Regulator Performance Framework 2018-19 self-assessment for Agriculture

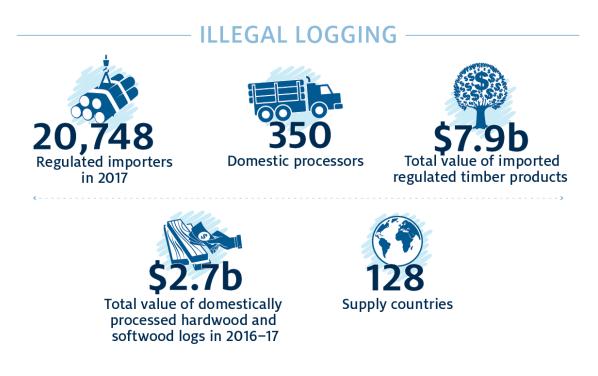
ILLEGAL LOGGING

Regulating timber product imports and raw log processing

The *Illegal Logging Prohibition Act 2012* (Act) and the *Illegal Logging Prohibition Regulation 2012* (**Regulation**) seek to reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and processing of illegally logged timber products in Australia.

The legislation makes it a criminal offence to import illegally logged timber and timber products into Australia, or to process domestically grown raw logs that have been illegally logged. Importers and processors are also required to undertake a structured risk assessment and mitigation process before importing a 'regulated timber product' (defined by their customs tariff codes) into Australia, or processing domestically grown raw logs. This is known as 'due diligence', the specifics of which are set out in the Regulation.

Figure 1: Illegal logging regulatory activities



As shown in Figure 1, the legislation affects a wide range of importing and processing businesses. In 2018-19, 20,748 importers imported approximately \$7.9 billion worth of regulated timber products into Australia. These products were imported from 128 different countries in more than 200,000 regulated consignments and included more than one million product lines. At a domestic level, in 2018-19 approximately 350 businesses processed Australian grown raw logs, worth a total of \$2.7 billion.

To manage our illegal logging compliance program, the department has adopted similar principles to those we use for biosecurity compliance. As a result, we focus our efforts on encouraging and prompting voluntary compliance, while responding to non-compliance in a way that is commensurate with the behaviours and risks involved.

The department's Illegal Logging Compliance Plan has been published online and articulates where our compliance activities will be concentrated. This includes a specific focus on products from fragile and conflict-affected regions; the Convention on International Trade in Endangered Species (**CITES**)

and other timber species of concern; complex supply chains; suppliers identified in non-government organisation's reports; and previous instances of non-compliance.

To gain a comprehensive understanding of illegal logging risks the department works with international and domestic organisations to increase our intelligence about high risk supply chains associated with forest products. The intelligence function within the department analyses an array of internal and external data sets; non-government organisation reporting and social media inquiries to ascertain those entities we suspect are engaged in non-compliant behaviour. We also collaborate with international bodies and partner countries to ensure that we have access to the latest available data. Based on this information the department formulates hypotheses, which we test using structured analytic techniques.

In 2019, we continued to conduct audits of due diligence systems, resulting in improvement in compliance rates, attributed to educational efforts and a growing familiarity with the laws and the due diligence requirements. Over the years there has been a mixed level of understanding of the due diligence requirements, with around a third of audited importers found to be compliant with their due diligence obligations. At the same time, the majority of audited domestic processors were found to be compliant with the legislation.

Where incidents of non-compliance occurred, we provided the non-compliant entity with further guidance to help them become compliant. In a number of instances, the initial non-compliant behaviour or approach was resolved by the entity working with us to rectify their due diligence process. Where an entity does not respond to such a cooperative approach, further compliance actions are considered. This led to the legislation's first infringement notice being issued to a non-compliant importer, for a sum of \$12,600.

To ensure the regulated community is aware of their illegal logging obligations, we have conducted a range of activities to increase awareness and understanding of the legislation and the due diligence requirements. This included refreshing and promoting the department's illegal logging webpages; undertaking outreach activities with relevant industry bodies; targeted social media advertising; education through online webinars; information alerts on applicable Biosecurity Import Conditions system (BICON) cases; and enhancing our audit reports to provide more clear and concise advice on areas for improvement.

