



Submission No 12

## **Inquiry into Illegal Logging Prohibition Bill 2011**

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# Submission to Joint Standing Committee on Foreign Affairs, Defence and Trade

## *Illegal Logging Prohibition Bill 2011 Inquiry*

Greenpeace Australia Pacific  
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## Submission to the Joint Standing Committee Inquiry into the Illegal Timber Prohibition Bill

Greenpeace is concerned that the Illegal Timber bill is now the subject of a third Parliamentary inquiry and that previous multi-partisan approaches to the complexities and difficulties of the legislation are being replaced by political posturing. The raising of trade and WTO issues appears to be based on issues previously canvassed and resolved as well as misreadings of the legislation.

This Greenpeace submission will focus on addressing the concerns raised by Indonesia, Canada and NZ (noting that contrary to the referral that resulted in this Inquiry, PNG did not express concerns regarding trade issues).

Also attached for the information of Committee members is the previous submission made by Greenpeace to the Senate Standing Committee on Rural and Regional Affairs and Transport and a 'Joint Statement on the elimination of illegal timber products 2010' and a 'Common Platform for the elimination of illegal timber products 2011' demonstrating the broad community, environmental and business support for this long overdue legislation.

### Introduction

On April 27<sup>th</sup> 2012 a Cambodian forest activist was killed by a police officer as he tried to document the ongoing trade in illegal timber in his country.<sup>1</sup> This Bill is not an academic exercise nor is it simply a bill to make Australians feel good about the timber products they buy. This Bill is part of a global effort to reduce the demand for illegal timber and thereby reduce the environmental and human impacts of this trade and the associated and very real cost that its trade brings.

As a recent World Bank report into illegal logging from March this year has noted, the trade in illegal timber is now epidemic and is a trade primarily run by organised crime.<sup>2</sup> .

*"We need to fight organized crime in illegal logging the way we go after gangsters selling drugs or racketeering,"* said Jean Pesme, Manager of the World Bank Financial Market Integrity team<sup>3</sup>

Combatting illegal logging and associated trade must of course happen in those countries which experience it, and more support can be given to those countries in these efforts, however it is both counter-productive and hypocritical for Australia to continue to import timber products from illegal logging.

The comments made by Alan Oxley, a known consultant to some of the world's most notorious logging companies, are directly contradicted by the World Bank Report.<sup>4</sup> His attempts (like those of

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<sup>1</sup> 'Cambodian police shoot dead leading anti-logging campaigner', Thursday 26 April, 2012. Accessed at: <http://www.guardian.co.uk/world/2012/apr/26/cambodia-police-shoot-dead-antilogging-activist?newsfeed=true>

<sup>2</sup> 'Justice For Forests: Improving Criminal Justice Efforts to Combat Illegal Logging', Marilyne Pereira Goncalves...[et al.], The World Bank, available at: [http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal\\_Logging.pdf](http://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal_Logging.pdf)

<sup>3</sup> "Dirty Money" in Illegal Logging Can be Tracked and Confiscated", World Bank press release 20 March 2012, accessed at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23147021~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>

the PNG Forest Industry) to argue against the Bill on the basis that illegal timber is not a serious problem are clearly not true. The World Bank report suggests that 90% of all timber felled is illegal – a trade worth between 10-15 billion dollars annually. Just last year, one of the largest cases of illegal logging was finally settled in Papua New Guinea with a company ordered to pay a record \$100m for illegal logging operations.<sup>5</sup>

It is critical to note that Australia's proposed legislation reflects initiatives already taken in the EU and the US. These are two massive timber markets, with restrictions on the import of illegal timber and timber products already in place. These rules have already affected practices and processes in most timber producing countries.

Similarly, there have been claims that the Australian bill breaches the WTO rules and yet there has been no WTO challenges to the US or EU rules despite the US provisions being enacted in 2008. This suggests that these claims are not based on legitimate WTO concerns at all.

