B). The companies assumed that compliance could be achieved without any real authority, "but in the chemical industry, as in the rest of life, authority is the price of a vital community."

There are strong compliance advantages in involving independent entities in enforcement, with the degree of independence necessary depending on circumstances. Analysis of ISO 14001 compliance suggested that even third party monitoring is insufficient in some cases: because auditors "are hired by the organisations whose practices they are supposed to assess, their desire to get re-hired in subsequent years creates a serious conflict of interest that might encourage them to reduce their level of scrutiny" (Toffel 2005). In contrast, Gunningham (2004) noted that monitoring of the Australian code of practice for the fruit juice industry by code members themselves was effective because of the incentive for companies to ensure their rivals did not gain a competitive advantage by diluting their product: "by providing for inspection at the production stage by rival manufacturers, the code is largely self-policing." Consumers can also act as effective monitors either by involvement in administration of a code or when they have avenues for complaint when they are victims of poor practice (eg. case study 17, the scanning code).

Laggards and recalcitrants: Some proportion of participants in a voluntary program are inevitably going to be poor performers. Analysis of US nuclear and chemical industry programs by Rees (1994; 1997) suggested that about a third each of the participants were high, satisfactory and low performers, and that enforcement was essential to compel better performance from the laggards and recalcitrants. The nuclear association gained that authority only after it reported serious non-compliance to the regulatory agency (case study 5). As Gunningham and Rees (2002) say, "a worrisome question arises about the capacity of industrial self-regulation to use strategic punishment …, for the fact of the matter is that examples of this kind of punitive approach are very hard to find in industry self-regulation." Complementary policy measures such as state regulation and third party oversight are often needed to compensate for this deficiency in self-regulation.

Most code administrators have few or no sanctions by which to punish offenders. Gunningham (2004) says it is usually crucial for codes to operate "in the shadow of rules and sanctions provided by the general law, for it is these that are the most obvious and visible (but not the only) means of giving regulatees the incentive to comply with the code." The Code for Computerised Checkout Systems in Supermarkets operates against the backdrop of a law against misleading pricing (case study 17). Parker et al. (2004) emphasise the importance of an ongoing interaction with state enforcement: the motivation to implement compliance strategies for codes often derives from past enforcement actions by governments, and the continuing relevance and improvement of these strategies "generally only occurs because of the ongoing possibility (and often actuality) of enforcement action in the future."

If companies are sensitive to reputation, there is potential for shaming sanctions – public exposure of non-compliance – if breaches can be detected. This has worked for some large companies breaching codes about labour conditions in 3rd world countries)(Webb and Morrison 2004). However, as noted, detection of breaches can be more difficult for environmental codes.

4.2.4 Code transparency and accountability

Finally, a code cannot be effective unless there is credible information by which the public can ascertain whether it is achieving its stated goals. As Parker (2007) says, "self-regulating organisations and sectors may engage in activity that looks impressive, but is not actually effective." She points out this is also an issue with government regulatory agencies, which have too often measured success "in terms of numbers of inspections, prosecutions or interactions with regulated entities, with no real evaluation of whether these activities are actually effective at achieving the outcomes of their regulatory regime". One reason there is little empirical information about the efficacy of codes of conduct is that there is almost no systematic data collection by the bodies that administer codes and, if there is, it may be of dubious reliability or not disclosed. Accountability requires collection, disclosure and independent verification. Information about compliance under most codes featured as case studies here derives from data collection by, or mandated by, governments, such as mandatory pollution inventories (case studies 3A-C, 6A-C, 9A-B) and assessments of plastic bag use commissioned by the Australian Government (case study 7B).

With governments strongly promoting voluntary codes as an alternative to regulation, they should be auditing their effectiveness. Australia's Centre for Competition and Consumer Policy (2003) recommended that the ACCC should conduct triennial evaluations of the quality of voluntary industry codes and their administration, measured against benchmarks set in their guidelines for voluntary codes (see ACCC 2005). The Centre for Competition and Consumer Policy comment that "It does not matter if the first report is headlined '95% of Australian Business Substandard in Terms of Code Compliance'" (it "leaves plenty of scope for upwards

movement in subsequent triennial reports"). The UK Office of Fair Trading has implemented a new approach to code endorsement that places much more emphasis on auditing effectiveness. They endorse through a well-marketed logo "those codes for which there is robust evidence of practical success", obtained by methods including mystery shopping, compliance audits, complaints data and assessment of consumer satisfaction (Parker et al. 2004). There is also the potential for community, academic and NGO representatives to be involved in compliance verification.

4.3 Summary of limitations

Code development is likely to be lacklustre when reforms in the public interest conflict with private business interests. Agreement to high standards is likely to be difficult in industries with multiple and heterogeneous players and result in lowest common denominator codes. Codes often lack specific measurable performance standards.

Code adoption is likely to be piecemeal if the reforms required are difficult or costly, unless there are strong external pressures. The companies with the weakest standards may be those least willing to voluntarily reform, particularly if they have limited resources. Free-riders may undermine code effectiveness by dragging down overall industry performance and reducing the motivation of other companies to comply, particularly if there is a competitive advantage in not doing so.

Code compliance is likely to be uneven unless there is rigorous monitoring and enforcement and meaningful sanctions, which are lacking in many codes. If compliance mechanisms are weak, breaches will occur when code provisions become costly or inconvenient, and capacity to compel laggards or recalcitrants to reform will be lacking. Compliance can be compromised unless monitoring is conducted by an independent entity.

Code transparency and accountability will be lacking unless there is collection and disclosure of performance data and independent verification of performance. Governments cannot credibly promote codes as alternatives to regulation unless there is empirical evidence of their effectiveness.

4.4 Motivational limitations

That voluntary codes often don't succeed in reforming environmental practices should not be surprising in the light of motivations at play. As discussed in section 4, motivations for business practices are multiple and complex, and many company decision-makers are not solely motivated by profit and do not fit the profile of 'amoral calculators'. They may be motivated by normative and social reasons to adopt codes and improve business practices beyond legal compliance. But it is not enough that these motivations exist in some companies: they have to be of sufficient strength and comprehensiveness across an industry to engender widespread adoption of and compliance with codes. While some business executives are motivated to perform to high environmental standards, others are not. The motivations of high performers can be undermined if other companies breach standards, particularly if the latter gain a competitive advantage.

Although there are many criticisms of traditional regulation, there is little doubt that it "is generally effective" if enforced and that compliance is higher than when actions are voluntary (May 2005). The inherent weakness of self-regulation is the conflict between motivations and the fact that for some proportion of companies calculated profit motivations to reject or breach

codes will prevail over normative or social motivations. Some of the motivational conflicts and limitations of voluntary codes are outlined in Table 2.

Table 2. Motivational conflicts and limitations of voluntary codes

Motivations for reform may have limited industry coverage	Normative or social motivations for high performance may be strong in particular companies but are unlikely to apply to all companies in an industry. They may be sufficient under favourable economic circumstances but not when conditions are tougher. Motivational variability limits the capacity for an entire industry to voluntarily agree to high code standards and also achieve high adoption and compliance rates, unless there are strong external pressures. There is inevitable tension between specifying high standards and achieving high adoption and compliance rates.
Motivations for code development may not be motivations for high standards.	The motivation for development and adoption of many industry codes is the calculated one of staving off state regulation, but such motivations may also result in low standards and low compliance unless there are strong counteracting influences. There is no guarantee that calculative motivations for self-regulation will evolve into normative motivations over time, and little understanding of the processes by which such changes occur.
Low-performing companies are likely to be least motivated	Companies most in need of reform – those with low standards – are least likely to voluntary adopt and comply with high-standard codes unless they are calculatedly motivated through compulsion or potential for gain.
Motivations will decline when compliance is costly or inconvenient	Some proportion of companies in an industry will inevitably be calculatedly motivated to resist or breach codes when reforms are costly or inconvenient, unless there are stronger counteracting calculative reasons for adoption and compliance. There is much less likelihood of compliance when there is conflict between private business interests and public interests.
Free-riding undermines motivations of other companies	Free-riders will undermine motivations of other companies to adopt and comply with codes: calculative motivations are undermined if free-riders gain competitive advantages, normative motivations if adoption is too low to achieve industry targets, and mimetic motivations if adoption is piecemeal.
Weak sanctions will limit motivations for compliance.	Many codes lack mechanisms to compel laggards and recalcitrants to comply. They may be immune to sanctions available under codes and can opt out of codes if sanctions are threatened. Industry bodies are often reluctant to impose strong sanctions. Cooperation and peer relations in industry associations may foster social motivations for code adoption but undermine authority for enforcement, which lowers calculative motivations for compliance.
Low visibility will limit compliance motivations	Calculated motivations for compliance are limited when breaches are unlikely to be detected. This is a particular problem for environmental codes, where impacts are often invisible to consumers. Where compliance is poor, industries will seek to limit transparency.

In contrast to industry associations, governments do not require the agreement of those being regulated, and imposition may be the only way of achieving higher standards when there is conflict between private business interests and public interests, as is often the case with environmental issues. Regulations apply to all players and prevent free-riding provided they are

enforced. State regulations are more enforceable than most voluntary codes. Regulation is generally needed to strengthen or supplement codes, as Pengilley (1990) has stressed:

> Society cannot expect miracles from self-regulation when the substantive law is weak. … In many ways the best thing government can do for self-regulation is to provide for effective general laws. No trader will submit her/himself to stringent standards if she or he has little liability at general law. ... All codes have to work against the background that the law itself will provide a less palatable sanction to industry than will self-regulatory codes. This is the incentive to make self-regulatory codes operate effectively.

4.5 Conditions for effectiveness

Table 3 below summarises conditions under which self-regulation is likely to be effective and ineffective. In general, various degrees of self-regulation are most likely to work when there are no major conflicts between private business interests and public interests, when reform is a high priority for the industry as a whole, when there is good capacity within the industry for development and implementation of codes of conduct and when there are mechanisms to ensure compliance and transparency. These same factors also influence the effectiveness of state regulation, but laws have the substantial advantage of applying universally and having stronger enforcement mechanisms. When self-regulation is used, the challenge becomes to marry it with state regulation and other external pressures to make up for its weaknesses.

