

**Government Response to the Senate Committee Report
on the Exposure draft and explanatory memorandum of the
Illegal Logging Prohibition Bill 2011**

Senate Rural and Regional Affairs and Transport Committee

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November 2011

BACKGROUND

The 2007 Australian Labor Party made election commitments to restrict illegally logged timber imports. In particular, commitments were made to require disclosure at point of sale of species, country of origin and any certification; and identify illegally logged timber and restrict its import into Australia.

Following the 2007 election, the Department of Agriculture, Fisheries and Forestry (the department) commissioned a number of integrated projects to inform the development of the policy. These projects are available at <http://www.daff.gov.au/forestry/international>. From the commissioned projects, the department developed a final Regulation Impact Statement (RIS), which assessed the costs and benefits for domestic business, individuals and the Australian economy of three regulatory options designed to restrict the importation of illegally logged timber into Australia. The RIS recommended a co-regulatory approach as the most effective means of fulfilling the government's election commitment.

On 3 June 2010 the government approved a co-regulatory due diligence approach for implementing the government's illegal logging policy.

During the 2010 election the government announced it would implement a policy that:

- *restricts the importation of illegally logged timber products into Australia*
- *implements a code of conduct to ensure suppliers who first place timber into the Australian market carry out the proper tests to ensure wood coming into the country is legal*
- *implements a trade description for legally verified timber products and specify the circumstances under which it can be used.*

On 9 December 2010, the Minister for Agriculture, Fisheries and Forestry, the Hon. Joe Ludwig announced, in a media release, the government's intention to introduce legislation into Parliament in 2011. On 23 March 2011, Minister Ludwig referred the Illegal Logging Prohibition Bill to the Senate Committee on Rural Affairs and Transport for public inquiry.

The Senate Standing Committee on Rural Affairs and Transport released a report on 23 June 2011 that included seven key recommendations.

The Australian Government welcomes community interest in this complex issue. In this regard, the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig, and the department have consulted with domestic timber producers, timber importers and retailers, Social Justice organisations, worker representatives and interested environmental Non-Government Organisations and the Construction, Forestry, Mining, and Energy Union in preparing its response to these recommendations.

Government Response to the Committee's Recommendations

Recommendation 1

5.19 The committee recommends the Government consider alternatives to provisions for timber industry certifiers and the certifier requirements in relation to them from those listed in the bill.

The Government agrees with the recommendation.

The revised Illegal Logging Prohibition Bill (2011) (the Bill) removes these provisions

Recommendation 2

5.38 The committee recommends that importers provide a mandatory and explicit declaration of legality of product at the border and that such a requirement be incorporated into the bill.

The Government agrees with the recommendation.

The revised Bill addresses this recommendation through implementing a requirement for a declaration confirming due diligence for the importation of a 'regulated timber product'. This would ensure that importers of 'regulated timber products' affirm that they have completed due diligence processes in line with the requirements outlined in the proposed Act and confirm this at the border.

Recommendation 3

5.39 The committee recommends that the Department of Agriculture, Fisheries and Forestry ensure that the declaration requirements are consistent, to the fullest extent possible, with those in the United States (US) Lacey Act and the European Union (EU) regulation and others that meet a similar standard.

The Government agrees with the recommendation.

The requirements in the revised Bill are consistent, to the extent possible, with measures being implemented by the US and EU.

Recommendation 4

5.40 The committee recommends that the Department of Agriculture, Fisheries and Forestry in consultation with the Australian Customs and Border Protection Service adapt the current Customs declaration to incorporate the bill's declaration requirements.

The Government agrees with the recommendation.

The revised Bill makes it an offence if a regulated timber product is imported without making a declaration of compliance with the due diligence requirements of the Act through a Customs import declaration form.

Recommendation 5

5.41 The committee recommends that the Department of Agriculture, Fisheries and Forestry give consideration to providing visibility to the declaration process and that transparency is assured by way of:

- A requirement that the importer regularly publish, or provide publication of, the declarations in a publicly accessible form;
- A requirement that at a minimum, an annual audit of the importer be undertaken to determine the legality of their timber;
- A requirement that the importer publishes, or provides for publication, a Report outcome of the audit; and
- A requirement on the part of the Commonwealth Government to undertake random audits of the importer declarations, and where warranted (based on risk assessment) undertake further investigation of the supply chain from forest to importer.

The Government agrees in principle with the recommendation.

The government will implement this recommendation in consultation with industry and other interested parties. The Government acknowledges the importance of transparency but will have regard to commercial-in-confidence issues when implementing this recommendation. The Government also proposes to publish an overview of the outcomes of audits undertaken to monitor compliance with the requirements of the Bill on the department's website.

Recommendation 6

5.52 The committee recommends that regulations prescribe that importers and processors should demonstrate due diligence under one of the following:

- a) an internationally recognised third-party certification scheme, or
- b) an individual country initiative, or
- c) have in place a management system to ensure legal compliance.

The Government agrees in principle with the recommendation.

The Bill includes a requirement for importers and processors of raw logs to demonstrate due diligence. Similar to the EU due diligence model the department proposes a due diligence process under the Act will require three steps:

- *risk identification*
- *risk assessment; and*
- *risk mitigation*

In the due diligence process the Government advises that a) an internationally recognised third-party certification scheme, b) an individual country initiative, or c) a management system to ensure legal compliance, could be used in steps of the risk assessment and to mitigate any identified risks.

Recommendation 4 [sic] (*should be 7*)

6.21 The committee recommends that the Department of Agriculture, Fisheries and Forestry conduct a review of the bill's provisions five years after enactment.

