

The Senate

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Rural Affairs and Transport  
Legislation Committee

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Exposure draft and explanatory memorandum  
of the Illegal Logging Prohibition Bill 2011

June 2011

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# **LIST OF 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.

## **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.

## **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.**

**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.**

# Chapter 1

## Introduction

### Inquiry terms of reference

1.1 On 23 March 2011, the Senate referred the exposure draft and explanatory memorandum on the Illegal Logging Prohibition Bill 2011 to the Senate Rural Affairs and Transport Legislation Committee for inquiry and report by 27 May 2011. On 25 May, the Senate granted an extension of the time to report to 15 June 2011 and on that date, the Senate granted a further extension to 21 June 2011.

### Purpose

1.2 The exposure draft of the Illegal Logging Prohibition Bill 2011 (the bill) addresses the issue of illegal logging and unfair competition on domestic timber producers by restricting the importation and sale of illegally-logged timber products in Australia.

1.3 The explanatory memorandum consultation draft notes that the bill will:

- introduce a prohibition on the importation of timber products containing illegally logged timber;
- require importers of regulated products and domestic processors of raw logs to meet legal logging requirements and be approved by a timber industry certifier or the Minister to place timber projects on the market;
- introduce a requirement for the accurate description of legally logged timber products placed onto the Australian market; and
- establish adequate monitoring and enforcement powers to ensure compliance with the bill, including the appointment of officers to undertake necessary duties.<sup>1</sup>

1.4 The bill will provide a high level framework to prohibit the sale of illegally logged timber on the Australian market and establish a framework for the introduction of legal logging requirements which will be set out in regulations. Under this provision, those responsible for the entry of timber products onto the Australian market, importers and Australian domestic processors of raw logs, will have to meet the requirements relating to the legality and description of those products. Adherence to the requirements will ensure that importers will avoid breaching the prohibition on the importation of illegally logged timber whilst domestic processors of raw logs will avoid breaching relevant state and territory legislation in relation to the harvesting of

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1 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*– 23 March 2011, p. 2.

timber within Australia.<sup>2</sup> Timber industry certifiers will be responsible, alongside the Minister, for administering the requirements by way of approving importers and domestic processors who adhere to the legal logging requirements. The regulations will list regulated timber products and any administrative and operational requirement that a prospective timber industry certifier must comply with.

## Definitions

1.5 Illegal logging and associated trade is traditionally defined within a 'criminal' context. The government defines illegal logging as occurring when:

- timber is stolen;
- timber is harvested without the required approvals or in breach of a harvesting licence or law;
- timber is bought, sold, exported or imported and processed in breach of law; and/or
- timber is harvested or trade is authorised through corrupt practices.<sup>3</sup>

1.6 The explanatory memorandum notes that the workable definition of legally sourced timber products that can be assessed using legality verification systems are those where timber suppliers have:

- right of access to the forest;
- complied with the legal right to harvest; and
- paid all taxes and royalties.<sup>4</sup>

## New policy to combat illegal logging

1.7 The exposure draft represents the regulatory elements of the government's new illegal logging policy. The policy, announced in December 2010, is expected to be implemented through a combination of co-regulation, continued bilateral cooperation with countries in the region, and multilateral engagement on forestry through existing forums. It derives from the government's 2010 election commitment to restrict the sale of illegally logged wood in Australia by introducing legislation to make the import of any timber products that have not been legally harvested an

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2 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 2.

3 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 5.

4 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 11.

offence.<sup>5</sup> The policy comprises five measures of which the bill addresses the third and fourth measure:

- (i) build capacity within regional governments to prevent illegal harvesting;
- (ii) develop and support certification schemes for timber and timber products sold in Australia;
- (iii) identify illegally logged timber and restrict its import into Australia;
- (iv) require disclosure at point of sale of species, country of origin and any certification; and
- (v) argue that market-based incentives aimed at reducing emissions from deforestation and forest degradation should be included in a future international climate change agreement.<sup>6</sup>

## Consultation process

1.8 The exposure draft follows from a consultation process with industry and involved stakeholders. Consultation took place with industry during the development of the Regulation Impact Statement (RIS), which assesses the costs and benefits of policy options. Officials from the Department of Agriculture, Fisheries and Forestry (DAFF) met with peak industry bodies and representatives in the development of the new policy on illegal logging.<sup>7</sup> The Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig noted that the government consulted widely with forest industry stakeholders, manufacturers and retailers of wood products. He also highlighted the research undertaken under commission by the government including a proposed framework for assessing and managing the risk of sourcing illegally logged timber products, a generic code of conduct and regulatory and small business impact statements.<sup>8</sup>

1.9 The Centre for International Economics (CIE) was commissioned to produce a series of reports used to inform the final RIS. In this context, the CIE consulted with stakeholders representing forest, wood products, paper and construction industries,

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5 Department of Agriculture, Fisheries and Forestry, *Illegal Logging Questions and Answers*, <http://www.daff.gov.au/forestry/international/illegal-logging/q-and-a> (accessed 30 March 2011).

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

7 Department of Agriculture, Fisheries and Forestry, *Illegal Logging Questions and Answers*, <http://www.daff.gov.au/forestry/international/illegal-logging/q-and-a> (accessed 30 March 2011).

8 Senator the Hon Joe Ludwig, Minister for Agriculture, Fisheries and Forestry, *Senate Hansard*, 23 March 2011, p. 66, [http://parlinfo.parlInfo/genpdf/chamber/hansards/2011-03-23/0124/hansard\\_frag.pdf;fileType=application%2Fpdf](http://parlinfo.parlInfo/genpdf/chamber/hansards/2011-03-23/0124/hansard_frag.pdf;fileType=application%2Fpdf) (accessed 30 March 2011).

retailers, non-government organisations, academic institutions, certifiers, consultants, and both federal and state government agencies. In all, three rounds of consultation were conducted and included individual meetings with stakeholders, group meetings to test the initial CIE estimates, and a submission process in response to the CIE's draft report.<sup>9</sup>

1.10 Twenty-one submissions were received in relation to the findings and methodology of the Regulation Impact Statement (RIS) and 12,251 postcards were received demanding that the government fulfil its election promise of banning illegally logged timber imports. Three options are detailed in the RIS (which are considered in chapter 3 of this report) with stakeholder support weighted in favour of option 2 or a co-regulation approach.<sup>10</sup>

## Submissions

1.11 The committee advertised the inquiry on its website and in *The Australian* on 30 March 2011. The committee wrote to the Department of Agriculture, Fisheries and Forestry as well as a range of industry stakeholders and interested organisations. The committee received 31 submissions, which are listed at Appendix 1.

## Acknowledgements

1.12 The committee thanks those who assisted with the inquiry.

## Note on references

1.13 References in this report to individual submissions are to those submissions as received by the committee, not a bound volume.

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9 Department of Agriculture, Fisheries and Forestry, Background on the Australian Government's work to combat illegal logging, <http://www.daff.gov.au/forestry/international/illegal-logging> (accessed 23 May 2011).

10 Option 2 was favoured by 8 organisations whereas a quasi-regulation approach or option 1 was supported by six stakeholders of whom four offered qualified support for option 2. Option 3 or explicit regulation received the support of four stakeholders of whom three indicated support for option 2. See further, *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 21.

## Chapter 2

### Overview of the scope and impact of illegal logging

2.1 This chapter provides an overview of illegal logging across the globe with focus on Australia. It considers the social, economic and environmental impacts of illegal logging and worldwide initiatives to combat the trade before considering initiatives undertaken by Australia in the Asia-Pacific region and the current domestic self-regulatory approach.

#### The impact of illegal logging worldwide

2.2 The social, economic and environmental impacts of illegal logging are recognised as severe.<sup>1</sup> The Centre for International Economics (CIE) estimated that the social and environmental costs of illegal logging amounted to US\$60.5 billion per annum.<sup>2</sup> In developing countries, the significance of its impacts on forest degradation, climate change, habitat loss and community livelihoods are widely recognised.<sup>3</sup> Estimates suggest that of the US\$60.5 billion, the cost of annual greenhouse gas emissions (based on estimates of global emissions) amounted to US\$43 billion.

2.3 In terms of the financial costs of illegal logging, a study by the CIE estimated that between 20 and 80 per cent of timber was illegally sourced in high risk countries. In 2006, the World Bank predicted that the financial losses to the global market from illegal logging was more than US\$10 billion a year and that losses of government revenues amounted to approximately US\$5 billion a year. The CIE also estimated that:

traded and non-traded output from those sectors of the global industry dependent on illegally-sourced timber as being worth US\$91 billion per annum, or 6% of total industry output. This estimate was derived on the basis of global efforts being effective in stopping illegal logging.<sup>4</sup>

2.4 In terms of the trade impact of illegal logging, the costs of legal log production have been estimated at between US\$63–76 per cubic metre compared to illegal log production costs of between US\$19–29 per cubic metre. Production costs

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1 It should be noted, however, that establishing accurate estimates of the global scale and costs of illegal logging are hampered by limited transparency of the regulatory environments in producer countries as well as imprecise export and import trade statistics which make current methodologies unreliable.

2 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 7.

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

4 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 7.

of illegal logging operations are far cheaper than those for legal logging because they may only pay the cost of harvesting and transportation, without internalising the costs of legal and sustainable activities such as forest management planning and environment protection.<sup>5</sup>

2.5 The social costs of illegal logging are far reaching and may include:

fees and other benefits associated with legal and sustainable logging, which would normally be returned to the community in various forms of social benefits beyond some arbitrary payments for harvesting timber, are foregone due to illegal logging. These include government taxes and charges which may be transferred to forest-dependent communities, the delivery of government services, and the social services provided directly to communities by legal logging companies, such as roads, education and health services, as part of their logging agreements.<sup>6</sup>

2.6 Other 'intangible' costs associated with illegal logging include a reduction in the standard of living, erosion of sustainable livelihoods, destruction of customary and spiritual and heritage values of forest dependent communities, human rights abuses, use and exploitation of illegal foreign workers, and a reduction in the quality of the forest environment, including contamination of food and water sources. The explanatory memorandum notes that these intangible costs 'extend to the citizens of consumer countries such as Australia, who place an immeasurable value on the existence of forests and sustainable use of those resources'.<sup>7</sup>

### **Costs and benefits involved in stopping illegal logging**

2.7 The CIE estimates that putting a stop to illegal logging would benefit legal producers by US\$46 billion per annum in addition to providing social and environmental benefits amounting to US\$60.5 billion per annum. The CIE noted that:

These total benefits of US\$106.5 billion per annum would be off-set by a decline in the illegal sector of US\$91 billion per annum. From these results, the CIE indicated a benefit: cost ratio of 1.2:1 (106.5/91) from global action to stop illegal logging. In effect, it demonstrates a global benefit from eliminating illegal logging.<sup>8</sup>

2.8 The Australian Bureau of Agricultural and Resource Economics (ABARE) utilised alternative modelling to that of the CIE to establish that the net global benefit

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5 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 7.