Table 3. Conditions under which codes of conduct are likely to be effective and ineffective

Elements of effective codes	Industry characteristics and conditions under which codes are most likely to be effective	Industry characteristics and conditions under which codes are likely to be ineffective
CODE DEVELOPMENT Rigorous measurable performance standards that address problems	**Cost-benefit**: Private business interests are not substantially in conflict with public interests (eg. reforms are necessary for industry viability or will lead to cost-savings or enhanced reputation and profits) and benefits of reform exceed costs.	Public interests and private business interests are in substantial conflict (eg. reforms will be costly), and external pressures are insufficient to motivate high code standards. Costs of reform are substantially higher than benefits.
	Priority: Substantive reform is a high priority, sufficient to overcome reform resistance by some companies and limit lowest common denominator outcomes.	Reform is a low priority for industry.
	Industry structure: Industry is relatively cohesive, participants are large and few, and there is a strong industry association with wide industry coverage.	Industry participants are many and heterogeneous, and/or lack a strong industry association with wide coverage.
	Industry capacity: Most companies are economically strong with a long-term focus and have technical and logistical capacity to address problems.	Some proportion of companies are economically marginal and focused on short-term profits and/or have limited technical or logistical capacity to develop solutions to problems.
CODE ADOPTION Adoption by a sufficient number of businesses to meet industry-wide goals and to limit free-riding.	**Extent of support**: Support for the code is sufficiently comprehensive across the industry to ensure wide adoption and to limit the drop-out rate, or there are strong industry leaders to exert pressure on other companies to adopt the code.	Support for the code is not very comprehensive, and industry leaders cannot exert sufficient pressure on laggards to motivate adoption.
	Weakest performers: There are compelling reasons for the weakest performers in an industry to adopt the code.	There is no compulsion or incentive for the weakest industry performers to adopt the code.
	Free-riding: Companies which do not participate will not gain a competitive advantage (ie. free-riding potential is limited).	Companies which don't participate will gain a competitive advantage (by free-riding).
CODE COMPLIANCE Monitoring, enforcement and sanctions to compel	**Enforcement capacity:** An industry body is likely to be granted the authority and resources necessary to monitor company performance and enforce compliance.	Companies are unlikely to grant an industry body authority and resources for monitoring and enforcement.

	Detectability: There is a high likelihood that code breaches will be detected by external parties and reported (eg. by independent monitoring or consumers).	Code breaches are unlikely to be detected except if reported by the company involved.
	Reputation: Industry viability and company profitability are reputation-sensitive.	Industry viability and company profitability are immune to reputational impacts.
	History: There is a history of compliance in the industry.	There is a history of poor compliance in the industry.
	External sanctions: State laws apply as a backup to codes.	There is no fallback to state enforcement when there is non-compliance.
CODE TRANSPARENCY & ACCOUNTABILITY Collection and disclosure of performance data and independent verification of performance	**Community oversight**: A powerful or substantial community sector has a strong interest in monitoring industry performance.	There is little community pressure for accountability.
	Data collection: There are viable methods of data collection by which industry performance can be assessed.	It is difficult to collect meaningful data about performance.

5. Importation of products deriving from illegally logged forests

*Trade in products derived from illegally logged timber is a serious impediment to forest conservation globally, with G8 Summit Declaration (2007), for example, noting that it is "one of the most difficult obstacles to further progress in realising sustainable forest management and thereof, in protecting forests worldwide." As part of an international effort to reduce illegal logging, the Australian Government made a 2007 election commitment to "encourage sourcing of forest products from sustainable forest practices and seek to ban the sale of illegally logged timber imports". Elements of the policy commitment relevant to this analysis are:

- require disclosure at point of sale of species, country of origin and any certification
- identify illegally logged timber and restrict its import into Australia (Department of Agriculture Fisheries and Forestry 2009 (Department of Agriculture Fisheries and Forestry 2009).

The Australian Government is assessing options for implementing its commitment, including a voluntary industry code of conduct. In this section we assess whether a voluntary industry code of conduct is likely to be effective in ensuring that timber and timber products imported into Australia are from legal sources.

5.1 Importation of illegally harvested timber products

In 2007 Australia imported timber and timber products worth about $8.4 billion (TheCIE 2010). It is very difficult to ascertain the proportion of timber products traded that involve illegally logged timber. According to United Nations agencies, 20 to 40% of global industrial wood production may come from illegal sources (UNECE/FAO 2007). In a report commissioned by the Australian Government, Jaako Poyry Consulting (2005) estimated that about 9% of Australia's imported forest products incorporated illegally logged timber. The value of these products was said to be about $400 million. However, based on the 2007 import figure of $8.4 billion, the value would be about double that at $750 million. Australia imports an estimated 0.3 per cent of estimated global production of timber products incorporating illegally logged timber (TheCIE 2010).

The affected products are furniture, paper and paperboard, wood based panels and sawn wood, and other products such as doors and mouldings, mostly coming from Indonesia, Malaysia and possibly China (Jaakko Poyry Consulting 2005). At least 22% of imported furniture is thought to include illegally harvested timber.

The problem of illegal logging is recognised within the import industry – including in codes of ethics and guidelines. However, most importers do not have formal processes to ascertain the origin of imports or their legality (Jaakko Poyry Consulting 2005). The Australian Timber Importers Federation (2010) says that illegal logging "has a major impact on the forest industry and its elimination is a primary concern for Australian businesses and communities dependent on forests that are having to compete against illegally logged timber products." The Federation requires its members to comply with a code of ethics that states that timber should be sourced from "lawful and well managed forests and plantations", but does not have resources or mechanisms for enforcement (Jaakko Poyry Consulting 2005).

5.2 Characteristics of companies involved in timber imports

Companies involved in importation of timber products are very diverse – in size and products sold – and there is intense competition between them. The diversity of participants is indicated by the more than dozen industry associations involved in developing a 'code of conduct for the purchase and supply of legally harvested timber and wood-based products', funded by the Australian Government (Mitchell 2009):

Australian Timber Importers Federation
Australian Wood Panels Association Incorporated
Australian Window Association
Decorative Wood Veneers Association
Furniture Industry Association of Australia
National Association of Forest Industries
Engineered Wood Products Association of Australasia
Timber Development Association
Queensland Timber Importers Exporters and Wholesalers Association Inc
Australian Plantation Products and Paper Industry Council
Timber Merchants Association
Windows and Doors Industry Council
Timber and Building Materials Association (NSW)

*The extent of membership in industry bodies in Australia is unknown. In Europe coverage is estimated to be about 70%, and shrinking due to companies cutting costs by withdrawing membership (Hentschel 2009).

Not surprisingly, there is no consensus within the multiple industries involved about the preferred response to the problem of trade in illegal products. Some companies (eg. Bunnings) and industry associations support a mandatory code (Australian Timber Importers Federation Inc. 2009; Furnishing Industry Association of Australia (Vic/Tas) 2009); others do not (TheCIE 2010).

*International trade in timber products can involve complex supply chains, across multiple companies and countries, which makes it difficult for individual companies to ascertain the legality of their imported timber products, unless they restrict imports to timber products certified under a reliable scheme. There are a range of certification schemes operating internationally, including the Forest Stewardship Council (with which Greenpeace and other NGOs are involved), but these have limited reach. By May 2007, less than 8% of the world's forests had been certified. The majority of certified forests are in North America and Europe. Oceania had about 5% of its forests certified by 2007, and Asia just 0.3% (UNECE/FAO 2007). Most Australian business involved in importation of timber or timber products do not require certification of their product. Fewer than 50 chain-of-custody certificates (issued by the Forest Stewardship Council or the Programme for the Endorsement of Forest Certification schemes) were issued in Australia in 2007 (UNECE/FAO 2007).

5.3 Australian Government assessment of policy options

The Australian Government commissioned The Centre for International Economics to assess regulatory and non-regulatory options to inform a Regulatory Impact Statement for two elements of its policy comment on illegal logging: disclosure at point of sale and restricting the import of illegally logged timber (TheCIE 2010). Based on a cost-benefit analysis, TheCIE recommended that the Australian Government "consider only non-regulatory policy options to combat illegal logging".

TheCIE (2010) recommended a non-regulatory approach despite acknowledging the likely ineffectiveness of a voluntary code of conduct:

> The main disadvantage is that those importing most of the products incorporating illegally logged timber are unlikely to be signatories to a voluntary code. These will also tend to be those facing the highest potential compliance costs and they will face incentives to opt out.

TheCIE rejected regulatory approaches not because they found them to be ineffective but because the apparent costs of reducing the trade in illegal timber (to consumers, businesses and government) would outweigh the benefits. However, the calculation of benefits in their cost-benefit analysis relied on the assumption that any economic benefits derived from illegal logging were equivalent in status to benefits derived from legal logging. Using this method, the benefits of illegal logging – lower prices for consumers and increased revenue for companies involved in illegal logging or trading in products from illegally harvested timber – came close to outweighing its costs (TheCIE 2010):

> The financial costs to legal producers around the world are estimated at US$46.0 billion a year, but these are more than offset by the fact that without illegal logging, consumers in the developed world would be worse off by around US$12 billion a year, and that in source countries consumers and producers of illegal timber and products using it would be worse off by US$80 billion a year.

On TheCIE's logic, the higher the level of illegal activity and the more profitable it is, the less reason there is for government intervention. If the same logic was applied broadly, governments should ignore all sorts of illegal activity because of the economic benefits accruing to those who directly and indirectly profit from it. Here are the economic costs and benefits relied on by TheCIE (2010) in its assessment:

(a) Costs of illegal logging (global): $106 billion, including $46 billion losses to legal loggers and $60 billion non-market costs (wasted resources, greenhouse gas emissions, loss of ecosystem services, soil and water degradation).
(b) Benefits of illegal logging (global): $92 billion, including lower timber costs for consumers and higher incomes for illegal loggers.
(c) Global net benefit of eliminating illegal logging (a – b): $15 billion.
(d) Global benefit: cost ratio of eliminating illegal logging: 1.16
(e) Australian net benefit of preventing illegal logging: $56 million (0.34% of the global benefit)

TheCIE also assumed that any action by the Australian Government was unilateral and not likely to be effective because Australia imports less than 1% of timber and timber products derived from illegal logging. But as pointed out in a submission by the European Union's

Directorate General of Environment (2009), many companies and countries are taking action against the trade in illegally logged timber, and so action by Australia would contribute to a growing multilateral effort to stem trade based on illegal logging.

Despite the lack of measures in place, TheCIE suggests that the current approach can be characterised as “self-regulation ... in operation” and that the measures are 90% effective (because an estimated 10% of imported products are thought to incorporate illegally logged timber). They say these measures cost $90 million and provide benefits of $28 million. They thus imply that the $400/$800 million trade involving illegally logged timber is not substantial enough to warrant further measures.

Starting from the basis that there is minimal benefit in reducing imports of illegal timber products into Australia, TheCIE unsurprisingly found that all options ranging from a voluntary code of conduct to government regulation resulted in a ‘negative net benefit’. For example, a government-prescribed legality verification scheme and regulated due diligence were each said to cost from $US20-236 million a year and yield a benefit only of $US5-34 million a year.

