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The Parliament of the
Commonwealth of Australia

THE SENATE

EXPOSURE DRAFT (18/03/2011)

Illegal Logging Prohibition Bill 2011

No. , 2011

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to combat illegal logging, and for
related purposes**

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1 **A Bill for an Act to combat illegal logging, and for**
2 **related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *Illegal Logging Prohibition Act 2011*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Part 1 Preliminary

Section 3

1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 6	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Sections 7 and 8	The day after the end of the period of 2 years after the commencement of section 3.	
4. Sections 9 to 46	At the same time as the provision(s) covered by table item 2.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

10 **3 Crown to be bound**

11 (1) This Act binds the Crown in each of its capacities.

12 (2) This Act does not make the Crown liable to be prosecuted for an
13 offence.

4 Guide to this Act

This Act prohibits the importation of regulated timber products that contain illegally logged timber. Regulated timber products are prescribed by the regulations.

This Act also prohibits:

- (a) the importation of regulated timber products by persons who are not approved as importers; and
- (b) the processing of raw logs by certain persons unless they are approved as processors.

Importers and processors are approved by timber industry certifiers. (The Minister is also able to approve importers and processors if necessary.)

Timber industry certifiers are approved by the Minister.

To approve a timber industry certifier, the Minister must be satisfied that the certifier will ensure that persons approved by the certifier will comply with legal logging requirements. Legal logging requirements are prescribed by the regulations for the following purposes:

- (a) ensuring that imported timber products do not contain illegally logged timber;
- (b) ensuring that illegally logged timber is not processed;
- (c) ensuring that timber products are accurately described.

The Minister may cancel the approval of a timber industry certifier if importers or processors approved by the certifier do not comply with legal logging requirements, or the certifier does not comply with any additional requirements prescribed by the regulations.

Section 5

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This Act also provides for the appointment of officers. Officers have powers to:

- (a) monitor compliance with this Act and legal logging requirements; and
- (b) investigate offences against this Act.

5 Definitions

In this Act:

Commonwealth authority means the following:

- (a) a body corporate established for a public purpose by or under an Act;
- (b) a company in which a controlling interest is held by any one of the following persons, or by 2 or more of the following persons together:
 - (i) the Commonwealth;
 - (ii) a body covered by paragraph (a).

constitutional corporation means a trading, foreign or financial corporation within the meaning of paragraph 51(xx) of the Constitution.

evidential material means any thing that may afford evidence of an offence against this Act, including such a thing in electronic form.

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.

import means import into Australia.

legal logging requirements has the meaning given by subsection 13(1).

monitoring powers has the meaning given by section 21.

monitoring warrant means a warrant issued under section 22.

Section 5

1 **occupier**, of premises, includes the person apparently in charge of
2 the premises.

3 **offence against this Act** includes an offence against any of the
4 following that relates to this Act:

- 5 (a) section 6 of the *Crimes Act 1914*;
6 (b) Chapter 7 of the *Criminal Code*.

7 **offence-related powers** has the meaning given by section 24.

8 **offence-related warrant** means:

- 9 (a) a warrant issued by a magistrate under section 32; or
10 (b) a warrant signed by a magistrate under section 33.

11 **officer** means a person appointed under section 18.

12 **person assisting** an officer has the meaning given by subsection
13 34(1).

14 **premises** includes the following:

- 15 (a) an area of land or any other place (whether or not it is
16 enclosed or built on);
17 (b) a building, wharf or other structure;
18 (c) a vehicle or vessel;
19 (d) a part of any premises.

20 **regulated timber product** means a timber product prescribed by the
21 regulations.

22 **Secretary** means the Secretary of the Department.

23 **this Act** includes the regulations.

24 **timber industry certifier** means a person or body approved by the
25 Minister under subsection 9(1).

26 **timber industry certifier requirements** has the meaning given by
27 subsection 11(1).

28 **timber product** means a thing that is, is made from, or includes,
29 timber.
30

Part 2 Offences

Division 1 Importing illegally logged timber

Section 6

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2 **Part 2—Offences**

3 **Division 1—Importing illegally logged timber**

4 **6 Importing regulated timber products**

- 5 (1) A person commits an offence if:
- 6 (a) the person imports a thing; and
- 7 (b) the thing is a regulated timber product; and
- 8 (c) the thing is, is made from, or includes, illegally logged
- 9 timber.

10 Penalty: 5 years imprisonment.

- 11 (2) Subsection (1) does not apply if the regulated timber product is
- 12 prescribed by the regulations as a product to which subsection (1)
- 13 does not apply.
- 14

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2 **Division 2—Importing or processing without being**
3 **approved**

4 **7 Importing regulated timber products without being approved**

- 5 (1) A person commits an offence if:
6 (a) the person imports a thing; and
7 (b) the thing is a regulated timber product; and
8 (c) the person is not approved as an importer of regulated timber
9 products of that kind by:
10 (i) a timber industry certifier; or
11 (ii) the Minister.

