

## Chapter 6

### Looking forward – Committee conclusions

#### Sovereignty and risk management

6.1 The committee's primary concern is that the draft bill should avoid the creation of additional bureaucracy around the legality verification requirements where there are already processes in place, both domestically and in countries of source, that can provide the information required and surety by way of due diligence.

6.2 In terms of the domestic context, whilst the committee received assurances from DAFF officials that the intention of the bill is to ensure that current systems are adapted, it stands by its recommendations to simplify the framework for legality verification and due diligence to that of a mandatory declaration underscored by due diligence in the form of validation documentation.

6.3 The committee takes the view that whilst the legislation must be effective in restricting the importation and processing of illegally logged timber, it must also ensure that mechanisms used to address illegal imports do not pose an additional bureaucracy or impose any unnecessary impediments on domestic industry. The committee acknowledges the position of the Australian Forest Products Association as expressed by Mr Mick Stephens in this regard:

The mechanism used to address illegal imports should be risk based and flexible with respect to the treatment of imported products and any requirements for domestic producers under World Trade Organisation rules.<sup>1</sup>

6.4 The committee recognises that in addition to state and territory regulation, approximately 90 per cent of timber produced in Australia is accredited under internationally-recognised voluntary third party certification schemes which include standards and chain of custody legal verification.<sup>2</sup> Similarly, evidence to the inquiry suggests that most timber-importing companies and timber-product importing companies have their own in-house systems in place with many such companies importing timber that is third party certified.<sup>3</sup> Compatibility with the Australian Standard is essential as Miss Kayt Watts of Australian Forestry Standard Ltd explained:

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1 Mick Stephens, Australian Forest Product Association, *Committee Hansard*, 16 May 2011, p. 12.

2 Mick Stephens, Australian Forest Product Association, *Committee Hansard*, 16 May 2011, p. 12.

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

With the current certification against the standards, there is a recognition of certified timber and noncontroversial timber currently in place, and the noncontroversial does have a declaration that comes in of the source of supply of the timber so it can be certified.<sup>4</sup>

6.5 Notwithstanding these facts, the committee is equally aware of the variability across companies in terms of the processes, mechanisms and standards used to ensure that their timber supply is legal. The committee notes the need to ensure that clear and appropriate systems are in place across the domestic industry as well as in relation to importation, which are backed up by evidence of due diligence. In terms of importation, the committee heard considerable evidence in support of the view that timber that has been the subject of a certification process such as SVLK in Indonesia and SGS TLTV in Papua New Guinea should be considered as acceptable systems for certification in terms of Australia's requirements under the draft bill. Whilst the international benchmarks are new and evolving, the committee recognises the importance of alignment with the EU and US and other appropriate legislation in terms of recognising particular certification schemes and strongly encourages DAFF to pursue this approach.

## **Regulations**

6.6 The committee appreciates that many of the concerns raised by stakeholders relate to uncertainty about the regulations and what may be prescribed in them. The committee understands the importance of regulatory certainty, particularly for industry. However, assurances were given by DAFF that in taking a co-regulatory approach, it has sought to engage industry and other involved stakeholders in the development of the legislation and will continue to do so in developing the regulations. Furthermore, the committee recognises that prescription of some elements in subordinate legislation will enable greater flexibility and room for continual improvement to the legislative framework. This is particularly important given that:

[T]his is a complex policy area and international benchmarks are either difficult to establish or are new in their implementation and there is little established practice.<sup>5</sup>

## **Harmonisation**

6.7 The committee recognises the importance of avoiding a situation in which there are multiple compliance regimes which will, amongst other things, drive product substitution by competing materials. A situation whereby internationally active companies are required to meet multiple requirements, all placing a burden on business in terms of complexity and costs, is both counterproductive and unsustainable.

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4 Kayt Watts, Australian Forestry Standard Limited, *Committee Hansard*, 16 May 2011, p. 9.

6.8 Most submitters suggested that harmonisation with the US Lacey Act and EU legislation to the fullest extent possible would be most beneficial.<sup>6</sup> Indeed, it was one of the key messages emanating from the evidence before the committee. Ms Caroline Hoisington also held that the legislation should 'use similar systems where possible to facilitate commercial dealings internationally'.<sup>7</sup> She continued:

It makes sense for Australia to work alongside the EU and the USA and to implement a system that will be as robust as theirs - but to achieve that, this proposed legislation will have to be strengthened. As much trade is international, it will simplify work for Australian industry if similar, or at least compatible, certification systems are used.<sup>8</sup>

6.9 The committee notes DAFF's intentions to continue discussion with the EU and US and that a number of bilateral agreements have been signed or are progressing towards signature. The committee appreciates that Australia is moving towards alignment with both the EU and US and that such alignment will provide greater opportunities to engage and potentially share approaches to implementing aspects of the legislation.<sup>9</sup>

6.10 The committee recognises the benefits in harmonisation with the EU and US legislation wherever appropriate and is satisfied that DAFF takes a similar view. The committee strongly encourages DAFF to continue monitoring developments in relation to both the EU and US legislation and to pursue talks with both jurisdictions in order to ensure that harmonisation is realised to the fullest extent possible in relation to the both the recommended mandatory declaration and due diligence framework.