Because it relies on two dubious assumptions – (i) that the benefits of illegal logging are almost equivalent to the costs and (ii) that Australia would be acting unilaterally and be ineffective in contributing to the prevention of illegal logging – TheCIE analysis does not provide a sound basis for comparing different approaches to reducing the trade of illegal products.

If the Australian Government was to support a voluntary code of conduct as its preferred policy approach, it would contrast with measures taken elsewhere. In May 2008 the US Lacey Act was amended to make it illegal to import products made from plants (with limited exceptions) taken or traded in violation of domestic or international laws. The European Parliament is due to vote on legislation that would require operators placing timber and timber products on the Community market to apply due diligence. “[M]any other countries are also developing measures to deal with illegally harvested timber at the point of production, sale or importation” (EU Directorate-General Environment 2009). The European Union is proceeding with regulation despite many timber trade federations having operated codes of conduct. An assessment of options for the European Parliament found that although the voluntary initiatives have some merits, “their voluntary nature, lack of policing over implementation and lack of sanctions for non-compliance challenged over the years their credibility and sustainability” (Commission of the European Communities 2008).

5.4 Checklist to assess whether a code is likely to be effective and is the appropriate approach

5.4.1 Conditions for code effectiveness

This checklist has been derived from the analysis in section 4 of the conditions under which codes are likely to be effective.

1. Code development – are the conditions likely to result in a code with rigorous measurable performance standards that address the problem of illegal imports?

Checklist questions	Response	Meets code condition
1. Conflict of interests: Is there a conflict between public interests in preventing imports of illegal timber products and private business interests in minimising business costs?	Yes. Some larger, reputation-sensitive companies support a rigorous approach. Because products from illegally logged timber are likely to be cheaper, the market is competitive and implementing compliance will involve some expense, there would be conflict for some businesses between private and public interests.	NO
2. Priority: Are the proposed reforms a high priority for most companies in the industry?	No. Reform is a priority for some large retailers in the industry, some of whom have adopted measures against illegal logging and want to reduce the competitive advantage of those who don't take such measures. Traders with less profile have little incentive to reform and stand to become more competitive on price when others invest in higher standards.	NO
3. Industry structure: Is the industry cohesive? Are participants relatively large and few? Is there a strong industry association with wide coverage?	No. The industry is heterogeneous, with a large number of participants of different size with divergent agendas. There are multiple industry associations and coverage is likely to be uneven.	NO
4. Industry capacity: Do most companies have a strong capacity to enact the reforms, including financial, informational and logistical capacity?	*No. Because the trade is international, and supply chains are often complex, it is difficult for individual companies to set up their own voluntary system of verification. Some large companies already take steps to ensure their products are legal, eg. through certification. But there are many small to medium businesses with limited capacity to establish their own compliance regime.	NO

2. Code adoption – is adoption likely to be comprehensive?

Checklist questions	Response	Meets code condition
5. Extent of support: Is there likely to be industry-wide support for a strong code? Are industry leaders that are supportive of the code able to exert pressure on other companies to adopt it?	No. The industry is highly heterogeneous and there is limited capacity for industry leaders to exert pressure on other businesses to adopt voluntary high standards.	NO
6. Laggard companies: Is there good potential for compulsion or incentives likely to be effective in getting laggard companies to adopt a code?	No. Apart from the potential for an industry body to require adoption of a code as a condition of membership, there is little potential to compel or entice laggards. Membership of an industry body may not be important for many businesses.	NO
7. Free-riding: Will companies that do not adopt the code gain a competitive (free-riding) advantage?	Yes. There are likely to be price differences between products derived legally and those derived illegally that some companies could exploit.	NO

3. Compliance – conditions likely to permit monitoring and enforcement sufficient to compel compliance

Checklist questions	Response	Meets code condition
8. Industry compliance capacity: Is an industry body administering the code likely to be able to monitor and compel compliance**?***	No. Because of the disparate nature of businesses and industry bodies involved, it is highly unlikely they would grant an administering body sufficient authority or resources to effectively monitor compliance, and there are limited sanctions available for such a body.	NO
9. Detectability of breaches: Would breaches of the code be easily detected by external parties?	*No. Because the trade is international, external parties would find it very difficult to detect breaches. Unless they have due diligence processes in place, businesses themselves may be unaware they are importing illegally derived products.	NO
10. Reputation sensitivity: Are most companies in the industry sensitive to loss of reputation should code breaches be exposed publicly?	No. Only some of the biggest companies with brand recognition are likely to be sensitive to reputation. There are many companies focused largely on price differentials.	NO
11. Compliance ethos: Is there a history of good compliance	Unknown.	?

in the industry?		
12. Legal backup: Can existing laws provide an effective backup to a code should there be non-compliance?	There are no relevant existing laws.	NO

4. Transparency and accountability – are the conditions such as to permit independent verification of performance?

Checklist questions	Response	Meets code condition
13. External verification: Is there a strong community sector able to monitor and assess industry-wide code performance?	No. Trade in timber products is too difficult for the community sector to monitor.	NO
14. Data collection: Are there viable methods of data collection by which to independently assess industry performance?	No. There are currently no methods of data collection by which to assess industry performance, hence the lack of certainty over the extent of trade in illegally derived products.	NO

5.4.2 Conditions specified by Government policy under which codes are appropriate

This checklist is derived from the Government's policy as outlined in its *Best Practice Regulation Handbook* specifying conditions under which voluntary codes and various forms of regulation are appropriate (Australian Government 2007). Some of them overlap with questions above.

Checklist questions	Response	Meets code condition
1. Public concern: Is there strong public concern about the problem?	Yes. It is regarded as a high priority environmental issue. The Government considered the level of concern sufficiently high to make it the subject of an election commitment.	NO
2. Market role: Can the problem be fixed by the market?	No. Australian consumers have demonstrated some willingness to pay for wood products from certified sources. But the level is not high enough to address the problem. Many purchasers are motivated mainly by price.	NO
3. Need for sanctions: Are legal sanctions necessary to achieve the desired outcome?	Yes. Many of the companies importing products derived from illegal logging are those least likely to adopt voluntary measures.	NO
4. Need for universality: Is universal application across the	Yes. Even if there was 90% compliance with a voluntary code it may not capture the estimated	NO

industry required to achieve the desired outcome?	10% of imports estimated to be derived from illegal logging.	
5. Compliance issues: Is there a systemic compliance problem within the industry?	Unknown.	?

The industries involved in import of timber and timber products fail to satisfy the conditions under which a voluntary code of conduct might be effective, failing at least 13 of the 14 criteria tested here. They also fail to satisfy the conditions specified by the Australian Government for determining whether a voluntary code is appropriate, failing four of five criteria. Major barriers include:

- there are conflicts between private business interests in minimising cost/maximising profit and the public interest in not supporting illegal logging;
- many companies are unlikely to agree to a strong code if it involves costs or inconvenience above a low threshold;
- the industries are too heterogeneous and involve too many businesses with diverse interests to expect comprehensive adoption of and compliance with a voluntary code;
- there is little potential to compel or attract adoption by laggard companies;
- there is a high probability of free-riding, which will give some companies a competitive advantage and discourage others from adopting a code; and
- breaches are not easily detected by third parties, and there are no current methods of data collection by which to assess the level of compliance.

All the evidence suggests that a voluntary code of conduct would fail to stop, or even substantially reduce, importation of products deriving from illegally logged timber.

6. Conclusion

This review, although based on limited empirical analysis, has found that voluntary industry codes of conduct are mostly ineffective for achieving reforms of any substance, particularly if the changes are costly or inconvenient. This is good reason, as the Australian Government's *Best Practice Regulation Handbook* specifies, to limit the use of voluntary codes and other self-regulatory mechanisms to low-risk and low-impact/significance problems where there is no strong public interest concern. Although some businesses will self-regulate to a high standard, others in the same industry will not reform unless compelled. Voluntary codes suffer many weaknesses, some of which could only be addressed in some sort of quasi or co-regulatory arrangement. In many cases where comprehensive change is required, regulation is the only option. Unless policy approaches are determined on the basis of evidence about effectiveness, there is the risk of failure and for abdication of the state's responsibilities on behalf of the public interest in favour of private business interest in avoiding reform.

7. References

ACCC. 2005. Guidelines for developing effective voluntary industry codes of conduct. Australian Competition & Consumer Commission.

ACCC. 2009. *Prescribed industry codes of conduct*. Retrieved May 2009, from http://www.accc.gov.au/content/index.phtml/itemId/783097/fromItemId/783096.

ACCI. 2005. Holding back the red tape avalanche: A regulatory reform agenda for Australia. Position paper. Australian Chamber of Commerce and Industry.

Allen S, Smith H, Waples K and Harcourt R. 2007. The voluntary code of conduct for dolphin watching in Port Stephens, Australia: is self-regulation an effective management tool? Journal of Cetacean Research Management 9(2): 159-66.

Antweiler W and Harrison K. 2007. Canada's voluntary ARET program: limited success despite industry cosponsorship. Journal of Policy Analysis and Management 26(4): 755-73.

Australian Government. 2007. *Best Practice Regulation Handbook*. Canberra.

Australian Parliament. 1998. Ozone Protection Amendment Bill 1998 Explanatory Amendment.

Australian Timber Importers Federation Inc. 2009. Submission on Regulatory Impact Statement: Proposed new policy on illegally logged timber, prepared by Centre for International Economics.

Barla P. 2007. ISO 14001 certification and environmental performance in Quebec's pulp and paper industry. Journal of Environmental Economics and Management 53(3): 291-306.

Braithwaite J. 1993. Responsive business regulatory institutions. Business, Ethics and Law. C Cody and C Sampford. Sydney, Federation Press.

Brodie J, Binney J, Fabricius K, Gordon I, Hoegh-Guldberg O, Hunter H, O'Reagin P, Pearson R, Quirk M, Thorburn P, Waterhouse J, Webster I and Wilkinson S. 2008. *Scientific consensus statement on water quality in the Great Barrier Reef*. Department of the Premier and Cabinet, Brisbane.

Brouhle K, Griffiths C and Wolverton A. 2009. Evaluating the role of EPA policy levers: an examination of a voluntary program and regulatory threat in the metal-finishing industry. Journal of Environmental Economics and Management 57: 166-81.

Burby R and Paterson R. 1993. Improving compliance with state environmental regulations. Journal of Policy Analysis and Management 12(4): 753-72.

Carroll P and McGregor-Lowndes M. 2002. Managing regulatory compliance. Current Issues In Regulation: Enforcement and Compliance Conference. Melbourne.