6 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 8.

7 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 8.

8 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 16.



from stopping illegal logging would amount to approximately US\$60.5 billion per annum after industry adjustment and restructuring. It estimated that global benefits would amount to US\$101.3 against the economic losses of US\$34.5 billion per annum.<sup>9</sup> ABARE also estimated that if the outcome of eliminating illegal logging were achieved, Australia's GNP would increase by US\$155 million per annum.<sup>10</sup>

## Global initiatives to combat illegal logging

2.9 The explanatory memorandum notes that whilst progress has been slow and limited at the multilateral level, significant advances have been made through bilateral cooperation between countries to reach agreement on processes for combating illegal logging and associated trade. The United States (US) and the European Union (EU) have developed policies and regulations to combat illegal logging and associated trade. Under the 2008 Amendments to the Lacey Act from H.R.2419, Sec.8204, it is unlawful to import certain timber products into the US without an import declaration or to import such products in contravention of the laws of the country where the timber is harvested.<sup>11</sup> The Council of the EU is currently developing a new regulation aimed at minimising the risk of placing illegally harvested timber into that market. The explanatory memorandum notes that a key element of both US and EU approaches is their focus on capacity building in developing countries to support their direct domestic policy measures.<sup>12</sup>

2.10 For their part, a number of key producer countries, including Indonesia and Papua New Guinea (PNG), are developing legality verification, chain of custody and forest certification schemes in response to mounting pressure from consumer countries to demonstrate the legality of their timber products.<sup>13</sup>

2.11 The Australian Government is seeking to address the issue of illegal logging in other countries through non-regulatory measures including capacity building and bilateral and multilateral engagement. Highlights of this action include:

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9 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 16.

10 The explanatory memorandum notes that this estimate does not include the compliance costs associated with legal verification which have previously been shown to be significantly less (*Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 25).

11 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](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf) (accessed 23 May 2011).

12 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 6.

13 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, p. 6.

- the Asia Pacific Forestry Skills and Capacity Building Program which provides institutional and technical support to developing countries to combat illegal logging and promote better forest management;
- bilateral cooperation agreements with China, Indonesia and PNG including cooperation arrangements for combating illegal logging and promoting sustainable forest management;
- Australia as a signatory to a number of multilateral agreements and processes including the United Nations Forum on Forests, Asia Pacific Forestry Commission of the Food and Agriculture Organisation, and International Tropical Timber Organization.<sup>14</sup>

2.12 According to the explanatory memorandum, complementary regulatory and non-regulatory measures have now reached a point of development where a new international policy environment has been established. It noted further that:

These efforts create an environment which enables individual nations, such as Australia, to more effectively combat illegal logging and associated trade by establishing domestic policy settings to allow a differentiation of legally and illegally-sourced timber products. The effectiveness and costs of these domestic policy settings will be strongly influenced by the government's commensurate investment in regional capacity building and bilateral and multilateral engagement.<sup>15</sup>

### **Impact of illegal logging on Australia**

2.13 Australia imports approximately \$4.4 billion worth of timber and wood products (excluding furniture) annually. According to the explanatory memorandum, Australia's proportion of illegally sourced timber products has been estimated at 9 per cent of total worldwide imports or around \$400 million (US\$340 million) which is the equivalent of 0.034 per cent of global production. However, as many processing mills supply their manufactured products for domestic consumption and export to other countries, the illegal logging problem for consumer countries such as Australia extends beyond the impacts associated with just the traded products. Australia's share of the problem is, therefore, estimated at US\$21 million per annum.<sup>16</sup>

2.14 According to the explanatory memorandum, whilst domestic timber harvesting is controlled through a comprehensive framework of laws, regulations and policies, timber is imported into Australia without any requirement for verifying its legality, other than through voluntary industry measures. Where a regulation exists,

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14 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 9.

15 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 6.

16 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 9.

such as under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) management, 'only a limited number of timber products would need to comply and therefore indirectly meet the government's election commitment to restrict illegally logged timber imports'.<sup>17</sup>

2.15 The explanatory memorandum details the impact of illegal imports into Australia:

Illegal imports, because of their lower prices, create unfair competition for Australian producers and suppliers who source their products from legally and sustainably managed forests. As a consequence domestic market prices are undercut, impacting on business decisions, industry investment, business profitability and jobs.<sup>18</sup>

2.16 Concerns regarding the impact on local industry have also been raised by those within the industry. The Australian Forest Growers, for example, noted in 2009 that whilst the impact has not been clearly measured, the import of illegally logged timber creates an 'artificially low market price that undercuts Australian products and consequently negatively distorts the Australian timber market'.<sup>19</sup>

### **Current self-regulatory approach**

2.17 Under the current self-regulatory scheme, there is no national approach or consistent use of measures that provide industry-wide assurance of legality for timber products imported or sold in Australia. The explanatory memorandum notes that only a small number of businesses and industry associations have implemented legality assurance measures. Moreover, some within the industry take the view that no action should be taken because the cost of any governmental action would be prohibitive and generate negligible benefits.<sup>20</sup>

2.18 Amongst the concerns raised in relation to the self-regulatory approach is that industry is uncertain as to what constitutes an adequate level of legality verification for timber products and that not all business enterprises undertake equivalent levels of legality verification. The explanatory memorandum explains further:

Industry is concerned that some businesses undertake no legality verification of their products (free-riders) and may obtain an unfair market

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17 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 5.

18 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 5.

19 Australian Forest Growers, Submission to Proposed new policy on illegally logged timber, 30 November 2009, Submission 5, p. 3.  
<http://www.thecie.com.au/RIS%20illegal%20logging/5%20-%20Australian%20Forest%20Growers.pdf> (accessed 2 May 2011).

20 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 10.

advantage from sourcing cheap, potentially illegal, timber as well as the impacts that illegally-sourced timber products can have on market prices. This provides an economic benefit over companies which seek to ensure the legality of their products, thereby creating distortions in the market place.<sup>21</sup>

2.19 Self-regulation by way of voluntary measures is currently implemented through a mix of guidelines, codes of conduct and procurement policies for the purchase and sale of legally sourced timber. According to the RIS, there is limited independent auditing or monitoring of performance against such schemes and system requirements making the effectiveness of such measures in excluding imports of illegal timber difficult to determine.<sup>22</sup>

2.20 In terms of impact of the current approach, the CIE, which authored the RIS, concluded that the voluntary arrangements were 90 per cent effective on the basis that an estimated 10 per cent of Australia's timber imports are suspected of being derived from illegally-logged timber. The removal of the self-regulatory scheme would see illegal imports increase to an estimated 20 per cent of Australia's total imports.<sup>23</sup>

2.21 As for the costs associated with combating illegal logging, such efforts currently cost the government US\$5 million per annum and include capacity building, bilateral cooperation and multilateral engagement, as well as ongoing work on the part of the Department of Agriculture, Fisheries and Forestry.<sup>24</sup>

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21 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 10.

22 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 10.

23 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 16.

24 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 16.

## Chapter 3

### Regulation Impact Statement

3.1 This chapter considers the Regulation Impact Statement (RIS) and the options put forward to meet the government's policy on illegal logging. It focuses primarily on the co-regulatory option which the government seeks to realise through an Illegal Logging Prohibition Bill 2011.

#### National framework

3.2 The national policy framework in relation to Australia's forest and timber industry is provided by the *Environmental Protection and Biodiversity Conservation Act (1999)*, *Regional Forest Agreements Act (2002)*, and *National Forest Policy Statement (1992)*. This framework is underpinned by relevant state and territory legislation. Each state and territory is responsible for defining and regulating legal timber harvesting within their jurisdictions. Compliance with the laws requires that domestic timber products are derived from legally-harvested sources.

3.3 According to the explanatory memorandum, voluntary forest certification standards including those of the Forest Stewardship Council or Australian Forestry Certification Scheme can be used to provide an assurance that domestic timber is legally (and sustainably) produced. Under these arrangements, approximately 90 per cent of timber produced in Australia is sourced from certified forests. The remaining 10 per cent of timber product that is not certified comes from wood supplied by small forest growers who are, regardless, required to comply with the relevant state and territory regulations for growing and harvesting wood.<sup>1</sup>

#### Regulation Impact Statement

3.4 The RIS assesses the potential costs and benefits for domestic business, individuals and the Australian economy of regulatory options designed to restrict the importation of illegally logged timber into Australia. It outlines three options and identifies a preferred option. Whilst five measures were identified in the December 2010 policy announcement, the RIS focuses on measures 3 and 4 which are to:

- identify illegal logged timber and restrict its import into Australia;

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1 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft– 23 March 2011, pp. 10–11.

- require disclosure at point of sale of species, country of origin and any certification.<sup>2</sup>

3.5 The initial assessment of the costs and benefits of the potential regulatory approaches were taken by the CIE using:

- CIE assumptions for estimating compliance costs for developed countries, developing countries and Australia; and
- four levels of legality verification – Self-declared legal (SDL), Verified Legal Origin (VLO), Verified Legal Compliance (VLC) and full certification (FC).

3.6 In terms of modelling, the Global Trade Analysis Project (GTAP) model was initially used by the CIE to analyse the costs and benefits to the global and Australian economies of stopping illegal logging. This analysis was supplemented with modelling undertaken by ABARE using the Global Trade and Environment Model (GTEM). According to the explanatory memorandum, the differences between the CIE and Australian Bureau of Agricultural and Resource Economics (ABARE) analytical approaches and assumptions used for the assessment of costs and benefits 'reveals major differences in the economic outcomes for Australia from combating illegal logging'.<sup>3</sup>

3.7 The timber products to be covered by the policy options fall into three groups:

- Category I solid timber and wood products and some paper products (12 per cent of Australia's timber imports);
- Category II partially processed/processed timber and wood products plus category I products (39 per cent of Australia's timber imports); and
- Category III highly processed/composite timber and wood products from multiple sources plus category II products (70 per cent of Australia's timber imports).<sup>4</sup>

### **Concerns regarding the draft Regulation Impact Statement**

3.8 According to the explanatory memorandum, the response of stakeholders to the draft RIS was one of 'significant support for moral reasons for change and an

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2 The others include 1. Build capacity within regional governments to prevent illegal harvesting; 2. Develop and support certification schemes for timber and timber products sold in Australia; 5. Argue that market-based incentives aimed at reducing emissions from deforestation and forest degradation should be included in a future international climate change agreement (*Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*– 23 March 2011, p. 4).

3 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*– 23 March 2011, p. 15.