We also continued to work with key trading partners on Country Specific Guidelines (**CSGs**), which provide helpful advice on forest legality arrangements amongst some of our key trading partners. This saw the publication of the new CSG for the Republic of Korea in late 2018. This added to our existing library of eight CSGs and six State Specific Guidelines (**SSGs**). Work is also being undertaken to review and update all of our existing CSGs and SSGs to ensure they remain accurate and relevant.

As required by the legislation, we also progressed a statutory review of the Act's first five years of operation. This assessed the extent to which the Act had met the government's illegal logging policy objectives. It also looked at operational issues encountered during the first five years and identified potential options for improving the legislation. A finalised report was tabled in Parliament in January 2019.

As part of its 2019 election campaign, the government committed to seeking advice from the Forest Industry Advisory Committee (FIAC) on the review's findings and to provide guidance on any

necessary strengthening of the laws. In August 2019, FIAC recommended delaying any significant amendments to the Act. This reflected the fact that the Act had only been fully operating for a short time (with the law's initial soft-start compliance period ending on 1 January 2018). The government has taken this advice into account and will not introduce any significant legislative changes until a further comprehensive review of the Act is carried out in late 2021. This will provide domestic processors and importers with a period of regulatory stability, allow them to manage their timber legality risks with greater certainty.

KPI 1 — We consider the impacts of our regulation

Objective: We take account of the operating environment of our regulated entities and stakeholders.

Performance Measures	Targets	Results
Our regulatory practices take into account the impact of regulation on stakeholders and regulated entities.	New and amended regulations are supported by best practice regulatory impact analysis that includes consultation on impacts.	 Rating: Managed We use a range of approaches to identify and detect non-compliance with the illegal logging laws. We use the findings together with gathered intelligence and information to improve the focus and effectiveness of our interventions. We aim to reduce unnecessary intervention on importers dealing with low risk products and more effectively prevent illegally logged products ending up in Australia's domestic market. We have adopted a regulatory approach that takes into account the compliance history of our regulated community and the risk of the imported product/s in relation to illegal logging. More information on how we apply this approach can be found in the illegal logging compliance plan. If we were to make significant regulatory changes, we would prepare a regulation impact statement (RIS) and consult with stakeholders on the impacts of any proposed changes. During 2018–19, we completed the Statutory Review of the <i>Illegal Logging Prohibition Act 2012</i>. This review was provided to the Forest Industry Advisory Council (FIAC) for consultation.

Performance Measures	Targets	Results
Our regulatory practices take into account the impact of regulation on stakeholders and regulated entities.	We engage with our stakeholders on implementation and compliance approaches.	 Rating: Managed We are working with organisations internationally and domestically to increase our intelligence about the high risk supply chains associated with forest products. We continue to engage in a range of domestic and international forums to improve administration of the illegal logging laws. This includes: regular discussions with Australian based industry associations, environmental and social groups, forest certification bodies and other interested parties participation in the APEC Expert Group on Illegal Logging and Associated Trade (EGILAT) participation in the European and Asian meetings of the Timber Regulation Enforcement Exchange (TREE) forum participation in the Global Timber Tracking Network (GTTN) participation in the Interpol Forestry Crime Working Group engagement on illegal logging issues with key forest product trading partners via regular bilateral discussions. We have developed a streamlined assessment procedure that allows us to engage more directly with stakeholders when non-compliance is detected.
Our regulatory practices take into account the impact of regulation on stakeholders and regulated entities.	We consider the operating environment impacting the Department and regulated entities.	 Rating: Managed We have reviewed our assessments procedures for entities selected for due diligence assessments to clearly identify and prioritise the obligations imposed on them by the illegal logging laws. This makes the information easier to understand and comply with as we note conducting due diligence is an additional impact on the regulated community. Using the illegal logging compliance plan we have focused our assessments on higher risk entities. This ensures higher interventions rates are put in place for higher risk entities.

KPI 2 — Our communication with regulated entities is clear, concise and targeted and effective

Objective: Our communication with regulated entities and stakeholders is effective and substantive.