12 Penalty: 100 penalty units.

- 13 (2) Subsection (1) does not apply if the regulated timber product is
14 prescribed by the regulations as a product to which subsection (1)
15 does not apply.

16 **8 Processing raw logs without being approved**

- 17 (1) A person commits an offence if the person:
18 (a) processes raw logs into something other than raw logs; and
19 (b) is a constitutional corporation or processes the raw logs:
20 (i) in the course of, or for the purposes of, trade and
21 commerce with other countries, or among the States or
22 between a State and a Territory; or
23 (ii) in a Territory; or
24 (iii) on behalf of a constitutional corporation; or
25 (iv) for the purpose of supplying timber products to a
26 constitutional corporation; or
27 (v) on behalf of the Commonwealth or a Commonwealth
28 authority; or
29 (vi) for the purpose of supplying timber products to the
30 Commonwealth or a Commonwealth authority; and
31 (c) is not approved as a processor of raw logs by:

Part 2 Offences

Division 2 Importing or processing without being approved

Section 8

- 1 (i) a timber industry certifier; or
2 (ii) the Minister.

3 Penalty: 100 penalty units.

4 (2) Subsection (1) does not apply if:

5 (a) the person is included in a class of persons prescribed by the
6 regulations as a class of persons to whom subsection (1) does
7 not apply; or

8 (b) the process is prescribed by the regulations as a process to
9 which subsection (1) does not apply.
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2 **Part 3—Timber industry certifiers**

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4 **9 Approval**

5 (1) The Minister may, by writing given to a person or body (the
6 *certifier*), approve the person or body as a timber industry certifier.

7 (2) However, the Minister must not approve the certifier unless the
8 Minister is satisfied that the certifier:

9 (a) will comply with applicable timber industry certifier
10 requirements; and

11 (b) will ensure that persons approved by the certifier as importers
12 of regulated timber products or processors of raw logs
13 comply with applicable legal logging requirements.

14 **10 Cancelling approval**

15 The Minister may, by writing given to a timber industry certifier,
16 cancel the certifier's approval if the Minister is satisfied that:

17 (a) the certifier has not complied, or is not able to comply, with
18 applicable timber industry certifier requirements; or

19 (b) one or more persons approved by the certifier as importers of
20 regulated timber products or processors of raw logs have not
21 complied with applicable legal logging requirements.

22 **11 Timber industry certifier requirements**

23 (1) The regulations may prescribe *timber industry certifier*
24 *requirements*.

25 (2) Timber industry certifier requirements may be prescribed only for
26 the purposes of ensuring that timber industry certifiers are effective
27 in monitoring compliance with legal logging requirements.

28 (3) Different timber industry certifier requirements may be prescribed
29 for different classes of timber industry certifiers.

Section 12

1 **12 Matters that may be included in timber industry certifier**
2 **requirements**

- 3 (1) Timber industry certifier requirements may require timber industry
4 certifiers to do one or more of the following:
- 5 (a) develop and implement codes of conduct for persons
6 approved by certifiers;
 - 7 (b) comply with or implement complaints resolution processes;
 - 8 (c) retain and produce records or documents;
 - 9 (d) undergo audits;
 - 10 (e) provide reports;
 - 11 (f) provide training for persons employed or approved by
12 certifiers;
 - 13 (g) undertake remedial action.
- 14 (2) Subsection (1) does not limit the timber industry certifier
15 requirements that may be prescribed.

16 **13 Legal logging requirements**

- 17 (1) The regulations may prescribe *legal logging requirements* for the
18 following:
- 19 (a) importing regulated timber products of a particular kind;
 - 20 (b) processing raw logs.
- 21 (2) Legal logging requirements may be prescribed only for the
22 purposes of ensuring the following:
- 23 (a) that imported timber products do not contain illegally logged
24 timber;
 - 25 (b) that illegally logged timber is not processed;
 - 26 (c) that timber products are accurately described.
- 27 (3) Different legal logging requirements may be prescribed for:
- 28 (a) different classes of kinds of imported regulated timber
29 products; or
 - 30 (b) different classes of persons who import a kind of regulated
31 timber product; or
 - 32 (c) different kinds of processes for raw logs; or

1 (d) different classes of persons who process raw logs.

2 **14 Matters that may be included in legal logging requirements**

3 (1) Legal logging requirements may require importers or processors to
4 do one or more of the following:

5 (a) assess the risk of importing or processing illegally logged
6 timber and implement appropriate risk management
7 measures;

8 (b) adhere to a code of conduct;

9 (c) comply with or implement complaints resolution processes;

10 (d) retain and produce records or documents;

11 (e) undergo audits;

12 (f) provide reports;

13 (g) provide training for employees;

14 (h) undertake remedial action.

15 (2) Subsection (1) does not limit the legal logging requirements that
16 may be prescribed.
17

Section 15

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2 **Part 4—Approval of importers and processors by**
3 **Minister**

4

5 **15 When Minister may approve**

6 The Minister may approve a person under this Part:

- 7 (a) if the Minister is satisfied that there is no appropriate timber
8 industry certifier to approve the person; or
9 (b) for any other reason.