As the World Bank report notes, the justice systems within the countries experiencing illegal logging are often under siege. Laws aren't enforced and crime is not investigated. The Illegal Timber Prohibition Bill and its companions in the US and EU are efforts to change this by making the consuming countries take some responsibility for the products they import.

Additionally, the Australian Government has legal advice indicating that the current bill does not breach WTO rules - advice supported by the University of Sydney law school submission to the 2<sup>nd</sup> Senate Inquiry.

## **Indonesia**

Greenpeace agrees with Indonesia that the lack of detail in the primary Bill regarding what is to be regulated creates a degree of uncertainty that is neither necessary nor useful. There is now sufficient information for the Bill to identify the timber and timber products that are likely to be regulated. Such a list should not be exclusive but should provide guidance to producing countries.

Indonesia claims that the Bill is in breach of the WTO rules in that it will 'selectively impose restrictions on timber products from a limited number of targeted countries.'

Indonesia also claims that the bill constitutes a 'unilateral ban on Indonesian imports.'

Indonesia provides no evidence for either of these claims nor do they refer to any provisions in the bill that target specific countries. The bill prohibits the import of illegal timber and timber products from any country and contains provisions relating to domestic production to ensure that domestic industry standards are equivalent to those being imposed on importers. While many of the

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<sup>4</sup> Alan Oxley has consulted and actively defended the notorious Malaysian logging company operating in Papua New Guinea, Rimbunan Hijau, convicted for both logging illegally and intimidating, threatening and harassment of the press. Rimbunan Hijau was convicted of illegal logging in Kamulo Doso in late 2008: [http://www.rainforestfoundationuk.org/PNG\\_EFF2](http://www.rainforestfoundationuk.org/PNG_EFF2). Rimbunan Hijau was convicted of intimidating, threatening and harassment of the Post Courier newspaper: <http://www.actnowpng.org/content/rimbunan-hijau-found-guilty-intimidating-threatening-and-harassing-media>

<sup>5</sup> [http://news.mongabay.com/2011/0628-hance\\_png\\_fine.html](http://news.mongabay.com/2011/0628-hance_png_fine.html)

documents supporting the legislation have pointed to specific countries in terms of the risks of illegality, the Bill names and targets no countries. The prohibition applies to all imports and importers.

It is worth noting that the World Bank Report into illegal logging notes that in Indonesia the chances of an illegal logger being penalised is less than 0.1%.

Indonesia proposes that in order to avoid WTO litigation, Australia should recognise the Indonesian Government's certification program, the SVLK. The Australian Government and DAFF have made it clear that verification systems may be part of a due diligence and legality verification requirements of the Bill, but that, rightly it will not recognise any certification system as sufficient to satisfy those requirements. The Bill should avoid bias towards any certification scheme – and its primary goal should be to seek verification of legality rather than reliance on specific mechanisms that may or may not evidence legality.

Indonesia seeks a delay in the Bill until 2015. Greenpeace notes firstly that the regulated timber provisions of the bill will not take effect until 2014 in any event. Further delay is not justified – particularly in light of the fact that this Bill is basically harmonious with legislation from both the United States and the EU (Indonesia admits that they have been adjusting their practices in response to the EU FLEGT timber rules). This is neither new nor does it impose standards on Indonesia that aren't already required under the EU and US legislation.

## **Canada**

Canada appears primarily concerned with the issue of the increased costs resulting from compliance with due diligence requirements. Canada provides no figures nor any evidence that would support that claim.

Canada points to the lack of supply chain information and that securing more detailed supply chain information will be one of the areas where costs are increased. They argue that this should not be imposed on 'low risk' countries. The explanatory memorandum makes clear that those countries of lower risk are likely to face less onerous processes in meeting the requirements of the Bill. This isn't discrimination but the result of analysing existing laws and implementation in producing countries. However, countries such as Canada cannot claim a low risk status and at the same time claim that the cost of ascertaining detailed information regarding the source of timber in Canada is too high. This is basic information required to meet due diligence and if Canada cannot meet these basic standards, perhaps its timber is not as low risk as it claims. It is interesting and important to note that Canada makes no claim that the Lacey Act has resulted in increased costs – despite the declaration form under that legislation requiring levels of information that Canada complains about in the Australian Bill.

