

Chapter 5

Timber industry certifiers, certification and legal logging requirements

5.1 This chapter considers timber industry certifiers and the respective requirements upon them as well as the legal logging requirements. It considers the concerns raised in relation to the provisions of the bill, the department's response to them and the committee's view. The chapter also explores key themes raised in evidence including that of risk management, cost-effectiveness in relation to legality verification measures and the potential impact on industry.

Timber industry certifiers

5.2 Part 3 of the bill allows the responsible Minister to approve a person or a body as a timber industry certifier who is responsible to ensure industry compliance with the legal logging requirements otherwise intended to minimise the risk of illegally logged timber entering the market.¹ Timber industry certifiers will have the capacity to approve importers of regulated timber products or domestic processors of raw logs.

5.3 Under Section 9 of the bill, the Minister may approve a person or body as a timber industry certifier. Section 10 provides the Minister with the authority to cancel a timber industry certifier's approval as a timber industry certifier if one or more persons approved by the certifier has not complied with the legal logging requirements applicable for importing regulated timber products.²

Timber industry certifier requirements

5.4 Subsection 11.1 provides for the establishment of timber industry certifier requirements in the regulations. Such requirements are prescribed for the purpose of ensuring that a certifier is effective in monitoring compliance with the legal logging requirements for those importers of regulated timber products or processors of raw logs to whom they are responsible. Subsection 11.3 provides that different timber industry certifier requirements may be prescribed for different classes of timber industry certifiers. This provision recognises the diversity of the Australian timber industry and is intended to allow flexibility in relation to the manner in which requirements are placed on certifiers.³

1 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 48.

2 Exposure Draft of the Illegal Logging Prohibition Bill 2011, s.10.

3 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 49.

5.5 Section 12 of the bill sets out the tasks that timber industry certifiers may be required to undertake and provides for their inclusion in the timber industry certifiers requirements. The lists of tasks, which can be further developed by way of regulations, include the following:

- develop and implement codes of conduct for persons approved by certifiers;
- comply with or implement complaints resolution processes;
- retain and produce records or documents;
- undergo audits;
- provide reports;
- provide training for persons employed or approved by certifiers; or undertake remedial action.⁴

Concerns raised regarding industry certifiers and certification

5.6 A number of witnesses questioned the need for certifiers, recognising their establishment as unnecessary, an additional cost and administrative burden on industry. Ms Caroline Hoisington, an agricultural and national resources economist argued that the establishment of certifiers will fail to achieve the objective of the legislation. She put the view that the mechanism of using certifiers without requiring importers to provide full information on source of wood and chain of custody will be insufficient to capture more than a small amount of illegally-sourced timber. She also argued that the costs of establishing certifiers will be prohibitive and that the penalties are insufficient to deter the deliberate importation of illegal timber.⁵

5.7 Mr Warwick Ragg of Australian Forest Growers stated that a code of conduct and timber industry certifiers amounted to 'pseudo-certification' when a declaration of legality of product would suffice. He argued in favour of a system which draws on current practices, noting that:

To me it does not seem to need a complex, new system when we could just link to an existing chain-of-custody framework, for example, by such a declaration to the first point of sale, and then it could travel through.⁶

5.8 The joint submission of WADIC and other associations also questioned the need for certifiers. They argued that as an alternative, regulated businesses should be required to register with the government.⁷ They held the view that in light of the prohibition, legal logging requirements and the fact that industry will be required to

4 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 50.

5 Caroline Hoisington, *Submission 2*, p. [1].

6 Warwick Ragg, Australian Forest Growers, *Committee Hansard*, 16 May 2011, p. 41.

7 Wood and Door Industry Council and 7 industry associations, *Submission 15*, p. 8.

undergo independent audits, certifiers were unnecessary and will 'likely add significant business cost for little gain in regulatory effectiveness'.⁸ Indeed, others raised questions as to the rationale of appointing certifiers as part of a new legality verification process when existing systems can be utilised. Mr John Halkett of the Australian Timber Importers Federation (ATIF) said that rather than provide an 'upfront declaration', the bill sets up a surrogate system whereby the Minister appoints timber industry certifiers. Rather than the onus resting with the importer or processor, the proposed system is one in which: "[T]hose certifiers then approve importers or processors and the responsibility then lies with timber industry certifiers to do the work...the declaration under a code of conduct to look at risk assessment, to report to the minister and so on".⁹

5.9 Humane Society International (HSI), Greenpeace and BDA (NSW) argued that the process for approving certifiers, whilst resembling the EU regulations structure, is not only substantially weaker but also vaguer.¹⁰ Greenpeace listed a number of key weaknesses with the draft bill including the observation that there is no process to ensure the neutrality of certifiers and therefore no legal reason as to why an importer could not certify itself.¹¹ This concern was also raised by the Uniting Church in Australia–Synod of Victoria and Tasmania which argued that beyond section 9(2) of the bill concerning the Minister, there is no provision to exclude a body being made an approved certifier when a conflict of interest may exist.¹² Other weaknesses identified include the omission of a provision to require timber to be checked or monitored by a certifier (or any other entity) at the border or any other place and failure to make compliance with certification requirements and legal logging requirements mandatory as 'both are discretionary and without standards'.¹³

5.10 Greenpeace raised concerns that there are no assurances as to how certifiers will be audited, reviewed or checked. It argued, moreover, that there is no complaint mechanism or government oversight in this regard.¹⁴ ATIF raised the question of potential liability and insurance requirements of timber industry certifiers where importers approved by such certifiers are subsequently found to have imported illegally logged timber or breached the provisions of the act in other ways.¹⁵ Submitters compared the bill's provisions in this regard with the EU regulation monitoring organisations which are responsible for ensuring that companies which

8 Wood and Door Industry Council and 7 industry associations, *Submission 15*, p. 10.

9 John Halkett, Australian Timber Importers Federation, *Committee Hansard*, 16 May 2011, p. 5.

10 Humane Society International, *Submission 21*, p. [5]; Greenpeace Australia Pacific, *Submission 9*, p. 8; Building Designers Australia (NSW), *Submission 13*, pp. 4–5.

11 Greenpeace Australia Pacific, *Submission 9*, p. 8.

12 Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 6.