Caton B. 2005. *Availability in Florida nurseries of invasive plants on a voluntary 'do not sell' list*. United States Department of Agriculture, Animal and Plant Health Inspection Service.

Centre for Competition and Consumer Policy. 2003. *Submission on ACCC proposed guidelines for developing effective voluntary industry codes*. Australian National University, Canberra.

Cohen D. 2004. The role of the state in a privatised regulatory environment. In *Voluntary codes: private governance, the public interest and innovation*. K Webb, Carleton Research Unit for Innovation, Science and Environment, Ottawa, Canada: 35-56.

Consumers' Federation of Australia. 2009. Unit Pricing. From www.consumersfederation.org/unitpricing.htm.

Cowton C and Thompson P. 2000. Do codes make a difference? The case of bank lending and the environment. Journal of Business Ethics 24(2): 165-78.

Department of Agriculture Fisheries and Forestry. 2009. *Australian Government Forest Policy Commitments*. From http://www.daff.gov.au/forestry/australian_government_forest_policy_commitments.

DiMaggio P and Powell W. 1983. The iron cage revisited: institutional isomorphism and collective rationality in organizational fields. American Sociological Review 48: 147-60.

Ehrenberg-Bass Institute. 2009. *Plastic Bag Ban Research*. University of South Australia, Zero Waste SA.

Emerson C. 2009. *Unit pricing becomes mandatory in major supermarkets*. Media Release. Australian Government.

Commission of the European Communities. 2008. Proposal for a regulation of the European Parliament and of the Council: laying down the obligation of operators who place timber and timber products on the market.

EU Directorate-General Environment. 2009. Technical comments DG ENV-E2 on Draft Regulatory Impact Statement. European Commission.

Francis J. 1993. *The Politics of Regulation*. Oxford, Blackwell.

Furnishing Industry Association of Australia (Vic/Tas). 2009. Submission to the Centre for International Economics (CIE) Regulatory Impact Statement proposed new policy on illegally logged timber.

G8 Summit. 2007. *Growth and responsibility in the world economy*. http://www.g-8.de/Webs/G8/EN/G8Summit/SummitDocuments/summit-documents.html.

Gamper-Rabindran S. 2006. Did the EPA's voluntary industrial toxics program reduce emissions? A GIS analysis of distributional impacts and by-media analysis of substitution. Journal of Environmental Economics and Management 52: 391-410.

Gunningham N. 2004. Codes of practice: The Australian experience. In *Voluntary Codes: Private Governance, the Public Interest and Innovation*. K Webb. Ottawa, Canada, Carleton Research Unit for Innovation, Science and Environment**:** 317-34.

Gunningham N. 2007. Reconfiguring environmental regulation: next generation policy instruments. In *Industrial innovation and environmental regulation: developing workable solutions*. S Parto and B Herbert-Copley, UNU Press.

Gunningham N and Rees J. 2002. Industry self-regulation: an institutional perspective. Law & Policy 19(4): 363-414.

Gunningham N, Thornton D and Kagan R. 2005. Motivating management: corporate compliance in environmental protection. Law & Policy 27(2): 298-325.

Hentschel G. 2009. Review of Timber Trade Federations' Purchasing Policies. The EU Timber Trade Action Plan.

Hyder Consulting Pty Ltd. 2008. *Plastic Retail Carry Bag Use. 2006 and 2007 consumption*. Environment Protection and Heritage Council.

IWC. 2004. *Report of the sub-committee on whalewatching*. International Whaling Commission, Scientific committee.

Jaakko Poyry Consulting. 2005. *Overview of illegal logging*. Department of Agriculture, Fisheries & Forestry, Australian Government, Canberra.

Kagan R and Scholz J. 1984. The criminology of the corporation and regulatory enforcement styles. In *Enforcing Regulation*. K Hawkins and J Thomas. Boston, Kluwer-Nijhoff.

King A and Lenox M. 2000. Industry self-regulation without sanctions: the chemical industry's responsible care program. The Academy of Management Journal 43(4): 698-716.

King L, Kelly B, Gill T, Chau J and Chapman K. 2009. *Consultancy report on inappropriate food marketing to the National Preventative Taskforce*. The University of Sydney, Institute of Obesity, Nutrition & Exercise.

Kolk A, van Tuler R and Welters C. 1999. International codes of conduct and corporate social responsibility: can transnational corporations regulate themselves? Transnational Corporations 8(1): 143-80.

May P. 2005. Compliance motivations: perspectives of farmers, homebuilders, and marine facilities. Law & Policy 27(2): 371-400.

Mitchell S. 2009. Code of conduct project for the purchase & supply of legally harvested timber and wood-based products. Powerpoint presentation. Timber Development Association.

Moffet J, Bregha F and Middelkoop M. 2004. Responsible Care: A case study of a voluntary environmental initiative. In *Voluntary Codes: Private Governance, the Public Interest and Innovation*. K Webb. Ottawa, Carleton Research Unit for Innovation, Science and Environment**:** 177-208.

Office of Regulation Review. 1998. *A Guide to Regulation*, 2nd edition. Australian Government. http://www.pc.gov.au/orr/guide/regulationguide2.

Overdevest C. 2004. Codes of conduct and standard setting in the forest sector: constructing markets for democracy? Industrial Relations 59(1): 171-98.

Parker C. 2004. ACCC enforcement and compliance project: working paper on ACCC compliance education and liaison strategies. Centre for Competition and Consumer Policy, Australian Natural University.

Parker C. 2007. Self-regulation and the not-for-profit sector. Melbourne Law School.

Pengilley W. 1990. Competition law and voluntary codes of self regulation: an individual assessment of what has happened to date. UNSW Law Journal 212(212-301).

Potoski M and Prakash A. 2005. Covenants with weak swords: ISO 14001 and facilities' environmental performance. Journal of Policy Analysis and Management 24(4): 745-69.

Prakash A and Kollman K. 2004. Policy modes, firms and the natural environment. Business Strategy and the Environment 13(2): 107-28.

Rees J. 1994. Hostages of Each Other: The Transformation of Nuclear Safety since Three Mile Island. Chicago, The University of Chicago Press.

Rees J. 1997. Development of communitarian regulation in the chemical industry. Law & Policy 19: 477-528.

Rivera J and de Leon P. 2004. Is greener whiter? Voluntary environmental performance of western ski areas. The Policy Studies Journal 32(3): 417-37.

Rivera J, de Leon P and LKoerber C. 2006. Is greener whiter yet? The Sustainable Slopes program after five years. The Policy Studies Journal 34(2): 195-221.

Sethi S and Emelianova O. 2006. A failed strategy of using voluntary codes of conduct by the global mining industry. Corporate Governance 6(3): 226-38.

Spence D. 2001. The shadow of the rational polluter: rethinking the role of rational actor models in environmental law. California Law Review 89(4): 917-98.

Stoeckl N. 2004. The private costs and benefits of environmental self-regulation: Which firms have most to gain? Business Strategy and the Environment 13: 135-55.

Taskforce on Industry Self-regulation. 2000. *Industry self-regulation in consumer markets*. Australian Government. http://www.treasury.gov.au/documents/1131/HTML/docshell.asp?URL=01_prelims.asp.

The Treasury. 1999. Prescribed Codes of Conduct: Policy Guidelines on Making Industry Codes of Conduct Enforceable under the Trade Practices Act 1974. Australian Government.

TheCIE. 2010. *A final report to inform a Regulation Impact Statement for the proposed new policy on illegally logged timber*. Prepared for Department of Agriculture, Fisheries and Forestry. Centre for International Economics, Canberra.

Toffel M. 2005. Voluntary environmental management initiatives: smoke signals or smoke screens? PhD thesis. Berkeley, University of California.

Total Environment Centre. 2007. Supermarket Shame: City of Sydney Plastic Bag Survey 2007. TEC, City of Sydney.

UNECE/FAO. 2007. *Forest Products Annual Market Review 2006-2007*. United Nations Economic Commission for Europe, Food and Agricultural Organization of the United Nations. www.unece.org/timber/docs/fpama/2007/FPAMR2007.pdf.

Vidovic M and Khanna N. 2007. Can voluntary pollution prevention programs fulfill their promises? Further evidence from the EPA's 33/50 Program. Journal of Environmental Economics and Management 53(2): 180-95.

Webb K and Morrison A. 2004. The law and voluntary codes: examining the 'tangled web'. In *Voluntary Codes: Private Governance, the Public Interest and Innovation*. K Webb. Ottawa, Canada, Carleton Research Unit for Innovation, Science and Environment**:** 97-174.

Welch E, Mazur A and Bretschneider S. 2000. Voluntary behaviour by electric utilities: levels of adoption and contribution of the Climate Challenge program to the reduction of carbon dioxide. Journal of Policy Analysis and Management 19(3): 407-25.

West D and TEC. 2008. EPHC Mid-term review of the National Packaging Covenant: Report 1: Recycling Performance and Data Integrity. Sydney, Total Environment Centre.

Wiley D, Moller J, Pace R and Carlson C. 2007. Effectiveness of voluntary conservation agreements: Case study of endangered whales and commercial whale watching. Conservation Biology 22(2): 450-57.

Winter S and May P. 2001. Motivation for compliance with environmental regulations. Journal of Policy Analysis and Management 20(4): 675-98.

Appendix 1 Case-studies

Case study 1: UK banks and lending practices

Reference: Cowton & Thompson (2000).

Companies: Banks in the United Kingdom.

Focus of study: Effectiveness of 'A statement by banks on the environment and sustainable development'.

Background: Through their lending practices, banks facilitate commercial activities that degrade the environment. The code of conduct was promulgated by the United Nations Environment Programme (UNEP). Some 30 banks signed the code at the 1992 Rio Earth Summit, and at the time of the study there were more than 90 signatory banks from five continents. The statement "commits signatories to pursue common principles of environmental protection by using best practices of environmental management in their internal operations and integrating environmental risks into the normal checklist for risk assessment and management".

Method: A comparison between the lending practices and policies of signatories and non-signatories was conducted by a questionnaire. It was sent to all 36 signatory banks (in 1995) engaging in corporate lending in the UK and 105 non-signatory banks. 40% of the banks (56% and 35% respectively) participated.

Results: The signatories displayed some differences from non-signatories, but few were statistically significant. There was no statistically significant difference in lending procedures. About three-quarters of signatories (74%) included environmental factors in their formal corporate lending policy while just over half of non-signatories (51%) did so, but the difference was not statistically significant. This finding meant that more than a quarter of signatories (26%) were in breach of the statement in this respect. There were no significant differences between the groups on the avoidance of particular industries or companies with a poor environmental record. There was some evidence of different attitudes towards companies and information that might lead to some differences in practices or future divergences. Signatories rated significantly more highly than non-signatories regarding belief in sustainable development and consideration of the environment as part of a broad ethical stance.