10 **16 Approval**

- 11 (1) The Minister may, by writing given to a person, approve the person
12 as an importer of regulated timber products or a processor of raw
13 logs.
14 (2) However, the Minister must not approve the person unless the
15 Minister is satisfied that the person will comply with applicable
16 legal logging requirements.

17 **17 Cancelling approval**

- 18 (1) If the Minister has approved a person under this Part, the Minister
19 may, by writing given to the person, cancel the approval.
20 (2) However, the Minister must not cancel the approval unless the
21 Minister is satisfied that the person has not complied, or is not able
22 to comply, with applicable legal logging requirements.
23

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2 **Part 5—Officers and officers' powers**

3 **Division 1—Officers**

4 **18 Appointment**

5 The Secretary may, in writing, appoint as an officer a person who:

- 6 (a) is employed by the Commonwealth; and
7 (b) has appropriate skills or experience.

8 **19 Identity cards**

9 (1) The Secretary must issue to an officer an identity card in a form
10 approved by the Secretary.

11 (2) A person commits an offence if:

- 12 (a) an identity card was issued to the person; and
13 (b) the person has ceased to be an officer; and
14 (c) the person does not, as soon as practicable after so ceasing,
15 return the identity card to the Secretary.

16 Penalty: 1 penalty unit.

17 (3) Subsection (2) does not apply if the identity card was lost or
18 destroyed.

19 Note: The defendant bears an evidential burden in relation to the matter in
20 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

21 (4) An officer must carry his or her identity card at all times when
22 exercising powers or performing functions as an officer.
23

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2 **Division 2—Monitoring compliance**

3 **20 Powers available to officers for monitoring compliance**

- 4 (1) An officer may:
- 5 (a) enter any premises; and
- 6 (b) exercise monitoring powers;
- 7 for any of the following purposes:
- 8 (c) to find out whether this Act has been complied with;
- 9 (d) to find out whether legal logging requirements have been
- 10 complied with;
- 11 (e) to assess the correctness of information provided under this
- 12 Act.
- 13 (2) An officer is not authorised to enter premises under subsection (1)
- 14 unless:
- 15 (a) the occupier of the premises has consented to the entry; or
- 16 (b) the entry is made under a monitoring warrant.

17 **21 Monitoring powers**

- 18 (1) The *monitoring powers* are as follows:
- 19 (a) to search the premises and any thing on the premises;
- 20 (b) to inspect, examine, take measurements of, conduct tests on,
- 21 or take samples of, any thing on the premises;
- 22 (c) to take photographs, make video or audio recordings or make
- 23 sketches of the premises or any thing on the premises;
- 24 (d) if the officer was authorised to enter the premises by a
- 25 monitoring warrant—to require any person in or on the
- 26 premises:
- 27 (i) to answer any questions put by the officer; and
- 28 (ii) to produce any book, record or document requested by
- 29 the officer;
- 30 (e) to inspect any book, record or document on the premises;
- 31 (f) to take extracts from or make copies of any such book, record
- 32 or document;

Section 21

- 1 (g) to take onto premises such equipment and materials as the
2 officer requires for the purpose of exercising powers in
3 relation to the premises;
- 4 (h) to secure a thing, until a warrant is obtained to seize it, being
5 a thing:
- 6 (i) that the officer finds during the exercise of monitoring
7 powers on the premises; and
- 8 (ii) that the officer believes on reasonable grounds may be
9 evidential material; and
- 10 (iii) that the officer believes on reasonable grounds would be
11 lost, destroyed or tampered with before the warrant can
12 be obtained;
- 13 (i) the powers set out in subsections (3) and (4).
- 14 (2) A person commits an offence if:
- 15 (a) the person is subject to a requirement under paragraph (1)(d);
16 and
- 17 (b) the person fails to comply with the requirement.
- 18 Penalty: 30 penalty units.
- 19 *Powers relating to equipment*
- 20 (3) The **monitoring powers** include the power to operate equipment at
21 premises to see whether:
- 22 (a) the equipment; or
- 23 (b) a disk, tape or other storage device that:
- 24 (i) is at the premises; and
- 25 (ii) can be used with the equipment or is associated with it;
26 contains information that is relevant to determining whether there
27 has been compliance with this Act or legal logging requirements,
28 or to assessing the correctness of information provided under this
29 Act.
- 30 (4) If the officer, after operating equipment at the premises, finds that
31 the equipment, or that a tape, disk or other storage device at the
32 premises, contains information mentioned in subsection (3), the
33 officer may:

Part 5 Officers and officers' powers

Division 2 Monitoring compliance

Section 22

- 1 (a) operate facilities at the premises to put the information in
2 documentary form and copy the document so produced; or
3 (b) if the information can be transferred to a tape, disk or other
4 storage device that:
5 (i) is brought to the premises; or
6 (ii) is at the premises and the use of which for the purpose
7 has been agreed to in writing by the occupier of the
8 premises;
9 operate the equipment or other facilities to copy the
10 information to the storage device, and remove the storage
11 device from the premises.
- 12 (5) An officer may operate equipment as mentioned in subsection (3)
13 or (4) only if he or she believes on reasonable grounds that the
14 operation of the equipment can be carried out without damage to
15 the equipment.