4 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*– 23 March 2011, p. 15.

acceptance of small costs for Australia from removing illegally sourced products from Australia's market'.<sup>5</sup>

3.9 There were, however, four key issues of concern raised in relation to the draft RIS. The primary concern amongst stakeholders was that illegal timber production should not be seen as an economic benefit. Greenpeace Australia Pacific, for example argued:

The Draft RIS also fails to acknowledge that consumers of illegally derived timber products are effectively the end recipients of stolen goods and it is perverse to describe the reduced costs of illegal timber as a 'benefit' to the economy and consumers without recognizing this aspect.<sup>6</sup>

3.10 The explanatory memorandum responds to this concern by noting that in the final RIS in the exposure draft, illegal timber production is not viewed as providing an economic benefit. Indeed, the RIS recognises that illegal logging can have a significant impact on industry structure, employment, investment and profitability.<sup>7</sup>

3.11 Submitters to the draft RIS in 2009 were also concerned that the 'intangible' and social impacts and costs in the cost-benefit analysis should be given greater emphasis. The Uniting Church in Australia–Synod of Victoria and Tasmania, for example, argued that the analysis produced by the CIE and reflected in the draft RIS was 'highly deficient in its social analysis' and adopted what it termed an 'amoral approach of including criminal activity within the logging industry as a net economic positive without any comment on the social or human rights dimensions of such criminal activity'.<sup>8</sup> Similarly, Humane Society International (HSI) argued that the cost-benefit analysis was of limited use to the government because of its dismissive treatment of intangible benefits which included Australia providing a role model to other trading partners and 'Australia sending a message to trading partners that they should also invest in measures to curb illegal logging', and that the initiative should

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5 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 25.

6 Greenpeace Australia Pacific, Submission to Draft Regulatory Impact Statement, November 2009, Submission 14, p. 4, <http://www.thecie.com.au/RIS%20illegal%20logging/14%20-%20Greenpeace.pdf> (accessed 2 May 2011).

7 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 21.

8 Uniting Church in Australia–Synod of Victoria and Tasmania, Submission to Proposed new policy on illegally logged timber, Submission 4, p. 1. See also, 'Illegal logging assessment counts corruption as a benefit', Media Release, Uniting Church in Australia–Synod of Victoria and Tasmania, undated, [http://blogs.victas.uca.org.au/mediaroom/?page\\_id=541](http://blogs.victas.uca.org.au/mediaroom/?page_id=541) (accessed 30 March 2011). This position was also held by Humane Society International, Submission to Proposed new policy on illegally logged timber, 30 November 2009, Submission 6, p. 1, <http://www.thecie.com.au/RIS%20illegal%20logging/6%20-%20Humane%20Society%20International.pdf> (accessed 2 May 2011).

serve as a 'step towards more effective national and multilateral moves to improve the sustainability of all logging, legal or illegal'.<sup>9</sup>

3.12 The government responded to these concerns, noting that the Department of Agriculture, Fisheries and Forestry (DAFF) has undertaken a more detailed social assessment to support the completion of the RIS which highlighted the social impacts associated with illegal logging. According to the explanatory memorandum, as part of the assessment, significant tangible and intangible costs were noted and in particular, the loss of human, resource and other forms of capital for forest-dependent communities, loss of payments for timber and the lack of social services supplied by industry and government where there are illegal forestry operations.<sup>10</sup>

3.13 There was also support amongst a number of submitters for the inclusion of moral and treaty obligations for Australia in the cost-benefit analysis. The government noted, however, that given its strategic geographical location in the Asia-Pacific, if Australia is able to influence governments to take action to combat illegal logging through the domestic measures it employs to identify and restrict illegally-logged timber imports, there may be some justification for claiming a greater proportion of the benefits than 0.034 per cent. That is, the benefits might be greater than US\$21 million per annum.<sup>11</sup>

3.14 A number of submitters to the draft RIS also held the view that a comprehensive assessment of the policy options available to the government for combating illegal logging requires an examination of both the tangible and intangible costs and benefits. In relation to the option of a co-regulatory approach which is realised in the bill, the government responded that an assessment of the range of intangible benefits adds weight to the benefits component of the benefit to cost ratio, although they remain similar in size.<sup>12</sup>

### **Identified options and stakeholders response**

3.15 The RIS considers three options to change the behaviour of timber producers by directly limiting opportunities for the production and trade of illegal timber. Such options, which are based on the outputs of CIE and ABARE analysis, seek to

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9 Humane Society International, Proposed new policy on illegally logged timber, 30 November 2009, Submission 6, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/6%20-%20Humane%20Society%20International.pdf> (accessed 2 May 2011). See also Greenpeace Australia Pacific, Response to the Draft Regulatory Impact Statement, November 2009, p. 3, <http://www.thecie.com.au/RIS%20illegal%20logging/14%20-%20Greenpeace.pdf> (accessed 2 May 2011).

10 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 22.

11 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 22.

12 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 22.



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complement the government's broader suite of non-regulatory measures outlined in its election commitment and include:

- Option 1: a quasi-regulation regime whereby codes of conduct would be enforced by industry;
- Option 2: a co-regulatory regime using a prohibited element and a requirement for due diligence, and ;
- Option 3: an explicit regulation requiring a minimum standard for legality verification.<sup>13</sup>

3.16 The CIE recommended that the government implement option 1 or a quasi-regulatory approach. However, the government decided upon a co-regulatory regime or due diligence approach. The co-regulation option would include targeted investment in capacity building and maintaining Australia's bilateral and multilateral engagement with other countries in the Asia-Pacific region.

### *Option 1*

3.17 The RIS provided an impact analysis of the costs, benefits and risks in relation to each option, all of which include a capacity building investment requirement as well as relevant estimates of the government enforcement costs. The RIS emphasises that in the absence of any multilateral agreement, 'utilising the available processes for legality verification and forest certification provides an enabling environment which will allow producers to benefit from being part of the legal timber market'.<sup>14</sup> It concluded that because Australia has a limited share in the international timber trade, the government should consider only non-regulatory policy options to combat illegal logging.

3.18 The CIE recommended option 1 which it assumed would have no cost for the Australian economy and minimal impact on industry as the small and large companies currently using legality verification would see no incentive for taking on the extra cost. It argued that as Australia's imports account for such a small share of illegally logged timber and restricting imports has limited effect in reducing illegal logging, Australia would incur all the costs of restricting imports without achieving commensurate benefits of reducing the damaging effects of illegal logging. The CIE conceded, however, that this conclusion is heavily dependent upon no other country taking action.<sup>15</sup>

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13 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, pp. 12–14.

14 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 11.

15 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 25.

3.19 Alternatively, the CIE recognised that under this option, it was possible that a greater volume of illegally logged timber products could be diverted to Australia as the regulatory requirements imposed by the EU and US came into effect. Therefore, such a policy response by Australia might 'undermine the effectiveness of other global approaches to combating illegal logging'.<sup>16</sup> This argument was taken up by Humane Society International in its 2009 submission on the draft RIS:

As a first point, we note that the Government has rejected similar arguments in relation to Australia's unilateral commitment to reduce our greenhouse gas emissions. Secondly, it is obviously the case that a prohibition on imports of illegal timber needs to be part of a broader policy package to be pursued by the Government, including continued pursuit of bi and multi-lateral measures.<sup>17</sup>

3.20 The explanatory memorandum notes that option 1 maintains the status quo and does not meet the government policy objective given its voluntary nature. It highlights that the policy objective would only be met through this option if other governments similarly contributed 'on a proportional basis to the substantive capacity building requirements for verifying the legal origins of timber products'.<sup>18</sup> Even so, there would remain 'long lead times before acceptable legality verification schemes would be available in all producer countries'.<sup>19</sup> Whilst quasi regulation provides a low cost option to industry and government, the explanatory memorandum concluded that substantial investment in overseas capacity building would be required to provide credible systems of legality verification in producer countries.

3.21 In terms of costs, this option would require government to maintain the existing level of bilateral and multilateral engagement (approximately \$1 million per annum) and investment in capacity building. There would be no requirement for increased costs to any of the regulatory or enforcement agencies.<sup>20</sup>

3.22 Responses to the draft RIS in 2009 indicate industry support for Option 1 on the grounds that it is a low-cost approach for industry compliance where many

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

17 Humane Society International, Submission to Proposed new policy on illegally logged timber, 30 November 2009, Submission 6, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/6%20-%20Humane%20Society%20International.pdf> (accessed 2 May 2011).

18 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 12.

19 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 26.

20 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 26.

involved sectors comprise a substantial number of small businesses.<sup>21</sup> The Australian Timber Importers Federation Inc (ATIF), for example, supported this option on the basis that there would be 'no net benefit to Australian consumers from introducing regulatory measures' given Australia's small share of international trade in potentially illegal timber products and the capacity of producers to divert such products to less discerning markets.<sup>22</sup> In 2009, ATIF argued in favour of continuing with the process of developing a robust industry code of conduct, noting that its preferred policy option was that of a mandatory code of conduct for timber product (veneer, plywood, panels, engineered wood products, timber components and solid timber products) importers into Australia. ATIF suggested that an industry body administer the code with a third-party audit and verification process.<sup>23</sup>

3.23 The Decorative Wood Veneers Association (DWVA) held that Australia is a small importer in the overall world timber/veneers production industry and that its impact on the world scene is greatly overrated.<sup>24</sup> It also argued that the most cost effective approach in reducing or eliminating illegal logging without imposing unnecessary costs on the Australian economy was that of self-regulation combined with a bilateral approach.<sup>25</sup> Others supported the view that the current regime was adequate. The Department of Infrastructure, Energy and Resources of Tasmania, for example, argued that Tasmania has a 'comprehensive regulatory system and enforcement provisions to provide certainty of legality'.<sup>26</sup> Australian Forest Growers (AFG) also argued that the current compliance requirements under existing legislative framework in various jurisdictions within Australia are both 'substantial and well implemented'. It raised concerns that private forest growers in Australia should not be

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21 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 26.

22 Australian Timber Importers Federation Inc, Submission to Submission to Proposed new policy on illegally logged timber, Submission 1, p. 1, <http://www.thecie.com.au/RIS%20illegal%20logging/1%20-%20Australian%20Timber%20Importers%20Federation.pdf> (accessed 27 April 2011).

23 Australian Timber Importers Federation Inc, Submission to Proposed new policy on illegally logged timber, Submission 1, p. 7, <http://www.thecie.com.au/RIS%20illegal%20logging/1%20-%20Australian%20Timber%20Importers%20Federation.pdf> (accessed 27 April 2011).

24 Decorative Wood Veneers Association, Submission to Proposed new policy on illegally logged timber, 27 November 2009, Submission 13, p. 1, <http://www.thecie.com.au/RIS%20illegal%20logging/13%20-%20Decorative%20Wood%20Veneers%20Association.pdf> (accessed 2 May 2011).

25 Decorative Wood Veneers Association, Submission to Proposed new policy on illegally logged timber, 27 November 2009, Submission 13, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/13%20-%20Decorative%20Wood%20Veneers%20Association.pdf> (accessed 2 May 2011).