Performance Measures	Targets	Results
Our guidance and information is tailored to the needs of regulated entities and accessible.	Risk-based frameworks, strategies and service standards are available on our website and the information is regularly reviewed to ensure currency.	 Rating: Managed We use a range of approaches to ensure the legislation and supporting guidance materials are readily available to our regulated community. This includes information on the department's illegal logging webpages, the provision of regular illegal logging e-updates, industry advice notices, and other supporting media. A series of webinar are available on the website to introduce people to the illegal logging laws and their requirements. The illegal logging compliance plan outlines how we would ensure compliance with the illegal logging legislation and the focus for our compliance activities. We manage the illegal logging hotline and illegal logging mailboxes to ensure we are effectively and consistently providing services for clients. We periodically review our client service procedures and practices, and make improvements where necessary.
We engage with regulated entities on potential changes to regulatory policies, practices or services.	Advice notices and guidance material are up to date, accurate, accessible and in plain English.	 Rating: Managed We have developed a range of information and guidance materials to improve awareness and understanding of the due diligence requirements. We worked with selected industry associations to ensure effective targeting and content of resources and guidance material. Associated work instructions and guidelines are also reviewed periodically to ensure they are relevant and up-to-date. We have provided a checklist for importers selected for an audit which outlines the minimum requirements that must be met to fulfil their obligations under the illegal logging legislation. We are currently working with key trading partners and our state governments to revisit and update our existing CSGs and SSGs.

Performance Measures	Targets	Results
We engage with regulated entities on potential changes to regulatory policies, practices or services.	We routinely consult with stakeholders on administration of regulation, and seek their advice on significant changes and explain our decisions.	 Rating: Managed No major changes have occurred to the administration of the regulations however if they were to occur we would consult with the regulated community. As an example we have consulted with FIAC on the Statutory Review of the <i>Illegal Logging Prohibition Act 2012</i>. Our stakeholders regularly engage with the department via the illegal logging hotline, illegal logging inbox, or in response to a request for information as part of a compliance audit. Staff monitoring these avenues are directly involved in the department's compliance activities and have comprehensive understanding of the relevant legislation and regulatory requirements. The illegal logging laws are regularly discussed at the Department of Agriculture Cargo Consultative Committee. This provides the department and international trade and logistics service providers industries with a consultative forum to ensure that effective biosecurity/illegal logging/imported food outcomes are delivered without unnecessary impediments to trade.

KPI 3 — Actions undertaken by regulators are proportionate to the regulatory risk being managed

Objective: We apply a risk-based, proportionate approach to compliance, engagement and enforcement activities.

Performance Measures	Targets	Results
Our regulatory frameworks are supported by best practice compliance strategies that are risk based.	We use information, data, analysis and intelligence-based approaches to determine risk, and consider the circumstances of regulated entities.	 Rating: Managed The department uses similar principles and the same differentiated approach to managing illegal logging compliance as we do for biosecurity compliance. The approach focuses on encouraging and prompting voluntary compliance and responding to non-compliance in a way that is commensurate with the behaviours of those involved. During the 2018–19 period, our compliance audits focused on high volume importers supplied from a high risk country or higher volume importers with a history of non-compliance. This was identified in our Illegal Logging Compliance Plan, which is available on the department's website. The department's illegal logging compliance audits are conducted in accordance with the Regulation's requirements and the best available science and advice. This is informed by intelligence and data analytics generated form internal and external sources and may include import trade data, illegal logging reports; shared intelligence; discussions with experts; and engagement in relevant forums. In addition, we continue to develop the data that underpins our illegal logging risk assessments and due diligence requirements of regulated entities. This is informed by intelligence and data generated from multiple sources. The department has strengthened our intelligence and analytical capabilities this year which has enhanced our ability to focus on higher risk entities and pathways.