13 Greenpeace Australia Pacific, *Submission 9*, p. 8.

14 Greenpeace Australia Pacific, *Submission 9*, p. 8.

15 Australian Timber Importers Federation Inc, *Submission 14*, p. 6.

place timber on the market abide by a clearly set out 'due diligence' framework and may lose their status if the Commission establishes that they have failed to fulfil their defined functions. In addition, as Greenpeace noted, in contrast to the draft bill, the EU regulation also stipulates that authorities carry out checks to verify that timber operators comply with their requirements and keep track of records of such checks which are then made publicly available. Greenpeace emphasised that there are no such provisions in the bill.¹⁶ The Uniting Church in Australia–Synod of Victoria and Tasmania also suggested that a provision be included like that of the EU regulation requiring a monitoring organisation to have an 'absence of any conflict of interest in carryout out its functions'.¹⁷ Similarly, BDA (NSW) recommended that the requirements in relation to EU regulation monitoring organisations be set out in the bill.¹⁸ As an alternative, Greenpeace recommended that section 9 of the bill be amended in order that the Minister can only approve certifiers if they have complied with applicable timber industry certifier requirements.¹⁹

5.11 Greenpeace took issue with the fact that the Minister is able to cancel an industry certifier under section 10 of the bill and argued that the section should be deleted with such powers being given to an independent and neutral body such as a court or tribunal responsible to make determinations based on clear criteria in legislation.²⁰

5.12 In terms of the industry certifier requirements, some submitters raised concerns that matters that may be included are discretionary as there are no minimum standards even if requirements on certifiers are imposed.²¹ Greenpeace favoured making the certifier requirements articulated in sections 11 and 12 mandatory.²²

The department's response

5.13 DAFF emphasised that the draft bill allows for a broad range of options regarding timber industry certifiers to be prescribed in the regulations including their establishment. DAFF also emphasised that possibilities exist for industry to form their own timber industry certifier body individually or in conjunction with other companies or organisations. Through the working group and other consultation processes established by DAFF, the government is expected to determine how best to establish timber industry certifiers.²³ DAFF official, Mr John Talbot assured the

16 Greenpeace Australia Pacific, *Submission 9*, p. 9.

17 Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 6.

18 Building Designers Australia (NSW), *Submission 13*, p. [6].

19 Greenpeace Australia Pacific, *Submission 9*, p. 9.

20 Greenpeace Australia Pacific, *Submission 9*, pp. 8–9.

21 Greenpeace Australia Pacific, *Submission 9*, p. 8.

22 Greenpeace Australia Pacific, *Submission 9*, pp. 8–9.

23 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 26.

committee that the government sought to ensure that industry was given the opportunity to 'have some control over the certification in terms of things like flexibility and cost effectiveness to allow them the opportunity to set up their own bodies if they so wished'.²⁴

5.14 In relation to suggestions that the Minister take carriage of the process rather than certifiers, Mr Talbot clarified that certifiers would be able to do things in a more cost-effective manner and that:

I understand also that there are some companies whose early thinking is that they will not have an industry certifier and that because of their size they would like to simply use processors, similar to what they have in place if they meet the regs, and have them certified by the minister. It was something that we did not look at to add red tape; we thought we were providing something that might assist industry.²⁵

5.15 Responding to concerns regarding the Minister's power in relation to cancelling approval of an importer, processor or timber industry certifier, DAFF noted that the decision to cancel approval 'may be based on a major breach of a legislative requirement or on a series of minor non-compliance instances, as identified through independent third party audits of compliance'.²⁶

5.16 In relation to queries regarding certifier compliance and the need for neutrality in relation to certifiers, DAFF affirmed that in order to provide assurance that certifiers will comply with the provisions, the Minister may in writing:

...cancel the certifier's approval if the responsible minister is satisfied that the certifier has not complied, or is not able to comply, with applicable timber industry certifier requirements; or one or more persons approved by the certifier as importers of regulated timber products or processors of raw logs have not complied with applicable legal logging requirements.²⁷

5.17 Regarding concerns expressed in relation to the role of the certifying body, Mr Ben Mitchell of DAFF recognised that there might be some misconception about the role and that:

Rather than looking at each specific consignment that may cross the border, I think the certifying body will be established simply to approve the systems that are out there. For a company which already has a system in place, it would be a very straightforward process. The certifying body would just come, assess the process that it has in place and grant it approval to use that process to import its goods. The certifying body would not be

24 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 59.

25 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 62.

26 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 18.

27 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 26.

overlaying each consignment, so to speak, or each time across the border; they would simply be there to make sure a company has a system in place and then to potentially audit that system on a regular basis.²⁸

The committee's view on certifiers and timber industry certification

5.18 The committee recognises the concerns of a number of submitters in relation to the role of certifiers and the real risks that their establishment will impose another layer of bureaucracy, together with additional costs and administrative requirements on industry. The committee supports as an alternative, a declaration at the first point of entry supported by due diligence. The committee's recommendations in this regard are detailed throughout this chapter.

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.

Legal logging requirements

5.20 Section 13 of the bill specifies that regulations may prescribe legal logging requirements which are intended to ensure that 'those persons involved in the entry of regulated timber products onto the Australia market – importers and processors of raw logs – adhere to basic requirements relating to the legality and description of those products'.²⁹ The section will provide industry with a set of requirements which importers and domestic processors must use to develop procedures to ensure the legal status of the timber they seek to place on the Australian market.

5.21 Legal logging requirements may only be prescribed in relation to two primary actions: importing regulated timber products of a particular kind, and processing raw logs within Australia. This limitation prescribed in subsection 13.1 matches the bill's intention only to target these two activities which are the entry points for timber products onto the Australian market.³⁰ Thus, subsection 31.2 specifies that legal logging requirements may only be prescribed for the purpose of ensuring approved importers and processors adhere to three key criteria:

- ensuring that imported timber products do not contain illegally logged timber;
- ensuring that illegally logged timber is not processed within Australia; and

28 Ben Mitchell, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 62.

29 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 50.

30 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 50.

- ensuring that timber products are accurately described.³¹

5.22 Subsection 13.3 details the differing legal logging requirements to be prescribed for different:

- classes of kinds of imported regulated timber products;
- classes of person who import a kind of regulated timber product;
- kinds of processors for raw logs; and
- classes of persons who process raw logs.