26 Department of Infrastructure, Energy and Resources, Tasmania, Submission to Proposed new policy on illegally logged timber, Submission 11, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/11%20-%20Dept%20of%20Infrastructure,%20Energy%20and%20Resources,%20Tas.pdf> (accessed 2 May 2011).

the subject of increased regulatory burdens in order to address illegal logging that takes place elsewhere and noted that it does not support application of certification standards as 'surrogates for existing domestic legislation and codes of practice'.<sup>27</sup> It concluded that:

AFG would seek that any measures imposed on Australian growers as part of an Australian policy to address illegal logging are simplistic and are not costly to comply with in time nor fiscally, e.g. a statutory declaration stating that the timber is legally grown and sourced would be a maximum measure support by AFG.<sup>28</sup>

## ***Option 2***

3.24 Option 2 proposes a co-regulatory regime comprising two elements – a prohibition on illegal timber imports and a requirement for due diligence. The second element comprises a requirement for companies or other organisations placing timber on the market in Australia to be signatories to Commonwealth-accredited codes of conduct for undertaking due diligence in verifying the legal origins of timber products.<sup>29</sup>

3.25 The government supports this option as the most effective of the three options for reasons including the fact that it is consistent with actions of the EU and US.<sup>30</sup> A co-regulatory approach is also expected to minimise disruption to trade by:

...allowing importers and domestic suppliers to determine the most effective means for verifying the legality of products from potentially multiple sources based risk assessment of the potential illegality of timber using a framework for due diligence system developed by industry.<sup>31</sup>

3.26 The RIS also highlights that the cost-benefit analysis indicates that the costs and benefits of such an approach would be of similar size. However, it also noted that:

When the intangible costs and benefits of stopping illegal logging and Australia's capacity for encouraging action by foreign governments are

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27 Australian Forest Growers, Submission to Proposed new policy on illegally logged timber, 30 November 2009, Submission 5, pp. 1–2, <http://www.thecie.com.au/RIS%20illegal%20logging/5%20-%20Australian%20Forest%20Growers.pdf> (accessed 27 April 2011).

28 Australian Forest Growers, Submission to Proposed new policy on illegally logged timber, 30 November 2009, Submission 5, p. 3, <http://www.thecie.com.au/RIS%20illegal%20logging/5%20-%20Australian%20Forest%20Growers.pdf> (accessed 27 April 2011).

29 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 12.

30 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 24.

31 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, pp. 22–23.

taken into account, this option should generate benefits to industry, the economy and the community that outweigh the costs. Applying similar measures to domestic suppliers and imports would ensure the approach is consistent with Australia's trade law obligations whilst providing a comprehensive policy response at both domestic and global levels.<sup>32</sup>

3.27 According to the RIS, a co-regulation approach should:

[M]inimise disruptions to trade, allow a recovery of depressed prices (which will help offset the additional compliance costs), minimise industry compliance costs, limit potential impacts on small businesses (and the industry structure), address the free-rider problem, remove unfair competition and provide assurances to Australian consumers of the legal origins of the timber products they are purchasing. The use of a licensed trademark by industry would assist consumers to identify legally-sourced timber products.<sup>33</sup>

3.28 The explanatory memorandum acknowledges that in terms of the financial impact of this approach on consumers, businesses and the Australian economy, costs are expected to increase as a consequence given that importers and domestic producers will be required to verify the legal origins of timber products at the first point of sale or entry onto the market in Australia.<sup>34</sup> However, the explanatory memorandum also notes that compliance costs may be at least partially offset by the recovery in prices if products derived from illegally-logged sources are prevented from entering the country.<sup>35</sup> It acknowledges the argument of stakeholders that prices are depressed because of the availability of illegally-logged products. The explanatory memorandum notes in this regard that if illegal logging was stopped, the prices for timber products would be expected to rise by an estimated 3 per cent.<sup>36</sup> However, it was also argued that when the intangible costs and benefits of stopping illegal logging as well as Australia's capacity to encourage action by foreign governments are taken into account, 'this option should generate benefits to industry, the economy and the community that outweigh the costs'.<sup>37</sup>

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32 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 26.

33 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 26.

34 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 18.

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

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

37 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 26.

3.29 In terms of costs to it, the department noted that any increased financial burden would be relatively small because whilst it may invest in a targeted capacity building and outreach program, the costs for government enforcement, accreditation of codes and monitoring of compliance would be relatively low (compared to option three) with industry responsible for administering the codes of conduct which are accredited and monitored by the Commonwealth.<sup>38</sup> In terms of impact and costs to industry, larger businesses would be in a better position than smaller ones to absorb the additional costs associated with co-regulation, however:

[T]his is not expected to have a significant effect on industry structure, particularly small businesses, as the rebound in market prices for legal timber products that would occur if the sale of illegal-sourced product was severely restricted in Australia, would be expected to cover at least part of the due diligence costs.<sup>39</sup>

3.30 The explanatory memorandum responds to the argument of the CIE and some industry stakeholders that as Australia's imports account for a small share of illegally logged timber, Australia would incur costs of restricting imports without achieving commensurable benefits. Whilst conceding that Australia's share of the global trade in illegally logged timber is small, the explanatory memorandum emphasises that this conclusion is totally dependent on a lack of action on the part of other countries. Moreover, Australia's 'strategic location and regional engagement in combating illegal logging and associated trade should add to the process of change'.<sup>40</sup>

### ***Option 3***

3.31 Option three comprises an explicit regulation requiring a minimum standard for legality verification. As part of the explicit regulation, the government would:

- (a) create an offence for importing or supplying illegal logged timber products in Australia;
- (b) specify a minimum standard of legality verification with Commonwealth accreditation of acceptable schemes; and
- (c) establish a separate system for disclosure of species, country of harvest and any certification of imported and domestic timber products.<sup>41</sup>

3.32 Whilst the explanatory memorandum recognises that the option of explicit regulation would offer certainty in meeting its policy objective, a minimum standard

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38 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 27.

39 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 18.

40 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 25.

41 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*—23 March 2011, p. 14.

for legality implies high government administration and industry compliance costs because of the high levels of intervention. The explanatory memorandum also emphasises that the costs involved with this approach are expected to significantly outweigh the potential benefits.<sup>42</sup> Moreover, such an approach would be 'inconsistent with the approaches of all other producer and consumer countries'.<sup>43</sup>

3.33 Measures equivalent to those introduced for imported timber would be applied to domestic products in line with Australia's commitments under the World Trade Organization (WTO) and obligations under its free trade agreements.<sup>44</sup>

3.34 The costs associated with verifying the local origins of timber products at the first point of sale or entry onto the Australian market were not directly assessed by the CIE. However, the explanatory memorandum drew on analysis by ABARE and others to estimate the associated costs as follows:

The costs for the Australian economy with category III product coverage were estimated as US\$8.9–17.9 million per annum once the new equilibrium is reached. For category II product coverage costs were estimated as being in the range of US\$4.4–9.8 million per annum, and US\$2.1–5.1 for category I product coverage. It is important to note the size of these net costs compared to the size of the Australian forest industry, independent of whether it is domestic mill production (\$2.5–\$3 billion per annum) or industry turnover (\$23 billion per annum).<sup>45</sup>

3.35 The explanatory memorandum details the costs and considerations in relation to this option:

- The costs to consumers would increase as a result of higher timber prices associated with a reduction in the volume of illegally-logged timber entering Australia.
- Australian industry will gain from higher prices which may off-set increased production costs either partially or fully. Production costs are expected to increase in light of the new legality verification compliance costs.
- Most of the benefits from this action will accrue to overseas countries as the legal timber producers in developing countries will benefit and GDP in developing countries will fall (though offset by those countries receiving a significant share of the social and environment benefits from Australia's actions to stop illegal logging).

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42 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 27.

43 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 27.

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

45 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 18.

- The range of potential benefits arising from this option is US\$0–21 million per annum.
- Large business would be better able to absorb the additional costs associated with a co-regulatory option based on the use of legality verification due diligence systems.<sup>46</sup>
- Option 2 would have a lesser impact on industry structure than Option 3.

3.36 In terms of costs to government of this option, the CIE concluded that the potential costs and benefits are similar in size and that such costs would encompass:

- 'the accreditation of due diligence codes of conduct, the assessment of code administration body compliance with the regulatory requirements, and some post-border surveillance activities (less than US\$1 million per annum)'; and
- capacity building targeted at 'addressing critical gaps in producer countries, assisting industry develop codes of conduct and an outreach program to inform government and industry of Australia's approach (US\$8-14 million over the first four years of the regulation coming into effect)'.<sup>47</sup>

### **Implementing a co-regulatory approach**

3.37 The co-regulatory approach outlined in option 2 is to be implemented through new legislation administered by DAFF and supported by the Australian Customs and Border Protection Service in association with DAFF.

3.38 For its part, industry would be required to develop and implement legality verification codes of conduct through new code administration bodies which describe the processes for assessing the risks of sourcing illegally-logged timber. Individual companies who are signatories to the due diligence codes of conduct would be responsible to undertake third-party independent auditing of compliance with the codes' requirements. This would involve identifying the risks of sourcing illegal products and implementing approaches that are relevant to minimising those risks. The code administration bodies would then report on the findings of the signatory audits, the signatory response to adverse audit reports and complaints against their signatories as the basis for retaining their Commonwealth accreditation.<sup>48</sup>

3.39 Timber suppliers who are legally compliant and who use a range of voluntary legality verification measures for imported and domestic timber would simply formalise their current arrangements to meet the legality verification requirements of

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46 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, p. 18.

47 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft*–23 March 2011, pp. 18–19.

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



the relevant codes of conduct.<sup>49</sup> It is the free-riders or enterprises that don't have such systems in place that will need to implement due diligence procedures.

3.40 The prohibition elements of the due diligence approach would apply from the date the legislation comes into effect and in order to minimise impacts on stakeholders in relation to the code of conduct elements of due diligence, transitional arrangements would be put in place for two years prior to such requirements being fully enforced. After that time, timber products could only be placed on the domestic market by code of conduct signatories.<sup>50</sup>

### **Support for and concerns regarding a co-regulatory approach**

3.41 Most stakeholders who responded to the draft RIS supported the government's intention to combat illegal logging and the capacity development initiatives undertaken by the government in countries including Indonesia and Papua New Guinea. Timber Queensland recognised that Australia has a significant role to play in developing capacity in high-risk supply countries to help reduce illegal logging and to assist in developing legality and compliance systems that can be used for verification purposes in Australia and elsewhere.<sup>51</sup> Similarly, the Australian Plantation Products and Paper Industry Council (A3P) expressed its support for what it called 'continued complementary action' by the government to support other countries individually or collectively to improve forest law enforcement, governance and management.<sup>52</sup>

3.42 Many such stakeholders were mindful of the need for Australia to act as consumers 'simply expect that timber and timber products will be sourced from legally logged origins' and as Timber Queensland noted, 'delivering on these expectations will be essential to maintaining the reputation and standing of timber as being the premier environmental choice'.<sup>53</sup>

3.43 In terms of the co-regulatory approach, A3P voiced support for a policy response that incorporates mandatory application of the principles of due diligence

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

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

51 Timber Queensland, Proposed new policy on illegally logged timber, 30 November 2009, Submission 8, p. 4, <http://www.thecie.com.au/RIS%20illegal%20logging/8%20-%20Timber%20Queensland.pdf> (accessed 2 May 2011).