### **Legality or sustainability**

6.11 The committee acknowledges that one of the debates underlying the evidence in relation to the draft bill is that of the objective of the legislation. A number of submitters hold the view that the objective of the legislation is to provide a legality verification framework under which a prohibition on the importation and processing of illegally logged timber rests. In contrast, other submitters maintain that the objective of the legislation should be that of sustainable forest management.

6.12 The committee recognises that the provision of a legality verification framework is the core intention of the bill. International benchmarks are new and difficult to establish and key legislation including that of the EU regulation and US Lacey Act are in the early stages. Given these facts, the committee is firmly of the

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6 Kimberly-Clark Australia Pty Ltd, *Submission 4*; WWF-Australia, *Submission 11*, p. [2]; Solaris Paper Pty Ltd, *Submission 19*, p. 2.

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

8 Caroline Hoisington, *Submission 2*, p. [3].

9 See comments by Tom Aldred, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 60.

view that the draft bill should remain focused on the verification of legality and that the definitions and other aspects of the framework that are to be prescribed in the regulations reflect this objective.

6.13 The committee is concerned that sustainable forest management, which is a far broader concept with its own value system around forest management, is a different debate. Recognising that the bill entails requirements on industry which are new and will have a financial impact as well as the greater levels of complexity involved in sustainable forest management, the committee acknowledges that there are many risks in taking a sustainable forest management approach at this stage.<sup>10</sup> The committee notes in this regard, the observations of Mr Robert Tate, PNG Forest Industries Association that sustainability requires first legality of production, adequate chain of custody controls, a form of checking and validity of the resource base and social aspects and then certification.<sup>11</sup> Indeed, it should be recognised that the regulatory environment is new and evolving and establishing more stringent requirements which are also more costly poses considerable risks.

6.14 In light of its position regarding the objective of the bill, the committee takes the view that there would be no value added in including an object clause in the draft bill. The committee considers the statement in Section 4 that the act 'prohibits the importation of regulated timber products that contain illegally logged timber' an adequate explanation of its purpose.

### **Collaboration with industry and other stakeholders**

6.15 DAFF highlighted that it has established a stakeholder working group to provide input into the development of the regulations and that the working group membership comprises representatives of the broad range of stakeholders.<sup>12</sup> It also notes that the department will consult with businesses and industry organisations that have developed processes to assess and mitigate the risk of sourcing illegally harvested timber products.<sup>13</sup>

6.16 The committee acknowledges the consultation process that DAFF has undertaken and the considerable amount of work that has been commissioned in relation to Australia's timber imports, domestic legislation and regulations for legal timber production, risk assessment, legality verification and codes of conduct.<sup>14</sup> It

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10 Richard Stanton of AFPA noted, for example, that sustainable forest management certification systems do much more than just certify legality as the highest standard (Richard Stanton, Australian Forest Products Association, *Committee Hansard*, 16 May 2011, p. 13.).

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

12 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 6.

13 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 25.

14 Department of Agriculture, Fisheries and Forestry, *Submission 26*, p. 25.

appreciates that DAFF has liaised with a working group of industry stakeholders over the past three years whilst developing the policy.<sup>15</sup>

6.17 A number of involved stakeholders raised concerns with the committee that the exposure draft of the bill was tabled prior to public consultation on it. Mr John Talbot from DAFF defended its approach on the basis that it was better to 'provide an exposure draft to a much wider range of clients and to refer it to the committee so that a great deal of input could be put in before it got absolutely too far down the track'.<sup>16</sup>

6.18 The committee appreciates the position of the department and trusts that despite some misgivings of involved stakeholders with this approach, such concerns do not impact on the consultation process between the department, industry and relevant stakeholders or the spirit in which such consultation will take place in the future.

### **Review of the provisions**

6.19 A number of submitters acknowledged clarification in the explanatory memorandum that a review of the due diligence requirement will take place after five years.<sup>17</sup> Many suggested that the bill include a provision for a review of the legislation in its entirety within five years.<sup>18</sup> Greenpeace suggested that such a review should on the effectiveness of the legislation in 'reducing the import of illegal timber and timber products, identifying research needs and assessing costs of the programme'.<sup>19</sup> The joint WADIC submission recommended that periodic reviews take place to assess whether the law has been effective and cost-efficient in meeting its objective.<sup>20</sup> ANEDO recommended that an initial review of the legislation take place within two years of its enactment followed by reviews every two to five years. It noted in this regard:

Such a review could consider, for example, statistics on offences, monitoring and non-compliance; international developments and best practice; whether requirements initially made in regulations should be incorporated into primary legislation; along with an evaluation of the Bill's overall effectiveness.<sup>21</sup>

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15 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 57.

16 John Talbot, Department of Agriculture, Fisheries and Forestry, *Committee Hansard*, 16 May 2011, p. 64.

17 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 28.

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

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

20 Window and Door Industry Council and 7 industry associations, *Submission 15*, p. 4.

21 Australian Network of Environmental Defender's Offices, *Submission 20*, p. [4].

6.20 The committee supports suggestions for a review of the legislation five years from enactment, particularly in light of the rapid international developments in terms of legislation to address illegal logging and trends towards international third-party certification.

**Recommendation 4**

**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.**

**Senator Glenn Sterle  
Chair**