5.23 Section 14 provides scope for the inclusion of matters in the legal logging requirements additional to the essential elements identified in section 13. The purpose of the section is to provide an indicative framework for possible matters that may be prescribed in subordinate legislation. Subsection 14.1 provides that the legal logging requirements may require imports of regulated timber products or processors of raw logs to:

- assess the risk of importing or processing illegally logged timber and apply appropriate measures to ensure this does not take place;
- adhere to a code of conduct which will set out specific legality verification requirements;
- implement and/or comply with complaints resolution processes;
- retain and produce records or documents;
- undergo audits as required;
- provide reports;
- provide training for employees; or
- undertake remedial action.

5.24 The explanatory memorandum notes that it is intended that codes of conduct will be developed by industry following the introduction of the regulations. The intention of any such code will be set to 'set out legality verification requirements to aid industry to comply with *legal logging requirements*'.³²

Concerns regarding legal logging requirements

A declaration at the point of importation

5.25 As previously noted, many submitters raised concerns that the due diligence requirements of the bill do not require an explicit declaration of legality of product,

31 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, pp. 50–51.

32 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 52.

chain of custody and legality verification documentation. The committee explored the option of a mandatory declaration and demonstration of due diligence as an alternative to timber industry certifiers.

5.26 In terms of the declaration, submitters recommended that the legislation specify a requirement for importers to disclose specified information at the point of importation in a declaration form or electronically.³³ BDA (NSW) argued that whilst the regulations allow provisions to be imposed in the form of a declaration, it is 'entirely discretionary and in the hands of the certifiers'.³⁴ As Kimberly-Clark Pty Ltd noted, whilst a fundamental element of both the US and EU legislation, the bill does not include a declaration provision requiring importers to provide information on the timber products they seek to import into Australia.³⁵ In this regard, Greenpeace Australia Pacific clarified that:

The US Lacey Act has a very clear declaration requirement which has helped drive much of the change in the timber supply chain, by forcing importers and traders to ask important questions of their suppliers. The EU Regulation also clearly states the kind of information that may be required from operators placing timber on the market for the first time. This information includes the species, the supplier, name and address of the recipient trader, the country of origin and even the concession of harvest (Article 6(1)).³⁶

5.27 According to a number of submitters, information that should be required under the legislation includes that of the species, country of origin, quantity or value and any supporting documentation of legal verification or certification when available.³⁷ The Uniting Church in Australia–Synod of Victoria and Tasmania supported this course of action and elaborated upon the list, noting that it should include the elements contained in Article 6 of the EU Regulation 995/2010.³⁸ Ms Hoisington agreed, noting that importers will know at least some of this information and are in a better position to require their suppliers to provide the complete provenance of their products than are end-point inspectors.³⁹

33 Furnishing Industry Association of Australia Ltd, *Submission 3*, p. [2]; Common Platform, *Submission 2*; Kimberly-Clark Australia Pty Ltd, *Submission 4*, p. [1]; Furnishing Industry Association of Australia (Vic/Tas) Inc, *Submission 5*, p. [2]; Greenpeace Australia Pacific, *Submission 9*, p. 5; Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 6.

34 Building Designers Australia (NSW), *Submission 13*, p. [2].

35 Kimberly-Clark Australia Pty Ltd, *Submission 4*, p. [1].

36 Greenpeace Australia Pacific, *Submission 9*, p. 5.

37 Common Platform, *Submission 1*; Furnishing Industry Association of Australia, *Submission 3*, p. [2]; WWF-Australia, *Submission 11*, p. [1]; Humane Society International, *Submission 21*, p. [5].

38 Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 6.

39 Caroline Hoisington, *Submission 2*, p. [2].

5.28 Others such as the BDA (NSW) suggested that a point of sale disclosure also be introduced in the bill.⁴⁰ ANEDO also suggested that the requirements be set out in the primary legislation and not delegated to subordinate instruments and recommended that the declaration and respective due diligence requirement should go beyond importation and require the legality of products to be verified at every point of trade.⁴¹

The department's position in relation to a declaration

5.29 With regard to concerns that there was no declaration requirement under the bill, the committee notes that as part of the Commonwealth-accredited code of conduct requirements, signatories will need to provide information on 'species, country of harvest and certification in their annual compliance reports'. It is proposed that industry bodies disclose this information at the first point of entry onto the Australian market in order to meet the due diligence requirements.⁴²

5.30 In relation to suggestions that Customs forms be adapted for the purposes of such a declaration, DAFF clarified that:

[I]t is likely information to monitor consignments of timber and timber products entering Australia will be compiled and reported through the use of existing systems administered by Customs. Customs will provide the relevant information to the department to analyse and monitor compliance.⁴³

5.31 DAFF officials further elaborated that the department is currently working on an initiative to include information in the Customs declaration when the material comes into the country.⁴⁴ Mr Talbot clarified that:

[I]n the Customs process, there will be something in terms of what is imported into the country—some sort of declaration or something included in a customs form.⁴⁵

5.32 In terms of a declaration at the point of sale, however, the explanatory memorandum is clear that the costs would be prohibitive for the final sellers and that:

[E]nforcement of the disclosure requirement by government at point of sale would require working with a large set of stakeholders in addition to the

40 Building Designers Australia (NSW), *Submission 13*, p. [2].

41 Australian Network of Environmental Defender's Offices, *Submission 20*, p. [2].

42 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, pp. 12–13.

43 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 17.

44 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 61.