52 Australian Plantation Products and Paper Industry Council, Proposed new policy on illegally logged timber, Submission 9, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/9%20-%20Australian%20Plantation%20Products%20and%20Paper%20Industry%20Council.pdf> (accessed 2 May 2011).

53 Timber Queensland, Proposed new policy on illegally logged timber, 30 November 2009, Submission 8, p. 4, <http://www.thecie.com.au/RIS%20illegal%20logging/8%20-%20Timber%20Queensland.pdf> (accessed 2 May 2011).

within a risk assessment framework'.<sup>54</sup> Timber Queensland acknowledged that a staged introduction of more comprehensive verification requirements and a phasing in over a wider range of products would more likely be the most effective way of addressing the issues surrounding capacity to verify legality.<sup>55</sup> It noted, moreover, that many timber importing businesses had already started work on addressing the legality and sustainability of their imported timber and timber products where they were being sourced from high risk countries and that:

[T]he majority of Category I and Category II products produced in Queensland already have full certification or come from businesses that are working towards certification.<sup>56</sup>

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- 54 Australian Plantation Products and Paper Industry Council, Proposed new policy on illegally logged timber, Submission 9, p. 2, <http://www.thecie.com.au/RIS%20illegal%20logging/9%20-%20Australian%20Plantation%20Products%20and%20Paper%20Industry%20Council.pdf> (accessed 2 May 2011).
- 55 Timber Queensland, Proposed new policy on illegally logged timber, 30 November 2009, Submission 8, p. 3, <http://www.thecie.com.au/RIS%20illegal%20logging/8%20-%20Timber%20Queensland.pdf> (accessed 2 May 2011).
- 56 Timber Queensland, Proposed new policy on illegally logged timber, 30 November 2009, Submission 8, p. 3, <http://www.thecie.com.au/RIS%20illegal%20logging/8%20-%20Timber%20Queensland.pdf> (accessed 2 May 2011).

## Chapter 4

### Definitions and penalties

4.1 This chapter provides an overview of stakeholder responses and common concerns in relation to the exposure draft of the Illegal Logging Prohibition Bill 2011 (the bill). It identifies the issues of primary concern raised in evidence in relation to definitions and penalties outlined in the bill, details suggested amendments to the proposed provisions and provides the department's response to them.

#### General views and concerns in relation to the bill

4.2 The views of stakeholders in response to the bill range from a strong view that the current voluntary scheme is adequate to suggestions that the bill is a thinly disguised form of self-regulation and will not stop illegal timber entering Australia.<sup>1</sup> Some stakeholders argued that if the legislation is not strengthened, it would impose costs and complexity on industry without achieving the result intended.<sup>2</sup> Others held the view that there was not enough detail in the draft bill to assess its impact on industry or that it would not prevent the import and processing of illegally logged timber. However, regardless of their position on the proposed legislation and the approach that underpins it, the overwhelming majority of submitters to this inquiry broadly support the government's efforts to end the importation and trade of illegally logged timber and wood products.<sup>3</sup>

4.3 One of the key points of difference in evidence on the draft bill rests with the differing approach taken by stakeholders to the objective and purpose of the legislation. Most industry stakeholders hold the view that the objective of the bill is to establish a legality verification mechanism.<sup>4</sup> In direct contrast, other submitters, and primarily environmental groups argue that the bill should meet sustainable forest

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1 See for example, Papua New Guinea Forest Industries Association, *Submission 10*, p. 2 and World Grow, *Submission 17*, p. 3, for the first perspective and Greenpeace Australia Pacific, *Submission 9*, p. 2 for the second.

2 Furnishing Industry Association of Australia (VIC/Tas) Inc, *Submission 5*, p. [2].

3 Common Platform, *Submission 1*; Caroline Hoisington, *Submission 2*; Furnishing Industry Association of Australia Ltd, *Submission 3*; Kimberly-Clark Australia Pty Ltd, *Submission 4*; Furnishing Industry Association of Australia Victoria/Tasmania Inc, *Submission 5*; Papua New Guinea Forest Industries Association, *Submission 10*; Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 2; Australian Timber Importers Federation Inc, *Submission 14*, p. 2; Wood and Door Industry Council and 7 associations, *Submission 15*, p. 5; Solaris Paper Pty Ltd, *Submission 19*, p. 1; Construction, Forestry, Mining and Energy Union, *Submission 22*, p. [1].

4 See for example, John Halkett, Australian Timber Importers Federation Inc, *Committee Hansard*, 16 May 2011, p. 2.

management objectives.<sup>5</sup> These contrasting positions were reflected in evidence particularly in relation to key issues including views on the definition of 'regulated timber product' and what materials should fall within the definition. To this extent, therefore, the views of such stakeholders in relation to the provisions of the bill are shaped by their position on its objective.

4.4 This debate about the purpose of the legislation was reflected in views in relation to the addition of an objects clause to the draft bill. Stakeholders in support of the draft bill serving a legality verification purpose to prevent the import and processing of illegally logged timber favoured an objects clause focused on preventing illegal logging. The joint submission of Window and Door Industry Council (WADIC) and seven industry associations recommended, for example, an object clause simply stating that the bill 'restrict illegally logged timber'.<sup>6</sup> Solaris Paper Pty Ltd also suggested the addition of an object clause with the objective of preventing trade in regulated timber products which contain illegally logged timber.<sup>7</sup>

4.5 In contrast, stakeholders concerned with the draft bill meeting sustainability objectives argued in favour of an objects clause which reflected such objectives. Humane Society International (HSI) argued that the objective of the legislation is to protect domestic Australian timber producers and importers of legally logged timber as well as to assist in 'protecting the natural carbon/biodiversity stores of the Planet to be found in natural forests'. HSI supported the addition of an object clause that included the following statement:

To contribute to the conservation of biodiversity and natural terrestrial carbon stores in forest ecosystems.<sup>8</sup>

4.6 Similarly, the first recommendation of the industry, wood product sector and civil society stakeholders represented under the Common Platform is that the bill include within its object clauses, 'an objective to help promote ecologically

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5 See for example, Reece Turner, Greenpeace Australia Pacific, *Committee Hansard*, 16 May 2011, p. 50.

6 Window and Door Industry Council and 7 industry associations, *Submission 15*, p. 4. The industry associations include the Decorative Wood Veneers Association, Timber Merchants Association, Timber and Building Materials Association (Australia), Timber and Building Materials Association (Queensland), Cabinet Makers Association (Victoria), Cabinet Makers Association (WA), and the Queensland Timber Importers, Exporters and Wholesalers Association.

7 Solaris Paper Pty Ltd, *Submission 19*, p. 14.

8 Humane Society International, *Submission 21*, p. [3].

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sustainable and socially just timber and wood products and to eliminate other forms of timber and wood products'.<sup>9</sup>

4.7 Another theme around which there was considerable debate was that of the prescription of key elements of the policy in regulations. A number of submitters argued that leaving the government's policy intent to delegated or subordinate instruments is contrary to best legislative practice and had created uncertainty for an industry unable to estimate the legislation's potential financial and other impacts on itself. HSI argued that the bill is no more than a 'shell' leaving 'almost all substantive matters to be dealt with by subsequent regulations'.<sup>10</sup> Greenpeace noted the ramifications in this regard:

Regulations that may have significant effect on the affairs of industry, the efficacy of the legislative scheme and the trade in illegal timber are being left to delegated instruments. There is no clarity about whether such instruments will be created and no guidance in the legislation that gives any certainty to the public or industry that the government's policy intention will in fact be implemented. There is an indication from the explanatory memorandum that substantial responsibilities will be delegated under the regulations, although there is no clarity regarding the nature and scope of those delegated responsibilities.<sup>11</sup>

4.8 Further Greenpeace held that leaving a 'vast majority of obligations to subordinate legislation' does not conform to best legislative practice which 'recognises the importance of ensuring that the role of Parliament in reviewing and passing legislation is respected and maintained'.<sup>12</sup> For example, the due diligence scheme, which is central to eliminating imports of illegal timber, will be 'entirely defined, described, implemented and enforced in regulation'.<sup>13</sup> Greenpeace recommended that the government provide, as an alternative, greater clarity and structure within the bill itself so as to clearly define what activity the legal regime will regulate and how this will be monitored and enforced.<sup>14</sup>

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9 Common Platform, *Submission 1*. Members of the common platform include Australian Conservation Foundation, Australian Forestry Standards, Building Designers Australia, Bunnings, Fantastic Furniture, FSC, Greenpeace, IKEA, Kimberly-Clark, SCA, Simmonds Lumber, WWF, The Wilderness Society, Uniting Church in Australia–Synod of Victoria and Tasmania.

10 Humane Society International, *Submission 21*, p. [2].

11 Greenpeace Australia Pacific, *Submission 9*, p. 17.

12 Greenpeace Australia Pacific, *Submission 9*, p. 17.

13 Greenpeace Australia Pacific, *Submission 9*, p. 18.

14 Greenpeace Australia Pacific, *Submission 9*, p. 18.

## Definition of illegal logging

4.9 Section 5 of the draft bill defines illegal logging in relation to timber to mean 'harvested in contravention of the laws in force in the place (whether or not in Australia) where the timber is harvested'.

4.10 The explanatory memorandum indicates that the government defines illegal logging as occurring when:

- timber is stolen;
- timber is harvested without the required approvals or in breach of a harvesting licence or law;
- timber is bought, sold, exported or imported and processed in breach of law; and/or
- timber is harvested or trade is authorised through corrupt practices.<sup>15</sup>

### *Stakeholder concerns and the department's response*

4.11 A number of submitters took the view that the definition of illegal logging is too narrow and restricted to the use of the term 'harvested'. Greenpeace, for example, argued that the use of this term could have the effect of ignoring significant 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.<sup>16</sup> Similarly, the Common Platform argues that the definition should be defined broadly:

to capture all situations where timber has been harvested and traded in contravention of the laws of the country of origin or treaties in force in the country of origin or Australia.<sup>17</sup>

4.12 The Uniting Church in Australia—Synod of Victoria and Tasmania and the Environmental Investigation Agency questioned why the bill's definition appears far narrower than the government's own definition of illegal logging as articulated in the explanatory memorandum and stated above.<sup>18</sup> Building Designers Australia (NSW) (BDA NSW) took issue with the fact that the definition is specifically designed to

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15 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 5.*

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

17 Common Platform, *Submission 1*. Members of the common platform include Australian Conservation Foundation, Australian Forestry Standards, Building Designers Australia, Bunnings, Fantastic Furniture, FSC, Greenpeace, IKEA, Kimberly-Clark, SCA, Simmonds Lumber, WWF, The Wilderness Society, Uniting Church in Australia—Synod of Victoria and Tasmania.