Performance Measures	Targets	Results
Our regulatory frameworks are supported by best practice compliance strategies that are risk based.	Our regulators employ a range of compliance and enforcement tools.	 Rating: Managed Where non-compliance is detected the department provides guidance and advice to facilitate voluntary compliance. The department may also utilise a range of regulatory actions such as, targeted education, issuing notices of advices, increased compliance audits, infringement notices, and civil action and/or criminal prosecution when necessary. A guideline has been developed that clearly articulates the approach the department will take for differing levels of non-compliance and where escalation from educational tools to enforcement tools may be utilised.
Our regulatory frameworks are supported by best practice compliance strategies that are risk based.	Our staff are provided with appropriate training and guidance materials to support their compliance roles.	 Rating: Managed We offer a range of online training courses including introduction to risk management, regulatory practices and specific training on various legislation and regulations. Detailed work instructions and guidelines are available to all staff and these are reviewed periodically to ensure relevance.

Performance Measures	Targets	Results
Eligible regulated entities receive tailored approaches based on an understanding of their operating environment and risk profile.	We apply a graduated approach to compliance activities that provides for earned autonomy, within legislative parameters.	 Rating: Managed The department uses a risk-based approach to guide its illegal logging compliance program. The regulatory framework includes a range of graduated compliance and enforcement tools. The broad principles are set out in our compliance plans and relevant statements published on our website. Where non-compliance is detected the department provides guidance and advice to facilitate voluntary compliance. The department may also utilise a range of regulatory actions such as, targeted education, issuing of Notice of Advices, increased compliance audits, Infringement Notices and where necessary, and civil action and/or criminal prosecution when necessary. We adopt a regulatory approach that takes into account compliance history and overall risk of the activities. This is set out in our regulatory compliance plans and operating procedures. A guideline has been developed that clearly articulates the approach the department will take for differing levels of non-compliance and where escalation from educational tools to enforcement tools may be utilised. The audit assessment procedure has been updated and streamlined to ensure clear and concise information is provided where non-compliance in an entities due diligence system is detected. This gives entities precise educational information on where their systems need to improve which in turn gives them more autonomy over their systems. Where compliance has been demonstrated the department minimises intervention allowing compliant entities with more autonomy.

Performance Measures	Targets	Results
Eligible regulated entities receive tailored approaches based on an understanding of their operating environment and risk profile.	Our compliance responses are coordinated and undertaken with appropriate authority and accountability.	 Rating: Managed Compliance activities are undertaken in accordance with legislative requirements which specifies the minimum timeframe a request for information must be provided to a responder, using a delegate with the correct delegations, and what information can be requested. Good decision making and defensible decision making principles are used when conducting compliance activities under the illegal logging legislation.

KPI 4 — Compliance and monitoring approaches are streamlined and coordinated

Objective: We base our monitoring and inspection approaches on assessed risk and where possible, we take into account the operating context.

Performance Measures	Targets	Results
There are demonstrated benefits to regulated entities from our efforts to streamline and coordinate our regulatory activities.	We regularly review our business processes with a view to streamlining where possible.	 Rating: Managed As a result of the 'Reforming Australia's Illegal Logging Regulations' RIS process, the government amended the <i>lllegal Logging Prohibition Regulation 2012</i>. As a result personal or non-commercial importers and processors no longer need to include business information in their due diligence system. Entities deemed to be non-compliant with their due diligence requirements are provided with advice on how to comply and offer the opportunity to correct their non-compliance. Previously entities that were unable to demonstrate compliance in the first instance were recorded as non-compliant and targeted in future assessment rounds. The audit assessment procedure has been updated and streamlined to ensure clear and concise information is provided where non-compliance in an entities due diligence system is detected. This gives entities precise educational information on where their systems need to improve. Where compliance has been demonstrated the department minimises intervention, which streamlines the compliance assessment process.
There are demonstrated benefits to regulated entities from our efforts to streamline and coordinate our regulatory activities.	Our published service standards are met or exceeded.	 Rating: Managed There are no published service standards under the illegal logging prohibition legislation. However, advice regarding assessment outcomes and responses to enquiries are completed in a timely manner consistent with other areas of the department. Entities are selected for compliance audits in accordance with our illegal logging compliance plan. We assess due diligence requirements for regulated entities in accordance with the illegal logging compliance plan and information available on the illegal logging website.

Objective: We share information and coordinate our compliance activities within the department and with other regulators as appropriate, to minimise duplication and increase efficiency.