45 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 61.

group required to fulfil the due diligence obligation. It is therefore proposed that this information is disclosed at the first point of entry onto the Australian market.⁴⁶

5.33 DAFF further clarified that whilst a system requiring certification along the entire supply chain of timber products was considered along with other options:

[I]t was determined that the most cost effective method of certification would be targeted at two key points of entry where the legality of timber products could be effectively and efficiently screened for compliance with the legislation.⁴⁷

The committee's view on a declaration

5.34 The committee recognises that in meeting the code of conduct requirements, signatories would need to provide information at the point of entry onto the Australian market of the species, country of harvest and any certification in their annual compliance reports.⁴⁸ However, the committee takes the view that a mandatory and explicit declaration at the first point of entry should be provided for in the bill. Such a declaration of legality of product should be supported by due diligence as a means of verifying that what is declared is accurate. The declaration requirements should, therefore, form part of the basis of the offence. To this end, the committee highlights the declaration requirements in both the US Lacey Act and EU regulation which clearly set out the information required from operations placing timber on the market for the first time. The US Lacey Act requires importers to declare the country of origin of harvest and species name of all plants contained in their products and establishes penalties in relation to trade in plant and plant products that are illegally sourced.⁴⁹ The EU regulation requires that 'measures and procedures providing access to the following information concerning the operator's supply of timber or timber products placed on the market' include:

- description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name,
- country of harvest, and where applicable:
 - (i) sub-national region where the timber was harvested; and
 - (ii) concession of harvest,

46 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 13.

47 Department of Agriculture, Fisheries and Forestry, Answer to question on notice, 16 May 2011 (received 26 May 2011).

48 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 13.

49 United States Government, Amendments to the Lacey Act from H.R.2419, Sec.8204, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf (accessed 23 May 2011).

- quantity (expressed in volume, weight or number of units),
- name and address of the supplier to the operator,
- name and address of the trader to whom the timber and timber products have been supplied,
- documents or other information indicating compliance of those timber and timber products with the applicable legislation.⁵⁰

5.35 The committee recognises that whilst the draft bill is modelled to some extent on the EU regulation, it appreciates the comments of Greenpeace Australia Pacific's Reece Turner who articulates some of the differences:

For example, if you look at the EU legislation, which is designed to be exactly the same as these laws— an overarching skeleton with regulations that will be developed and are currently in the process of negotiation— you see that the EU legislation sets out that there will be a requirement for disclosure of information and it will include species, country of origin, volume, amount et cetera. So that amount of low-level detail is made explicit in the laws and the regulations will come through later and define how that is going to be checked and how the disclosure requirement will be processed at the point of importation. But, as for this bill, there is so much that is flagged in the explanatory memorandum which simply does not appear in the bill itself.⁵¹

5.36 The committee drew a comparison with Australia's exportation of fish to the EU. Under the current arrangements, the EU has accepted fish that has been certified from state fisheries managers from the Australian Fisheries Management Authority. Under the existing system, the EU requires details of the boat, the master's name, number and the fishing license, date and location of capture, the landing weights, details of processing on board and then the export/import and transport details.⁵² The committee highlights, therefore, that a declaration system in relation to timber and timber products should also be introduced. Furthermore, the committee notes that whilst the existing system in relation to fish is paper based, DAFF have recognised that an electronic system would be 'cheaper and simpler' and highlights that adaptation of the Customs declaration in relation to timber would be the best course of action.

5.37 Notwithstanding differences in the products that will be regulated under the proposed legislation, the committee recommends that an explicit and mandatory declaration be required under the bill and strongly encourages DAFF, in consultation

50 Office Journal of the European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council, 20 October 2010, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF> (accessed 23 May 2011).

51 Reece Turner, Greenpeace Australia Pacific, *Committee Hansard*, 16 May 2011, p. 47.

52 Ian Thompson, Department of Agriculture, Fisheries and Forestry, *Estimates Hansard*, 23 May 2011, p. 115.

with industry and involved stakeholders to draw on the US Lacey Act and EU regulation when determining the declaration requirements. Furthermore, the Customs declaration should be adapted to incorporate the bill's declaration requirements. The committee also recognises the importance of transparency in terms of the declaration process as a way to pressure for a change in practices. To this end, the committee supports visibility in relation to the declaration process and encourages DAFF to identify ways to disseminate information regarding the source of imported and domestically processed timber.

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.

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 US Lacey Act and EU regulation and others that meet a similar standard.

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.

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.**

A flexible, cost-effective and adaptable compliance framework

5.42 Many submissions from industry focused on the importance of avoiding duplication in terms of legality verification requirements. For example, Mr Richard Stanton of the Australian Forest Products Association (AFPA) argued that there should be a flexible framework to enable each company to assess its own risk and its own supply chain and to put into place the most appropriate system, which may be an existing certification system or something different.⁵³ Mrs Moira Kuffer of the Australian Forest Growers (AFG) also raised this concern with the committee. She noted that the AFG considered the current compliance requirements on Australian growers under the existing domestic legislative framework as substantial and well implemented whilst:

[T]he current bill presents some challenges as it requires a code of conduct and timber industry certifiers, which seems to require a further layer of compliance costs from industry, which are ultimately borne by the grower as reduced returns because they have no-one left to pass costs on to.⁵⁴

5.43 In their joint submission, WADIC and the seven associations emphasised that the legal logging requirements must be simple, practical and cost-effective for business. They maintained that small business, which constitutes an estimated 92 per cent of the industry, has a limited capacity to handle increased compliance costs and obligations.⁵⁵ This view was supported by AFPA. Mr Grant Johnston explained:

...the concern with the bill [is] that it is a one-size-fits-all approach. Whilst there is some scope for flexibility of response in the regulations, they are based around a code of practice-type system, and...there needs to be greater scope than just a code of practice. There are a range of ways of ensuring compliance with the aims and objectives of the bill other than simply requiring a code of practice.⁵⁶

The department's position on the compliance framework

5.44 In relation to the criticism concerning the specification of the legal logging requirements in subordinate legislation, the committee draws attention to the explanation in the explanatory memorandum that such an approach will 'allow flexibility in how these requirements are applied, particularly owing to the diversity of products found within the Australian timber industry' and that:

53 Richard Stanton, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 14.

54 Moira Kuffer, Australian Forest Growers, *Committee Hansard*, 16 May 2011, p. 41.

55 Window and Door Industry Council and 7 industry associations, *Submission 15*, pp. 4 and 7.

56 Grant Johnson, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 14.

[I]t is intended that the requirements will be straightforward, efficient and cost effective in minimising the risk of illegally logged timber entering the Australian market.⁵⁷