16 **22 Issue of monitoring warrant**

- 17 (1) An officer may apply to a magistrate for a monitoring warrant in
18 relation to premises.
- 19 (2) The magistrate may issue the monitoring warrant if the magistrate
20 is satisfied, by information on oath or affirmation, that it is
21 reasonably necessary that one or more officers should have access
22 to the premises for any of the following purposes:
23 (a) to find out whether this Act has been complied with;
24 (b) to find out whether legal logging requirements have been
25 complied with;
26 (c) to assess the correctness of information provided under this
27 Act.
- 28 (3) However, the magistrate must not issue the monitoring warrant
29 unless the officer or some other person has given to the magistrate,
30 either orally or by affidavit, such further information (if any) as the
31 magistrate requires concerning the grounds on which the issue of
32 the warrant is being sought.
- 33 (4) The monitoring warrant must:

Section 22

- 1 (a) authorise one or more officers (whether or not named in the
2 warrant), with such assistance and by such force as is
3 necessary and reasonable:
4 (i) to enter the premises; and
5 (ii) to exercise the powers set out in section 21 in relation to
6 the premises; and
7 (b) state whether the entry is authorised to be made at any time
8 of the day or night or during specified hours of the day or
9 night; and
10 (c) specify the day (not more than 6 months after the issue of the
11 warrant) on which the warrant ceases to have effect; and
12 (d) state the purpose for which the warrant is issued.
13

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2 **Division 3—Offence-related powers**

3 **23 Officer may enter premises by consent or under warrant**

4 (1) If an officer has reasonable grounds for suspecting that there may
5 be evidential material on any premises, the officer may:

- 6 (a) enter the premises; and
7 (b) exercise offence-related powers.

8 (2) An officer is not authorised to enter the premises under
9 subsection (1) unless:

- 10 (a) the occupier of the premises has consented to the entry; or
11 (b) the entry is made under an offence-related warrant.

12 **24 Offence-related powers**

13 (1) The *offence-related powers* are as follows:

- 14 (a) if entry to the premises is with the occupier's consent:
15 (i) to search the premises and any thing on the premises for
16 the evidential material the officer has reasonable
17 grounds for suspecting may be on the premises; and
18 (ii) to secure evidential material of that kind until a warrant
19 is obtained to seize it;
- 20 (b) if entry to the premises is under an offence-related warrant:
21 (i) to search the premises and any thing on the premises for
22 the kind of evidential material specified in the warrant;
23 and
24 (ii) to seize evidential material of that kind;
- 25 (c) to inspect, examine, take measurements of, conduct tests on
26 or take samples of evidential material referred to in
27 paragraph (a) or (b), as the case requires;
- 28 (d) to take photographs, make video or audio recordings or make
29 sketches of the premises or evidential material referred to in
30 paragraph (a) or (b), as the case requires;

- 1 (e) to take onto the premises such equipment and materials as the
2 officer requires for the purpose of exercising powers in
3 relation to the premises;
4 (f) the powers set out in subsections (2), (3) and (6).

5 *Powers relating to equipment*

- 6 (2) The **offence-related powers** include the power to operate
7 equipment on the premises to access data (including data not held
8 at the premises) if the officer suspects on reasonable grounds that
9 the data constitutes evidential material referred to in
10 paragraph (1)(a) or (b), as the case requires.
- 11 (3) The **offence-related powers** include the following powers in
12 relation to evidential material described in subsection (2) found in
13 the exercise of the power under that subsection:
- 14 (a) if entry to the premises is under an offence-related warrant—
15 to seize the equipment and any disk, tape or other associated
16 device;
- 17 (b) to operate equipment on the premises to put the evidential
18 material in documentary form and remove the documents so
19 produced from the premises;
- 20 (c) to operate equipment on the premises to copy the evidential
21 material to a disk, tape or other storage device that:
- 22 (i) is brought to the premises for the exercise of the power;
23 or
24 (ii) is on the premises and the use of which for that purpose
25 has been agreed in writing by the occupier of the
26 premises;
27 and remove the disk, tape or other storage device from the
28 premises.
- 29 (4) An officer may operate equipment as mentioned in subsection (2)
30 or (3) only if he or she believes on reasonable grounds that the
31 operation of the equipment can be carried out without damage to
32 the equipment.
- 33 (5) An officer may seize equipment as mentioned in paragraph (3)(a)
34 only if:
-

Section 25

- 1 (a) it is not practicable to put the evidential material in
2 documentary form as mentioned in paragraph (3)(b) or to
3 copy the evidential material as mentioned in
4 paragraph (3)(c); or
5 (b) possession of the equipment or the disk, tape or other storage
6 device by the occupier could constitute an offence against a
7 law of the Commonwealth.