Canada argues that domestic timber is treated differently than international imports. They claim that the domestic requirements will be significantly less expensive than those imposed on importers. They provide no evidence for this claim – only that ascertaining the origins of timber in the supply chain is somehow more onerous for importers than domestic producers. If countries such as Canada cannot ascertain the origins of their timber then the initial exercise to do so will have a cost – but it

will also provide a level playing field as this kind of information is required already of domestic producers.

Canada's claim that treatment of domestic timber, which is not subject to due diligence beyond the sawmill, is somehow less costly or onerous than the provision relating to importers that imposes no due diligence requirements after importation, is not explained.

Greenpeace supports (and has previously made a similar recommendation) the Canadian proposal for clear, transparent and government supported country risk assessments. Determining which countries are low, medium or high risk is best done by government or independent third party – not industry. And it is best done by a single body so that the standards and criteria used to determine risk are consistent. Such assessment should make use of information provided by industry.

Greenpeace also supports (and has previously made the same recommendation) that Government provide a reliable source of public information regarding countries and risks for use by importers. Governments can provide consistent and reliable information for all in the industry to use.

### **New Zealand.**

NZ has similar concerns relating to costs on low risk countries. They support the identification of low risk species. Greenpeace supports this approach provided the evidence for a determination that a species is low risk is rigorous and independently verified.

New Zealand notes that many of the crucial elements to be considered are left to the regulations. Greenpeace has noted a number of times that too much information and detail is being left to the regulations resulting in uncertainty for business (and countries). NZ seeks support in commenting or making submissions to regulation proposals. This is much more difficult with processes relating to regulation rather than primary legislation. It would be far preferable for the Bill to include the necessary detail regarding regulated products, risk assessment and due diligence requirements and how the law will address low risk countries and products.

NZ expresses concern that the due diligence requirements not be overly prescriptive but outcome based. The Bill recognises that due diligence can be satisfied in a variety of ways, often depending on the circumstances, risks, countries etc. Greenpeace supports this flexibility provided there is regular independent auditing of the due diligence processes and documentation to ensure that legality is being verified.

### **Conclusion**

This Bill has been delayed too long. The Government's own research shows that \$400m of suspected illegal timber is imported in Australia each year. The longer the Government delays the more illegal timber is imported and the more environmental and social harm is caused. There are many improvements Greenpeace would like to see made to the current Bill which we have reiterated

previously and can be found in our submission from November 2011.<sup>6</sup> While Greenpeace remains critical of some components on the Bill, particularly its lack of detail and lack of commitment to enforcement, it is time for the bill to become law and for all interested in stopping the highly destructive trade in illegal timber to make sure the bill becomes an effective and important tool in protecting our forests and the people who rely on them.

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**Submission to the Senate Rural Affairs  
and Transport Legislation Committee**

**Follow-up inquiry into the**

***Illegal Logging Prohibition Bill 2011***



## **Submission to the Senate Rural Affairs and Transport Legislation Committee**

### **Inquiry into the Illegal Logging Prohibition Bill 2011**

#### **Introduction**

Greenpeace Australia Pacific is pleased to provide this submission to the Committee to consider as it undertakes its inquiry into the Illegal Logging Prohibition Bill 2011.

Greenpeace has campaigned to see the Government introduce this legislation and has provided policy advice over at least 3 years to the Department and various Ministers. In broad terms we welcome the Bill and believe that it represents an improvement on the Draft Exposure Bill released in March 2011. However, there are amendments that are required to ensure the legislation delivers on the Government's policies and election promise.