5.45 DAFF also emphasised that the draft bill provides a 'high-level legislative framework' to implement the government's policy to combat illegal logging. In this sense, it provides government with the necessary authority to develop subordinate legislative instruments including regulations to realise government policy.⁵⁸ DAFF further noted that specifying the details in subordinate legislation 'allows for requirements that may be subject to periodic change, such as the coverage of regulated timber products, as well as providing flexibility to ensure there are opportunities for continuous improvement'.⁵⁹ To this end, such an approach aligns with the government's preference that industry stakeholders have 'an important role in the development of the requirements and will be extensively consulted under the co-regulatory approach'.⁶⁰ Mr Talbot explained that, in relation to the codes of conduct, this approach seeks to take into account the industry's diversity:

We have left things fairly flexible because with the code of conduct or practice—both words have been used—we have had a situation where a number of the industry players have said to us that they would like a degree of flexibility in this because at one end of the scale you have companies with something in place and at the other end of the scale you have very little in place. So what we are trying to do is provide some flexibility in terms of having a framework of key things that it has to do. So the code of conduct would have in the regs a framework and then people could pull out of the framework what they needed to manage things for their business on the ground.⁶¹

5.46 Furthermore, the approach will enable adaptability in relation to state legislation whilst ensuring compliance with international obligations as Mr Talbot from DAFF clarified:

In Australia at a state level we have good legality frameworks, we have codes of practice and we have certification for 90 per cent of the product. We are looking at how we can meld that with our international obligations under this law and make it a reasonable playing field in how we apply things domestically.⁶²

57 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 50.

58 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 7.

59 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 5.

60 Department of Agriculture, Fisheries and Forestry, *Submission 26*, pp. 7 and 15.

61 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 58.

62 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 58.

5.47 Mr Talbot went on to emphasise that the intention was not to add another layer of bureaucracy in the process but to be able to assist industry in developing codes of practice to suit their own business. He concluded that the idea was to provide flexibility in order to ensure that the approach was cost-effective'.⁶³

5.48 In response to suggestions that the due diligence requirements align with the US and EU legislation, DAFF clarified that the amendments to the Lacey Act do not have a requirement to put in place a due diligence system for providing assurance of legality of imported timber products as *due care* is required to be exercised in ensuring that shipments of timber are obtained legally. The onus of proof rests with the US government to prove an importer has violated the legislation and that such proof is based on information gained from foreign governments, non-governmental organisations, private citizens, anonymous tips and data analysis as well as agents on the border. In comparison, the EU regulation requires operators to exercise due diligence when first placing timber or timber products on the market with the regulation setting out what the due diligence system must contain.⁶⁴

The committee's view on the compliance framework

5.49 The committee questioned the necessity for imposing requirements at every stage of the supply chain as suggested by HSI, ANEDO and other submitters.⁶⁵ The committee accepted the logic of the draft bill that it targets the border and Australian timber processing mills as the key points of entry where the legality of such timber products can be 'effectively and efficiently screened for compliance with the legislation'. DAFF assured the committee, moreover, that:

This approach provides an assurance that timber products further down the timber supply chain have been verified as legally logged, thereby removing the need for full timber supply chain traceability and reducing overall business compliance costs.⁶⁶

5.50 At the same time, however, the committee takes the view that due diligence should be provided as an assurance regarding legality of product. The committee recognises that an explicit requirement for a declaration and due diligence would provide verification of legality and establish a chain of custody. Whilst the committee appreciates that there is a global trend towards third-party certification, it also recognises that other options including individual country initiatives are equally viable. In this regard, the committee acknowledges the concerns raised by Indonesia that there is a risk that only private sector certification systems will be recognised in

63 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 62.

64 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 19.

65 See for example, Rod Holesgrove, Humane Society International, *Committee Hansard*, 16 May 2011, pp. 36–37 and Nari Sahukar, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 16 May 2011, pp. 36–37.

66 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 5.

future regulations when there are viable national systems specifically designed to provide the legal verification required to meet regulations. Indeed, Indonesia as a case in point, has introduced the Sistem Verifikasi Legalitas Kayu (SVLK), a timber legality assurance system, to meet the legal verification requirements of regulations such as the US and EU as well as the proposed bill.⁶⁷

5.51 The committee also recognises the fact that some companies may have their own management systems in place to ensure legal compliance which are equally appropriate. Indeed, given that the need for flexibility and adaptability of currently operational systems was highlighted in evidence, the committee recognises the importance of enabling companies which wish to import, to assess the risks to them and to introduce or utilise appropriate systems to demonstrate legality of product. Furthermore, to ensure flexibility and to enable amendments to the due diligence requirements in response to international and domestic developments, the committee recommends that due diligence requirements be prescribed in subordinate legislation.

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.**

5.53 The committee holds that the output of this process will be a legally binding and enforceable declaration of the legality of timber supply, signed by the importer.

5.54 Whilst the committee appreciates that the intention of the approach in prescribing key elements in subordinate legislation is to ensure flexibility and adaptability for industry stakeholders, it recognises the most flexible and cost-effective approach is to provide a framework of verification by way of a declaration supported by due diligence enabling industry to draw on their own systems. The committee's recommendation would require each company wishing to import to assess the risks and to have appropriate systems in place to demonstrate legality of product. Such a system will, moreover, do away with the need for certifiers and thereby reduce the risk of imposing an additional layer of bureaucracy and expense.

5.55 The committee's recommendations will impact upon the legal logging requirements to which amendments will be required. However, stated requirements on industry outlined in subsection 14.1 of the bill including that of a reporting mechanism and necessity to undergo audits should be retained. Indeed, as certification or management processes deal with the product down the supply chain, there must be an assurance that the certification or management system is managed and regularly audited.

67 Ministry of Trade of the Republic of Indonesia, *Submission 31*, p. [2].

5.56 The committee takes the view that its recommendations will allay concerns of industry and other stakeholders and meet the expectations of organisations including Greenpeace that the due diligence requirements in relation to the legal logging requirements be made explicit and mandatory in the bill and include requirements such as a declaration and chain of custody and legality verification documentation.⁶⁸

5.57 In light of the fact that the European Commission is expected to adopt more detailed rules on the due diligence system by June 2012, DAFF highlighted that the government will follow the progress of the EU as well as the US 'throughout the development and implementation of its own policy and legislative measures'.⁶⁹ The committee strongly supports this course of action in light of its recommendations that the provisions of the draft bill align with that of the EU regulation and US Lacey Act and other appropriate legislation to the fullest extent possible.

