



Sunseting Review of the Illegal Logging Prohibition Regulation 2012: overview paper

Summary

The Australian Government is undertaking a Sunseting Review of the Illegal Logging Prohibition Regulation 2012 (the Regulation). The Regulation is scheduled to cease to have effect or 'sunset' on 1 April 2023.

The review looks at whether to remake the Regulation. This includes whether the Regulation still fulfils its purpose of protecting the Australian market from illegally logged timber. It also considers ways to optimise the *Illegal Logging Prohibition Act 2012* (the Act) alongside the Regulation, drawing on recommendations from the 2018 Statutory Review. The Act's fitness-for-purpose will not be considered as it was previously reviewed as part of the Statutory review of the Act published in January 2019.

Some of the ways the laws could be improved include:

- reducing the instances where importers and processors must reassess illegal logging risks
- requiring that before bringing each regulated product into Australia, importers declare the:
 - timber species
 - harvest location
 - risk of illegal logging.
- adding powers to sample or seize goods at the border
- using timber ID techniques to check claims about timber types and origins
- publicising key findings
- simplifying requirements for low volume importers and processors
- reducing requirements for lower risk pathways
- updating the scope of regulated products and the exemptions.

Australia was among the first countries globally to introduce illegal logging laws. The review provides an opportunity to learn from overseas developments and ensure Australia's laws remain effective.

We encourage you to make a submission to inform the final recommendations. The Department of Agriculture, Water and the Environment aims to complete the review within 2021. Any subsequent changes to the Act and the Regulation will be carefully considered by government.

1 Australia's Illegal Logging Laws

The Act and Regulation aim to promote trade in legal timber products while reducing the environmental, economic, and social costs of illegal logging. The laws place obligations on timber importers and processors to identify and avoid importing or processing illegally logged timber.

Importers and processors must collect information about the products origins, assess the risk of illegal harvest, and take steps to reduce the risk if rated above 'low'. This process is known as 'due diligence'. Due diligence must be done before importing a regulated timber product or before processing domestically grown raw logs.

The Regulation establishes:

- the due diligence requirements
- the types of products subject to the due diligence requirements
- exemptions to the due diligence requirements
- systems or processes that satisfy parts of the due diligence requirements.

Many requirements under the illegal logging laws would not be present or enforceable if the Regulation is not remade. Having these requirements in place has helped create 'market access' opportunities for Australian exporters. The Regulation is therefore key to the operation and effectiveness of the laws.

2 Overview of potential reforms

The department is considering the following reforms to optimise the illegal logging laws. You can provide feedback on these potential reforms through taking the survey or uploading a written submission on the department's [Have Your Say](#) website. The Consultation Paper provides further details on each of these reforms, including their likely regulatory impact.

2.1 Provision of due-diligence information to government

The Regulation requires importers to collect and assess information about regulated timber products prior to bringing them into the country. They currently do not provide this information to the department ahead of the goods arriving at the border, only later where requested.

Providing key information upfront, such as the species, harvest location, and risk of illegal harvest for regulated timber products would help target compliance efforts.

Requiring importers to provide this information upfront would add minimal burden, as importers are already required to collect it. Existing systems could be adapted, such as the Integrated Cargo System, to streamline provision of this information to the department.

2.2 Strengthening at-border powers (sampling, detainment, and seizure)

Adding sampling powers to the laws would allow the department to verify claims about the timber species and harvest location of imported products. This would enable officials to work with the regulated community to pinpoint and address issues. Timber ID techniques are advancing globally, with several other nations already using them under their own illegal logging laws. Importers are also using these tools for their own assurance processes.

Adding seizure and detainment powers to the Act would allow the officials to intervene at the border for compliance purposes. These powers would be expected to be used on a very limited basis and target high-risk imports. Having goods potentially seized or detained provides a strong incentive for importers to do their due diligence and procure from low-risk pathways.

2.3 Additional statutory powers (publication, injunctions, undertakings)

The power to publish certain instances of repeated non-compliance could be added to the laws. This power would be designed to adhere to privacy and information law protections. The exercise of identifying entities would in most cases be avoided by constructive engagement with the regulatory authorities. Only repeated and serious instances of non-compliance would attract its usage.