These are set out below with rationales and suggested amendments under the following headings:

1. Sustainability in the objects clause
2. Definition of illegal logging consistent with the EU
3. Standing
4. Due diligence and declaration form
5. Supply Chain access to declaration and legality form
6. Enforcement and Compliance
7. Greater transparency

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## Proposed Amendments

### 1. Sustainability in the objects clause

In the lead-up to the 2007 election the Australian Labor Party (ALP) announced its policy to bring in a ban on illegal timber imports with the top line “Ensuring sustainable timber imports”. Eliminating illegal timber, the worst of the worst, was seen, as it still should be, as the initial step towards this end goal. In December 2009, then Minister for Agriculture, Fisheries and Forestry, Tony Burke signed-off on changes to the objective of the Government’s policy which remains current. It ‘provides the basis for addressing all five components of the government’s illegal logging election commitment’. It states:

“The policy objective is ‘the Australian Government will combat illegal logging and its associated trade by establishing systems that will promote trade in legally logged timber and wood products **and, in the long term, trade in timber and wood products from sustainably managed forests**’.” (emphasis in bold added)

The explanatory memorandum (EM) recognizes that this is existing Government policy and flags on several occasions the possibility of a shift from legality to sustainability in the legislation.

*“Review elements of the policy necessary to meet the government’s policy objective would include consideration of the range of timber products that are covered and the possible timing of a shift from a legality requirement to one based on sustainability (EM p 49)*

*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 products covered by the regulatory elements of the policy; (c) the economic impacts of the due diligence compliance requirements; (d) potential for increasing the legislative requirement from ‘legality’ to ‘sustainability’ of timber products (to meet the long-term objective of the policy); and (e) the effectiveness of the arrangements in reducing illegal logging in producer countries.” (EM p65)*

It is clear that the Government recognises the 5 year review as an opportunity to begin to examine this possible shift to sustainability. However, nothing in the Bill reflects this.

Below is a proposed objects clause. This reflects ALP policy and the Government’s commitment to the Montreal process<sup>1</sup> and we believe creates the opportunity for the Government to move, as they have promised, towards sustainability in timber trade and practice. It does so in a way that is cautious and non-prescriptive but allows the 5 year review, which is a review of legislation not policy, to consider the shift from legality to sustainability.

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<sup>1</sup> The Montreal process arose from the 1992 Earth Summit and calls for the sustainable management of forests. Australia is part of the process and has committed to developing and implementing the criteria of sustainable forest management.

## Objects of Act

(1) The objects of this Act are to:

- a. prevent the trade of forest products derived from illegal logging; and
- b. help reduce illegal logging in Australia's region and globally; and
- c. encourage the sourcing of forest products from sustainable forest practices; and
- d. help Australia become a country that trades only in sustainable forest products; and
- e. assist in the implementation of Australia's international responsibilities to stamp out corruption, including:
  - (i) OECD Convention on Combating Bribery of Foreign Public Officials in International Business
  - (ii) UN Convention Against Corruption
  - (iii) UN Convention against Transnational Organised Crime
- f. assist in the implementation of Australia's international environmental responsibilities, including:
  - (i) The Montreal Process
  - (ii) Convention on International Trade in Endangered Species (CITES)
  - (iii) Convention on Biological Diversity

(2) In order to achieve its objects, the Act:

- a. makes it an offence to import prescribed timber and wood products
- b. makes it an offence to process raw logs without approval in Australia
- c. requires importers to undertake due diligence

**Recommendation 1:** The Bill include an objects clause which includes sustainability objectives pursuant to Government policy and international commitments

## 2. Definition of illegal logging consistent with the EU

The current definition of illegal logging in section 7 lacks clarity and certainty.

*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.*

It remains the same as the March Draft Exposure version which Greenpeace and other groups were critical of. It is also contrary to the views in the Common Platform put forward by a wide range of timber industry, timber retail, environmental and social organisations

which explicitly calls for a broad definition of illegal timber.<sup>2</sup> Indeed the Senate Committee majority report also recommended the definition be expanded for clarity. Instead the Government has opted to retain the vaguer definition and provide some additional detail in the EM. Their reasoning that “An unintended consequence of a prescriptive definition of illegally logged may result in some elements of applicable legislation being overlooked or excluded through omission” (EM p11) is not convincing. The EU definition, which Greenpeace supports, provides additional clarity to the types of legislation that relate to determining whether a timber harvest is legal without being prescriptive. If there remains a concern regarding unintended consequences or omissions, subsection (h) could be altered to read: ““applicable legislation” means the legislation in force in the country of harvest, including but not limited to the following matters’:

#### **EU Definition**

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 2:** The definition of “illegally logged” be amended so that it is consistent with the EU definition.