18 Uniting Church in Australia—Synod of Victoria and Tasmania, *Submission 12*, p. 3; Environmental Investigation Agency, *Submission 29*, p. 2.

exclude 'technical breaches' such as breaches of the logging codes of conduct or where there are disputes over land tenure and argued that the definition will 'ignore, and in fact could legitimise, cases where the traditional landowners' land is logged against their wishes – even where their rights are protected by national laws'.<sup>19</sup>

4.13 Congressman Earl Blumenauer, who authored the US Lacey Act amendments in the US House of Representatives and Jim McDermott, Member of the US House of Representatives encouraged harmonisation of the definition of illegal logging with the definition provided for in the US Lacey Act and EU laws.<sup>20</sup> Greenpeace and BDA (NSW) noted, moreover, that both the US Lacey Act and EU regulation use a definition that is far broader and they supported a similarly wide definition whilst the Uniting Church in Australia–Synod of Victoria and Tasmania argued in favour of the definition being brought into line with that of Article 2 of the EU regulation.<sup>21</sup>

4.14 The Papua New Guinea (PNG) Forest Industries Association argued that the definition should reflect the International Tropical Timber Organization's definition as 'harvesting, transporting, processing, and trading of forest products in violation of national laws'. It also recommended that the legislation should recognise the legal sovereignty of partner countries, including PNG, and respect partner country legal and regulatory frameworks.<sup>22</sup> Concerns regarding sovereignty and the risk of potential conflicts between laws from different jurisdictions were also raised in the joint submission of the Window and Door Industry Council (WADIC) and seven other industry associations in relation to the definition.<sup>23</sup>

4.15 As a means of comparison, section 8204 of the US Lacey Act amendments apply to any plant:

- (i) taken, possessed, transported, or sold in violation of any law or regulation of any State, or any foreign law, that protects plants or that regulates –
  - (I) the theft of plants;
  - (II) the taking of plants from a park, forest reserve, or other officially protected area;
  - (III) the taking of plants without, or contrary to, required authorization;

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19 Building Designers Australia (NSW), *Submission 13*, p. [3].

20 Congressman Earl Blumenauer and Jim McDermott, Member of US House of Representatives, *Submission 16*, p. [1].

21 Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 3.

22 Papua New Guinea Forest Industries Association, *Submission 10*, p. 2.

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

- (ii) taken, possessed, transported, or sold without payment of appropriate royalties, taxes, or stumpage fees required for the plant by any law or regulation of any State or any foreign law; or
- (iii) taken, possessed, transported or sold in violation of any limitation under any law or regulation of any State, or under any foreign law, governing the export or transshipment of plants;...<sup>24</sup>

4.16 EU Regulation 995/2010 states that illegally harvested means 'harvested in contravention of the applicable legislation in the country of harvest'. Applicable legislation in this context means the legislation in force in the country of harvest and covering:

- rights to harvest timber within legally gazetted boundaries;
- payments for harvest rights and timber including duties related to timber harvesting;
- timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting;
- third parties' legal rights concerning use and tenure that are affected by timber harvesting; and
- trade and customs, in so far as the forest sector is concerned.<sup>25</sup>

4.17 In response to concerns regarding the definition of illegal logged timber in the draft bill, the Department of Agriculture, Fisheries and Forestry (DAFF) noted in its submission that when compared to other definitions of illegal timber, the draft bill's definition is 'broad, and refers to timber harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.<sup>26</sup>

4.18 The committee strongly encourages DAFF to amend the explanatory memorandum to provide that clarity.

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24 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](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf) (accessed 23 May 2011).

25 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).

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



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## Prohibition on importing illegally logged timber

4.19 Under section 6 of the bill, it is an offence to import a 'regulated timber product' where the product is made from or includes any illegally logged timber. The offence carries with it a maximum penalty of five years imprisonment.<sup>27</sup>

4.20 An offence is committed if:

- (a) the person imports a thing; and
- (b) the thing is a regulated timber product; and
- (c) the thing is, is made from, or includes, illegally logged timber.

4.21 For the purposes of the bill, a 'regulated timber product' is a product that the Commonwealth seeks to regulate for the purpose of minimising the risk of containing illegally logged timber. Subsection 6(2) specifies that the regulations may exclude certain regulated timber products from this offence as a means of ensuring 'flexibility in allowing for particular circumstances or risks associated with certain *regulated timber products* to be taken into account'.

### *Stakeholder concerns and the department's response*

*The prohibition will not come into effect immediately*

4.22 Greenpeace, BDA (NSW), and the Uniting Church in Australia–Synod of Victoria and Tasmania raised concerns that the prohibition in relation to the import of a 'regulated timber product' as prescribed by the regulations is therefore contingent upon the regulations being created and coming into force.<sup>28</sup> Greenpeace highlighted that the regulations could take up to two years or more to come into effect which is contrary to the commitment of the government that the prohibition on illegal timber would come into effect upon the commencement of the legislation. Greenpeace continued:

It is understandable that some details of the regime should be defined within the regulations, but leaving the definition of what timber is covered by the laws renders the Bill ineffective until the regulations come into force. The government has been very clear in both the Regulatory Impact Statement, Ministerial statements and in workshops about which products would be covered by the laws. There is no reason why the Bill cannot prescribe a non-exhaustive list of regulated timber products that could be expanded upon in the regulations, as has been done in the EU.<sup>29</sup>

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27 Exposure Draft of the Illegal Logging Prohibition Bill 2011, s. 6.

28 Greenpeace Australia Pacific, *Submission 9*, pp. 4–5; Building Designers Australia (NSW), *Submission 13*, p. [2]; Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 5.

29 Greenpeace Australia Pacific, *Submission 9*, pp. 4–5.

4.23 This position was supported by the Uniting Church in Australia–Synod of Victoria and Tasmania, HSI and the BDA (NSW).<sup>30</sup> ATIF argue that the definition of a 'regulated timber product' will require comprehensive attention in order that it is prescribed in the regulations accordingly as it is a 'critical' aspect of the Government's illegal logging policy.<sup>31</sup> The Uniting Church–Synod of Victoria and Tasmania as well as BDA (NSW) recommended that that the bill provide a definition of a 'regulated timber product' in order that the prohibition for schedule 1 timber takes effect immediately and that a timeframe be included in the bill in relation to the remaining regulated timber products.

4.24 The government's justification for the delay is detailed in the following section of the report which considers the offence provisions set out in sections 7 and 8 of the bill.

#### *A narrow prohibition*

4.25 A number of submitters raised concerns that the prohibition detailed in section 6 of the bill is too narrow as it does not extend to other links along the supply chain beyond that of importation.<sup>32</sup> Greenpeace continued:

The prohibition should cover any trade in illegal timber or the placing of timber on the market. It should ensure that all those involved in and benefitting from a trade in timber and timber products are responsible for ensuring that all imported timber is legal.<sup>33</sup>

4.26 HSI argued that it should be an offence to 'possess, sell or buy wood or wood products derived from inappropriate sources—not just to import them' and that the legislation should match the provisions of the US Lacey Act in this regard.<sup>34</sup> Also drawing on the US Lacey Act which has a broader prohibition, Greenpeace raised concerns that the omission of logging and trading from the prohibition will result in different standards and penalty regimes applying which could 'raise WTO issues and will certainly raise equity issues'.<sup>35</sup> Greenpeace, BDA (NSW) along with the Australian Forestry Standard Limited recommends therefore that section 6(a) be

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30 Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 5; Humane Society International, *Submission 21*, p. [4]; Building Designers Australia (NSW), *Submission 13*, p. [2].

31 Australian Timber Importers Federation Inc, *Submission 14*, p. 5.

32 Australian Forestry Standard Limited, *Submission 6*, p. [2]; Building Designers Australia (NSW), *Submission 13*, p. 7; Greenpeace Australia Pacific, *Submission 9*, p. 12; Australian Network of Environmental Defender's Offices, *Submission 20*, p. [1]; Humane Society International, *Submission 21*, p. [5].

33 Greenpeace Australia Pacific, *Submission 9*, p. 12.

34 Humane Society International, *Submission 21*, p. [2].

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

amended in order that the prohibition covers any trade and not just importation as in the Lacey Act.<sup>36</sup>

4.27 In response to such concerns, DAFF noted that the draft bill prohibition is similar to the amendments to the US Lacey Act which makes it unlawful to trade in any plant that is 'taken, possessed, transported, or sold' in violation of any US law or regulation, or any foreign law that protects plants. Similarly, the EU regulation prohibits 'the placing on the market of illegally harvested timber or timber products derived from such timber'.<sup>37</sup>

### *Fines and forfeiture*

4.28 The Common Platform lists amongst its recommendations for effective laws, that appropriate penalties be applied to provide an 'effective deterrent against those who knowingly or negligently break the law or fail to show due diligence'.<sup>38</sup> It does not, however, elaborate on what penalties it considers to be appropriate.

4.29 Greenpeace supported the prohibition penalty of five years imprisonment, noting that it was in line with the Lacey Act. However, it and BDA (NSW) raised concerns that there is no fine associated with the penalty, as in the case of the Lacey Act (US\$500 000).<sup>39</sup> Furthermore, Greenpeace noted that there was no forfeiture requirement and that whilst the explanatory memorandum suggests that forfeiture may occur under the Custom Act, it is not mandatory and 'seems to leave open the possibility that illegal timber could conceivably be sold on the Australian market even after being identified as illegal'.<sup>40</sup> Greenpeace, BDA (NSW) along with the Uniting Church in Australia–Synod of Victoria and Tasmania, which supported strengthening the penalty as a deterrent, recommended that forfeiture of goods be made mandatory and explicit for breaches under sections 6, 7 and 8 of the bill.<sup>41</sup>

4.30 However, DAFF clarified in its submission that the absence of a prescribed financial penalty in the bill does not exclude the possibility of one being imposed by the courts. The *Crimes Act 1914* allows for a financial penalty to be imposed instead of or in addition to imprisonment. Under this provision a five year prison term equates

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36 Greenpeace Australia Pacific, *Submission 9*, p. 13; Building Designers Australia (NSW), *Submission 13*, p. [8]; Australian Forestry Standard Limited, *Submission 6*, p. [2].

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

38 Common Platform, *Submission 1*.

39 Greenpeace Australia Pacific, *Submission 9*, p. 7; Building Designers Australia (NSW), *Submission 13*, p. [4].

40 Greenpeace Australia Pacific, *Submission 9*, p. 7.

41 Greenpeace Australia Pacific, *Submission 9*, p. 7; Building Designers Australia (NSW), *Submission 13*, pp. 4–6; Uniting Church in Australia–Synod of Victoria and Tasmania, *Submission 12*, p. 5.

to a maximum of 300 penalty units for an individual and 1500 penalty units for a corporation/body corporate.<sup>42</sup> Therefore:

The maximum penalty for the importation of illegal timber products is prescribed at five years imprisonment, which, at the discretion of a court when sentencing, equates to a maximum fine for an individual of \$33,000, and \$165,000 for a corporation or body corporate.<sup>43</sup>

4.31 The committee notes that on the question of forfeiture, the explanatory memorandum wording is far stronger than suggested by concerned submitters as it states that it is 'expected' that section 229 of the *Customs Act 1901* 'may be invoked by the Commonwealth to direct the forfeiture of goods found in breach of the prohibition and thereby prevent their entry onto the Australian market'.<sup>44</sup> DAFF also noted that forfeiture provisions are also present in existing legislation such as Parts 2-2 and 2-3 of the *Proceeds of Crime Act 2002*.<sup>45</sup>

4.32 The committee appreciates that many of the concerns regarding fines and forfeiture would have been alleviated if the legal framework had been set out more clearly in the explanatory memorandum. The committee encourages revision of the explanatory memorandum with a view to providing a clear and concise overview of the legal framework which sets out all the penalties including imprisonment, fines and forfeiture.

