

## **Additional Comments from the Liberal Party**

1.1 The bill seeks to:

- prohibit the importation and sale of all timber products containing illegally logged timber
- prohibit the processing of illegally harvested domestically grown raw logs
- require importers of regulated timber products and processors of raw logs to comply with due diligence requirements,
- require the accurate description of legally logged timber products for sale in Australia,
- establish enforcement powers and offences and imposes penalties and
- provide for a review of the first five years of the operation of the Act.

1.2 The Coalition is broadly supportive of the Government's moves to legislate to prohibit importation of illegally logged timber and timber products. This position was clearly articulated in the Coalition's 2010 policy,

The Coalition will legislate to make it an offence to import any timber product which has not been verified as being legally harvested.

1.3 However, the Coalition is cognisant of the potential impacts of enacting legislation that has not been carefully considered. The example of particularly the second case raised against Gibson Guitar's in the US provides a very salient warning of the possible consequences if this type of legislation is not developed with due consideration case. In this instance, the Lacey Act is being used to enforce a broader range of laws many of which are not directly related to the legality of timber harvest, but are connected to issues such as domestic labour laws.

1.4 Seven recommendations were made to strengthen the bill as a consequence of review and stakeholder input into the Illegal Logging Prohibition Exposure Draft. The Coalition acknowledges the Government's response to these recommendations and the actions taken towards their adoption.

1.5 Further the Coalition remains particularly concerned regarding the impact this legislation and regulations may have on our international relationships.

### **International Consultation**

1.6 Representations have been made to the latest Senate Inquiry by Canada, New Zealand, Malaysia, Indonesia and Papua New Guinea. The fact these representations were made to the inquiry raises serious questions regarding the level of consultation undertaken by the Government during the development of this legislation.

1.7 Issues raised by these submissions include:

- differential treatment of imported and domestic timber products
- recognition of source country programs
- lack of consultation.

1.8 The Coalition is satisfied that these concerns may be mitigated by closer and more effective consultation, the apparent lack of which appears to leave Australia exposed.

1.9 A submission from the University of NSW, 22 February 2012, summarises many of the concerns raised:

Two remaining issues may leave Australia somewhat exposed. Australia may need to demonstrate that it negotiated in good faith with affected countries to secure its conservative objectives before resorting to unilateral restrictive measures. The objections of Canada and Indonesia indicate that those countries do not appear satisfied with negotiations thus far.

Careful consideration is therefore needed of the extent to which Australia has pursued genuine negotiations with affected countries with a view to reaching agreement on bilateral or multilateral measures to prevent trade in illegal logging.

1.10 The Coalition believes that the apparent rush by the government to finalise this legislation has been a factor in the level of international concern.

### **Implementation arrangements**

1.11 The Coalition believes better alignment between the implementation of the legislation and the development and implementation of the regulations is essential. The Government has indicated that the regulations will be available within two years of the legislation passing the parliament.

1.12 The inability to review the regulations and associated Regulated Timber Products list is likely to have exacerbated concerns international concerns with the legislation.

1.13 This concern is also mirrored in representations from timber importers who remain concerned that there will be a significant time between the creation of an offence and the availability of the rules that apply to the assessment of imports and hence provide detail on what constitutes that offence.

1.14 The Coalition believes that there exists a real opportunity to mitigate the concerns of both importers and our trading partners by aligning the creation of the offence and the acceptance of the regulations by the Parliament.

1.15 The Coalition believes that the time afforded by delaying the enactment of the legislation, could be better utilised by the Government to:

- complete what have been inadequate negotiations with our timber trading partners,
- develop capacity building measures in developing nations in particular, some country to country arrangements which have been a very positive feature FLEGT process being developed in the EU and
- provide clarity around the regulations, assessment of products and list of regulated products

## **Outreach**

1.16 The Coalition acknowledges the initiative of countries such as Indonesia where legality assurance programs have been developed, and of support programs such as the Asia-Pacific Forestry Skills and Capacity Building Program. However, as was revealed recently through Estimates, significant challenges exist in establishing assistance programs. The Coalition maintains that without support and ongoing diligence the integrity and reach of verification programs may suffer. It is sobering to consider the World Bank's advise that most illegally logged timber has legitimate documentation attached to it.

## **Nation to Nation agreements**

1.17 Submissions have been received from a number of countries advocating for acceptance of their domestic legalisation and/or certification systems as proof of legality of supply. Again, It is the Coalition view the lack of visibility of proposed regulations and effective consultation has contributed to these concerns.

## **Scope of the legislation**

1.18 With regard to the development of the Regulated Timber Products list, difficulties have been identified around the applicability of the legislation and regulations to products manufactured from recycled materials (clause 2.82). Currently these materials receive no consideration. The Coalition also has concerns as to the implications for products manufactured before the legislation is enacted, for example antiques, unique and bespoke products. Given many businesses have aged stocks of raw materials the current legislation provides no capacity for them to demonstrate the due diligence requirements; impacting both domestic and internationally sourced timbers.

## **Additional recommendations**

### **Recommendation 1**

#### **1.19 Align commencement of offence with effective implementation of regulations.**

1.20 This issue was raised by a number of submitters (2.15 – 2.19 in Committee report), who expressed concerns regarding the two year period between the commencement of the legislation and the development of the regulations. It was felt that this would result in a significant period of uncertainty for importers and processors of imported timber, with the threat of fines and gaol sentences.

**It is recommended that the legislation be amended to state that the legislation not take effect until the regulations are tabled and accepted by the Parliament.**

1.21 This will achieve the desired effect of articulating the Government's intentions with regard to the prohibition of illegally logged timber, while also providing importers and exporters with greater clarity with regard to the Regulations as well as additional time to move towards compliance with the legislation and regulations.

### **Recommendation 2**

#### **1.22 Increase Australia's outreach prohibitions on importing or processing illegally logged timber.**

1.23 Concerns remain as to the ability of many countries currently supplying timber and timber products to Australia to effectively meet the requirements of this legislation. The Coalition acknowledges the initiative of countries such as Indonesia where legality assurance programs have been developed, and of support programs such as the Asia-Pacific Forestry Skills and Capacity Building Program. However, as was revealed recently through Estimates, significant challenges exist in establishing assistance programs. The Coalition maintains that without support and ongoing diligence the integrity and reach of verification programs may suffer. It is sobering to consider the World Bank's advise that most illegally logged timber has legitimate documentation attached to it.

1.24 The Coalition believes that efforts must be intensified to effectively build capacity in countries supplying our markets.

### **Recommendation 3**

#### **1.25 Actively pursue nation to nation arrangements to minimise impact on trade and cost.**

1.26 It is recommended the Government undertake, in conjunction with the finalisation of regulations and creation of the Regulated Timber Products List, high level negotiations with countries currently exporting timber products to Australia to

identify and recognise legislation or certification or other processes which contribute to the demonstration of due diligence as required by the legislation.

#### **Recommendation 4**

##### **1.27 Specific attention be given to aged stock, bespoke, antique and recycled materials**

1.28 The legislation does not give consideration to these materials and how they will be handled. There is potentially significant complexity around these materials and potentially the need to verify the date of manufacture in order to gain exemption from the legislation and associated regulations.

**Senator the Hon. Richard Colbeck**  
**Acting Deputy Chair**