Conclusions: There was no evidence that the code was having a substantial impact on business practice. The researchers suggested that some banks may have been under governmental pressure to sign the statement, but did not have pressure or motivation to change their policies and practices. About one-quarter of the signatories were in breach of the code by failing to include environmental factors in their lending policy.

Case study 2: US ski resorts and environmental management

Reference: Rivera & de Leon (2004).

Companies: Ski resorts in western USA.

Focus of study: The effectiveness of the Sustainable Slopes Program (SSP).

Background: The SSP is a voluntary environmental program established by the US National Ski Areas Association with federal and state government agencies. The SSP was developed in response to community conflict over expansion plans by the industry and environmental problems such as landscape destruction and damage to wildlife habitats. It aims to promote beyond compliance activity with principles outlined in a charter covering 21 areas of environmental management. Participants are expected to

conduct annual self-assessment of their environmental performance. The charter does not include specific environmental standards, third-party oversight or sanctions for poor performance.

Method: Assessments conducted by an alliance of American environmental organisations were used to compare the environmental performance of ski resorts participating in the program with those not participating (amongst other assessments). The western ski industry comprises about one-third of ski resorts in the US, and more than 90% of the facilities occupy some federal land.

Results: Participation in the Sustainable Slopes Program was significantly correlated with lower environmental performance, the converse of what was expected. Higher pressure from state environmental agencies was significantly correlated with higher environmental performance. Coercive institutional regulatory pressures were associated with participation in the voluntary program. Companies operating ski areas on public lands, and therefore facing more federal government oversight, were more likely to participate, as were those facing higher pressure from state environmental agencies, state environmental groups and local public opinion.

Conclusions: The voluntary program failed to bring about improved environmental performance. The researchers suggested that participating companies were "displaying free-riding behaviour expecting to improve their 'green' reputation without actually implementing it beyond compliance environmental management principles and practices." This behaviour is facilitated by the program's lack of sanctions and lack of independent monitoring. The only variable that had a positive and statistically significant relationship with environmental performance was state environmental pressure.

Addendum: Rivera et al. (2000) conducted a follow-up assessment of the performance of the first 5 years of the program. They found that of 4 categories of environmental management, only with resource conservation management was there any significant correlation between participation and higher environmental performance. This facet included conservation of water and energy and recycling. They commented that "once enrolled, ski areas may predominantly adopt natural resources conservation practices that are known to be easier and more visible for their customers (such as recycling) or those that offer immediate short-term benefits with relatively small investment such as energy and water conservation." The other management areas may not have short-term financial benefits or customer visibility, or may require larger financial investment.

Case study 3A: US chemical manufacturing companies and pollution

Reference: King & Lennox (2000)

Companies: Chemical manufacturing companies in the US

Focus of study: The effectiveness of the Responsible Care Program of the US Chemical Manufacturers Association (CMA)

Background: The CMA's Responsible Care Program is a "leading example of self-regulation without sanctions". It was created in 1989 in response to declining public confidence in chemical companies to "promote continuous improvement in member company environmental, health and safety performance in response to public concerns, and to assist members' demonstration of their improvements to critical public audiences". It includes 10 guiding principles and six codes of management practice that cover more than 100 management practices. The codes set standards for inputs but not for outputs: they specify broad environmental objectives and require performance of certain functions but they do not specify what output levels should be achieved. The policy of the CMA is to revoke the membership of any company that persistently breaches the codes, but it does not require third parties to verify or enforce adherence. No companies have been expelled. CMA firms must annually self-assess their progress towards code implementation and submit this to the CMA.

Method: Participant and non-participant performance was compared by comparing emissions recorded in the EPA's Toxics Release Inventory, which reports on emissions of over 200 toxic chemicals

Results: The entire industry greatly improved performance from 1987-1996, with toxicity-weighted emissions reduced by nearly 50 percent. There was no evidence that the Responsible Care program had positively influenced the rate of improvement among its members. Indeed, there was evidence that members were improving their relative performance more slowly than non-members. Members of Responsible Care did not improve faster than they had prior to joining.

Conclusions: The findings expose the difficulty of creating self-regulation without explicit sanctions. "Thus, whatever the strength of the institutional forces that Responsible Care brings to bear on its members – and these forces appear considerable – they have not been enough to counteract opportunism." The program has been moving toward a third-party verification system that may help distinguish good from poor performers and allow use of sanctions. "If industry self-regulation is to achieve its promise, systems must be put in place to improve the ability of outsiders to audit improvement."

Case study 3B: US chemical manufacturing companies and environmental management

Reference: Rees (1997).

Companies: Chemical manufacturing companies in the USA.

Focus of study: The effectiveness of the voluntary chemical manufacturing industry code Responsible Care.

Background: The 1984 Union Carbide's gas leak in Bhopal India plant that killed up to 4000 people led to major changes in government regulation of the chemical industry and stimulated an international program of self-regulation called 'Responsible Care'. Participation in Responsible Care is a condition of members of the US Chemical Manufacturers Association. The program "stands out as the leading (and most influential) example of regulation by industry trade association on the US environmental scene today." It was created as a legitimation strategy to deal with demands that the industry be responsible and responsive. The code consists of guiding principles and 6 codes of management practices.

Method: Qualitative analysis based on open-ended interviews with ~90 industry members and examination of documents.

Results: While there is industry recognition that genuine implementation of the code is pivotal to improving their public reputation, results have been 'uneven' (this was the CMA's verdict). About 1/3 of the members may be classed as laggards and recalcitrants. The formal role of the industry association is to "facilitate" delivery on the code, and it has no authority for enforcement. There is a tension between the role of the trade association as a service organisation (and 'cheerleader' for the industry) and as administrator of the voluntary code. It is unlikely that "the industry laggards or recalcitrants … will change their errant ways until Responsible Care is backed by stiffer sanctions."

Conclusions: "While Responsible Care has come a long way since its creation less than a decade ago, it also has a long way to go, and …. It remains a very open question whether it will in fact develop into a truly effective system of industry self-regulation." Progress has been erratic, many institutional mechanisms are in very early stages of development, and it doesn't meet community expectations. Institutional competence to deliver on the promises of the code is growing slowly, but overcoming its limitations will require "more authority than chemical company officials have ever been willing to concede to their industry association." There are strong grounds for pessimism because "it seems all but inevitable that [the industry association] is, and will remain, a largely ineffectual (albeit well-intentioned) associative regulator."

Case study 4: International mining companies and environmental management

Reference: Sethi & Emelianova (2006).

Companies: Mining companies internationally.

Focus of study: The credibility and effectiveness of a voluntary code of conduct for the mining industry – the International Council on Mining and Metals (ICMM) Sustainable Development Framework.

Background: The SD framework, launched in 2003, creates a uniform set of principles, which individual companies are meant to adapt to their own situation. It consists of 10 major principles of industry sustainable development performance and operations, and 46 standards to amplify the more general principles. "This initiative is the primary vehicle through which the mining industry has channeled most of its resources to demonstrate the industry's commitment toward meeting societal expectations."

Method: The code was assessed against 6 preconditions the researchers nominated as essential for a successful code.

- that in the initial stages it does not attempt to include the entire industry, but is led by forward-looking companies
- that it covers issues of concern to community, not just those preferred by the industry, and that the broad principles are amplified into objective, quantifiable, and outcome-oriented standards.
- That the governance structure includes representation from different segments of the industry, has independent, external input (independent experts) for performance monitoring;
- That code compliance is integrated into a company's normal decision-making structure and systems, and that top management is accountable for ensuring the company's compliance;
- That performance with code compliance by individual companies and industry as a whole is subjected to independent external monitoring and compliance verification;
- That the industry makes the findings of the independent external audit available to the public without prior censorship.
- Individual company performance was assessed on the quality of the sustainability reports published by 4 of the leading companies in the industry whose CEOs are leaders in ICMM.

Results: The researchers found that the code and its implementation substantially failed to meet the preconditions. The governance structure for implementing the SD framework is totally controlled by the mining industry, and there is no formal incorporation of external, non-industry based input in the governance structure or decision-making. None of the members of ICMM provide information about their compliance with the guidelines in the ICMM's SD framework.

The principles of the code have been defined by the industry, and they lack in "specificity, objectivity, standards of compliance and their relevance to the magnitude of the problems that currently exist". The principles are inspirational rather than specific and the amplificatory standards are also broad and non-specific. "Rather than alleviating the problem of overly generalised principles, the amplifications have further exacerbated the problem by overly simplistic explanations." For example, the first principle states its goal to ''implement and maintain ethical business practices and sound system of corporate governance,' but there is no specification of what is required to meet these goals. There are no standards that define minimum expectations and that are quantitative and measurable. There are no ''outcome-oriented'' standards of performance.

The sustainability reports were largely pictorial and descriptive, emphasising process rather than output and did not provide information by which the performance could be adequately assessed. “The reports did not have any comparative analysis or points of reference where individual company performance is measured against best practices, targets to be achieved, and short falls, if any.” There was little information about actions which had been previously criticised by external stakeholders. There was no systematic analysis of the companies’ compliance with the ICMM principles and standards.

Conclusions: The researchers concluded that the code signatories “substantially failed in meeting any of its objectives in terms of adequacy of principles, establishment and implementation of the framework, allocation of sufficient financial and human resources, and independent external monitoring for compliance verification.”

Case study 5: US nuclear power plants and safety

Reference: Rees (1997), citing Rees (1994).

Companies: Nuclear power companies in the USA.

Focus of study: The effectiveness of a voluntary industry program for nuclear power plants.

Background: There was a transformation of nuclear regulation after the 1979 Three Mile Accident, led by a newly created industrial association, the Institute of Nuclear Power Operations (INPO). With a budget of $54 million and 400 staff, it developed standards, conducted inspections and investigated accidents.

Method: Qualitative analysis based on open-ended interviews with industry members and examination of documents.

Results: Initially the INPO did not have much authority over industry members. About one-third each of the members “aggressively adopted” the recommendations, “did okay” and “really didn’t do anything”. For the laggards, the problems identified by INPO didn’t have sufficient priority, and they could ignore the INPO because of its lack authority. The INPO had a dilemma: “a significant number of plants were ignoring the problems INPO had identified, yet getting tough seemed out of the question because that might drive the recalcitrants out of the association.”