### **3. Standing**

In line with best practice environmental legislation broad standing should be made available to the public including NGOs and timber industry competitors to initiate action for civil breaches of the Act. There are compelling reasons for allowing public interest litigation under the Bill.

In 1995, the Australian Law Review Commission (ALRC) considered standing law and concluded that public interest litigation is an “important mechanism for clarifying legal

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<sup>2</sup> Common Platform, April 2011, Element 2, ‘Definition of Illegal Timber and Wood Products, <http://www.goodwoodguide.org.au/assets/docs/CommonPlatform.pdf>,

issues or enforcing laws to the benefit of the general community.”<sup>3</sup> This legislation is public interest legislation and allowing public interest participation in the legislation through standing is not only appropriate but should be seen as a valuable measure to improve the Act and achieve its objectives.

Some within the timber industry have raised concerns with open standing provisions in relation to this bill. A common argument against open standing is that it will open litigation floodgates. This argument was made in relation to the NSW Environmental Planning and Assessment Act 1979. In 1990 the former chief of the NSW Land and Environment Court, Justice Jerold Cripps noted that no such flood of litigation occurred and that the “the argument has been wholly discredited.”<sup>4</sup>

In relation to the same Act, Justice Murray Wilcox noted in 1987 that because of cost provisions, litigation, even with open standing provisions, was not entered into “lightly or wantonly” and that the actual litigation figures in NSW supported this.<sup>5</sup>

Similar concerns regarding litigation floods were raised when the EPBC Act was passed. Section 487 allows any ‘interested person’ to challenge decisions made under the Act. In their first review of the Act, the Senate Standing Committee on Environment, Education and the Arts found that the level of litigation appeared to be “extremely low.”<sup>6</sup>

There are also compelling reasons for allowing public interest litigation. In 1995, the ALRC considered standing law and concluded that public interest litigation is an “important mechanism for clarifying legal issues or enforcing laws to the benefit of the general community.”<sup>7</sup> This legislation is public interest legislation and allowing public interest participation in the legislation through standing is not only appropriate but should be seen as a valuable measure to improve the Act.

The signatures to the Common Platform also identified broad standing as a critical element to successful legislation.<sup>8</sup>

Greenpeace recommends standing provisions derived from those in the current EPBC Act as per below:

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<sup>3</sup> Who can sue? A review of the law of standing” (ALRC 61)

<sup>4</sup> Cripps J “People v The Offenders”, Dispute Resolution Seminar, Brisbane 6 July 1990.

<sup>5</sup> see *Ogle v Strickland* (1987) 71 ALR 41: 13 FCR 306 at 322 per Wilcox J.

<sup>6</sup> The operation of the Environment Protection and Biodiversity Conservation Act 1999 First Report by The Senate Standing Committee on Environment, Education and the Arts, 18 March 2009, para 6.43

<sup>7</sup> “Who can sue? A review of the law of standing” (ALRC 61).

<sup>8</sup> Common Platform, April 2011, Element , ‘Public Standing’, <http://www.goodwoodguide.org.au/assets/docs/CommonPlatform.pdf>,

### **Standing for judicial review**

(1) This section extends (and does not limit) the meaning of the term **person aggrieved** in the *Administrative Decisions (Judicial Review) Act 1977* for the purposes of the application of that Act in relation to:

- (a) a decision made under this Act or the regulations; or
- (b) a failure to make a decision under this Act or the regulations; or
- (c) conduct engaged in for the purpose of making a decision under this Act or the regulations.