8 *Seizing other evidential material*

- 9 (6) If:
10 (a) entry to the premises is under an offence-related warrant; and
11 (b) the officer, in the course of searching for the kind of
12 evidential material specified in the warrant, finds a thing that
13 the officer believes on reasonable grounds to be other
14 evidential material; and
15 (c) the officer believes on reasonable grounds that it is necessary
16 to seize the thing in order to prevent its concealment, loss or
17 destruction;
18 then the *offence-related powers* include seizing the thing.

19 **25 Officer may ask questions and seek production of documents**

20 *Entry with consent*

- 21 (1) If an officer is authorised by section 23 to enter premises because
22 the occupier of the premises consented to the entry, the officer may
23 ask the occupier to:
24 (a) answer any questions relating to the reasons for the officer
25 entering the premises that are put by the officer; and
26 (b) produce any book, record or document relating to the reasons
27 for the officer entering the premises that is requested by the
28 officer.

29 *Entry under warrant*

- 30 (2) If an officer is authorised to enter premises under an
31 offence-related warrant, the officer may require any person on the
32 premises to:

Section 26

- 1 (a) answer any questions relating to the reasons for the officer
2 entering the premises that are put by the officer; and
3 (b) produce any book, record or document relating to the reasons
4 for the officer entering the premises that is requested by the
5 officer.

6 *Offence*

- 7 (3) A person commits an offence if:
8 (a) the person is subject to a requirement under subsection (2);
9 and
10 (b) the person fails to comply with the requirement.

11 Penalty for contravention of this subsection: 30 penalty units.

12 **26 Occupier to provide officer with facilities and assistance**

- 13 (1) The occupier of premises to which an offence-related warrant
14 relates, or another person who apparently represents the occupier,
15 must provide:
16 (a) an officer executing the warrant; and
17 (b) any person assisting the officer;
18 with all reasonable facilities and assistance for the effective
19 exercise of their powers.

- 20 (2) A person commits an offence if:
21 (a) the person is subject to subsection (1); and
22 (b) the person fails to comply with that subsection.

23 Penalty for contravention of this subsection: 30 penalty units.

24 **27 Copies of seized things to be provided**

- 25 (1) If an officer enters premises under this Division and seizes:
26 (a) a document, film, computer file or other thing that can be
27 readily copied; or
28 (b) a storage device, the information in which can be readily
29 copied;

Section 28

1 the officer must, if requested to do so by the occupier of the
2 premises, or another person who apparently represents the occupier
3 and who is present when the warrant is executed, give a copy of the
4 thing or the information to the occupier or other person as soon as
5 practicable after the seizure.

6 (2) However, subsection (1) does not apply if possession of the
7 document, film, computer file, thing or information by the occupier
8 or other person could constitute an offence against a law of the
9 Commonwealth.

10 **28 Receipts for things seized**

11 (1) If a thing is seized under this Division, an officer must provide a
12 receipt for the thing.

13 (2) If 2 or more things are seized, they may be covered in the one
14 receipt.

15 **29 Return of seized things**

16 (1) Subject to any contrary order of a court, if an officer seizes a thing
17 under this Division, the Secretary must take reasonable steps to
18 return it if:

19 (a) the reason for its seizure no longer exists or it is decided that
20 it is not to be used in evidence; or

21 (b) the period of 60 days after its seizure ends;

22 whichever happens first, unless the thing is forfeited or forfeitable
23 to the Commonwealth or is the subject of a dispute as to
24 ownership.

25 (2) If, apart from this subsection, the Secretary would be required to
26 take reasonable steps to return a thing under subsection (1) because
27 of paragraph (1)(b), the Secretary is not required to do so if:

28 (a) proceedings in respect of which the thing may afford
29 evidence were instituted before the end of the 60 days and
30 have not been completed (including an appeal to a court in
31 relation to those proceedings); or

32 (b) the thing may continue to be retained because of an order
33 under section 30; or

1 (c) the Secretary is otherwise authorised or required (by a law, or
2 an order of a court, of the Commonwealth, of a State or of a
3 Territory) to retain, destroy or dispose of the thing.

4 (3) A thing that is required to be returned under this section must be
5 returned to the person from whom it was seized (or to the owner if
6 that person is not entitled to possess it).

7 **30 Magistrate may permit thing to be retained**

- 8 (1) An officer may apply to a magistrate for an order permitting the
9 retention of the thing for a further period if:
10 (a) before the end of 60 days after the seizure; or
11 (b) before the end of a period previously specified in an order of
12 a magistrate under this section;
13 proceedings in respect of which the thing may afford evidence
14 have not commenced.
- 15 (2) If the magistrate is satisfied that it is necessary for the thing to
16 continue to be retained:
17 (a) for the purposes of an investigation as to whether an offence
18 against this Act has been committed; or
19 (b) to enable evidence of such an offence to be secured for the
20 purposes of a prosecution;
21 the magistrate may order that the thing may continue to be retained
22 for a period specified in the order (which must not exceed 3 years).
- 23 (3) Before making the application, the officer must:
24 (a) take reasonable steps to discover who has an interest in the
25 retention of the thing; and
26 (b) if it is practicable to do so, notify each person whom the
27 officer believes to have such an interest of the proposed
28 application.