The INPO created peer pressure by formalising their assessment process and ranking plants on a scale of 1-5. For low-performing plants they sought to meet with the member plant’s board of directors. These factors made a substantial difference: “…what motivates nuclear utilities to live up to the demands of the often costly industrial principles and practices articulated by INPO’s normative system is the peer pressure generated by INPO’s industry-wide institutional mechanisms for allocating praise and distributing shame.” The INPO also created authority by ‘piggybacking’ on regulators. They reported seriously recalcitrant plants to the regulatory agency, resulting in government intervention. This gave them much greater clout within the industry. “Is it the case that behind every effective system of industry self-regulation there stands a formidable government regulator?”

What distinguishes INPO’s regulatory approach is “its role in promoting the development of a distinctive kind of community in the nuclear power industry…[which] has led to the emergence of a new responsibility-centred industrial culture, a distinctive set of unifying principles and practices which spells out what conduct is virtuous and what goals are legitimate and desirable” – a ‘communitarian regulation’.

Conclusions: INPO developed into a “remarkably potent” industry watchdog. “With INPO… we have an example of a rare regulatory species – an industrial association that is an effective regulator. It “has a well-defined industrial morality that is backed by enough communal pressure to institutionalise responsibility among its members.” There are reasons the nuclear industry may be exceptional in it

potential for effective self-regulation: the potential for catastrophic accidents, the relatively small number of organisations, and the lack of economic competition among the utilities.

Case study 6A: US manufacturing facilities and ISO 14001 environmental management

Reference: Toffel (2005).

Companies: US manufacturing facilities in 5 industries.

Focus of study: Comparison of emissions and regulatory compliance of adopters of ISO 14001 with non-adopters.

Background: The ISO 1400 Environmental Management System Standard is an international management standard that provides specifications for development of an environmental management system (EMS). There are no performance requirements, but signatories commit to complying with environmental regulations and to continual improvement (to the EMS not necessarily performance). Third-party auditing every 3 years is required for certification. Comparative studies "suggest the enthusiastic perceptions of certified organisations may be overstated".

Method: Emissions data from the Toxic Release Inventory were compared for ISO 14001 adopters (858 manufacturing facilities in 5 industries) and non-adopters from 1991-2003, with trends examined both prior to and subsequent to adoption.

Results: ISO 14001 adopters emitted more toxic chemicals and more hazardous chemicals prior to adoption than non-adopters. However, they were improving their performance more rapidly than non-adopters in the pre-certification period. Adopters reduced their emissions by 25% to 32% as they prepared for certification and by 21-29% in the first two years after certification. However, the emissions of adopters became more hazardous per pound of emission, which resulted in no difference to the health risk imposed on communities by adopters and non-adopters. There was also no evidence that legal compliance improved among adopters.

Conclusions: The ISO14001 standard attracted facilities that were reducing their emissions and improving legal compliance faster than non-adopters. Adopting companies reduced their emissions in the two years before adoption, upgrading their management practices to meet the standard, and their better performance continued for 2 years after certification. But their emissions increased in toxicity, with the net result that "adopters' subsequent emissions imposed health risks on their communities that were indistinguishable from those imposed by non-adopters." There was also no evidence that adopters improved their regulatory compliance.

Contributing factors probably include variability in audit stringency and uneven rigor among certifiers. Because auditors "are hired by the organisations whose practices they are supposed to assess, their desire to get re-hired in subsequent years creates a serious conflict of interest that might encourage them to reduce their level of scrutiny." The procedural approach (in contrast to performance outcomes) of voluntary programs may fail to drive improvement in compliance or health risks. More prescriptive management practices with mandatory periodic third-party certification may improve performance.

Skepticism is warranted about claims that self-regulation provides a viable substitute for government regulation.

Case study 6B: US manufacturing facilities and ISO 14001 environmental management

Reference: Potoski & Prakash (2005).

Companies: >3000 facilities regulated as major sources under the US Clear Air Act.

Focus of study: Analysis of the effect of a voluntary program (ISO 14001) with third party auditing on pollution emissions.

Background: Voluntary programs leading to beyond compliance activity are "an integral component of the emerging environmental governance paradigm". But their efficacy has been "uneven" and critics question whether companies comply with voluntary commitments. ISO 14001 is a voluntary code for environmental management launched by the International Organisation for Standardisation in 1996. It is the most widely adopted voluntary environmental program in the world. ISO 14001 is enforced by third-party audits without public disclosure of results.

Method: They compared the environmental performance of certified and non-certified facilities classified as 'major sources' of air pollution under US laws whose emissions are tracked under the Toxics Release Inventory. Changes in emissions from 1995-96 and 2000-01 were compared, controlling for other factors. 151 (4%) of the sample of 3709 facilities were certified.

Results: Larger facilities were more likely to join ISO 14001, as were those in states with more stringent hazardous air regulations. Certified facilities had significantly larger reductions in pollution emissions than non-certified facilities.

Conclusions: Government inspections and stringent pollution regulations spur facilities to join ISO 14001. ISO 14001-certified facilities had better environmental performance than non-participants. This was attributed to third-party audits motivating compliance.

Addendum: This study has been criticised by Toffel (2005) as unreliable because facilities were coded as adopters if they adopted anytime by 2001. The majority of adopters in the sample were probably certified towards the end of the sample period, when emissions of all facilities were lower, so emission reductions may have been due to those with higher reductions joining the scheme rather than due to certification. Lowered emissions could also be due to lower production rather than improved practices.

Case study 6C: Quebec's pulp and paper industry and ISO 14001 environmental management

Reference: Barla (2007).

Companies: Pulp and paper industry, Quebec.

Focus of study: The effect of ISO14001 adoption or not on emissions from 37 plants between 1997 and 2003.

Background: By December 2003, over 66,000 entities worldwide had voluntarily adopted an ISO 10001 certified environmental management system (EMS). The ISO norm does not prescribe any specific objective. It is up to the organisation to determine its own targets. In Canada, companies spend about 2% of total expenditures obtaining and maintaining ISO 14001 EMS. The paper and pulp industry is a major source of pollution, particularly effluent discharge. It has been subject to increasingly stringent regulations.

Method: The monthly effluents of 37 pulp and paper plants were used to compare the performance of plants before and after certification and the performance of plants not certified.

Results: ISO 14001 certification had no effect on total suspended solids or total quantity of water rejected. It was associated with reduction in discharges of biological oxygen demand by about 9%. The impact of ISO was very variable across plants: only 3 adopters considerably reduced either total solids or biological oxygen demand after certification; 10 adopters maintained emissions and 6 adopters increased them. Plants that did not adopt the ISO norm overall had more significant effluent reductions than adopters.

Conclusion: ISO 14001 was mostly ineffective in improving effluent performance. The researchers suggested the ineffectiveness could be explained by the certification being motivated by a new governmental attestation procedure and by request from some European clients rather than by internal forces.

Case study 7A: Australian supermarkets and plastic bags

Reference: Total Environment Centre (2007).

Companies: Supermarkets in Sydney

Focus of study: The effectiveness of the Code of Practice for the Management of Plastic Bags

Background: Under threat of a ban or levy, Australian retailers were given the opportunity to voluntary reduce plastic bag use by the end of 2005. They failed to meet their targets, but continue to insist that regulation is not needed.

Methods: All outlets of 3 major supermarkets in the City of Sydney council area were surveyed to assess the availability of recycling facilities for plastic bags, shop promotion materials, reusable bags, staff practices and consumer behaviour at the checkout.

Results: 64% of customers used a free plastic bag, checkout operators automatically gave out a free plastic bag 68% of the time, only 27% of operators first asked if a bag was needed when a low number of items were purchased, 42% of supermarkets did not have a recycling bin, 65% had no promotional or education material.

Conclusions: Voluntary efforts are not sufficient to achieve the agreed reductions. The industry's code of practice is "nothing but a delaying tactic and enforceable legislative action is needed for a better and faster outcome".

Code of practice 7B: Australian supermarkets and plastic bags

Reference: Hyder Consulting Pty Ltd (2008).

Companies: Australian retailers.

Focus of study: Changes in the use of plastic carry bags from 2002-2007 and effectiveness of the Code of Practice for the Management of Plastic Bags.

Background: In 2003, the Environment Protection and Heritage Council agreed to a goal of phasing out plastic bag use by the end of 2008. Their initial approach was to endorse a National Code of Practice for the Management of Plastic Bags developed by the Australian Retailers' Association. This code included a commitment by major supermarket signatories to reduce the use of high-density polyethylene plastic bags by 50% by the end of 2005 against a 2002 baseline. It was estimated that the total reduction in single-use bags from 2002 to end 2005 was 34%, including 41% by supermarkets and 23% across other retail sectors. Since then, there have been no plastic bag reduction targets in place.

Method: Data from bag manufacturers, bag imports and retailers was used to assess the level of use. Observations of shopping behaviour at retail outlines were conducted in Melbourne and one regional Victorian town (>800 retail sale exit observations).

Results: From 2002-2006, HDPE plastic bag consumption declined by 43.6%, but increased by 17% from 2006 to 2007, resulting in a total decline of 33.9% from 2002 to 2007. Estimated bag use declined from 5.95 billion in 2002 to 3.93 billion in 2007. The majority of bags (an estimated 75% in 2007) come from supermarkets. Their consumption declined from 2002 to 2005, but increased from 2005 to 2007. Shopping behaviour observations found that within stories not charging for single-use bags, 72% of transactions involved these bags. Within stores charging a fee for the bags, only 27% involved a single-use bag. An estimated 30 to 50 million plastic bags enter the environment as litter annually. It is not possible to determine whether there is any link between bag consumption and litter.

Conclusions: Plastic bag use declined from 2002 to 2006 (but the extent of decline by end 2005 – 34% - did not meet the code of practice target of 50%). Consumption of plastic bags increased in 2007. The reasons for this could include some or all of the following:

- reduced focus on bag reduction by retailers, due to the conclusion of bag reduction targets
- reduced focus on bag reduction by consumers due to shifts in environmental concerns to climate change and water supply issues
- plateauing of consumer behaviour change to reusable bags
- increased use of degradable bags leading to the perception of single-use bags as acceptable
- broader factors such as population growth or economic growth

The researchers suggest that a “policy based market intervention by government or industry” will be necessary to reduce use further. The introduction of bag charges leads to a major shift from single-use bags.

Addendum: South Australia banned shops from supplying light-weight single-use polyethylene carry bags, starting May 2009. Ehrenberg-Bass Institute (2009) assessed the level of public support for it and its effect on consumer behavior by interviewing 502 people. More than 90% of respondents reported taking their own bags shopping in June 2009 compared to about 60% in October 2008. The proportion which reported using only store provided bags dropped from 18% to 1%. Many respondents reported it was a behaviour change within the previous 3 months, evidence that it was directly in response to the ban’s implementation. There was a high level of support for the ban, with ¾ of respondents saying they were highly supportive, and only 4% saying they were not at all supportive.