(2) An individual is taken to be a person aggrieved by the decision, failure or conduct if:

- (a) the individual is an Australian citizen or ordinarily resident in Australia or an external Territory; and
- (b) at any time in the 2 years immediately before the decision, failure or conduct, the individual has engaged in a series of activities in Australia or an external Territory for protection or conservation of, or research into, the environment.

(3) An organisation or association (whether incorporated or not) is taken to be a person aggrieved by the decision, failure or conduct if:

- (a) the organisation or association is incorporated, or was otherwise established, in Australia or an external Territory; and
- (b) at any time in the 2 years immediately before the decision, failure or conduct, the organisation or association has engaged in a series of activities relating to logging, illegal timber or related areas

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| <p><b>Recommendation 3:</b> The Bill include standing provisions derived from those in the current EPBC Act.</p> |
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#### **4. Due diligence and the declaration form. (ss 13 and 14)**

The provisions relating to the declaration form are very unclear. DAFF officials, in a working group meeting in August 2011 proposed, without prejudice, a declaration form modelled on the Lacey Act. This is included below in Appendix 1. It required information regarding the species and genus of the timber, the country of origin, the value of the import and other information critical to satisfying due diligence. It is not clear what the declaration form is in the current bill. It appears to be primarily a declaration of legality. That is supported, but it isn't clear that this form will contain any other information apart from that.

Section 13 imposes the declaration requirement. 13(c) makes it an offence if a person importing timber:

*“does not make a declaration to the Customs Minister, in the manner and form prescribed by the regulations, about the person’s compliance with the due diligence requirements for importing the product”*

The explanatory memorandum does not clarify this requirement. Importers - or their agents - will then be required to answer a “community protection question” on a customs import declaration in relation to their compliance with due diligence requirements of the Bill, as provided for in clause 13.”(EM p14)

Neither the Bill nor the EM explains what a “community protection question” is. Is this simply a declaration of legality or satisfaction of due diligence or is it a requirement that specific questions relating to the nature, value, origin etc of the imported product must be answered?

The EM later argues that “a pre-importation statement of compliance, together with a customs import declaration stating compliance with the due diligence requirements of the Bill, will enable the status of all imports of regulated timber products to be monitored at the border by the Australian Customs and Border Protection Service and enforced under the monitoring, investigation and enforcement powers of Part 4 of the Bill.”

This appears to be both an unnecessary duplication of purpose and a failure to ensure that the import declaration form provides critical information to those responsible for ensuring the legality of the imported product.

The declaration form should allow customs officials to easily and efficiently identify matters that are critical to determine whether inspections of imports or a review of due diligence documents is required.

Section 14 outlines information that may be required in the due diligence process. This includes some of the matters that should be part of the declaration form provided at the point of import as part of satisfying due diligence. However, section 14 is discretionary and does not indicate whether any of this information must be included in the declaration form or in other due diligence documents.

Greenpeace supports (following the Committee’s recommendation number 2) the requirement that the declaration form be a legally binding and enforceable declaration of legality.

**Recommendation 4:** Section 13 explicitly state information that must be supplied in the declaration form.

Greenpeace recommends the following amendments:

13(c) – insert ‘legally binding’ prior to ‘declaration’ in the first line.

Add a subsection 13(c)(1) – the declaration form must include the following information:

- a) name of importer
- b) name of supplier
- c) botanical name and common name for the timber being imported
- d) value of the import
- e) countries of origin
- f) region/coup
- g) permit or approval details or harvest concession details in country of origin
- h) vessel name
- i) voyage number
- j) container number
- k) description of product
- l) trade name and type of product
- m) component of the product
- n) tariff code
- o) quantity of timber
- p) due diligence system/components used to verify legality
- q) identifying the level of risk of illegality in the imported timber (high, low, medium)
- r) other information as required in the regulations

Amend s 14(3)(a) - gathering information for the purposes of assessing that risk (delete all text after ‘risk’).

Delete sections 14(3)(a)(i)-(iv).