#### *Enforcement or monitoring of illegal timber*

4.33 A number of submitters raised concerns that whilst the bill created a prohibition on the import of illegally logged timber and wood products, there is no provision within the bill for ongoing enforcement of it.<sup>46</sup> Greenpeace and BDA (NSW) noted in this regard that the provisions detailed in Part 5 of the bill enabling an officer to be appointed does not constitute an enforcement regime which, it argued is required along with monitoring in relation to point of import inspections and testing, and certifiers.<sup>47</sup> The ATIF questioned whether there was any connection between the roles of officers appointed under this part and that of timber industry certifiers.<sup>48</sup> Greenpeace argued that whilst the explanatory memorandum claims that the bill

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

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

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

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

46 Kimberley-Clark Australia Pty Ltd, *Submission 4*, p. [2]; Greenpeace Australia Pacific, *Submission 9*, p. 11; WWF-Australia, *Submission 11*, p. [1]; Building Designers Australia (NSW), *Submission 13*, p. [6].

47 Greenpeace Australia Pacific, *Submission 9*, p. 10; Building Designers Australia (NSW), *Submission 13*, p. [6].

48 Australian Timber Importers Federation Inc, *Submission 14*, p. 13.

provides officers with necessary powers to investigate and collect evidence of suspected offences with the purpose of ensuring that adequate enforcement of the bill takes place:

[T]his is highly misleading. The provisions in the Bill that relate to the powers of officers will not ensure or require that any enforcement take place.<sup>49</sup>

4.34 Greenpeace held that the bill must identify that enforcement will occur at the point of import and that an enforcement regime be established in regulations and developed within six months of Royal Assent.<sup>50</sup> However, in contrast the Australian Network of Environment Defender's Offices (ANEDO) supported the proposed enforcement regime in Part 5 of the bill, noting that the bill provides for officers with an appropriate range of powers.<sup>51</sup>

4.35 Indeed, the explanatory memorandum details the provisions in Part 5 of the bill which set out the compliance monitoring powers of officers. It details the general powers available to officers for monitoring compliance, specific monitoring powers, and procedures in relation to issuing a monitoring warrant. The explanatory memorandum states that such powers are consistent with other Commonwealth Acts which allow for the use of monitoring warrants and in particular, the *Quarantine Act 1980* (Part VIA, Division 2) which allows for the application of monitoring warrants.<sup>52</sup> The committee has no concerns in relation to the enforcement regime.

4.36 The committee notes in this regard that subsection 36.1 provides that an officer executing a monitoring warrant or an offence-related warrant may use 'such force against persons or things as is necessary and reasonable in the circumstances'. Similarly, a person assisting an officer (provided for in section 34) may also use such force as is necessary and reasonable in the circumstances.

4.37 The committee appreciates that this power is 'commensurate with other powers found in similar Commonwealth Acts that employ monitoring and offence-related powers'.<sup>53</sup> However, the committee recognises training as important to ensure that such officials carry out their duties appropriately. Therefore, the committee strongly encourages the establishment of an appropriate training regime in order to ensure that powers conferred on officers, and particularly those in relation to the use of force, are exercised safely and appropriately.

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49 Greenpeace Australia Pacific, *Submission 9*, pp. 10–11.

50 Greenpeace Australia Pacific, *Submission 9*, pp. 11–12.

51 Australian Network of Environment Defender's Offices, *Submission 20*, p. [3].

52 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 54.

53 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 64.

## Defining 'regulated timber product'

4.38 The bill establishes that the definition of 'regulated timber product' will be prescribed in the regulations. There was considerable discussion throughout the inquiry about what materials may be included in the definition, what should be included and of the consequences for industry stakeholders and the competitiveness of their products.

### *Stakeholder concerns*

4.39 The Furnishing Industry Association of Australia Ltd (FIAA) argued strongly against any exceptions regarding products that only have a small percentage of timber constituting its final value or its final volume or surface area emphasising that exceptions will 'only lead to the perception of corruption'.<sup>54</sup> This position was supported by the Furnishing Industry Association of Australia (Vic/Tas) Inc, which also held that if finished and semi-finished products such as flat-packed fit-outs and coffins are not regulated, illegal timber is likely to be 're-routed into the country via such finished products', the effect of which would be to:

...negate much of the effectiveness of The Bill and will result in Government-supported preferential treatment for overseas wood-products manufacturing over local manufacturers and jobs.<sup>55</sup>

4.40 The joint WADIC submission also expressed concern that an estimated 50 per cent of timber that enters Australia comes in the form of finished products. The submission highlighted that if it is not regulated, illegal timber will 'likely just be re-routed into the country via such finished products' and:

This would negate much of the effectiveness of The Bill and will result in Government supported preferential treatment for overseas wood-products manufacturing over local manufacturers and jobs. For reasons of fair competition and regulatory-effectiveness, we call on the Government to regulate all *imported finished products* containing wood. A suggested approach would be to regulate, in The Bill itself, all products containing more than 5% wood.<sup>56</sup>

4.41 Miss Juel Briggs of the Decorative Wood Veneer Association noted the changes that have taken place over the past five years in relation to imported materials and the need to be responsive to them. She said that five years ago, the ratio of timber imported to Australia compared to finished product has changed with the amount of finished product rapidly accelerating. Miss Briggs argued that it has to be addressed because a point may be reached where:

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

55 Furnishing Industry Association of Australia (Vic/Tas) Inc, *Submission 5*, p. [2].

56 Wood and Door Industry Council and 7 industry associations, *Submission 15*, p. 4.

...10 per cent of the timber coming into Australia comes in as raw timber and 90 per cent comes in as finished product. It would be absurd for us not to, in some way, go part way towards covering the finished product that comes in.<sup>57</sup>

4.42 ATIF shared such concerns regarding finished or manufactured products. Mr John Halkett, Technical Manager, ATIF, described the risks involved in relation to such products:

There are manufactured products that come from countries like China, Vietnam, Korea and so on, and the work that has been done and supported by the department to date suggests that in those manufactured products there is a greater probability of illegally logged timber being incorporated into them. They have a long supply chain and it is very difficult to track the timber back to source, so there is some risk there.<sup>58</sup>

4.43 Mr Halkett conceded that there were complexities involved in relation to certification of manufactured products as they become more 'sophisticated and go up the value chain it is often difficult to determine whether they have a wood component or not. They might just be described, for example, as lounge room furniture made of leather and so on'.<sup>59</sup>

4.44 Contrastingly, Solaris Paper Pty Ltd argued that pulp and paper products are unlikely to be involved in illegally logged timber and that there was no need to include such products within the definition of 'regulated timber product'.<sup>60</sup> Solaris Paper suggested as an alternative that a comprehensive risk analysis by type of pulp and paper be mandated and that those products with minimal risk of inclusion of illegal material be excluded from the regime.<sup>61</sup>

4.45 Consistent with its argument that the bill should address the issue of sustainability, HSI argued in favour of a definition beyond that of timber to 'forest products' in order to capture within it other illegally or unsustainably produced forest products and plants such as rattan. In determining the definition of 'forest products', HSI argued in favour of a definition that draws on the US Lacey Act definition of a 'plant'.<sup>62</sup>

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57 Juel Briggs, Decorative Wood Veneer Association, *Committee Hansard*, 16 May 2011, p. 29.

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

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

60 Solaris Paper Pty Ltd, *Submission 19*, p. 6 and 14.

61 Solaris Paper Pty Ltd, *Submission 19*, p. 14.

62 Humane Society International, *Submission 21*, p. [3].

### *The department's response*

4.46 DAFF noted that the list of three product categories that may be regulated was identified in the RIS and include solid timber and wood products; processed timber and wood products; and complex wood products. However, DAFF emphasised that further work will be undertaken by ABARE and stakeholders to identify timber and wood products that may be effectively regulated, taking into account the complexity of the product.<sup>63</sup>

4.47 For comparative purposes, DAFF noted that under the US Lacey Act, the prohibition applies to all plants and plant products and that the products which require the import declaration are being phased in, and currently include 'sawn wood, chipped wood, shaped wood, sheets for veneers, wood for joinery or carpentry, plywood, wooden frames and seats with wood frames'. Products that are yet to be phased in include particle board, fibreboard, packing cases and pulp and paper products.<sup>64</sup>

### **Importing or processing without being approved**

4.48 Division 2 of the bill provides the basis for the introduction of legal logging requirements on industry with the aim of 'minimising the risk of illegally logged timber entering the Australian market, and to assist importers to not incur the prohibition offence'.<sup>65</sup> The requirements targets importers of regulated timber products and processors of raw logs as the two entry points of timber onto the Australian market. This division places a legal obligation for importers and Australian domestic processors of raw logs to comply with the legal logging requirements for regulated timber producers by requiring them to be approved.<sup>66</sup>

4.49 Section 7 provides that it is an offence to import a regulated timber product without being approved as an importer of regulated timber products of that kind either by a timber industry certifier or the Minister. Section 13 of the bill enables regulations to be made that may list regulated timber products. The overall intention of the offence and penalty in Section 7 is to 'make sure importers have been granted approval by a *timber industry certifier* or by the Minister, before importing a *regulated timber product*'.<sup>67</sup>

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

64 Department of Agriculture, Fisheries and Forestry, *Submission 26*, pp. 21–22.

65 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 47.

66 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 47.

67 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft–23 March 2011, p. 47.



4.50 The importation of a regulated timber product without approval will attract a maximum penalty of 100 penalty units.<sup>68</sup> According to the explanatory memorandum, the penalty has been set at this level to 'influence compliance with the *legal logging requirements*' and to ensure that an unapproved import cannot take place as part of a calculated business decision.<sup>69</sup>

4.51 Similarly, under section 8, an offence is committed if a person processes raw logs in Australia without being approved to do so by a timber industry certifier or the responsible Minister. The purpose of the section is to promote adherence amongst domestic timber mills to the legal logging requirements. According to the explanatory memorandum, the maximum penalty of 100 penalty units for the section 8 offence is intended to act as a strong deterrent against the unapproved processing of domestic raw logs and is intended to ensure that these mills undertake appropriate steps to minimise the risk of placing illegally logged timber products on the Australian market.<sup>70</sup>

4.52 The explanatory memorandum also notes that sections 7 and 8 will commence two years after proclamation. The intention of the two-year delay is to 'allow government and industry to work together to develop the co-regulatory aspects under the policy; that is, the processes by which industry will be required to comply'.<sup>71</sup>

4.53 The committee notes the criticisms of this delay as detailed above. The government's position is that the delay is necessary to provide for a period of time to enable the development of the co-regulatory aspects of the policy:

The intention of the two-year delay is to allow government and industry to work together to develop the co-regulatory aspect under the policy; that is, the processes by which industry will be required to comply. In particular it will give industry time to develop *timber industry certifiers* and approve importers and processors to comply with the *legal logging requirements* that will be prescribed in subordinate legislation made under Section 13 of this Bill.<sup>72</sup>

4.54 Questions were also raised about the involvement of the Minister in terms of powers to approve importers and processors where no appropriate timber industry certifier is established to implement the approval. In response to such concerns, DAFF clarified that the provision is designed partly to accommodate businesses, industry

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68 Exposure Draft of the Illegal Logging Prohibition Bill 2011, s.7.