Case study 8A: US whale watching operators and voluntary speed limits

Reference: Wiley et al. (2007).

Companies: Commercial whale-watching companies in northeast US.

Focus of study: The efficacy of voluntary guidelines for regulating vessel approaches to whales.

Background: Voluntary guidelines for commercial whale-watching vessels used to view protected species of whales were created by the U.S. National Oceanic and Atmospheric Administration to avoid whale strikes and to keep whale-watching vessels from harassing animals, as prohibited under law.

Method: Compliance with recommended speed limits in zones around sighted whales was assessed by placing observers with Global Positioning Systems on whale-watching vessels. Data were obtained for about 1000 whale surfacings on 46 trips on 12 different vessels in 2003 and 2004.

Results: A high level of non-compliance (mean 0.78) was observed, with maximum speeds frequently exceeding those recommended. Failure occurred throughout the industry, although some companies were more compliant than others.

Conclusions: The voluntary program did not achieve its goal of substantially limiting vessel speeds near whales. When results were provided to the industry, some operators asserted that the two study years were not indicative of normal practice because there were fewer whales during that time and operators were under intense time pressures. However, the researchers concluded that this typifies one argument against voluntary conservation agreements – that participants can ignore restrictions when they are inconvenient or interfere with business. The researchers said the findings were "troubling" because the whale-watching seemed an ideal candidate for the successful use of the voluntary approach to management, due to the industry's "(1) focus on charismatic federally endangered and protected species, (2) operation within a federally designated marine protected area, (3) close links to education and conservation…, (4) professed sympathies for the animals, (5) dependence on a concerned public for paying customers and the public's willingness to report the mistreatment of animals, (6) stated ability to self-regulate and formally or informally deal with noncompliant operators, and (7) substantial efforts on the part of government agencies to ensure that operators were aware of the guidelines." The existence of the voluntary measures had thwarted the promulgation of regulations. The concluded that "that voluntary approaches to conservation management should be viewed with caution and, when used, should have quantifiable outcomes that are monitored and evaluated carefully."

Case study 8B: Australian dolphin watching tour operators and a voluntary code of conduct

Reference: Allen et al. (2007).

Companies: Commercial dolphin-watching tour operators in Port Stephens, Australia.

Focus of study: The effectiveness of a voluntary code of conduct on constraining dolphin and tour boat interactions.

Background: There are concerns about the impacts of tourism on dolphins, with studies showing that boating can result in short-term activity changes. Commercial dolphin watching in Port Stephens has involved up to 17 tour boats, about half of which run multiple, daily tours on a year-round basis. Due to concerns about impacts on dolphins, and with no government regulation, dolphin watching operators formed the Port Stephens Commercial Dolphin Watch Association Inc. (PSCDWA) in 1995 and adopted a code of conduct. This code was updated in 2000. The majority of operators were members of the Association.

Method: Boat interactions with dolphins were observed from the shore and assessed for compliance with the code of conduct and potential impacts on dolphins. A total of 15 boats conducting commercial dolphin watching tours were observed during the study from 21 December 2002 to 26 January 2003.

Results: The code of conduct limit of two boats within 100m of dolphins was breached during 35% of interactions, and the limit of 30 minutes duration was breached 13% of the time. (Dolphins were continuously exposed to dolphin watching boats for longer than 30min during 76% of recorded continued interactions.) Methods of approach and boat-handling that breached the code were observed during 16% of occasions. Five boats committed 31 breaches of the code limit of three trips per day. On 18 occasions there were interactions with dolphins outside the hours recommended by the code. Four boats were most compliant with the code; two boats occupied the middle ground; and three boats were consistently least compliant across all aspects of the code assessed.

Conclusions: The voluntary code had "limited value". It was ineffective in minimising impacts because some operators were non-compliant with the code, and there was considerable exposure of dolphins,

including calves, to both dolphin watching boats and recreational boats. There is need for “an association (or set of regulations) that all operators are subject to, rather than just those that choose to belong, and that has the capacity to encourage or ensure compliance with its code.” In 2006, with the declaration of a Marine Protected Area, the NSW government introduced regulations that included minimum approach distances, number of vessels permitted within this distance and the operation of vessels around marine mammals.

Case study 9A: US manufacturing businesses and pollution emissions

Reference: Gamper-Rabindran (2006).

Companies: Manufacturing plants in the US.

Focus of study: The effect of the Industrial Toxics Program (33-50 program) on pollution emissions of manufacturing plants.

Background: The 33-50 program is an EPA pollution prevention initiative launched in 1991. The goal was to reduce the aggregate emissions of 17 target chemicals, by 33% in 1992 and by 50% in 1995. The EPA provides information about options for pollution reduction and publicises the names of plants with reduced pollution. Plants determine their own goals and strategies.

Method: Emissions data from the Toxic Release Inventory were used to compare participants in the 33-50 program with non-participants.

Results: The program did not reduce emissions of participants compared to non-participants’ in most of the 8 top polluting 33-50 industries. Participants did better than non-participants in the fabricated metal industry and the paper industry (some of the time period), but did worse in the chemical and primary metal industries. However, in the fabricated metal industry the reductions were due to increased off-site transfers rather than reduced pollution. The program reduced overall TRI emissions only in the paper industry.

Conclusion: For most industries, the 33-50 program did not reduce emissions of participants compared to non-participants.

Case study 9B: US manufacturing companies and pollution emissions

Reference: Vidovic & Khanna (2007).

Companies: 365 manufacturing companies from 19 industries in the US.

Focus of study: Effect of the voluntary 33/50 Program on emissions of 17 toxins.

Background: The 33/50 program was designed to reduce the aggregate releases of 17 chemicals reported to the Toxics Release Inventory by 33% by 1992 and by 50% by 1995, relative to 1988 emissions. The EPA claimed the program reached its goal by 1994.

Method: Reported emissions to the Inventory were compared for 154 participating and 211 non-participating companies.

Results: Companies with higher emissions and a larger number of facilities were more likely to participate. Incentives for participation also included public pressure and potential liabilities under mandatory regulations. Participation in the program accounted for only 0.1% of the decline in estimated emissions. The program attracted many companies that had already substantially reduced emissions and they increased emission intensity during the program.

Conclusion: Participation did not have a significant impact on emissions and the decline in emissions observed “was likely to be the result of an independent trend that started before 1991, rather than a

consequence of the 33/50 Program." The results suggest that companies were free-riding on past reduction efforts.

Case study 10: US electric utilities and greenhouse gas emissions

Reference: Welch et al. (2000).

Industry/companies: Electrical utilities in the USA.

Focus of study: The effect of the voluntary Department of Energy's Climate Challenge Program on CO2 emissions of large electric utilities.

Background: The Department of Energy's Climate Challenge Program consisted of companies signing a written agreement to reduce their CO2 emissions by a certain amount. Utilities set their own goals and no sanctions were involved for non-compliance. The DoE identified 5 benefits for companies: the potential negation of future regulation, potential future credit for reductions, reduced costs, public recognition and contribution to the environment.

Method: The effectiveness of the program was assessed by assessing levels of CO2 emissions of the largest 50 electric utilities east of the Rocky Mountains from 1995-97. 35 participated in the program and 15 did not.

Results: Companies were more likely to volunteer for the program if they were in states characterised by higher levels of environmentalism, if they were subject to more regulation or if they were larger. However, participation did not affect levels of CO2 emissions from 1995-97. Companies committing to higher targets had lower levels of actual reduction.

Conclusions: The failure may be due to the general weakness of the CO2 regulatory regime in the USA as there was no looming regulatory threat. There was also little public scrutiny of CO2 emissions, so utilities were in "little danger of being held tightly accountable". Companies may have volunteered in part to "present a convincing portrait of environmental commitment" that may reduce regulators' rigor in other areas. "Under conditions of weak regulation and weak public concern, firms probably feel little external pressure to deliver on promised reductions." The regulatory context is a very important factor in the potential effectiveness of voluntary programs.

Case study 11: Canadian companies and release of toxins

Reference: Antweiler & Harrison (2007).

Industry/companies: Canadian companies from various industries including pulp & paper, metal mining & processing, chemical products, oil & gas, and processing industries.

Focus of study: The effect of the voluntary Canadian Accelerated Reduction/Elimination of Toxins (ARET) Challenge on emissions reductions by companies.

Background: The ARET program challenged companies to reduce discharges of 30 toxic, persistent and bioaccumulative chemicals by 90% by 2000, and of 87 other toxins by 50% by 2000. The chemicals covered, targets and deadlines were jointly determined by government and industry.

Method: Emissions data from Canada's National Pollutant Release Inventory was used to assess the role of the program in reducing emissions of 17 ARET substances (15% of the total targeted by the program), controlling for self-selection (the fact that if companies are already inclined to take actions consistent with objectives of a program they are more likely to sign on). Emissions prior to participation were compared with emissions during participation and participant companies were compared with non-participants.

Results: By the end of the program in 2000 351 facilities were participating. The 50% target or 87 chemicals was met by 1997, 3 years ahead of schedule. The 90% target for 30 chemicals was not met, but a 61% reduction was achieved. However, this data was self-reported and the baseline for comparison was 3 years prior to the ARET challenge starting, and a significant share of reductions counted were achieved before the program started. Furthermore, companies were allowed to choose their own baseline up to 6 years before the 1994 launch of the program. About half of the reductions reported to ARET were achieved before the program started. Participants in the program outperformed non-participants, but there was little evidence that they accelerated reductions.

Participation in the ARET Challenge accelerated emissions reductions for 5 toxins (29%), had no effect for 10 (59%) and slowed reductions for 2 toxins (12%). Other factors, such as regulator threat, may have played a role in the accelerated reductions in some cases. When the total releases of all ARET substances were considered, ARET participants made fewer reductions than non-participants. The apparently limited impact of the program was substantiated by a survey of participants which found there were other motivations, particularly regulation, for reductions.

Conclusions: Participation in the ARET program had a limited effect on emissions reductions. The researchers question whether "firms felt a need to make genuine reductions in order to attain regulatory or marketing benefits through participation, or whether they merely saw an opportunity to claim credit for business-as-usual behaviour."

Case study 12: US metal-finishing companies and effluent

Reference: Brouhle et al. (2009).

Companies: US metal-finishing companies.

Focus of study: The influence of a voluntary program and the threat of formal regulation on emissions by the metal-finishing industry.

Background: The metal-finishing industry was facing a threat of regulation and also had the opportunity to participate in a voluntary program - the Strategic Goals Program, launched in 1997. It was a sector-based program providing information and establishing goals derived from negotiation with the industry. The industry is characterised by small, single-facility companies, many privately owned. The regulatory threat increased over time to one of greater stringency, allowing for a comparison of the effect of different threat levels.