Legal verification compliance costs

5.58 Australian Timber Importers Federation Inc (ATIF) argued that the bill runs the risk of making timber products less competitive against other building products that are less environmentally friendly. It noted that the bill and supporting memorandum are 'silent about the cost impacts of the measures contained in the Bill on timber product imports' and that it needs to be explicit about the reality that costs relating to the implementation and operation of the bill will be passed onto timber product importers and subsequently to consumers.⁷⁰ Similarly, the joint WADIC submission warned that any reduction in the price competitiveness of timber and Australian made finished products will 'drive substitution by unregulated imported finished timber products, and illegal timber can just be re-routed into such imports'. The joint submission held that this will negate much of the bill's effectiveness and will result in 'Government-supported preferential competitive treatment for overseas wood-products manufacturing against local manufacturers and jobs'.⁷¹

5.59 Timber Queensland argued that the bill seeks to introduce a whole new bureaucracy and to have it funded by the industry which will impose 'unnecessary costs'.⁷² ATIF maintained that it was difficult to be precise about the likely timber legality verification compliance costs in the bill without knowing the specifics of the regulations yet to be drafted and against which timber product importers would be required to comply. Whilst there are the initial one-off costs in relation to the implementation of verification and other compliance systems, ATIF highlighted that there will be ongoing costs of licensing and what that entails in relation to

68 Greenpeace Australia Pacific, *Submission 9*, p. 15.

69 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 20.

70 Australian Timber Importers Federation Inc, *Submission 14*, pp. 3 and 6.

71 Wood and Door Industry Council and 7 industry associations, *Submission 15*, p. 9.

72 Timber Queensland, *Submission 30*, p. 1.

administration and management systems and due diligence assessments.⁷³ ATIF also noted that the costs of legality verification compliance are also likely to be influenced by considerations relating to whether supplier countries are above a predetermined illegal logging risk assessment ranking and the extent to which companies along the supply chain have due diligence and/or other procedure practices already in place.⁷⁴ Mr John Halkett of ATIF estimated that the legislation will result in an overall cost increase to industry by about a 2.5 to 4.5 per cent of the wholesale price.⁷⁵

5.60 DAFF responded by clarifying that the legality verification compliance costs for industry were based on estimates assessed for full certification (FC), Verified Legal Compliance (VLC), Verified Legal Origin (VLO) and due diligence.⁷⁶ DAFF noted that the compliance costs for different businesses would depend on the level of certification used and regional level of risk for timber and wood products sourced. The sources of these estimates are provided below:

Table 1: Compliance cost assumptions		
	Lower	Upper
	% export tax equivalent	% export tax equivalent
<i>Low risk regions (including Australia*)</i>	0.025 (Due Diligence**)	0.1 (Full Certification)
<i>High risk regions</i>	0.9 (Verified Legal Origin)	1.5 (Verified Legal Compliance **)
Note: Compliance costs are calculated as an export tax for the purposes of modelling economic impacts.*For Australia, compliance costs are modelled as production tax. **In terms of compliance requirements, SDL is the minimum of the four different regulatory schemes; see text and CIE (2010) for details. The requirements for VLC are more stringent than for VLO but less than for FC.		

73 Australian Timber Importers Federation Inc, *Submission 14*, p. 8.

74 Australian Timber Importers Federation Inc, *Submission 14*, p. 8.

75 John Halkett, Australian Timber Importers Federation Inc, *Committee Hansard*, 16 May 2011, p. 2.

76 Department of Agriculture, Fisheries and Forestry, Answer to question on notice, 16 May 2011 (received 26 May 2011).

5.61 Mr Tom Aldren of DAFF responded to concerns regarding the costs of compliance by emphasising that the intention of the work already undertaken was to reduce the impost on importing and timber-using industries. He concluded that:

To the extent that we can design things in consultation with industry that achieve the outcomes that are being sought at low cost, we will certainly be doing that.⁷⁷

5.62 The committee appreciates the concerns regarding a cost and administrative impost on domestic industry and takes the view that its recommendations to replace timber industry certifiers with a framework of legal verification and due diligence will address such concerns.

Sovereignty and managing risk

5.63 Questions regarding sovereignty and management of risk featured throughout the inquiry. Risk was discussed in two specific contexts—in relation to specific products as discussed in chapter 4 in the context of the definition of 'regulated timber product' as well as in relation to the jurisdictions that products are sourced from. This section considers the latter.

5.64 The Australian Forest Products Association (AFPA) raised the possibility of a risk-based approach whereby additional steps or requirements were put in place in relation to high-risk or suspect sources of timber and wood based products.⁷⁸ Mr Mick Stephens of AFPA argued that a risk-based approach in place of industry-wide codes of conduct would be simpler, cheaper and more effective as companies could develop their own situation-specific due diligence systems which could then be randomly audited by government. Mr Stephens continued:

For example, such a system would recognise the low level of risk and high degree of legal verification required as part of third-party chain of custody certification in Australia. Such certified products would be recognised under the legal logging regulations as meeting the legal requirements at quite a negligible cost.⁷⁹

5.65 Mr Richard Stanton of AFPA clarified that under a risk-based model, the onus is placed on the importer or domestic processor to have a system in place and that:

A lot of importers could be importing from a relatively low-risk country or have very simple supply chains where it is relatively easy for them to document and demonstrate the source of the wood, but if you were endeavouring to import a product from the Solomon Islands I think any

77 Tom Aldren, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 63.

78 Mick Stephens, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 13.

79 Mick Stephens, Australia Forest Products Association, *Committee Hansard*, 16 May 2011, p. 13.

system of assessing risk would say that that is a relatively high-risk situation. Therefore, there would be an onus on a company which wished to import product from the Solomon Islands to put in place a fairly rigorous system for ensuring that the wood they are accessing does meet the legal requirements. How they choose to do that, whether they engage a particular provider who says, 'We'll give you a legality certification service,' or whether they do it through the Solomon Islands government, however they choose to do it, the onus will be on them to do it. Some people may say, 'We don't want to be in that business any more, it's too complicated,' or they may say 'The only way we're prepared to do it is if it is FSC or PEFC certified,' which will constrain it to some extent; or if it is part of the core business and they have good contacts, I am sure they would be able to put in place systems to demonstrate their legality, as you mentioned. That will be up to each individual company... to make those assessments.⁸⁰