Results comparing the timber species and harvest location against those stated by importers could also be published, without identifying the entities involved. This would help build awareness in the regulated community of problematic products on the market.

Publicising instances of non-compliance can encourage corrective action. Such powers exist under other Australian laws and are used in line with privacy and information law protections. These powers also have no anticipated regulatory burden. The information published would only reflect completed compliance activities.

The Act triggers most of the powers available under the *Regulatory Powers (Standard Provisions) Act 2014*. The exceptions are injunctions and enforceable undertakings, which could be added to provide further regulatory flexibility under the laws. Enforceable undertakings allow regulated entities to commit to a course of action, usually in response to instances of non-compliance. Where the commitment is not kept, the undertaking is enforceable in a court of law.

2.4 Ensuring the laws are efficient

Importers and processors that rarely import or process timber face the same obligations as high-volume traders. Obligations could be tailored to the different frequencies of importing and processing among regulated entities. For example, the Regulation could be tailored to only require businesses that import or process more than a certain number of regulated products to establish a due diligence system.

Stronger requirements could be included for frequent importers and processors. These requirements would aim to ensure the regulated community has up to date due diligence systems in place. Third-party auditors or a licensing system could be added for the regulated community that deals with large volumes of regulated timber products.

Adding 'deemed to comply' arrangements to the regulations could provide an opportunity to reduce regulatory burden. This would mean importers or processors do not need to undertake additional due diligence steps if the regulated timber product is certified under a recognised framework. The recognised frameworks are the Forest Stewardship Council (FSC) and the Programme for the Endorsement of Forest Certification (PEFC). A similar proposal was previously disallowed by the Australian Senate in 2018.

Another potential option is to add a 'deemed to comply' arrangement for products with appropriate Convention on International Trade in Endangered Species of Wild Fauna and Flora

(CITES) documentation. CITES certification could alternatively be added to the regulations as a third timber legality framework (alongside FSC and PEFC).

2.5 Updating the regulated products and exemptions

Some timber products, such as musical instruments, print media, and charcoal are not within the current scope of products regulated by the laws. Currently, due diligence must be done on domestically processed Australian raw logs made into any of these products and this may represent an uneven playing field for the domestic industry.

Products with less than 5% wood content could be exempted from regulation under the laws, as is done under the United States' illegal logging laws. It is unclear what proportion of regulated products this would exempt from Australian laws. In the US, it is estimated that this excludes 10–20% of products from regulation, although their regulated product scope is much different.

Consignments valued under \$1000 are currently exempt from due diligence requirements. Increasing this exemption threshold to \$5000 or \$10,000 would reduce the number of regulated import consignments by 6% or 12% respectively. While low-value imports do not mean they are low-risk, this exemption has the benefit of reducing the regulatory community's size, which assist in burden and costs and focusing compliance and monitoring efforts.

Any regulated product under 100 years old is currently subject to due diligence requirements under the laws. This threshold could be reduced to a more reasonable timespan for assessing the illegal logging risk. It is estimated this would result in a small reduction to the number of imports regulated.

2.6 Additional improvements

The Act does not provide definitions of 'processing', 'raw log' and 'timber'. Clarifying these terms could help the regulated community and administrators better understand when the obligations around processing raw logs apply.

The laws could be amended to require importers to check if there is a log export ban in place in the country of origin and prohibit imports from such nations. Information on where bans are in place would be made readily available to importers.

Administrative flexibility could also be increased. The Regulation currently must be amended every time there is an update to the country or state specific guidelines. These could be incorporated by reference into the laws to avoid the need for frequent legislative changes.

3 How to have your say

You can make a submission or complete a short online survey via the [online form](#) on the department's Have Your Say website. For those having problems accessing the form, submissions can also be sent by email to IllegalLogging@awe.gov.au.

The Consultation Paper provides further details on the potential reforms, including their likely regulatory impact, and features questions inviting stakeholder feedback. We encourage those wanting to make a detailed submission to read the information provided in the Consultation Paper.

The deadline for receipt of all submissions is 5:00 pm (AEST) on Tuesday 31 August 2021.

Questions about the review or the submission process can be directed to the review secretariat at IllegalLogging@awe.gov.au.