29 **31 Disposal of things**

- 30 (1) If:
31 (a) a thing is seized under this Division; and

Section 32

- 1 (b) apart from this section, the Secretary would be required to
2 take reasonable steps to return the thing to a person; and
3 (c) either:
4 (i) the Secretary cannot, despite making reasonable efforts,
5 locate the person; or
6 (ii) the person has refused to take possession of the thing;
7 the Secretary may dispose of the thing in such manner as he or she
8 thinks appropriate.
- 9 (2) If the operation of this section would result in an acquisition of
10 property from a person otherwise than on just terms, the
11 Commonwealth is liable to pay a reasonable amount of
12 compensation to the person.
- 13 (3) If the Commonwealth and the person do not agree on the amount
14 of the compensation, the person may institute proceedings in a
15 court of competent jurisdiction for the recovery from the
16 Commonwealth of such reasonable amount of compensation as the
17 court determines.
- 18 (4) In this section:
19 *acquisition of property* has the same meaning as in paragraph
20 51(xxxi) of the Constitution.
21 *just terms* has the same meaning as in paragraph 51(xxxi) of the
22 Constitution.

23 **32 Issue of offence-related warrants**

24 *Application for warrant*

- 25 (1) An officer may apply to a magistrate for a warrant under this
26 section in relation to premises.

27 *Issue of warrant*

- 28 (2) The magistrate may issue the warrant if the magistrate is satisfied,
29 by information on oath or affirmation, that there are reasonable
30 grounds for suspecting that there is, or there may be within the next
31 72 hours, evidential material on the premises.

- 1 (3) However, the magistrate must not issue the warrant unless the
2 officer or some other person has given to the magistrate, either
3 orally or by affidavit, such further information (if any) as the
4 magistrate requires concerning the grounds on which the issue of
5 the warrant is being sought.

6 *Content of warrant*

- 7 (4) The warrant must:
8 (a) describe the premises to which the warrant relates; and
9 (b) state that the warrant is issued under this Division; and
10 (c) state each offence to which the warrant relates; and
11 (d) specify the kind of evidential material that is to be searched
12 for under the warrant; and
13 (e) name one or more officers; and
14 (f) authorise the officers so named, with such assistance and by
15 such force as is necessary and reasonable:
16 (i) to enter the premises; and
17 (ii) to exercise the powers set out in sections 24 and 25 in
18 relation to the premises; and
19 (g) state whether the entry is authorised to be made at any time
20 of the day or during specified hours of the day; and
21 (h) specify the day (not more than 1 week after the issue of the
22 warrant) on which the warrant ceases to be in force.
- 23 (5) The warrant must also state that it authorises the seizure of a thing
24 (other than evidential material of the kind referred to in
25 paragraph (4)(d)) found at the premises in the course of the search
26 that an officer executing the warrant believes on reasonable
27 grounds to be evidential material if the officer believes on
28 reasonable grounds that seizure of the thing is necessary to prevent
29 its concealment, loss or destruction.

30 **33 Offence-related warrants by telephone, fax etc.**

31 *Application for warrant*

- 32 (1) An officer may apply to a magistrate by telephone, fax or other
33 electronic means for a warrant under section 32 in relation to

Section 33

1 premises if the officer believes on reasonable grounds that the
2 delay that would occur if an application were made in person
3 would frustrate the effective execution of the warrant.

4 *Voice communication*

5 (2) The magistrate may require communication by voice to the extent
6 that it is practicable in the circumstances.

7 *Information*

8 (3) Before applying for the warrant, the officer must prepare an
9 information of the kind mentioned in subsection 32(2) in relation to
10 the premises that sets out the grounds on which the warrant is
11 sought. If it is necessary to do so, the officer may apply for the
12 warrant before the information is sworn or affirmed.

13 *Signing of warrant*

14 (4) If the magistrate is satisfied:
15 (a) after considering the terms of the information; and
16 (b) after receiving such further information (if any) as the
17 magistrate requires concerning the grounds on which the
18 issue of the warrant is being sought;
19 that there are reasonable grounds for issuing the warrant, the
20 magistrate may complete and sign the same warrant that the
21 magistrate would issue under section 32 if the application had been
22 made under that section.

23 *Notification*

24 (5) If the magistrate completes and signs the warrant, the magistrate
25 must inform the officer, by telephone, fax or other electronic
26 means, of:
27 (a) the terms of the warrant; and
28 (b) the day on which and the time at which the warrant was
29 signed.

Section 33

1 *Form of warrant*

- 2 (6) The officer must then complete a form of warrant in the same
3 terms as the warrant completed and signed by the magistrate,
4 stating on the form the name of the magistrate and the day on
5 which and the time at which the warrant was signed.