5.66 Another issued raised in relation to risk mitigation was that of the need for exporters to demonstrate compliance with the legal regime in their own country. In this regard, a declaration at the border was noted as a means of meeting such requirements. Mr Grant Johnson of AFPA argued that this would be a reasonable requirement for an exporter to provide a form showing details about the product so that it could then be inspected at the border. He continued:

If that documentation did not accompany the consignment, it would not be accepted for import to this country. Even more sensibly, if you had a foreign based representative, they could assess the documentation before it was even shipped to this country so as not to waste everybody's time and effort. Unless that documentation is there, it will be deemed not to be a sensible operation to export to Australia because, in all likelihood, it would not be accepted. These types of processes could reasonably be included in the requirements of an exporter.⁸¹

5.67 World Growth, argued that governments of exporters should be required to attest to the legality of national producers. However, it also noted that timber products which are considered illegal under the standards of importing countries may be legal under the national law of the exporting country.⁸² Other organisations such as Greenpeace raised similar concerns and argued that the use of the term 'harvested' in the definition could have the effect of ignoring cases of illegality:

– particularly where corruption bribery or timber smuggling occurs- as well as ignoring disputes over land tenure where indigenous and/or traditional land rights are concerned.⁸³

80 Richard Stanton, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 15.

81 Grant Johnson, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 16.

82 World Growth, *Submission 17*, p. 8.

83 Greenpeace Australia Pacific, *Submission 9*, p. 6.

5.68 Greenpeace concludes that the draft definition is unsatisfactory because it ignores and could legitimatise cases where traditional landowners' land is logged against their wishes, even where national laws protect their rights.

5.69 The committee takes the view, however, that the issues pertaining to leases and the manner in which they are granted is a separate matter to that contained in the draft legislation. The draft legislation is about the legality of timber and cannot seek to override sovereignty. It has no place in seeking to establish over and above national laws and standards, whether timber has been legally logged in accordance with its own standards. These are two separate matters which should be considered and addressed accordingly. Indeed, in relation to matters pertaining to national laws, the committee draws attention to the federal initiatives outlined in Chapter 2 of this report including capacity building through projects such as the Asia Pacific Forestry Skills and Capacity Building Program as well as multilateral and bilateral engagement.

5.70 Evidence given to the committee regarding PNG suggests that there has been what Mr Tate of the PNG Forest Industries Association termed a 'collapse in confidence' in relation to the country managing its own affairs. Mr Tate argued that third-party verification systems including SGS's Timber Legality and Traceability Verification (TLTV) and Forest Stewardship Council (FSC) have become a 'credible alternative' to demonstrating compliance with government regulations.⁸⁴ In the case of PNG, legal requirements are monitored through these exporting monitoring systems.⁸⁵ Mr Tate noted that companies are increasingly obtaining legal certification in this manner which is independent of government. He explained that work was ongoing to have SGS and FSC recognised under the EU system and that they are already recognised under the New Zealand government procurement program for wood products and by the Dutch government as credible schemes.⁸⁶

5.71 Whilst the committee appreciates that there is a global trend towards third-party certification, it also recognises that other mechanisms including individual country initiatives, are equally viable. Mr Halkett of ATIF noted that the Sistem Verifikasi Legalitas Kayu (SVLK) or wood legality verification system in Indonesia had been introduced to meet legal verification requirements and that:

It is a declaration made when the product is exported from Singapore that says that this product is obtained from legally logged timber... When you import products into Australia from Indonesia, if it has an SVLK certificate

84 Robert Tate, Papua New Guinea Forest Industries Association, *Committee Hansard*, 16 May 2011, p. 21.

85 Papua New Guinea Forest Industries Association, *Submission 10*, p. 9.

86 Robert Tate, Papua New Guinea Forest Industries Association, *Committee Hansard*, 16 May 2011, p. 21.

with it, you can be assured that the timber in that product comes from legal operations.⁸⁷

5.72 Mr Tate told the committee that the PNG Forest Industry Association proposes that:

...having met those criteria for legal origin and legal compliance, recognition or a risk reduction would be made on arrival in Australia so that product is not perhaps subject to the full rigours of having to go through and prove due diligence and all the rest of it.⁸⁸

5.73 A similar argument was put by Solaris Paper Pty Ltd in relation to timber product which qualifies as an allowable import under the EU Forest Law Enforcement, Governance and Trade (FLEGT) system or US Lacey Act provisions. Solaris Paper argued that such products should 'automatically qualify to be imported into Australia' under the bill and that:

Ensuring this design feature for the Australian system enables the integrity of the international systems, especially the EU system which has taken years to develop and negotiate, is freely available to Australian businesses without any of the expense of developing or maintaining the system or any other competing verification system.⁸⁹

5.74 Solaris Paper argued in favour of the inclusion of a 'mutual recognition provision' in the bill to make it mandatory for regulated timber products which are allowed to be imported into the EU or US to be allowed to be imported into Australia automatically.⁹⁰ Mr Tate from the PNG Forest Industries Association held a similar view but also argued that the legislation once finalised, should recognise the 'legality of production in the country of origin according to that country's rules and laws is satisfactory performance for the purpose of exporting to Australia'.⁹¹

5.75 ATIF noted, however, that a key issue for PNG and Indonesia is that schemes including the Programme for the Endorsement of Forest Certification (PEFC) and FSC are not in place for some species imported into Australia. Mr John Halkett of ATIF expressed the view that such countries should be recognised as having some degree of risk which should be addressed by way of legality verification arrangements in the bill.⁹² Mr Halkett added that in the Malaysian context, there is a full chain of

87 Robert Tate, Papua New Guinea Forest Industries Association, *Committee Hansard*, 16 May 2011, p. 4.

88 Robert Tate, Papua New Guinea Forest Industries Association, *Committee Hansard*, 16 May 2011, p. 22.

89 Solaris Paper Pty Ltd, *Submission 19*, p. 2.

90 Solaris Paper Pty Ltd, *Submission 19*, p. 15.

91 Robert Tate, Papua New Guinea Forest Industries Association, *Committee Hansard*, 16 May 2011, p. 20.

92 John Halkett, Australian Timber Importers Federation Inc, *Committee Hansard*, 16 May 2011, p. 3.

custody certification system which is more expensive than the systems that only require legal verification at the border. He noted that Malaysian importers were having difficulties selling their product in Australia because of the additional cost which amounted to between five and eight per cent which they add to products that must compete with similar imports from Indonesia and South America.⁹³

