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Department of Agriculture and Water Resources

Statutory review of the *Illegal Logging Prohibition Act 2012*

Review report
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Glossary

Consignment value threshold	The exemption provided to importers by paragraph 6(1)(c) of the Illegal Logging Prohibition Regulation 2012, which excludes a consignment from the due diligence requirements where the regulated timber products in the consignment is less than $1,000.
Chain of custody	The chronological documentation or paper trail used to ensure the traceability of wood materials from a certified forest to any point along the supply chain.
Country Specific Guideline (CSG)	A document negotiated by the department with key trading partners that assists importers to understand the legal frameworks governing timber harvesting in the country of supply.
The department	The Australian Government Department of Agriculture and Water Resources
Domestic processor	An entity that processes domestically grown raw logs into another form.
Due diligence	In the context of Australia's illegal logging laws, the process of assessing and managing the risk that a timber product includes, or is derived from, illegally logged timber.
Illegally logged	Defined in the *Illegal Logging Prohibition Act 2012* as timber that has been 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.
Importer	A business or individual who imports regulated timber products into Australia.
Integrated Cargo System (ICS)	A system used by the Department of Home Affairs that allows for the electronic lodging of formal import declarations by brokers or importers for all goods imported into Australia.
Regulated community	Businesses and individuals affected by the *Illegal Logging Prohibition Act 2012* and its associated regulation. It is generally made up of importers of

	wood, pulp and paper products into Australia and processors of domestically grown raw logs.
Regulated timber product	A timber product that is regulated under Australia's illegal logging laws. For timber imports, this is defined by their customs tariff code. This includes most timber and wood-based products, such as sawn timber, pulp, paper, veneer, mouldings, wood panels, flooring, medium-density fibreboard, particle board, plywood and furniture.
Review period	For the purpose of this review this is the period from 28 November 2012 to 31 December 2017.
State Specific Guideline (SSG)	A document negotiated by the department with Australian state counterparts that assists domestic processors to understand the legal frameworks governing timber harvesting in that state.
Timber legality framework	An independent third-party certification scheme, or licence, that is listed in Schedule 2 to the Illegal Logging Prohibition Regulation 2012.
Timber products	For the purposes of this document, includes all timber and wood-based products.

Abbreviations

ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
the Act	*Illegal Logging Prohibition Act 2012*
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSG	Country Specific Guideline
the department	The Department of Agriculture and Water Resources
EU	European Union
EUTR	European Union Timber Regulation
FSC	Forest Stewardship Council
ICS	Integrated Cargo System
PEFC	Programme for the Endorsement of Forest Certification
the Regulation	Illegal Logging Prohibition Regulation 2012
RIS	Regulation Impact Statement
SSG	State Specific Guideline
US	United States of America

Summary

A review of the first five years of operation of the *Illegal Logging Prohibition Act 2012* (the Act) is required to be provided to the responsible Australian Government minister by 29 November 2018. This report sets out the findings of the statutory review.

The report assesses the extent that the Act and the associated Illegal Logging Prohibition Regulation 2012 (the Regulation) have met the government's policy objectives. It also highlights operational issues encountered during the first five years of operation and identifies potential options for improving the Act's operation.

Impact of the Act

Determining the extent to which the Act has achieved the government's policy objectives of preventing or reducing the risk of the importation and processing of illegally logged timber within Australia remains challenging. Previous reviews and anecdotal evidence have suggested that the Act's due diligence requirements are likely to be driving change and affecting Australia's timber supply chains (KPMG 2016). This view has been supported by the Department of Agriculture and Water Resources' own compliance audits, which have shown some businesses moving away from 'risky' supply arrangements because of the due diligence process.

The implementation of an extended 'soft-start' compliance period (where no penalties were applied for non-compliance) for a large part of the review period may have delayed some businesses' responses to the laws. Notwithstanding the department's efforts to raise awareness and understanding of the Act, the compliance audit process has shown that there continues to be high levels of noncompliance in the regulated community. Continued education and outreach activities with the regulated community, combined with a targeted compliance program, will be essential to improving future rates of compliance.

During the review period, the Act has been used as a legislative model for other jurisdictions and contributed to global efforts to combat the trade in illegally logged timber. While Australia has not progressed a prosecution under the Act during this period, successful action in other jurisdictions together with the significant penalties available under the Act provide a strong disincentive to trading in illegal timber.

While there is limited concrete data available to measure the impact of the Act, the available evidence suggests that the full implementation of the Act, in concert with other international measures, should deliver benefits to the Australian timber sector. This is in the form of a reduction in illegal timber in supply chains (from both imported and domestic sources). Further, the implementation of the Act accentuates the credentials of Australia's timber sector as a supplier of legal and sustainable timber products and facilitates 'market access' for Australian exporters of timber products to jurisdictions implementing timber legality laws.

Opportunities to improve the operation of the Act

The review has identified the potential for a number of regulatory and non-regulatory improvements that could enable the Act to better achieve its overall policy objectives. These include potential improvements that would:

- provide clarity on the type of activities that are covered by the Act
- increase the reach of the laws by broadening the conduct and products regulated under the Act

- provide the department with more tools and greater flexibility in undertaking compliance activities
- facilitate the department's efficient administration of the Act.

While some of these initiatives would provide useful outcomes for importers and processors and allow them to better understand the requirements of the Act, other proposals would be likely to have a significant impact on who is a regulated entity and what their obligations are under the Act.

Any changes to the Act and Regulation would need to be carefully considered to ensure that there are not any negative consequences for the overall operation of the Act and that changes would not unduly burden Australia's importing and processing communities. At the same time, noting the need for the regulated community to have a period of policy stability and certainty surrounding the Act, there may be a case for leaving the broader policy and legislative settings in the Act unchanged and undertaking a further review on the operation of the Act in a later period.

1 Introduction

Section 84 of the *Illegal Logging Prohibition Act 2012* (the Act) requires that a review of the Act's first five years of operation be provided to the responsible minister by 29 November 2018. This report sets out the findings of the statutory review.

The report examines the operation of the Act and the associated Illegal Logging Prohibition Regulation 2012 (the Regulation) during their first five years of operation. It assesses to what extent the Act and Regulation have met the government's policy objectives, highlights operational issues encountered during the first five years of operation and identifies potential options for improving the Act's operation.

The report has been prepared by the Australian Government Department of Agriculture and Water Resources—specifically, the department's Forestry Branch (with policy responsibility for the Act), incorporating input from the department's Compliance Division (with responsibility for ensuring compliance with the Act's requirements).

In preparing the report, the Forestry Branch has also drawn on trade data analysis provided by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES). Additional data has also been taken from the department's illegal logging compliance assessments and third party reports.

The review builds on, but does not seek to replicate, the findings of previous reviews of the Act and the Regulation, including the 2016 KPMG-led *Independent review of the impacts of the illegal logging regulations on small business* and the 2017 *Reforming Australia's illegal logging regulations: Regulation Impact Statement*. Copies of these earlier reviews can be found at: http://www.agriculture.gov.au/forestry/policies/illegal-logging/review-and-consultation

2 Terms of reference

2.1 Legislative requirements

The requirement to undertake a review of the first five years of the operation of the Act is set out in section 84 of the Act:

> **Review of the operation of the Act**
>
> 1. The Minister must cause a review to be undertaken of the first 5 years of the operation of this Act.
> 2. The persons undertaking the review must give the Minister a written report of the review within 12 months after the end of the 5 year period.
> 3. The Minister must cause a copy of the report of the review to be laid before each House of Parliament within 15 sitting days of that House after its receipt by the Minister.