Performance Measures	Targets	Results
Business processes and services are improved through the better use of modern technology, and agreed service standards.	We analyse complaints information and other feedback from our regulated entities to understand trends and make improvements where possible.	 Rating: Managed We manage the illegal logging hotline and illegal logging mailboxes to ensure we are effectively and consistently providing service. The department also continues to periodically review and make improvements to its illegal logging service procedures and practices.
Business processes and services are improved through the better use of modern technology, and agreed service standards.	We collaborate and coordinate with stakeholders, other relevant regulators to reduce compliance costs and improve efficiency of our regulatory frameworks.	 Rating: Managed We have forged strong relationships with our counterparts in foreign and state governments. These relationships alert us to potential high risk products entering supply chains and instances where suspected trafficking in illegally logged timber is occurring. This information is also used to focus our communication and compliance activities—including any associated investigations. In addition to working with our partner agencies domestically and internationally, we are also active members of major international and national level fora on forestry and wildlife crime enforcement. These include, for example, the INTERPOL Forestry Crime Working Group, and the two Timber Regulation Enforcement Exchange (TREE). We also collaborate closely with other Australian agencies involved in monitoring forest related crime. This includes, in particular, the Department of the Environment and Energy which regulates the importation of internationally endangered plants and animals under the CITES.

KPI 5 — We are transparent and accountable in the way we administer our regulation

Objective: We make decisions in a manner that is timely, consistent and supports predictable outcomes.

Performance Measures	Targets	Results
When we make decisions we provide reasons and our advice is timely and consistent.	Our approach to regulation is clearly defined in publicly available regulatory statements and compliance plans.	 Rating: Managed We have a compliance plan and easily accessible information available publically on our website. The department is currently developing a Regulatory Practice Framework, which will to support a strengthened regulatory posture by outlining the department's approach to its regulatory responsibilities and providing principles to help guide regulatory staff in performing their duties.
When we make decisions we provide reasons and our advice is timely and consistent.	Our advice to regulated entities explains the reasons for decisions and provides information about avenues for review or complaint (as provided for in relevant legislation).	 Rating: Managed We conduct compliance-based assessments on regulated entities to determine their due diligence compliance in accordance with the legislation. Based on the outcomes of the assessments entities are either informed of their compliance or advice is provided with a comprehensive explanation of where the entity is non-compliant and how full compliance can be achieved. The department maintains a phone hotline and email account where the public and stakeholders can seek information and make complaints. The audit assessment procedure has been updated and streamlined to ensure clear and concise information is provided where non-compliance in an entities due diligence system is detected. This gives entities precise educational information on where their systems need to improve. The assessment procedure allows and encourages non-compliant entities to review and amend their

Objective: Reports on regulator performance are published in required timeframes.

Performance Measures	Targets	Results
We publish an annual self- assessment of our performance by the required timeframes.	Our regulators publish performance information specific to their regulatory frameworks.	 Rating: Managed We publish comprehensive information on our regulatory frameworks on the department's website.

Objective: Our assurance and integrity processes will ensure our compliance approaches are targeted to need.

Performance Measures	Targets	Results
Our regulatory actions are subject to internal assurance processes.	We verify the integrity and reliability of our compliance activities.	 Rating: Managed Compliance activities are conducted using standardised templates that were developed to increase their reliability, integrity, repeatability, transparency and defensibility. Compliance assessments are subject to peer review.

KPI 6 — Regulators actively contribute to the continuous improvement of regulatory frameworks

Objective: We establish cooperative and collaborative relationships with regulated entities and stakeholders to promote trust and improve the efficiency and effectiveness of our regulatory frameworks.

Performance Measures	Targets	Results
We take into account feedback from our regulated entities and performance information to improve operations of our regulatory frameworks.	We routinely consult with stakeholders on administration of regulation, and seek their advice on significant changes and explain our decisions (this target also applies for KPIs 2&5).	 Rating: Managed Engagement and discussion with industry stakeholders on potential changes to regulatory policies, practices or service standards is undertaken, as outlined throughout this document. We continue to work with key industry associations to improve understanding and awareness of the illegal logging laws. This includes the development of new industry-generated due diligence guidance materials and targeted outreach activities. During 2018–19, we submitted the statutory review of the illegal logging prohibition legislation. This review was tabled in Parliament and provided to the Forest Industry Advisory Council (FIAC) for consultation.