6.22 The committee recommends that consideration be given in the five-year review to further periodic reviews.

The Government agrees with the recommendation.

The revised Bill includes a five year review provision and consideration will be given during this review to further periodic reviews of the legislation.

Government Response to the Australian Greens Dissenting Report

Recommendation 1

1.1 Illegal logging not only impacts on local communities through loss of resources and environmental damage, it also damages Australian businesses' ability to compete on a fair playing field.

The Government notes this recommendation.

No comment required

Recommendation 2

1.2 The Greens support strong action on illegal logging but it is difficult to see how this bill will lead to a substantial improvement in the policing of illegal timber imports entering Australia.

The Government notes this recommendation.

The Government's illegal logging policy aims to restrict the importation of illegally logged timber and wood products. The revised Bill introduces a prohibition, and requires importers of regulated timber products to fulfil due diligence requirements that will be prescribed in regulations.

Recommendation 3

1.3 Placing the onus on industry to self-regulate and self-monitor is a small step at a time when big steps are needed. The Greens do not support the exposure draft in its current form. Amendments to the bill should ensure:

- **parity or stronger measures than those in place in the US and Europe against illegal logging, including a comprehensive definition of illegal logging that encompasses corruption, indigenous land rights and technical breaches of laws or codes;**

The Government agrees in principle to this recommendation.

The Government believes the penalty provided in the revised Bill of up to five years imprisonment and/or equivalent penalty units is sufficient and consistent with other relevant Commonwealth legislation. To import 'regulated timber products' a i) declaration and ii) due diligence system is required, which is consistent with the U.S. Lacey Act and EU regulations, respectively.

The Government considers the definition of illegal logging 'timber harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested' provides an adequate basis for establishing the legality of timber and wood products imported into Australia.

- a) **a requirement on the governments of exporting nations to avoid corruption or lose the market;**

The Government does not agree to this recommendation.

The Australian Government is not able to legislate actions to be undertaken by a sovereign country.

- b) the prohibition is immediate and regulations are enacted within three months of the legislation; this legislation has been on the cards for years so industry has had plenty of time to adjust and prepare for change;**

The Government agrees in part with this recommendation.

The department agrees with the recommended timeframe for the prohibition. The prohibition element of the Bill will be enacted on commencement of the legislation. The Government believes that a period of three months to commence the regulations is an unrealistic time frame for industry to develop and implement any change to meet any new requirements.

The original timeframe for the introduction of the regulations of two years after the commencement of the legislation will enable timber importers and processes of raw logs to establish systems and processes for due diligence.

- c) the prohibition is broadened beyond just the importation of timber to include all steps of the supply chain, similar to the US and EU regulations, so that all participants in the trade take responsibility;**

The Government does not agree to this recommendation.

The intention of the legislation is to regulate the placement of legally logged timber and wood products onto the Australian market at two key points of entry, being the Australian border (for imported products) and domestic processing mills (for raw logs). Effective regulation at these two points will remove the need for further regulation down the supply chain.

- d) penalties for breaching the prohibition are broadened to include fines or forfeiture within the act rather than it being left to the courts;**

The Government agrees in principle to this recommendation.

In the revised Bill, forfeiture provisions will apply when a conviction of an offence is found under the Act. The Bill will also include maximum penalties units for the prohibition offences to give further clarity to the community.

- e) approval of certifiers is a rigorous process, clearly outlined in the act and that any process needs to include government oversight;**

The Government notes this recommendation.

As the revised Bill removes this process, no comment is required.

- f) the declaration information to be as broad as the US and EU legislation.**

The Government agrees in principle to this recommendation.

When establishing the requirements of the 'due diligence declaration' the department has considered the US and EU measures for consistency and the revised Bill provides for broad declaration requirements.

Recommendation 4

1.4 One of the difficulties in scrutinising this legislation was the absence of regulations; there is no timeline for when the regulations may be prepared or come into effect. It is inappropriate to refer key components of the process framework to delegated instruments as this limits the parliament's ability to review and amend legislation.

The Government does not agree to this recommendation.

It is the government's intention that the prohibition will come into effect on commencement of the Act. The remaining elements of the Bill will come into effect in line with the regulations, which will be two years after the commencement of the Act.

The regulations will be developed through consultation with key industry and environmental and social justice organisations. It is anticipated that an existing stakeholder working group will be the main vehicle for consultation on the overarching elements. It is also expected there will be sector based working groups of industry players.

Recommendation 5

1.5 A chain of custody certification seems to be the most robust way to combat illegal logging. Ensuring that an independent body is responsible for certifying wood origin, type and licence to log the identified coupe then provides the foundation for certification to carry on to furniture makers, sawmillers and importers.

The Government does not agree to this recommendation.

The Government is of the view that effective regulation of illegally logged timber and wood products can be achieved at the border and processing mills (as proposed in recommendation 3(c)), and removes the need for further regulation down the supply chain. Additional requirements, such as chain of custody certification, will place an unnecessary cost burden on industry without achieving significant benefits in relation to the objectives of the legislation.

Recommendation 6

1.6 Setting up such a process also opens the possibility of addressing the sustainability of logging. The current exposure draft is only assessing illegal timber. It does not cover logged products emanating from native forests containing rare or endangered species or where traditional owners have not given or do not maintain assent to the logging.

The Government does not agree to this recommendation.

As stated in the government's 2010 election commitment the policy intention is to restrict the sale of illegally logged wood in Australia, by introducing legislation that makes it an offence to import timber products into Australia that have been illegally harvested.

Recommendation 7

1.7 Greenpeace in its submission identified 35 recommendations in 15 areas to improve the legislation; the Australian Greens support its call.

The Government notes this recommendation.