The Act commenced on 28 November 2012. As a result, the final report of the review must be provided to the minister by 29 November 2018.

2.2 Terms of reference

The review's terms of reference (TOR) were approved by the then Assistant Minister for Agriculture and Water Resources, Senator the Hon. Anne Ruston, on 14 December 2017.

The TOR noted the review would build on recent reviews[1] of aspects of the Act and the Regulation and would include the following key elements:

1. An assessment of the impact of the Act during its first five years of operation. This will include an examination of how the Act has affected Australia's timber importing and processing sectors; the Act's contribution to international efforts to promote the trade in legal timber; and whether the Act is achieving the government's illegal logging policy objectives.
2. Consideration of the scope and requirements of the Act. This will include an examination of the products and entities regulated under the Act; and how the Act interacts with relevant domestic legislative frameworks governing the harvest and trade in timber.
3. The Department's experience in administering the Act during its first five years of operation. This will include an examination of the existing suite of monitoring, investigation, and enforcement powers provided for under the Act; the suitability of the tools and systems available to the Department to administer the Act; and any practical or administrative challenges experienced by the Department during this period.
4. An assessment of opportunities to improve the operation of the Act, or arrangements that could be implemented to support the administration of the Act, to better meet the government's illegal logging policy objectives.
5. Any related matters.

For the purposes of the review, where the TOR refers to 'the Act', the department takes this to mean that it encompasses the operation of both the primary legislation and the supporting Regulation.

[1] Including the 2016 KPMG-led Independent review of the impacts of the illegal logging regulations on small business and the Reforming Australia's illegal logging regulations: Regulation Impact Statement 2017.

3 Background

3.1 Australia's illegal logging laws

The primary element of Australia's illegal logging laws—the Act—came into force on 28 November 2012. The Act seeks to 'reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber products in Australia' (Australian Government 2012).

The Act 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. For the Act's purposes, 'illegally logged' is defined in section 7 of the Act as timber 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.

The Act also requires a structured risk assessment and mitigation process before importing a 'regulated timber product' (defined by their customs tariff codes) into Australia or before processing domestically grown raw logs. This is known as 'due diligence', the specifics of which are set out in the Regulation. The Regulation came into effect on 30 November 2014. The due diligence requirements are summarised at **Appendix A**.

3.2 Why were the illegal logging laws introduced?

Successive Australian governments have identified illegal logging as a significant global problem. The theft, laundering and trade of illegal timber has occurred throughout the world—in both developed and developing countries—and in all types of forest ecosystems, including natural forests, plantations, the tropics, and temperate and boreal forests.

The principal motivation behind these illegal activities is profit. Illegal operators, by their very nature, avoid many costs associated with sustainable forestry management, such as payment of royalties to governments and traditional owners, costs of compliance with harvest controls, labour costs and other legitimate costs. Illegal logging can have a negative impact on domestic timber prices, which can affect business decisions, industry investment, profitability and jobs in the Australian economy.

As a significant market for timber products, Australia plays an important role in contributing to international efforts to combat illegal logging and its associated trade. Australia's laws promote the strong, competitive and sustainable international trade in legal timber products while also reducing the significant environmental, economic and social costs of illegal logging.

The laws have also been an important part of the government's strategy for a sustainable Australian domestic forest industry. By reducing the risk that importers and domestic producers will introduce illegally sourced timber into the Australian market, the government is ensuring that Australia's forest industries are not undercut by illegally logged timber products.

Effective illegal logging laws not only make Australia a less attractive destination for illegal timber but also strengthen Australia's reputation in international markets as a supplier of sustainable and legal timber products. This recognition has become increasingly important as more countries implement their own laws to exclude illegally logged timber from their markets.

The illegal logging laws also complement other key government priorities, such as supporting action to mitigate climate change, combatting organised crime activities and alleviating the costs of corruption in developing countries (Australian Government 2012).

3.3 The cost of illegal logging

Illegal logging has wide-reaching impacts across ecosystems, communities and economies. The environmental impacts of illegal logging are immediate, with the loss of biodiversity, erosion and subsequent water pollution changing the ecological balance of large swathes of forest areas (Lawson & MacFaul 2010). This damage is compounded by the costs to approximately 'one billion forest dependent people', with additional stresses created as a result of criminal groups increasing instances of corruption, fraud, money laundering, extortion and murder in regions neighbouring forests (Nellemann & INTERPOL 2012).

Illegal logging can also impose a range of intangible costs on forest-dependent communities. These include reducing the standard of living; eroding sustainable livelihoods; destroying customary, spiritual and heritage values; encouraging a wide range of human rights abuses; using and exploiting foreign workers; reducing the quality of the forest environment; and contaminating food and water resources (Australian Government 2012).

The economic costs of the illicit trade in forest products are significant, with governments losing billions of dollars in revenue. In a 2006 report, the World Bank estimated that illegal logging on public land cost developing nations US$10 billion per year (approximately A$14 billion), with government revenue losses of around US$5 billion per year (approximately A$7 billion) (World Bank 2006). Illegal logging can also depress international timber prices, which harms legitimate businesses across the supply chain.

Because of the illicit and often clandestine nature of the activities involved, the scale of illegal logging is difficult to assess accurately. Estimates of the global extent and cost of illegal logging vary, but a recent joint United Nations Environment Programme and INTERPOL report estimated that illegal logging represents an annual cost to the global community of between US$51 billion and US$152 billion (between A$71 billion and A$212 billion), with illegally logged timber representing between 15 and 30 per cent of the global trade (Nellemann et al. 2016).

The World Bank has illustrated the scale of the issue by stating, 'every two seconds … a forest the size of a football field is clear-cut by illegal loggers' and 'in some countries timber exports include up to 90 per cent of illegally logged materials' (Pereira Goncalves et al. 2012). INTERPOL also recently noted that 'an area of forest equivalent in size to the territory of Austria disappears worldwide every year as the result of illegal logging' (INTERPOL & World Bank 2010).

3.4 Australia's exposure to illegally logged products

The available estimates suggest that Australia's exposure to the trade in illegally logged products may be significant. In 2013, the United Nations Office on Drugs and Crime estimated that up to US$500 million (approximately A$700 million) of Australia's timber and wood-based imports were potentially sourced from illegally logged timber harvested in Asia and the Pacific (UNODC 2013). This represented approximately 9.9 per cent of Australia's annual timber and wood-based imports at the time (which totalled $6.8 billion in 2013) (ABARES 2016). Other reports have provided similar estimates, with Jaako Pöyry Consulting suggesting that 9 per cent of Australia's timber product imports could come from illegal sources (Jaako Pöyry Consulting 2005).