Performance Measures	Targets	Results
We take into account feedback from our regulated entities and performance information to improve operations of our regulatory frameworks.	We have a program of review for our regulatory frameworks and operational arrangements are fit for purpose and appropriate.	 Rating: Managed The department's Compliance Division provides regular feedback on emerging issues to the Forestry Branch. This is provided via weekly inter-branch meetings, regular SES level discussions, written briefs/reports (as required) and the Illegal Logging Project Board (which is chaired and attended by senior officials from across the department on a quarterly basis). Briefs are also provided to the Assistant Minister for Forestry and Fisheries re: the department's compliance activities. Our Enterprise Risk Management Policy and Framework is administered in accordance with the requirements of the Commonwealth Risk Management Policy. We require our Divisions to prepare annual risk management plans. We regularly review our risk governance arrangements, including our strategic risks and the department's risk appetite statement. We are undertaking a review to ensure that regulatory risks are adequately considered. Our compliance plans and strategies for illegal logging are available on our website and periodically reviewed.
We take into account feedback from our regulated entities and performance information to improve operations of our regulatory frameworks.	We review our regulatory performance and identify areas for improvement in our systems and processes.	 Rating: Managed We provide a rating of our performance as part of this report.

CASE STUDY – Illegal Logging Compliance

The department has seen a gradual improvement in compliance rates within the regulated community over the last few years, this is a positive trend that we aiming to continue. One of the mechanisms we have developed to assist in reaching this goal is the Illegal Logging Compliance Assessment Tool (**ILCAT**) and associated check list. While there is extensive information available on the department's website about conducting due diligence on regulated products and creating a due diligence system, the regulated community has expressed interest in being able to access a simplified and condensed summary of the due diligence requirements. The ILCAT fulfils this role by stepping out the due diligence obligations specified in the legislation in a single document that is easy to follow and in plain English.

Over this year we have conducted compliance assessments audits using the ILCAT and have seen the compliance rates of audited entities generally improve. We believe this is based on several factors. Firstly, the tool rates non-compliance on an escalating scale, with administrative non-compliances rated as minor, whereas more crucial aspects of conducting due diligence such as not reaching a supported risk conclusion or not using an adequate risk assessment method are rated as major and critical non-compliances. This has allowed audited entities to easily identify and focus on the high risk elements of their due diligence system.

Secondly, as each separate requirement under the legislation is identified in the ILCAT, the specific non-compliance can be easily isolated and advice about how to rectify the issue can be readily provided by the department. ILCAT is also assisting non-compliant importers by allowing them to resubmit their assessments after suitable education and advice has been provided. This enables the entities to consider the advice and where necessary provide additional supporting information to be reassessed. This allows previously non-compliant entities to amend their due diligence system, based on advice, to bring them into compliance.

The ILCAT is just one of many ways the department has engaged with the regulated community to enhance compliance under the illegal logging prohibition legislation. In seeking to improve overall awareness and understanding of the laws, we have:

- published a range of education and guidance materials, including a series of factsheets (several of which were translated into key trading partner languages), developed supporting templates, funded industry generated toolkits, published industry notices, and developed other tailored guidance materials for key industry groups
- undertaken workshops for overseas suppliers in key supply countries, hosted illegal logging 'roadshows' to help educate regulated entities, participated in industry run conferences and run online webinars
- provided updates on the laws through a dedicated illegal logging E-update service. The Eupdates are published on a regular basis and provide our over 1,000 subscribers with regular updates on the illegal logging laws, upcoming events and relevant publications
- provided supporting advice and guidance through our dedicated illegal logging inboxes (illegallogging@agriculture.gov.au and ILCA@agriculture.gov.au) and illegal logging hotline (1800 900 090)

• used the department's Twitter and Facebook social media platforms and paid advertising in other media platforms.

Despite the department's efforts, inadvertent non-compliance remain a problem. Approximately 50% of the regulated community are one off or two time importers. The department has found it challenging to educate this constantly changing low interaction cohort that is unlikely to be aware of the illegal logging laws. We will therefore continue to dedicate resources to educating our regulated community to promote greater levels of compliance.