Amend s 14(3) ‘The requirements **must** include requirements in relation to the following’

It should be noted that several of these provisions as drafted are appropriately contingent and will only be required in certain circumstances.

The purpose of these amendments is to clarify that the declaration form must contain certain information relating to the timber products being imported and that the information required to satisfy due diligence requirements are mandatory.

Section 14(5)(a) gives application of this provision to both domestic and imported timber products. (*laws, or processes under laws, in force in a State or Territory or another country*). However, section 14 generally only applies to imported timber and timber products. Greenpeace recommends deleting references in this section to ‘State or Territory’ as it is already covered in section 18(5)(a).



Greenpeace also recommends deleting section 14(5). Greenpeace would be quite concerned should the Bill provide that due diligence could be satisfied by reliance solely on certification schemes or solely on laws in force in a particular country. The standard being imposed on importers is a negligence standard and it requires that importers make informed decisions regarding the nature of the evidence that must be provided in order to reasonably assure legality. Allowing existing schemes to replace the obligations on importers runs contrary to the Bill.

Greenpeace would propose that certification schemes and laws of other countries are legitimate forms of evidence that should comprise part of the due diligence requirements in section 14 and should be incorporated into that section.

Note that amendment of the due diligence requirements relating to imports would require parallel amendments in Part 3 relating to domestic timber.

**Recommendation 5:** The Bill recognise that certification or legality schemes, whether sanctioned by Governments, industry or third parties be recognised as evidence of, but not proof of, legality.

## 5. Traceability

It is clear that most of the pressure to ensure timber and wood product legality is driven from the retail end of the market. Requiring all subsequent traders to obtain and retain documentation to demonstrate legality will encourage more questions to be asked in the supply chain, will increase the speed with which supply chains respond to the new legislation and provide assurity to those further down in the supply chain, including consumers.

The EU Timber Regulation has 'obligation of traceability' as a core element within its framework. Article 5 requires traders to keep records of all timber and wood products purchased and sold and make this available to authorities upon request so that illegal timber may be tracked within the market. This is an important enforcement tool especially when considering the challenges of enforcing the central criminal offence of illegal timber importation.

The Minister has resisted calls to require mandatory labelling on the basis that it would be too onerous despite the Labor election policy from 2007 clearly stating a commitment to requiring labelling at point of sale (See Appendix 2). In the absence of such a requirement for labelling, Greenpeace proposes there be a requirement for all traders in the supply chain to confirm the legality of products they are trading in.

Greenpeace recommends that a new part be inserted into the Bill following Part 3 – Processing. The part should be titled, Supply Chain:

‘Each subsequent purchaser or handler of imported timber or processed timber up to the point of retail sale must be provided with a copy of the declaration form (s 13) and due diligence documentation must be provided upon request.’

**Recommendation 6:** The Bill include traceability requirements for timber merchants and retailers and that due diligence documentation be available at all points on the supply chain.

## 6. Enforcement and Compliance

The effectiveness of the legislation (as with any law) hinges upon its enforcement. Enforcing the Act will undoubtedly prove challenging given the inherent transborder element of the key offence of the Bill (prohibition on the *importation* of illegal timber products). It is therefore important that the Government demonstrate its commitment to enforcement by producing quarterly reports of aggregated data and annual compliance audits.

Annual compliance audits was a measure proposed by DAFF following the Senate report. See Appendix 3. The Minister’s office did not appear opposed to its inclusion.

Greenpeace recommends that section 83(1) be amended in the following way:

- 83(1) The Secretary must publish
- (a) an annual compliance audit
  - (b) quarterly aggregate data reports
  - (c) materials that would otherwise be available by way of freedom of information
  - (d) any other materials designated in the regulations

Greenpeace recommends a new section 83(3) and (4)

- 83(3) Annual compliance audits
- “The Department shall prepare and publish an annual compliance audit on timber imports. Information must include:
- a) Companies audited
  - b) Products audited, including a breakdown by timber species
  - c) How many imports audited, with a breakdown of numbers by country of origin
  - d) Level of risk of timber products assessed
  - e) declaration requirements – accuracy, consistency etc
  - f) due diligence requirements – thoroughness, accuracy, consistency
  - g) Any investigation(s) undertaken

h) Status or result of any investigation(s) undertaken.