Since then, the value of Australia's timber imports have grown to a total of $8.1 billion in 2017 (ABARES 2018). Assuming Australia's exposure to illegal timber has remained relatively static (i.e. not considering the potential long-term impact of the Act or other major changes in Australia's trading relationships), this would see Australia's share in the trade in illegally logged timber products sitting at approximately $800 million per annum.

3.5 International efforts to combat illegal logging

Illegal logging is recognised as a problem of global significance that requires effective action throughout the timber supply chain to mitigate its social, economic and environmental impacts.

The European Union (EU) and the United States of America (US) are two of the largest markets for timber products globally, and both have implemented legislative measures to combat the trade in illegally logged timber and wood products. This has been in the form of the European Union Timber Regulation (EUTR) and the amended US Lacey Act. Both of these legal frameworks place obligations on importers regarding the legality of the timber in their products.

These actions have been supplemented more recently by the emergence of new legislative frameworks within the Asia-Pacific region, including in Indonesia, Japan, Republic of Korea, Malaysia and Vietnam, all of which are implementing or exploring measures to address the trade in illegal timber. Together with the efforts of the EU, US and Australia, these initiatives have the potential to create a significant global market incentive for companies to trade in legally sourced timber (World Resources Institute & Forest Trends 2018).

The illegal logging of particular tree species has also led to several timber species being added to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In 2016, parties to CITES listed hundreds of rosewood species for protection. This was in response to the rapid and mostly illegal exploitation of this high-value timber species to feed the booming market for luxury Hongmu rosewood furniture (Forest Trends 2017).

At the same time, private sector and non-government initiatives have also sought to improve the traceability and sustainability of the world's timber resources. Prominent among these have been the third-party forest certification schemes such as the Programme for the Endorsement of Forest Certification (PEFC) and Forest Stewardship Council (FSC) certification schemes. These frameworks provide purchasers with a level of assurance about the lawful harvesting of the certified timber.

4 Implementation

4.1 Development of the Act and Regulation

The Illegal Logging Prohibition Bill 2012 was passed by the Australian House of Representatives in August 2012 before being debated and passed by the Australian Senate in November 2012. The Act formally received royal assent on 28 November 2012.

The Act was the culmination of several years of debate and development by the Australian Government, with some of its earliest roots traceable back to commitments made in the 2004 federal election.[2] During its development, the Act was subject to considerable scrutiny, including the development of an initial Regulation Impact Statement (RIS), two separate Senate inquiries in 2011, and referral to a joint parliamentary committee in 2012.

While the Act established the high-level framework for Australia's illegal logging laws, several operational elements, including the 'due diligence' requirements, were left to be established in the Regulation. The main areas identified for inclusion in the Regulation included:

- the 'due diligence' requirements
- the types of products that would be subject to the due diligence requirements
- exemptions to the due diligence requirements
- systems or processes that would satisfy elements of the due diligence requirements.

In passing the Act, the Australian Government made a commitment to finalise the Regulation within six months of the Act's passage. This was to allow the regulated community time to become aware of the requirements and make necessary adjustments to their business practices.

The Illegal Logging Prohibition Amendment Regulation 2013 was developed in consultation with key stakeholders, including representatives of domestic and foreign industry, overseas governments, and social and environmental groups throughout early 2013. The final Regulation was tabled in parliament in June 2013 and came into force on 30 November 2014.[3]

4.2 Early implementation

While the Act came into effect on 28 November 2012, a large proportion of its legal obligations did not come into force until 30 November 2014.

During this initial two-year 'transition' period, businesses and individuals were subject to prosecution for the offences established in the Act (e.g. importing products that contain illegal timber or processing domestically grown raw logs). However, importers and processors were not required to undertake due diligence to assess and manage the risk that the timber in their products might have come from illegal sources.

In the lead-up to 30 November 2014, the department undertook a range of activities to prepare for the implementation of the due diligence requirements. Those activities included:

[2] The 2004 A Sustainable Future for Tasmania policy statement committed the then Australian Government to requiring 'wholesalers and retailers to ensure the timbers they sell are sourced from sustainable forest practices'.

[3] With the commencement of the relevant sections on 30 November 2014, the Illegal Logging Prohibition Amendment Regulation 2013 merged into the primary regulation, the Illegal Logging Prohibition Regulation 2012. All further references to the Regulation in this report are to the amended 2012 primary regulation.

- working with stakeholders to develop education and guidance materials
- delivering a range of outreach activities
- negotiating CSGs and SSGs
- developing supporting information technology systems.

By the time the Regulation commenced in November 2014, the department had negotiated CSGs with six countries (Canada, Finland, Indonesia, Italy, New Zealand and the Solomon Islands) to guide importers' due diligence processes and had five SSGs in place to guide processors' due diligence (New South Wales, Victoria, Western Australia, South Australia and Tasmania).

The department also progressed arrangements for the PEFC and FSC chain of custody standards to be added to the Timber Legality Frameworks recognised by the Regulation.

In June 2014, the department published an illegal logging 'policy position' paper outlining how it would implement the due diligence requirements when they commenced in late 2014. The paper included a commitment to an initial 18-month 'soft-start' compliance period to allow businesses time to adjust to the requirements. During this period, the department indicated that it would not issue penalties to businesses or individuals who were found to be noncompliant with the requirements.

4.3 The KPMG small business review

In the lead-up to the commencement of the due diligence requirements, elements of the regulated community expressed concern over the potential regulatory burden associated with the requirements and particularly the impact on small and micro businesses.

These concerns were examined in the KPMG-led Independent Review of the Impacts of the Illegal Logging Regulations on Small Business, announced on 1 December 2014. The KPMG review sought to assess whether the due diligence requirements achieved 'an appropriate balance between the cost of compliance for small businesses and reducing the risk of illegally logged timber entering the Australian market' (Department of Agriculture and Water Resources 2014).

KPMG's review report was released in February 2016. It concluded that there were opportunities to amend the Regulation to strike a better balance between the costs of compliance and the risk of illegal timber entering the Australian market. KPMG also recommended several non-regulatory measures to improve the overall operation of the Regulation.

In responding to the review's findings in February 2016, the government gave in-principle support to KPMG's recommendations and committed to examining the proposed regulatory reforms through a RIS process. It also announced an extension of the 'soft-start' compliance arrangements until any associated amendments were in place.

The KPMG review report and the government response can be found on the department's illegal logging webpages: www.agriculture.gov.au/illegallogging

4.4 2017 Regulation Impact Statement

The reforms proposed by KPMG were considered alongside other regulatory options in the *Reforming Australia's illegal logging regulations: Regulation Impact Statement* process (2017 RIS).

The 2017 RIS assessed the costs and benefits of implementing KPMG's proposed regulatory measures and examined other options to improve the balance between the cost of complying with the Regulation and the risk of illegal timber entering Australia. It was informed by a public consultation process which received 46 written submissions from a range of stakeholders.

The 2017 RIS was published in October 2017. The 2017 RIS report can be found on the department's illegal logging webpages: www.agriculture.gov.au/illegallogging

A key recommendation of the 2017 RIS was the establishment of a 'deemed to comply' arrangement for timber products certified under the PEFC and FSC forest certification schemes. This would have streamlined and simplified the due diligence process for those businesses and individuals importing or processing timber certified under the two schemes.