69 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 47.

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

71 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 45.

72 *Explanatory Memorandum*, Illegal Logging Prohibition Bill 2011, Consultation Draft—23 March 2011, p. 45.

associations or organisations who do not seek to become a timber industry certifier or to join a timber industry certifying body. DAFF continued:

This may occur for importers of particular categories of product which are not administered by a timber industry certifier, such as importers of specialised timber products. In this circumstance, approval by the responsible minister avoids the legislation having perverse impacts on importers whose products are not covered by a timber industry certifying entity.<sup>73</sup>

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

## 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.<sup>1</sup> 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.<sup>2</sup>

#### 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.<sup>3</sup>

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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.<sup>4</sup>

### **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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup> They held the view that in light of the prohibition, legal logging requirements and the fact that industry will be required to

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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'.<sup>8</sup> 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".<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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'.<sup>13</sup>

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.<sup>14</sup> 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.<sup>15</sup> Submitters compared the bill's provisions in this regard with the EU regulation monitoring organisations which are responsible for ensuring that companies which

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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.<sup>16</sup> 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'.<sup>17</sup> Similarly, BDA (NSW) recommended that the requirements in relation to EU regulation monitoring organisations be set out in the bill.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup> Greenpeace favoured making the certifier requirements articulated in sections 11 and 12 mandatory.<sup>22</sup>

### **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.<sup>23</sup> DAFF official, Mr John Talbot assured the

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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'.<sup>24</sup>

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.<sup>25</sup>

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'.<sup>26</sup>

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.<sup>27</sup>

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

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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.

overlying 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.<sup>28</sup>

## **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'.<sup>29</sup> 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.<sup>30</sup> 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

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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.<sup>31</sup>

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*'.<sup>32</sup>

## 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,

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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.<sup>33</sup> 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'.<sup>34</sup> 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.<sup>35</sup> 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)).<sup>36</sup>

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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup>

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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.<sup>40</sup> 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.<sup>41</sup>

### ***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.<sup>42</sup>

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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup>

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

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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.<sup>46</sup>

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.<sup>47</sup>

### ***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.<sup>48</sup> 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.<sup>49</sup> 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,

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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](http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf) (accessed 23 May 2011).

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- 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.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup> 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

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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.

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### ***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.<sup>53</sup> 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.<sup>54</sup>

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.<sup>55</sup> 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.<sup>56</sup>

### ***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:

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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.<sup>57</sup>

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.<sup>58</sup> 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'.<sup>59</sup> 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'.<sup>60</sup> 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.<sup>61</sup>

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.<sup>62</sup>

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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'.<sup>63</sup>

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.<sup>64</sup>

### ***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.<sup>65</sup> 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.<sup>66</sup>

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

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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.<sup>67</sup>

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.

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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.<sup>68</sup>

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'.<sup>69</sup> 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.<sup>70</sup> 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'.<sup>71</sup>

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'.<sup>72</sup> 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

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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.<sup>73</sup> 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.<sup>74</sup> 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.<sup>75</sup>

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.<sup>76</sup> 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:

<b>Table 1: Compliance cost assumptions</b>		
	<b>Lower</b>	<b>Upper</b>
	<i>% export tax equivalent</i>	<i>% export tax equivalent</i>
<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.<sup>77</sup>

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.<sup>78</sup> 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.<sup>79</sup>

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

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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.<sup>80</sup>

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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup>

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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 legitimise 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.<sup>84</sup> In the case of PNG, legal requirements are monitored through these exporting monitoring systems.<sup>85</sup> 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.<sup>86</sup>

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

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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.<sup>87</sup>

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.<sup>88</sup>

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.<sup>89</sup>

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.<sup>90</sup> 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'.<sup>91</sup>

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.<sup>92</sup> Mr Halkett added that in the Malaysian context, there is a full chain of

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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.<sup>93</sup>

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'.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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...<sup>98</sup>

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

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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.<sup>99</sup>

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.<sup>100</sup> 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.<sup>101</sup>

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.<sup>102</sup> 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.<sup>103</sup>

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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.

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***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.<sup>104</sup>

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.<sup>105</sup> 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.<sup>106</sup>

***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.

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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.



## 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**

# Australian Greens Dissenting Report

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.

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.

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;
- a requirement on the governments of exporting nations to avoid corruption or lose the market;
- 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 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;
- penalties for breaching the prohibition are broadened to include fines or forfeiture within the act rather than it being left to the courts;
- approval of certifiers is a rigorous process, clearly outlined in the act and that any process needs to include government oversight;
- the declaration information to be as broad as the US and EU legislation.

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.

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.

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.

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

**Senator Rachel Siewert**

**Senator Christine Milne**

**Senator Bob Brown**

# APPENDIX 1

## Submissions Received

<b>Submission Number</b>	<b>Submitter</b>
1	Common Platform
2	Caroline Hoisington
3	Furnishing Industry Association of Australia Ltd
4	Kimberly-Clark Australia Pty Ltd
5	Furnishing Industry Association of Australia Vic/Tas Inc.
6	Australian Forestry Standard Limited
7	SCA Hygiene Australasia
8	High Commission of Canada
9	Greenpeace Australia Pacific
10	Papua New Guinea Forest Industries Association
11	WWF–Australia
12	Justice and Int. Mission Unit, Uniting Church in Australia–Synod of Vic. & Tas.
13	Building Designers Australia (NSW)
14	Australian Timber Importers Federation Inc
15	Joint Submission from Window and Door Industry Council, Decorative Wood Veneers Association, Timber and Building Materials Australia, Timber and Building Materials QLD, Timber Merchants Association, Cabinet Makers VIC, Cabinet Makers WA and QLD Timber Importers, Exporters and Wholesalers Association
16	US Congressmen Earl Blumenauer and Jim McDermott
17	World Growth
18	East Gippsland Shire Council
19	Solaris Paper
20	Australian Network of Environmental Defender's Offices
21	Humane Society International
22	Construction, Forestry, Mining and Energy Union of Australia (CFMEU)
23	New Zealand High Commission
24	Timber Development Association (NSW)
25	Institute of Public Affairs
26	Department of Agriculture, Fisheries and Forestry
27	Australian Forest Products Association
28	Australian Forest Growers
29	Environmental Investigation Agency

- 30 Timber Queensland
- 31 Government of Indonesia (Ministry of Trade)

### **Additional Information Received**

- Received on 23 May 2011, from Australian Forestry Standard Ltd. Answers to Questions taken on Notice on 16 May 2011;
- Received on 23 May 2011, from Humane Society International. Answers to Questions taken on Notice on 16 May 2011;
- Received on 24 May 2011, from Greenpeace. Answers to Questions taken on Notice on 16 May 2011;
- Received on 25 May 2011, from the New Zealand High Commission. Answers to Questions taken on Notice on 16 May 2011;
- Received on 26 May 2011, from the Department of Agriculture, Fisheries and Forestry (DAFF). Answers to Questions taken on Notice on 16 May 2011.

### **TABLED DOCUMENTS**

- Tabled by Australian Forest Products Association (AFPG) on 16 May 2011 in Canberra. Copy of the opening statement;
- Tabled by Humane Society International (HSI) on 16 May 2011 in Canberra. Copy of the opening statement;
- Tabled by Australian Forest Growers (AFG) on 16 May 2011 in Canberra. Copies of:
  - opening statement;
  - 'Achieving FSC certification of private native forest harvesting' article, Australian Forest Grower, Spring 2010;
  - 'A small grower's viewpoint of the Australian Forestry Standard' article, Australian Forest Grower, Summer 2005;
  - Extract from the Small Business Impact Statement, 'Industry Classes potentially affected by illegal logging policy outcomes' table;
- Tabled by Department of Agriculture, Fisheries and Forestry (DAFF) on 16 May 2011 in Canberra. 'Comparison between product categories proposed or regulated for EU, US and Australia' table.

## **APPENDIX 2**

### **Public Hearings and Witnesses**

**MONDAY, 16 MAY 2011, CANBERRA, ACT**

- ALDRED, Mr Tom, Executive Manager, Forestry, Department of Agriculture, Fisheries and Forestry
- BEAGLEHOLE, Ms Charlotte, First Secretary, New Zealand High Commission
- BRIGGS, Ms Juel Sally, Industry Association Representative, Decorative Wood Veneers Association
- DUNNE, His Excellency Major General Martyn (Retired), High Commissioner for New Zealand
- FOORD, Mrs Bronwyn Sue, General Manager, Window and Door Industry Council Inc
- HALKETT, Mr John, Technical Manager, Australian Timber Importers Federation Inc
- HOLESGROVE, Mr Roderick Leslie, Biodiversity Policy Adviser, Humane Society International
- HOWARTH, Mr Richard William, Policy Lawyer, Australian Network of Environmental Defender's Offices
- JOHNSON, Mr Grant, Senior Policy Analyst, Australian Forest Products Association
- KUFFER, Mrs Moira, Policy Officer, Australian Forest Growers
- MATTHEW, Mr Gavin, Manager, Resources, Australian Plantation Products and Paper Industry Council
- MITCHELL, Mr Ben, Manager, International Forest Policy, Forestry Branch, Department of Agriculture, Fisheries and Forestry
- RAGG, Mr Warwick, Chief Executive, Australian Forest Growers
- ROBERTS, Mr Peter John, Executive Director, Timber Merchants Association
- SAHUKAR, Mr Nariman (Nari) Aspi, Acting Policy and Law Reform Director, Australian Network of Environmental Defender's Offices

- STANTON, Mr Richard, Chief Executive Officer, Resources, Australian Plantation Products and Paper Industry Council
- STEPHENS, Mr Mick, Manager, Strategic Policy, Australian Forest Products Association
- TALBOT, Mr John, General Manager, Forestry Branch, Department of Agriculture, Fisheries and Forestry
- TATE, Mr Robert, Executive Officer, PNG Forest Industries Association
- TURNER, Mr Reece, Forest Campaigner, Greenpeace Australia Pacific
- WATTS, Miss Kayt, Chief Executive Officer, Australian Forestry Standard Limited