#### 83(4) Quarterly aggregated data reports

The Department shall prepare and publish quarterly reports aggregating data relating to imported timber, including the following information:

- a) Volume of timber products imported
- b) Breakdown of imports by
  - i. Product type
  - ii. Timber species
  - iii. Country of origin
  - iv. Country of processing

**Recommendation 7:** The Bill require Government to publish annual compliance audits and quarterly data reports.

### 7. Greater transparency

In addition to no public interest standing, the Bill does not currently have any requirements for publication or transparency. We have proposed making section 14 mandatory, which would then require the publication of information as part of the due diligence requirements (presumably the regulations would identify specific publishing requirements) and amended section 83 to require specific reporting and transparency requirements of government. This ensures both consistent reporting, common reporting standards and that Government will be responsible for ensuring that the data produced by importers is available in a single location or report on a regular basis.

In addition to the quarterly aggregate data reports and the compliance audit, Greenpeace would like to see the declaration forms published as a matter of course and that due diligence documentation published to the extent that trade secrets aren't revealed.

**Recommendation 8:** The Bill make provision for declaration forms and due diligence forms to be published on the internet.

# Due Diligence Declaration form

DRAFT WITHOUT PREJUDICE

**COMPANY LOGO OR LETTERHEAD**

Vessel Name\*: \_\_\_\_\_ Voyage Number\*: \_\_\_\_\_  
 Container Number\*: \_\_\_\_\_  
 Consignment identifier(s) or Numerical Link(s)\*: \_\_\_\_\_  
 (i.e.: Bill of Landing Number, invoice number)

**ILLEGAL LOGGING PROHIBITION ACT (2011) DUE DILIGENCE DECLARATION**

★ **Q1. DESCRIPTION OF PRODUCT**  
 (a) Trade name and type of product/article\*: \_\_\_\_\_  
 (b) Component of the product/article: \_\_\_\_\_  
 (c) Percentage of recycled material: \_\_\_\_\_  
 (d) Tariff code\*: \_\_\_\_\_  
 (e) Common name and where applicable full scientific name of the timber or wood product: \_\_\_\_\_

★ **Q2. INFORMATION ABOUT ORIGIN\***  
 a) Country of harvest: \_\_\_\_\_  
*and where applicable*  
 a) sub-national region: \_\_\_\_\_  
 b) concession of harvest: \_\_\_\_\_

★ **Q3. NAME AND ADDRESS OF TIMBER OR WOOD PRODUCT SUPPLIER\***  
 \_\_\_\_\_  
 \_\_\_\_\_

**Q4. NAME AND ADDRESS OF TIMBER OR WOOD PRODUCT IMPORTER\***  
 \_\_\_\_\_  
 \_\_\_\_\_

★ **Q5. QUANTITY OF TIMBER (unit of measurement)\*:** \_\_\_\_\_

**Q6: VALUE OF TIMBER\*:** \_\_\_\_\_

**Q7: DUE DILIGENCE SYSTEM USED TO VERIFY LEGALITY OF PRODUCT:** \_\_\_\_\_  
 (i.e. Forest certification scheme; Timber legality verification scheme; Country led initiative; Company management system)

I, \_\_\_\_\_ (name) of \_\_\_\_\_ (company) have undertaken due diligence for this consignment in compliance with Illegal Logging Prohibition Act (2011).

Signature: ..... Printed Name: .....

Date .....

★ = As per US Lacey Act

\* = information currently provided on Import Declaration Form

## Appendix 2 – Labor’s 2007 election commitment.

### 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 proportion 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 paper board, 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 3 - Overview of the function of the Illegal Logging Prohibition Bill as presented to Illegal Logging Working Group August 2011 showing Government audits.