A package of regulatory amendments was tabled in parliament in late October 2017, to commence on 1 January 2018. In introducing the amendments, the government also announced that the initial 'soft-start' compliance period would end on 1 January 2018. After this date, businesses and individuals who were noncompliant with the due diligence requirements could face significant financial penalties.

On 8 February 2018 the proposed 'deemed to comply' arrangement was debated in the Australian Senate and the associated regulatory amendments were disallowed. Other amendments in the package were not affected by the disallowance motion.

4.5 Communication and education

In implementing the Act, the department has conducted a range of activities to increase awareness and understanding of the laws and the due diligence requirements.

Key communication and education activities undertaken during the first five years included:

- publishing a range of education and guidance materials. This included information on the department's illegal logging webpages (www.agriculture.gov.au/illegallogging), a series of fact sheets (several of which were translated into languages of key supply countries), supporting templates, industry notices and other guidance materials
- working with industry associations to develop guidance materials that provided tailored advice on complying with the laws to key industry groups
- conducting workshops for overseas suppliers in key supply countries, illegal logging 'roadshows' and webinars to educate importers and processors, industry-hosted events and participation in domestic conferences
- providing updates on the laws through the department's dedicated illegal logging E-update service. Published on a two- to three-monthly basis, the E-updates provide subscribers with regular updates on the illegal logging laws, upcoming events and relevant publications
- providing supporting advice and guidance through the department's dedicated illegal logging email inboxes (illegallogging@agriculture.gov.au and ILCA@agriculture.gov.au) and illegal logging hotline (1800 900 090)
- using the Twitter and Facebook social media platforms and paid advertising in other media platforms to publicise the laws.

5 Assessment of the impact of the Act

5.1 Impact on the importing and processing sectors

The Act's requirements apply to the first points of entry of timber into the Australian domestic market (i.e. importers and domestic processors). The Act requires regulated entities to understand what timber is in the product they are importing or processing and where it has come from.

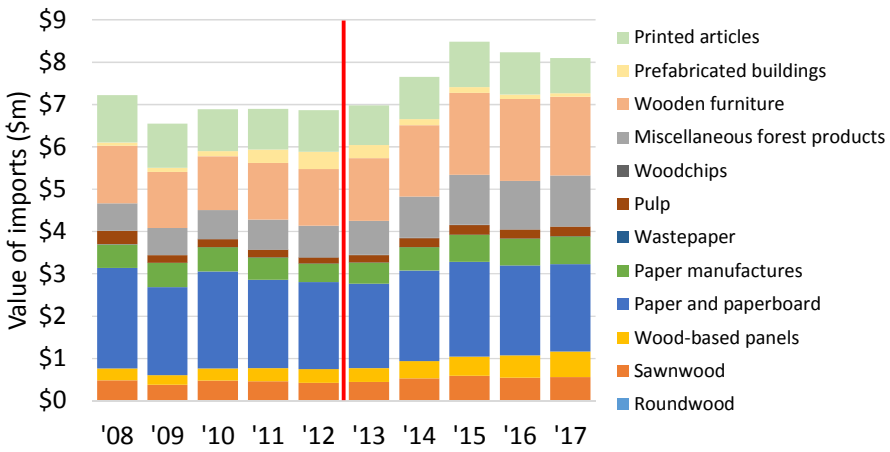
This section examines some of the broader trends that occurred in the importing and processing sectors during the review period.

Impacts on timber imports

In 2017, the most recent complete year for which trade data is available, the total value of primary and secondary wood products imported into Australia was $8.1 billion (ABARES 2018b). Around $2.78 billion, or 34 per cent, of this was secondary wood products (mostly wooden furniture) and around $2.06 billion, or 25 per cent, was paper and paperboard products.

As shown in Figure 1, the value of timber imports into Australia has been generally increasing over time. For example, the total value of imports averaged around $6.9 billion a year between 2008 and 2012 (i.e. prior to the Act's commencement) before increasing to $8.5 billion in 2015 and then falling slightly to current levels ($8.1 billion in 2017).

Figure 1 Value of Australian timber imports (2008–2017)



Source: ABARES 2018b

Approximately 85 per cent of traded products fall within the scope of the Act's due diligence requirements and are designated as 'regulated timber products'. Between 2012 and 2017, businesses and individuals imported a total of approximately $40.7 billion worth of regulated timber products into Australia. This was made up of 5.4 million different regulated timber product lines in approximately 1.2 million consignments.

Throughout the review period, the value of the imported regulated timber products grew steadily. Starting at $5.9 billion in 2012 (the year the Act came into force), it peaked at $7.5 billion in 2015 before declining slightly to $7.2 billion in 2017. This represented an overall increase of 22 per cent in the value of regulated timber products being imported into Australia.

Paper products continued to represent the greatest value of regulated timber products imported during the review period ($16.1 billion), closely followed by furniture ($13.6 billion), wood and wooden articles ($9.9 billion) and pulp ($1.1 billion).

The number of regulated import lines (i.e. type of products) also grew significantly during the period, increasing by 18 per cent a year from 563,848 product lines in 2012 to 1,091,233 product lines in 2017. Most of this growth can be attributed to imports of furniture products, which increased by 24 per cent a year over the period and accounted for 69 per cent of all import lines. By itself, tariff code 9403 (Other furniture) represented 55 per cent of all regulated timber products imported during the period. Table 1 summarises Australia's regulated timber imports in 2017.

Table 1 High-level figures: Australia's regulated timber imports in 2017

Item	Number/Value
Number of regulated importers	20,563
Number of regulated consignments (which could be made up of several product lines)	207,636
Number of regulated product lines (represents a single line of regulated products)	1,091,233
Number of import pathways (unique importer–supplier–product combinations)	207,013
Total value of regulated timber products	$7,208,090,857
Imported value of wood and wooden articles (tariff chapter 44)	$1,923,908,602
Imported value of pulp (tariff chapter 47)	$221,894,293
Imported value of paper (tariff chapter 48)	$2,683,623,994
Imported value of furniture (tariff chapter 94)	$2,378,663,967

Source: ABARES 2018b

Summary: It is evident that there has been a sustained growth in imports of regulated timber products over the review period. However, in a period of broad economic growth and in an environment where the due diligence obligations were in a period of transition, it is difficult to clearly attribute any significant impact on the value of imported timber products to the Act's operation.

Sources of timber product imports

Australian importers source timber products from a wide range of supply countries. In 2017, regulated timber products were imported from 135 different source countries. Around $5.7 billion (approximately 75 per cent) of these products were sourced from our 10 largest suppliers (see Table 2). These suppliers remained relatively static throughout the five-year review period.