6 *Completed form of warrant to be given to magistrate*

- 7 (7) The officer must also, not later than the day after the day on which
8 the warrant ceased to be in force or the day of execution of the
9 warrant, whichever is the earlier, send to the magistrate:
10 (a) the form of warrant completed by the officer; and
11 (b) the information referred to in subsection (3), which must
12 have been duly sworn or affirmed.

13 *Attachment*

- 14 (8) The magistrate must attach to the documents provided under
15 subsection (7) the warrant signed by the magistrate.

16 *Authority of warrant*

- 17 (9) A form of warrant duly completed under subsection (6) is authority
18 for the same powers as are authorised by the warrant signed by the
19 magistrate.
- 20 (10) If:
21 (a) it is material, in any proceedings, for a court to be satisfied
22 that an exercise of a power was authorised by this section;
23 and
24 (b) the warrant signed by the magistrate authorising the exercise
25 of the power is not produced in evidence;
26 the court must assume, unless the contrary is proved, that the
27 exercise of the power was not authorised by such a warrant.
28

Section 34

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2 **Division 4—Assistance and use of force**

3 **34 Persons assisting officers**

4 *Officers may be assisted by other persons*

- 5 (1) An officer may, in entering premises and exercising powers under
6 this Part, be assisted by other persons if that assistance is necessary
7 and reasonable. A person giving such assistance is a **person**
8 **assisting** the officer.

9 *Powers of a person assisting*

- 10 (2) A person assisting may:
11 (a) enter the premises; and
12 (b) exercise the monitoring powers or the offence-related powers
13 that the officer could exercise in relation to the premises, but
14 only in accordance with a direction given to the person by the
15 officer.
- 16 (3) A power exercised by a person assisting as mentioned in
17 subsection (2) is taken for all purposes to have been exercised by
18 the officer.
- 19 (4) If a direction is given under paragraph (2)(b) in writing, the
20 direction is not a legislative instrument.

21 **35 Expert assistance to operate a thing**

- 22 (1) If an officer believes on reasonable grounds that:
23 (a) any of the following may be accessible by operating a thing
24 at particular premises:
25 (i) information relevant to determining whether there has
26 been compliance with this Act or legal logging
27 requirements;
28 (ii) information relevant to assessing the correctness of
29 information provided under this Act;
30 (iii) evidential material; and

Section 36

- 1 (b) expert assistance is required to operate the thing; and
2 (c) if he or she does not take action under this subsection, the
3 information or material may be destroyed, altered or
4 otherwise interfered with;
5 he or she may do whatever is necessary to secure the thing,
6 whether by locking it up, placing a guard or otherwise.
- 7 (2) The officer must give notice to the occupier of the premises of his
8 or her intention to secure the thing and of the fact that the thing
9 may be secured for up to 24 hours.
- 10 (3) The thing may be secured:
11 (a) for a period not exceeding 24 hours; or
12 (b) until the thing has been operated by the expert;
13 whichever happens first.
- 14 (4) If the officer believes on reasonable grounds that the expert
15 assistance will not be available within 24 hours, he or she may
16 apply to a magistrate for an extension of that period.
- 17 (5) The officer must give notice to the occupier of the premises of his
18 or her intention to apply for an extension, and the occupier is
19 entitled to be heard in relation to the application.

20 **36 Use of force in executing a warrant**

- 21 (1) In executing a monitoring warrant or offence-related warrant, an
22 officer may use such force against persons and things as is
23 necessary and reasonable in the circumstances.
- 24 (2) A person assisting may use such force against things as is
25 necessary and reasonable in the circumstances.
26

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2 **Division 5—Obligations of officers**

3 **37 Officer must produce identity card on request**

4 An officer is not entitled to exercise any powers under this Part in
5 relation to premises if:

- 6 (a) the occupier of the premises has required the officer to
7 produce his or her identity card for inspection by the
8 occupier; and
9 (b) the officer fails to comply with the requirement.

10 **38 Obtaining consent**

- 11 (1) An officer must, before obtaining the consent of an occupier of
12 premises for the purposes of paragraph 20(2)(a) or 23(2)(a), inform
13 the occupier that the occupier may refuse consent.
- 14 (2) A consent has no effect unless the consent is voluntary.
- 15 (3) A consent may be expressed to be limited to entry during a
16 particular period. If so, the consent has effect for that period unless
17 the consent is withdrawn before the end of that period.
- 18 (4) A consent that is not limited as mentioned in subsection (3) has
19 effect until the consent is withdrawn.
- 20 (5) If an officer entered premises because of the consent of the
21 occupier of the premises, the officer, and any person assisting the
22 officer, must leave the premises if the consent ceases to have
23 effect.