5.76 The committee considered the provisions of risk assessments and what they might entail particularly in relation to the importation of products from high-risk countries. The AFPA argued that the federal government could provide some assessment of the risk of various governments in terms of the onus on importers of timber products to Australia. Mr Stanton of AFPA argued that 'there could be 'high-risk countries, medium-risk countries and low-risk countries, so as to provide some overlay to assist in the process'.⁹⁴ WWF-Australia raised the importance of government support to industry by way of commissioning an independent risk assessment program that 'considers risk levels of timber and wood products from export countries or regions'. WWF emphasised that the risk assessment should remain independent of government and be updated as required.⁹⁵ Greenpeace took the view that risk assessments relating to specific countries, corporations, or concessions should be conducted by either government or a third party commissioned by government.⁹⁶

5.77 ANEDO's Mr Nari Sahukar also argued in favour of a risk assessment process with parallel due diligence requirements. He held the view that DAFF could provide guidance to businesses as well as consumers about the regulatory regime and the problem of illegally logged timber.⁹⁷ ANEDO emphasised the importance of due diligence as a fundamental requirement alongside certification as Mr Sahukar noted:

Where a country has a higher risk of corruption, for example, due diligence requirements may be higher and where countries have a good certification scheme or a good track record in terms of legal protections, then the due diligence requirements would be less...⁹⁸

5.78 Mr Richard Howarth of the ANEDO argued that whilst certification was important, it would not be sufficient on its own to stop prosecution. He also emphasised that certification does not negate the requirement to take appropriate due diligence to make sure that industry 'sourcing information' to get as much information

93 John Halkett, Australian Timber Importers Federation Inc, *Committee Hansard*, 16 May 2011, p. 6.

94 Richard Stanton, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p.18.

95 WWF-Australia, *Submission 11*, p. [2].

96 Greenpeace Australia Pacific, *Submission 9*, p. 14.

97 Nari Sahukar, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 16 May 2011, p. 39.

98 Nari Sahukar, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 16 May 2011, p. 39.

as possible about the product in question. He concluded that ANEDO would support certification but would like to see the details of that certification as well as a requirement requiring due diligence regardless of the stage in the supply chain.⁹⁹

5.79 The committee appreciated this position and considered the provision of documents which demonstrated due diligence as a form of surety. It draws attention in this regard to its own recommendations regarding due diligence.

5.80 The committee appreciates that the EU due diligence system provides for risk assessment and risk mitigation procedures, and encourages DAFF to draw on the EU system and introduce its own transparent system to rank risk. Information in relation to the ranking system should be publicly available and disseminated widely across the industry.

5.81 The FIAA raised concerns that adequate funding be provided to finance the inspection, clearance and enforcement of the legislation and its regulations.¹⁰⁰ It maintains that an independent assessment of the risk levels of timber and wood-based products from export countries will need to be rapidly undertaken in order to assist in providing guidance of risk of illegality and that:

Product manufactured in any country but which contains high-risk protected rainforest species logged from high risk countries needs to be identified and subjected to more prudent scrutiny.¹⁰¹

5.82 Stakeholders who produced the Common Platform suggested that the federal government should enforce the prohibition and due diligence requirements and not leave the responsibility to industry. Kimberly-Clark Australia Pty Ltd clarified this position by noting that enforcement and monitoring should be substantially resourced.¹⁰² Greenpeace argued that monitoring and enforcement should be transparent and comprise annual reporting on inspections, accuracy of declarations, with annual reports on enforcement measures undertaken and a 'real time registry of declaration forms'. It also suggested that due diligence standards and codes of conduct outlined in Part 3 of the bill should be published on DAFF's website and that the names and qualifications of certifiers should be available on the DAFF website as well.¹⁰³

99 Richard Howarth, Australian Network of Environmental Defender's Offices, *Committee Hansard*, 16 May 2011, p. 34.

100 Furnishing Industry Association of Australia Ltd, *Submission 3*, p. [2].

101 Furnishing Industry Association of Australia Ltd, *Submission 3*, p. [3].

102 Kimberly-Clark Australia Pty Ltd, *Submission 4*, p. [2].

103 Greenpeace Australia Pacific, *Submission 9*, p. 16.

The department's response

5.83 Mr John Talbot provided clarification to the committee on the government's intentions in relation to risk and due diligence:

The idea of the code of conduct is that it is a due diligence process. Basically what is under that is the risk management framework. It is based on a number of things. One of them would be: what country has the timber come from? Is it a low-risk country or a high-risk country? Other things that would possibly be in it are things that have been mentioned at the hearings today—things like the species within a country and what sorts of schemes have been involved. Certainly there are a number of countries that have made representations that have been what I would consider low-risk countries.¹⁰⁴

5.84 Mr Talbot went on to note that low-risk countries would 'probably have a number of triggers that would get you over the line' and that one of them would be certification and another would be the frameworks in place.¹⁰⁵ However, in the context of discussion about a declaration at the point of importation, Mr Talbot emphasised that alongside a declaration of compliance, due diligence was still required. On the issue of due diligence, he commented:

I guess the question becomes whether that due diligence should be approved or endorsed by an industry certifier or whether the due diligence should just be endorsed by the minister or what. There is another side to this coin, and that is: what assurance are we giving the community that there are some checks to the process and some independence? We have tried to balance that by putting these sorts of processes in place.¹⁰⁶

The committee's view

5.85 The committee appreciates the suggestions of submitters in terms of how best to assess and mitigate risk and believes that its recommendations will require companies to assess the risks involved in placing their product on the Australian market and have in place appropriate systems to demonstrate legality of their product. In this sense, the recommendations seek to establish a transparent risk management framework which assesses countries in terms of risk and imposes certification and due diligence requirements in accordance with risk level.

104 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 59.

105 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 59.

106 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 61.