Table 2 Value of regulated timber product imports by source country ($ million)

Source country	2012	2013	2014	2015	2016	2017
China	1,966	2,075	2,370	2,779	2,712	2,808
New Zealand	587	583	633	659	654	622
Indonesia	429	391	476	539	544	508
Malaysia	382	390	419	462	484	453
United States	305	326	334	386	321	334
Finland	211	231	212	183	167	171
Germany	176	193	212	192	190	180
Vietnam	145	173	241	294	310	300
Italy	158	159	184	203	197	190
Republic of Korea	174	161	183	191	165	159
Rest of world	1,344	1,388	1,471	1,610	1,557	1,483
TOTAL	**5,879**	**6,070**	**6,733**	**7,498**	**7,300**	**7,208**

Source: ABARES 2018b

China has continued to be Australia's major supplier, accounting for $2.8 billion of Australia's regulated timber imports in 2017. During the review period, China's supply of regulated products increased from 30 per cent of all regulated imports in 2012 to 39 per cent in 2017.

Vietnam has also significantly increased its prominence as a timber supplier. During the review period, it doubled its share of regulated timber imports, increasing from 2 per cent ($145 million) of the imports in 2012 to 4 per cent ($300 million) in 2017. Other key trading partners included New Zealand, Indonesia, Malaysia and the US.

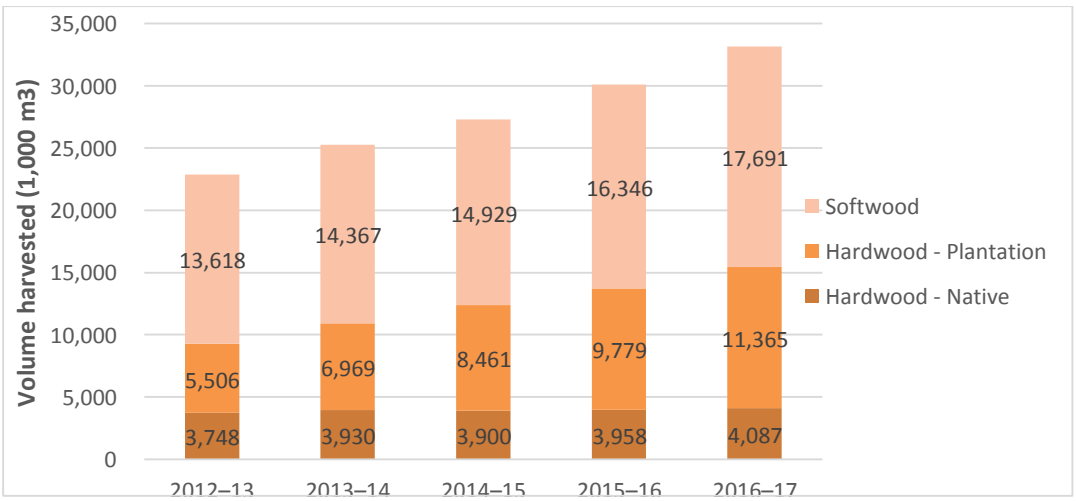
Summary: Over the review period, Australian importers have continued to source regulated timber products from a diverse range of supply countries. While there has been some variability between supply countries over the period, it is not possible to directly link any changes in trade patterns to the Act's implementation. Indeed, during the review period, there was no apparent shift away from what might be considered 'riskier' or more complex supply chains. This may be attributable to the fact that the due diligence obligations were initially implemented under a soft-start arrangement and importers may not have been actively assessing the possibility of risk.

Impacts on domestic timber processing

Throughout the review period, a total of 138.6 million cubic metres of hardwood and softwood logs were harvested in Australia (ABARES 2018a). This included 61.7 million cubic metres of hardwood (from both native and plantation sources) and 76.9 million cubic metres of softwood (largely sourced from plantation sources).

As shown in Figure 2, the volume of domestically harvested logs grew steadily throughout the review period. Starting at 22.8 million cubic metres in 2012–13, it grew to 33.1 million cubic metres in 2016–17—an overall increase of 44 per cent in the volume of harvested logs. The largest increase came from the hardwood plantation sector, which saw a 106 per cent increase in the volume of harvested logs.

Figure 2 Logs harvested in Australia 2012–13 to 2016–17



Source: Australian Forest and Wood Product Statistics, ABARES 2018a

At the same time, the number of domestic hardwood sawmills decreased by 21 per cent, from 232 mills in 2011–12 to 184 mills in 2016–17 (ABARES 2018a). The majority of this decrease (20 per cent) occurred between 2011–12 and 2013–14, with the remaining occurring between 2013–14 and 2016–17. Hardwood sawmills predominantly use logs from public native forests.

The number of softwood, cypress pine, and post and pole mills remained relatively constant during the period. Softwood sawmills source almost all their logs from plantation forests. Cypress pine mills source virtually all their logs from public native forests.

As show in Table 3, the number of wood-based panel, and pulp and paper mills also remained relatively constant. The number of log and woodchip export facilities, including log marshalling facilities, increased by 24 per cent, from 25 facilities in 2011–12 to 31 facilities in 2016–17.

Table 3 Number of wood processors, Australia, 2011–12 to 2016–17

Type of facility	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17[a]
Hardwood	232	200	186	184	182	184
Softwood	63	61	61	60	60	64
Cypress pine	22	20	16	17	17	20
Post and pole	21	14	16	18	21	19
Wood-based panel	26	24	23	24	25	25
Pulp and paper	15	15	14	14	14	14
Log and woodchip export[b]	25	27	27	30	32	31
Total	404	361	343	347	351	357

a Number of wood processors for 2016–17 is an estimate. **b** Includes log marshalling.
Source: ABARES 2018a

Summary: Over the review period, the amount of logs harvested in Australia grew significantly. At the same time there has been a period of consolidation for Australian wood processors. While it is not possible to attribute any specific changes in the domestic processing sector to the Act, the department's engagement with the sector suggests that the Act is likely to have a limited impact on legitimate processors. Domestic processors are generally engaged in short supply chains with known forestry managers, and many operations are PEFC or FSC certified. Accordingly, timber processors generally have a strong understanding of the legality of their products.

5.2 Contribution to international efforts

The Act is specifically designed to address the international trade in illegally logged timber. Alongside the EUTR and the US Lacey Act, it has played an important role in increasing scrutiny over the trade in timber products and encouraging transparency in timber supply chains.

In recent years, Indonesia, Japan, the Republic of Korea and Malaysia have all taken similar steps to develop import controls designed to keep illegally logged timber out of their markets. In developing these laws, some of these countries have drawn on elements of Australia's illegal logging framework to require importers to avoid risks in timber supply chains. It is understood that China is also considering efforts to address the trade in illegal timber.

When fully operational, these laws, together with the Act, the EUTR and the US Lacey Act, will have the potential to create a significant incentive for companies to trade in legally sourced timber. Combined, these markets would represent a significant percentage of the global timber trade—approximately 90 per cent in 2016 (Forest Trends 2017).

The review period has also seen some of the first successful prosecutions under these laws, with the US Government and several EU member states bringing cases against businesses who were in breach of their respective laws. While Australia has not yet progressed any prosecutions under the Act itself, matters have been pursued and prosecutions have been progressed under related legislation administered by the Australian Government and state governments.

A high-profile example of a successful illegal logging case is the US Government's prosecution of Lumber Liquidators (a flooring supply company in the US), which saw Lumber Liquidators found guilty of importing illegally sourced flooring from China and ordered to pay over $17 million in criminal fines and penalties (United States Department of Justice 2016). This sentence demonstrates the serious consequences of violating illegal logging laws and provides key lessons for companies trading in timber products.