Method: Various data (eg. from the Toxic Releases Inventory) were used to compare the performance of 65 participants and 134 non-participants in the voluntary program.

Results: Participants emitted 7% less emissions over the study period (1995-06 to 2002-03) compared to 49% less for all metal finishers reporting to the Toxic Releases Inventory. But participants emitted substantially less pollution than non-participants on average in each year of the study period. Facilities located in states with more stringent environmental regulations were more likely to join the program, as were those in states with higher contributions to environment groups. Threats of regulation had a significant effect on emissions reductions.

Conclusions: There was no "robust evidence" that the voluntary program had a significant impact on emission reductions over the entire study period, lending support to the idea that "facilities often joined voluntary programs, perhaps with good intensions, but make no real changes in behaviour as a direct result of joining the program." However, participants did appear to use the program in the latter years to make reductions, which is consistent with the idea that "relatively clean facilities do not initially change emissions because they have already made use of available abatement opportunities" but they can over

time. In contrast, facilities reacted strongly to the threat of regulation, both in its initial form and when the threat increased in stringency by significantly reducing emissions.

Case study 13: International industry associations and codes

Reference: Kolk et al. (1999).

Companies: 24 international business support groups for apparel manufacturers, chemical producers, petroleum producers, toy businesses, tourism bodies and others.

Focus of study: How codes adopted by 24 international business support groups rated against criteria for effectiveness (other categories of codes were also assessed but these will not be addressed here).

Background: During the 1990s there was a growing interest in developing codes of conduct by transnational corporations, business groups and international organisations, mostly due to actions by consumer groups and NGOs. However, it is a matter of dispute whether the behaviour of transnational corporations can be regulated through codes of conduct.

Method: The content of business codes was analysed and rated against criteria in an analytical framework in categories of specificity (issues, focus and measurability) and compliance mechanisms. Specificity is important because the more elaborated and focused the codes, the more likely they are to lead to measurable standards. "If issues are mentioned in general, leaving much room for interpretation, they will be more difficult to monitor than in the case of a restrictive formulation."

Results: The majority of codes had very little specificity and limited environmental focus. Close to half (46%) mentioned 0-1 environmental issues. Most codes lacked prescription or restrictions, and were very general in nature, with 79% classified as having a 'general' or 'frail' focus. Measurability of business codes was low, with none addressing more than 10-25% of issues in any quantitative way and only 12% having any sort of clear or vague timeline.

Compliance mechanisms were mostly lacking: 62% did not define monitoring systems and processes and only 8% had clear systems and processes. Most did not have independent monitoring, with 96% not specifying any monitoring or conducting self-monitoring. None specified monitoring by a 3rd party. None of the codes specified 'severe' sanctions for non-compliance. Most do not specify any financial commitment.

Conclusions: "Firms' renewed attention to codes cannot only be interpreted as a defensive response to social pressure." In a positive effect, codes can lead to constructive dialogue with external stakeholders – they are an entry to 'talk'. "The agenda-setting potential of codes, therefore, should not be underestimated." The business support group codes provided the least potential for addressing current socioeconomic problems of the four actors initiating codes of conduct. With regard to focus, measurability and compliance mechanisms, they were weakest on all scores. "This reflects their 'lowest common denominator' principle": many attracted considerable numbers of subscribing firms because the statements are very vague, but this renders monitoring and sanctions "useless, if they exist at all". They serve at best as awareness-raising tools. "However, once this function has been fulfilled, which currently seems to be the case, they become public relations and alibis against more drastic steps, rather than active means to increase corporate social responsibility."

Case study 14: Australian companies and waste packaging

Reference: West & TEC (2008).

Companies: Companies in Australia that produce waste packaging.

Focus of study: The effectiveness of the Environmental Code of Practice for Packaging under the National Packaging Covenant (NPC)

Background: The NPC, adopted in 1999, is "the voluntary component of a co-regulatory arrangement for managing the environmental impacts of consumer packaging in Australia." It has a regulatory underpinning – the National Environmental Protection (Used Packaging Materials) Measure. It was revised in 2005 and has targets for 2010.

Results: Recycling of packaging in 2006-07 was estimated to be 48.3%, less than the 56% estimated by the NPC Council (their figure excluded some types of consumer packaging that are poorly recycled). The overall target of 65% by 2010 is unlikely to be met. There was an increase of just 1.9% from the 2005 figure of 46.4%. An estimated >2.5 million tonnes went to landfills in 2006-07, an increase of 7.1% from 2005. The extent to which the NPCC has contributed to increases in recycling is unknown, as they are influenced by many other factors, but is likely to have been small. The Covenant does not deliver good information on consumption and recycling of consumer packaging or on its performance targets. There is a very low level of reporting by signatories of measurable targets, and NPC reporting is not independent as it is paid for by the industry association.

Conclusion: The NPCC needs to produce more reliable data on packaging. Due to other influences on recycling, the NPC is likely to be making little or no difference to packaging outcomes. The NPC consists of motherhood statements and little direction for participants in the supplier chain. Voluntary efforts by 10-20% of signatories are failing, and regulatory action is required. For some types of waste, market-based instruments (eg. a container deposit system) are appropriate. For other types, a product ban or mandatory return to point of sale schemes are needed. In general, TEC recommends that packaging manufacturers should be required to only produce packaging materials that are recyclable, have a well developed collection infrastructure, and conform to the code. State governments should be required to enforce the NEPM and the code, to manage data collection and undertake education.

Case study 15: Florida nurseries and invasive plants

Reference: Caton (2005).

Companies: Nurseries that were members of the Florida Nursery, Growers and Landscape Association.

Focus of study: The compliance of nurseries with a voluntary program of not selling a list of invasive plants

Background: Over half of invasive plant species in the US were deliberately introduced, most through nurseries. The nursery industry advocates voluntary measures rather than regulation as the best way to prevent weed problems. In 2001, the Florida Nursery, Growers and Landscape Association created a list of 45 invasive plants that they recommended their members not sell. The species chosen had limited market share to limit economic impacts.

Method: The researcher compared the availability of species on a list of 45 'do not sell' plants in 1999 and 2004 in a catalogue advertising nursery stock and also assessed their availability online.

Results: 18 species in the catalogue were available in both 1999 and 2004. The number of nurseries selling one or more increased from 76 in 1999 to 81 in 2004. The number of members of the Association selling species on the list increased from 26 in 1999 to 47 in 2004. Another 22 nurseries were selling species from the list over the internet, including 15 members of the Association. An additional 8 species from the 'do not sell' list were available online. About 60% of the 'do not sell' species were available in Florida nurseries in 2004.

Conclusions: The voluntary program failed to reduce trade in plants on the 'do not sell' list in Florida. The number of members of the Association selling species from the list nearly doubled. The failure was attributed to the lack of aggressive promotion and the lack of incentives for dealers to comply. Dealers not

complying with the program can have an advantage over those that do. Such a scheme is unlikely to work when a group is large, fluctuating and decentralised.

Case study 16: Australian food marketing to children

Reference: King et al. (2009).

Companies: Companies that advertise food to children in Australia.

Focus of study: Effectiveness of codes for food marketing to children.

Background: Inappropriate food marketing to children has been identified as a national policy priority. The 'marketed diet' consists mostly of "energy-dense, nutrient poor foods", which is contributing to high rates of obesity in Australian children. The study addresses the potential roles of national government, industry groups, NGOs and consumers in preventing inappropriate marketing. Industry seeks a predominantly self-regulatory approach and consumer organisations argue for government regulation. There are numerous codes of practice: Commercial Television Industry Code of Practice, Food and Beverages Advertising and Marketing Communications Code, Responsible Children's Marketing Initiative, Subscription Broadcast Television Code of Practice, Commercial Radio Codes of Practice, Code of Practice on Nutrition Claims.

Methods: Analysis of international evidence, including Australian and international research, and case studies of policy initiatives, and critique of relevant codes of practice.

Results: None of the codes is effective in addressing the problem. Eg. the Commercial Television Industry Code of Practice says ads directed to children should not encourage or promote "unhealthy eating or drinking habits", defined as "excessive or compulsive consumption of food and/or beverages". But the problem is not the portrayal of excessive or compulsive food consumption. The code does not restrict the volume of unhealthy food advertising or the range of techniques used to target children. The Responsible Children's Marketing Initiative will not involve all food companies, does not apply to peak viewing times, there are no significant deterrents for non-compliance, it is unclear what criteria will be used to define unhealthy foods, and restrictions will not apply to all forms of marketing techniques.

Conclusion: The authors recommend that the Federal Government take the lead by developing a food marketing policy framework and embedding it in statutory regulation. "Significant changes in the extent and nature of food marketing are only likely to occur within a statutory framework or through rigorous specifications within a co-regulatory system." The advantages of a regulatory approach include:

- comprehensive and optimally effective in reducing children's exposure
- highly efficient, as it clearly defines and limits what is covered
- consistency across media
- simple to monitor; Government can provide or arrange independent oversight and monitoring of the system, as well as enforcement
- applicable to a full set of food and retail companies, rather than a self-selected set of food companies. Uniform standards for all industry groups creates a level marketplace and an inclusive approach
- could be implemented incrementally

Case study 17: Australian supermarkets and checkout scanning

Reference: Gunningham (2004).

Companies: Supermarkets in Australia.

Focus of study: Effectiveness of the Australian Code of Practice for Computerised Checkout Systems in Supermarkets.

Background: When supermarkets implemented new bar code scanning technology, prices were specified only on shelves and not on products, which opened up the potential for systematic overcharging because shoppers would have to remember the shelf price if they wanted to be certain they were charged the correct price at the checkout. To address concerns, a code of practice was introduced in 1989 by a supermarket industry association. There were incentives built into the code to discourage abuse. If a customer detected overcharging for an item they were to receive it free. The code set out provisions for complaint handling and dispute resolution. The code was administered by a committee that included a consumers' representative. The code was backed up by laws that made it illegal to mislead a customer about the selling price of any item.

Method: Qualitative analysis, based on previous reviews.

Results: The code was judged by the Trade Practices Commission (TPC) in 1992 as effective. It was adopted by more than 83% of the supermarket scanning industry. Price discrepancies had been within "reasonable limits" and the number of complaints were trending downwards. The TPC and its successor concluded there was no justification for making it mandatory, although improvements in monitoring were recommended. However, it is difficult to know how much of the performance can be attributed to the code and how much to other factors such as improved management systems and technology.

Conclusion: Accepting that the code had been successful, the researcher proposed that the reason for its success was that "there is a substantial coincidence of interest between that of consumers in not paying misleading prices and that of large supermarket chains in protecting their reputation."