24 **39 Details of warrant etc. to be given to occupier**

- 25 If:
- 26 (a) a monitoring warrant or offence-related warrant is being
27 executed in relation to premises; and
28 (b) the occupier of the premises, or another person who
29 apparently represents the occupier, is present at the premises;

1 an officer executing the warrant must, as soon as practicable:

2 (c) do one of the following:

3 (i) if the warrant is a monitoring warrant, or an
4 offence-related warrant that was issued under
5 section 32—make a copy of the warrant available to the
6 occupier or other person (which need not include the
7 signature of the magistrate who issued it);

8 (ii) if the warrant is an offence-related warrant that was
9 signed under section 33—make a copy of the form of
10 warrant completed under subsection 33(6) available to
11 the occupier or other person; and

12 (d) if the warrant is an offence-related warrant—inform the
13 occupier or other person of the responsibilities of the
14 occupier or other person under section 26; and

15 (e) inform the occupier or other person of the rights of the
16 occupier or other person under section 41.

17 **40 Announcement before entry**

18 (1) An officer must, before entering premises under a monitoring
19 warrant or offence-related warrant:

20 (a) announce that he or she is authorised to enter the premises;
21 and

22 (b) show his or her identity card to the occupier of the premises,
23 or to another person who apparently represents the occupier,
24 if the occupier or other person is present at the premises; and

25 (c) give any person at the premises an opportunity to allow entry
26 to the premises.

27 (2) An officer is not required to comply with subsection (1) if he or
28 she believes on reasonable grounds that immediate entry to the
29 premises is required:

30 (a) to ensure the safety of a person; or

31 (b) to ensure that the effective execution of the warrant is not
32 frustrated.

33 (3) If:

34 (a) an officer does not comply with subsection (1) because of
35 subsection (2); and

Part 5 Officers and officers' powers

Division 5 Obligations of officers

Section 40

1 (b) the occupier of the premises, or another person who
2 apparently represents the occupier, is present at the premises;
3 the officer must, as soon as practicable after entering the premises,
4 show his or her identity card to the occupier or other person.
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2 **Division 6—Other matters**

3 **41 Occupier entitled to be present during search**

4 (1) If a monitoring warrant or offence-related warrant in relation to
5 premises is being executed and the occupier of the premises, or
6 another person who apparently represents the occupier, is present
7 at the premises, the occupier or other person is entitled to observe
8 the search being conducted.

9 (2) The right to observe the search being conducted ceases if the
10 occupier or other person impedes the search.

11 (3) This section does not prevent 2 or more areas of the premises being
12 searched at the same time.

13 **42 Compensation for damage to electronic equipment**

14 (1) This section applies if:

15 (a) as a result of equipment being operated as mentioned in
16 section 21 (about monitoring powers) or section 24 (about
17 offence-related powers):

18 (i) damage is caused to the equipment; or

19 (ii) the data recorded on the equipment is damaged; or

20 (iii) programs associated with the use of the equipment, or
21 with the use of the data, are damaged or corrupted; and

22 (b) the damage or corruption occurs because:

23 (i) insufficient care was exercised in selecting the person
24 who was to operate the equipment; or

25 (ii) insufficient care was exercised by the person operating
26 the equipment.

27 (2) The Commonwealth must pay the owner of the equipment, or the
28 user of the data or programs, such reasonable compensation for the
29 damage or corruption as the Commonwealth and the owner or user
30 agree on.

Part 5 Officers and officers' powers

Division 6 Other matters

Section 42

- 1 (3) However, if the owner or user and the Commonwealth fail to
2 agree, the owner or user may institute proceedings in a court of
3 competent jurisdiction for such reasonable amount of
4 compensation as the court determines.
- 5 (4) In determining the amount of compensation payable, regard is to
6 be had to whether the occupier of the premises, or the occupier's
7 employees or agents, if they were available at the time, provided
8 any appropriate warning or guidance on the operation of the
9 equipment.
- 10 (5) In this section:
- 11 *damage*, in relation to data, includes damage by erasure of data or
12 addition of other data.
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Part 6—Miscellaneous

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43 Review of decisions

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An application may be made to the Administrative Appeals Tribunal for review of a decision made by the Minister under Part 3 or 4.

44 Delegation by Minister

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- (1) The Minister may, in writing, delegate any or all of his or her powers or functions under this Act to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In performing a function or exercising a power delegated under subsection (1), the delegate must comply with any directions of the Minister.

45 Delegation by Secretary

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- (1) The Secretary may, in writing, delegate any or all of his or her powers or functions under this Act to an SES employee, or acting SES employee, in the Department.
- (2) In performing a function or exercising a power delegated under subsection (1), the delegate must comply with any directions of the Secretary.

46 Regulations

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- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Section 46

- 1 (2) Without limiting subsection (1), the regulations may:
- 2 (a) prescribe fees in respect of any matter under this Act; and
- 3 (b) prescribe penalties not exceeding 50 penalty units in respect
- 4 of offences against the regulations; and
- 5 (c) provide for the making of applications to the Minister for
- 6 approvals under this Act; and
- 7 (d) provide for review by the Administrative Appeals Tribunal of
- 8 decisions made under the regulations; and
- 9 (e) provide for the keeping of registers of one or more of the
- 10 following:
- 11 (i) persons or bodies approved as timber industry certifiers;
- 12 (ii) persons approved as importers of regulated timber
- 13 products;
- 14 (iii) persons approved as processors of raw logs.