The Act also complements non-government efforts to promote the transparency in timber supply chains. PEFC and FSC certification standards have undertaken significant work aimed at improving the transparency of timber supply chains.

Summary: During the review period, the Act has acted as a legislative model for other jurisdictions and contributed to global efforts to combat the trade in illegal timber. While Australia did not progress a prosecution under the Act during the review period, successful action in other jurisdictions, together with the significant penalties under the Act, provide a strong disincentive to trading in illegal timber.

5.3 Is the Act achieving the government's policy objectives?

By implementing the Act, the Australian Government has sought to drive greater transparency and accountability into Australia's timber supply chains. By requiring regulated entities to actively ask questions and understand the source and supply chains of the timber they are importing or processing, the primary goal is that only timber products with little or no risk of having been illegally logged are imported into or processed in Australia.

Despite its broad coverage, determining the extent to which the Act has achieved the government's policy objectives to reduce or remove illegally logged timber from Australia's domestic markets is challenging. This is due to:

- the illicit nature of the trade in illegally logged timber and timber products (which limits the ability to accurately assess impacts)
- the extended 'soft-start' compliance arrangement, which has meant that the due diligence obligations were not fully implemented during the review period
- the offences and powers under the Act remaining untested during the review period
- the inability to ascribe some of the trends in the international trade to the operation of the Act
- the potential impact of other international efforts to combat illegal logging.

Nonetheless, the KPMG review found evidence that the due diligence requirements (even under the soft-start arrangements) were driving change and affecting Australia's timber supply chains (KPMG 2016). Anecdotal evidence outlined in the KPMG review indicated that the Act's requirements were encouraging some businesses to avoid suppliers who were unable, or unwilling, to assist the importer to minimise the risk associated with their products.

This view is supported by the department's own compliance assessments, which have shown some businesses moving away from 'risky' supply arrangements as a result of the due diligence process. While the department continues to face challenges in generating awareness and understanding of the illegal logging laws, its compliance interactions during the review period showed that some businesses have embraced the laws and integrated due diligence into their business practices.

Discussions with stakeholders and non-government organisations have also suggested a growing awareness of Australia's laws amongst overseas suppliers. The department has heard from several sources that producers in some 'risky' countries now differentiate supply to markets based on their

laws, with legal timber being directed towards markets that require legality to be demonstrated, such as Australia.

A 2018 joint paper by the World Resources Institute and Forest Trends noted that, due to the emergence of legislation such as the Act, 'momentum in much of the private sector is moving in the right direction on timber legality' (World Resources Institute & Forest Trends 2018). However, it suggested that 'action by companies is still very much conditioned on the extent to which they perceive there to be significant reputational, legal, or material risk arising from the presence of illegal timber in their supply chains'. It concluded by saying, 'future progress on private sector compliance therefore depends on both energetically enforcing timber legality measures in countries where they are already in place, and establishing binding measures in the many major markets that do not have effective legislation'.

In the longer term, the full implementation of the Act, in concert with other international measures, should deliver greater benefits to the Australian timber sector, with illegal timber products less prevalent or removed from the Australian market. An economic analysis based on the Global Forest Products Model suggested that illegal timber depresses world prices by an average of 7 to 16 per cent depending on the product (Seneca Creek Associates 2004).

The Act is also likely to provide long-term benefits to Australia's producers and exporters of timber and wood-based products. Recent experience with emerging timber legality laws in the Asia-Pacific region has demonstrated the 'market access' benefits of a comprehensive timber legality framework such as the Act to demonstrate the credentials of Australia's timber exports in foreign markets.

Summary: While there is limited concrete data available to measure the impact of the Act in reducing Australia's exposure to illegal timber, the available evidence suggests that the full implementation of the Act is likely to support the government's policy objectives. Ongoing efforts by the department to educate regulated entities on the Act's requirements, combined with an effective and growing compliance presence in the future, is also expected to support these objectives. While the Act is focused on Australian importers and processors, continued advocacy and engagement with foreign trading partners to promote legal and transparent supply chains will further supplement achievement of the Act's objectives.

6 Scope of the Act

6.1 Products regulated under the Act

Australia imports a wide range of products that are made of, or have components of, wood, pulp or paper. This includes easily identifiable items like raw logs, sawnwood, floorboards, wooden frames and plywood. It also includes products such as nappies, paperware and teabags, which may be less recognisable as 'timber products'. In 2017, the total value of the primary and secondary wood products imported into Australia was $8.1 billion (ABARES 2018b).[4]

While the prohibition in the Act against the importation of illegally logged timber applies to all imported products containing wood, pulp or paper, the 'due diligence' requirements in the Regulation only apply to a prescribed range of 'regulated timber products'.

Regulated timber products are defined by their customs tariff codes. They include wood and wooden articles (tariff chapter 44), pulp (tariff chapter 47), paper (tariff chapter 48) and furniture (tariff chapter 94). The list includes 47 tariff codes, identified at either their four- or six-digit code level.

A summary of the regulated tariff codes is included at **Appendix B**. The summary includes:

- the value of the products imported under each regulated tariff code in 2017
- the number of individual product lines imported under each regulated tariff code in 2017
- the number of importers importing products under each regulated tariff code in 2017.

Products not regulated

Not all timber products fall within the scope of the regulated tariff codes. Certain imported goods made of timber or wood fibre, such as musical instruments, sporting goods and printed materials, are not regulated. Packaging materials used to transport other products are also not regulated. Furthermore, bamboo, rattan, osier and vegetable matter are also, for the Act's purposes, not considered timber products.

Section 6 of the Regulation also provides for the following exemptions from the due diligence requirements:

- where a regulated timber product is made, or partially made, from post-consumer recycled material, the recycled content is exempt
- a consignment where the value of the regulated timber products is worth less than $1,000. This is referred to as the 'individual consignment value threshold'.

Data taken from the department's compliance assessments suggest that between 5 and 6 per cent of regulated imports is likely to have some form of recycled content (and thus are exempt or partially exempt from the due diligence requirements).

The existing $1,000 consignment value threshold also removes a number of consignments from the Regulation's scope, with approximately 60,163 consignments, worth approximately $15 million, exempted. This also removes 10,220 importers from the Regulation's scope (ABARES 2018b).

[4] This figure does not include products that are likely to have some timber or wood content—e.g. musical instruments, boats and clocks—but do not fall within the major timber or wood-related tariff codes.

Development of the regulated tariff codes

The list of regulated timber products was developed through a series of workshops with stakeholders in 2013. In developing the list the stated objective was to develop a comprehensive list that was 'efficient for importers and trading partners and effective in achieving the goals of the Australian Government in combatting illegal logging while supporting productive markets' (Department of Agriculture and Water Resources 2013).

In seeking to meet this objective, the government considered:

- the historical value and volume of the wood or timber products imported into Australia, with a view to capturing 95 per cent of Australia's total timber product imports
- where possible, harmonising the regulated timber products with existing regulatory regimes, including the US Lacey Act and the EUTR
- Australia's World Trade Organization obligations, with a view to avoiding a disproportionate impact on trading partners
- fairness amongst competing industries to ensure that particular industries were not inadvertently disadvantaged
- where possible, ensuring compliance with the Regulation was not overly burdensome or cost-prohibitive and that the laws could be administered effectively and efficiently.

Based on these considerations, the list of regulated timber products was published in Schedule 1 to the Regulation in late 2013.

The department now has several years of experience in administering the Act. This, together with other international experiences, suggests there may be opportunities to refine the existing list of regulated tariff codes to improve the Act's efficiency and effectiveness.

Issue: Refinement of the regulated timber products

The department's experience suggests that some timber products which are currently not regulated under the Act may have significant exposure to illegal sources. Examples include musical instruments, timber boats and vessels, and charcoal. These products have seen increased international scrutiny after high-profile investigations and prosecutions in other jurisdictions.

As importers are not currently required to undertake due diligence on these products, importers may be unaware of the source of and risks associated with trade in these items. In these circumstances, there may be value in examining the trade in these products to determine whether these potentially 'high-risk' products should be included as regulated tariff codes under the Regulation.

The value, number of imported product lines and number of importers of some of these non-regulated tariff codes in 2017 are set out in **Appendix C**. The appendix includes some product types that are imported in limited quantities (e.g. railway sleepers, stakes and wood flour) as well as more regularly imported goods (e.g. printed goods, wooden vessels and sculptures).

The EU has been undertaking a public consultation process (European Commission 2018) to revisit the scope of products regulated under the EUTR. The EU is specifically looking at:

- amending the EUTR to include new categories of products. Potential additions include seats with wooden frames, printed media, musical instruments and other wood articles
- alternatively, including all products that may contain timber within the EUTR's scope and specifically defining products that do not fall within its scope.

Any action to amend the existing regulated tariff codes would need to carefully consider both the associated increase in the Act's regulatory burden and the impact on the law's effectiveness. Several of the tariff codes identified have large numbers of importers and product lines. For example, the inclusion of 'Chapter 49—Printed books' would almost double the number of regulated importers.

Further consideration would also need to be given to the particular characteristics of products. For example, the inclusion of musical instruments might need to be differentiated to avoid issues associated with the movement or importation of musical instruments commonly associated with travelling musicians and performers (where the instruments could be of an age where establishing providence and legality would be extremely challenging).

In the context of the department already finding it challenging to communicate to and educate the diverse range of regulated importers, and with many existing importers still unaware of the laws, an informed approach would need to be taken to any amendments that would significantly increase the reach of the Act.

Summary: The achievement of the Act's policy objectives could potentially be improved by expanding the scope of regulated timber products to include some additional 'high-risk' product types. However, there are inherent risks in potentially extending the Act's reach beyond the department's capacity to effectively administer the Act. Consideration needs to be given to whether the department could effectively communicate to a broader range of importers so that they are aware of their obligations and change risky behaviours. Further assessment would also need to consider the implications for the department's enforcement of the Act.

Issue: Treatment of 'peripheral' products

The existing regulated tariff codes capture a number of 'peripheral' products that contain limited wood fibre content or are only imported in very limited quantities. Examples include turf spray, empty tea bags, surgical gowns, puppy mats, cardiograph paper, sticky tape rolls and engine gaskets.

The value in regulating products of this nature is unclear. Experience has shown that importers of these products are largely unaware of the illegal logging laws, and it can be challenging to administer compliance outcomes for these products.

For some of these products (e.g. sticky tape rolls with a cardboard roll centre), the wood fibre content can be relatively minor. In these circumstances, there may be value in developing a '*de minimis*' exemption which would exclude products containing only a minimal amount of wood fibre.

A similar exemption is being considered by the US Government for application to the Lacey Act. Under the US proposal, where the wood fibre content represents less than 5 per cent of the product's total weight (up to a maximum of 2.9 kilos of wood fibre content), the product would be exempt from the Lacey Act's declaration requirements (APHIS 2018).

Establishing such an exemption would relieve importers of the burden of conducting due diligence on very small amounts of wood fibre. However, care would need to be taken in the design of any exemption to address the potential for abuse and to avoid the inadvertent exclusion of high-risk timber products—e.g. a furniture item partially clad with high-value timber veneers.

There are similar issues with applying the regulatory controls of the *Biosecurity Act 2015* to peripheral products. The *Biosecurity Act 2015* provides the department's secretary with the power to make formal 'determinations' that allow for certain goods to be declared as non-prohibited goods. This provides the department with significant flexibility in establishing what is, and is not, a prohibited good.

A similar approach could assist with the refinement of the products regulated under the Act. It would allow for a more responsive regulatory framework that could be amended to reflect emerging issues or information. However, this flexibility would need to be weighed against the potential uncertainty that such a discretion would create, together with the removal of such decisions from parliamentary scrutiny.

Alternatively, or in addition to the two previous measures, the department could revisit the existing tariff codes to identify opportunities for refining the codes to remove some of these products from the scope (possibly by moving away from certain four-digit tariff codes to more targeted six- or eight-digit codes). This approach could also address those products that are only imported in relatively small quantities (due to their inclusion in a higher four-digit tariff code).

Any revision of the tariff codes would need to be informed by a detailed assessment to ensure that key products were not inadvertently removed from the Act's scope and to avoid any risk of potential misclassification.

Summary: The Act's effectiveness could potentially be improved by implementing measures to exempt or remove certain classes of 'peripheral' products (which have relatively limited timber or wood content) from the requirements to undertake due diligence. This could take the form of a new '*de minimis*' exemption, the development of a broader departmental power to 'determine' that certain products fall outside the Act's scope, and/or the further refinement of the existing tariff codes. A narrower range of products would allow the department's communication and compliance activities to target importers of products that are more traditionally considered timber and wood products. Any products to be considered for removal from the Act's scope should first be assessed for their potential to include illegally harvested timber.

Issue: Due diligence on complex products / supply chains

A number of the regulated products (e.g. some furniture, some paper products and medium-density fibreboard (MDF)) include multiple, or highly processed, timber elements. Some products also have complex supply chains that include multiple points of supply, processing or trade. In these situations, it can be challenging for an importer to conduct due diligence. During the review period, the department regularly received questions about what is required when trading in these products.

The treatment of complex products and supply chains was examined during the development of the Regulation. At that time certain parties sought to exclude products with complex manufacturing processes or supply chains from the due diligence requirements. However, these proposals were ultimately dismissed due to the negative impacts that such an exemption would have on the Act's effectiveness and the difficulties in applying a consistent exemption for complex products.

The issues associated with excluding complex products remain. One option to improve importer outcomes would be for the department to prepare further guidance on what it expects when importers are dealing with complex products. Effective communication has the potential to increase clarity on what is expected and address issues with undertaking due diligence on complex products.

Summary: While complex products can present challenges for importers in undertaking effective due diligence, they remain an important element of the products regulated by the laws and should not be removed from the scope of the Act. Publication of new and improved information detailing the department's expectations of importers undertaking due diligence on complex products has the potential to clarify what efforts importers must apply to undertake compliant due diligence.

6.2 Entities regulated under the Act

The obligations set out in the Act affect a sizable number of businesses and individuals. Anyone who imports a product that contains timber or wood content or processes domestically grown raw logs[5] is potentially subject to the Act's prohibition on illegally logged timber. This could include a wide range of regulated and non-regulated timber products. In 2017, over 66,000 businesses and individuals imported products that fell within a tariff code that is likely to have some sort of timber or wood fibre content (ABARES 2018b).

There is also a core 'regulated community', which includes entities that need to undertake due diligence on the products they import or process. This is a smaller subset, and in 2017 it consisted of 20,500 importers and between 300 and 400 domestic timber processors (ABARES 2018b).

During the review period, the number of importers grew steadily from 17,276 in 2012 to 20,563 in 2017. This reflects an overall increase of 19 per cent since 2012, or 3 per cent a year. There was also a regular influx of new importers into the regulated community (i.e. parties that are importing regulated timber products for the first time), with an average of 2,000 new importers each year.

Data taken from the Department of Home Affairs' Integrated Cargo System (ICS) also suggests that the community is 'top heavy', with a relatively small number of importers importing a significant proportion of the regulated timber products. In 2017, the top 500 importers (by value) imported 60 per cent of all regulated consignments, which was worth $5.65 billion, or 78.5 per cent, of the total regulated product by value—approximately$7.2 billion in 2017 (ABARES 2018b).

Issue: Who is an importer?

Section 8 of the Act makes it an offence to 'import' a timber product that is made from, or includes, illegally logged timber, while section 12 makes it an offence to import a regulated timber product without complying with the due diligence requirements. Therefore, a key concept is who is an 'importer'. This term is currently not defined in the Act.

For the purposes of the Act, the department considers that an 'importer' is the person who owned the goods at the time of importation and has the ultimate authority to direct that the goods be landed in Australia.

At the commencement of the Act, the department received queries from the regulated community (particularly customs brokers) seeking clarification about who is an 'importer' for the Act's purposes. However, over the course of the review period, there did not appear to be any widespread confusion over who is an 'importer' for the purposes of the Act.

Accordingly, it appears the main and ordinary meaning of the term is sufficient and there is no need to include an express definition in the Act for the term 'importer'.

Summary: While the concept of an 'importer' is currently undefined in the Act, there does not appear to be a demonstrated need to amend the Act to provide a precise definition of the term.

Issue: Who is a processor?

Section 15 of the Act makes it an offence to 'process' a domestically grown raw log that has been illegally logged, while section 17 makes it an offence to process such a log without complying with the due diligence requirements. However, the Act does not include a definition of what constitutes 'processing' or who is a 'processor'.

[5] Although, for constitutional purposes, section 15 of the Act does establishes certain parameters around who is considered a domestic processor for the legislation's purposes.

In some situations, the absence of a formal definition of 'processing' has made it difficult to determine whether a particular conduct or an entity falls or is likely to fall within the scope of the Act. Adding to this complexity is the potential inconsistency between the Act and the *Export Control Act 1982*. Under the associated Export Control (Unprocessed Wood) Regulations 1986, woodchips and debarked sandalwood are considered 'unprocessed', whereas they are likely to fall within the scope of 'processed' timber for the Act's purposes.

In light of these issues, there may be value in amending the Act to include a formal definition of 'processing'. This would articulate what actions or steps in processing fall within the Act's scope. It would also provide greater certainty for the department's compliance and enforcement activities while clarifying the regulated community's understanding of their obligations.

A carefully drafted 'processing' definition could also clarify how the Act affects parties processing timber in the Australian Capital Territory or Northern Territory. Sections 15(1)(b)(ii) and 17(1)(b)(ii) of the Act provide that a person commits an offence if 'the person processes the raw log: … (ii) in a Territory'. This may unintentionally extend the Act to individuals who are dealing with trees on a professional (arborists, landscapers and public work contractors) or non-professional basis (private individuals) within the two territories. It is unlikely that the Act's obligations were intended to extend to these entities, who are likely to be 'processing' logs as a peripheral function of their employment or undertaking limited processing activities for personal purposes.

Summary: The insertion of a carefully drafted 'processing' definition in the Act has the potential to provide improved clarity on the types of activities that fall within the scope of the Act.

6.3 Interactions with other legal frameworks

The Act is one of several pieces of legislation that regulates the trade in timber products into and out of Australia. With a focus specifically on timber legality, the Act complements existing import-focused legislation that establishes different requirements for importing or exporting timber products. Other key pieces of legislation include:

- the *Biosecurity Act 2015*, which provides the Australian Government with the powers and tools to manage any biosecurity threats to plant, animal, and human health in Australia
- the *Environment Protection and Biodiversity Conservation Act 1999*, which gives effect to Australia's responsibilities under CITES
- the *Export Control Act 1982*, which requires certain timber products to be licensed by the Australian Government prior to export.

Australia's state and territory governments hold primary responsibility for regulating the domestic production of timber. Each state and territory has its own legislation which regulates the management of conservation and production forests on privately and publicly held lands. Commonalities between the different states and territories may include:

- Forestry Act—laws that govern the regulation and approval of timber harvesting
- Native Vegetation Act—laws that govern the protection of native vegetation
- Regional Forest Agreements—plans for the sustainable management and conservation of native forests
- Codes of Practice—that define sustainable harvesting practices, including environmental protection measures
- Plantation Code of Conduct—that regulate harvesting operations on authorised plantations.

A breach of the harvesting requirements established by the states and territories under these instruments would provide the foundation for what would be an 'illegally harvested domestically grown raw log' under the Act. It is the responsibility of the state and territory regulators to pursue enforcement action for instances of suspected illegal logging.

The Act has a distinct role in prohibiting the processing of any illegally harvested domestically grown raw logs and requiring due diligence to be undertaken by processors of such logs.

Issue: Definition of 'illegally logged'

The term 'illegally logged' is a central concept in the Act. This term establishes a basis on which many of the offences and actions set out in the legislation are determined. Section 7 of the Act defines 'illegally logged' as 'in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'. Accordingly, the Act's focus has been on the legality of the harvest of the trees.

While the Act was designed to largely complement the EUTR and US Lacey Act, these laws include broader definitions of 'illegally logged':

- the EUTR defines 'illegally harvested' as 'harvested in contravention of the applicable legislation the country of harvest'. 'Applicable legislation' is defined to incorporate laws covering harvest rights; payments for harvest rights; timber harvest practices; third-party tenure rights; and trade/customs obligations
- the US Lacey Act takes an even wider approach and makes it unlawful to import, export, transport, sell, receive, acquire or purchase any plants, or their parts, *taken in violation of any foreign law*.

In order to capture a wider range of illegal activities, consideration could be given to amending the Act to include a broader definition of 'illegally logged'. This would expand the focus to address some of the 'associated trade' aspects of illegal logging in recognition of the inherent complexity of timber supply chains. It would also ensure that importers and domestic processors consider a broader range of legislation when undertaking their due diligence.

Expanding the definition may also provide a more comprehensive basis for future prosecutions. Experience with the US Lacey Act has shown that it may be easier to pursue parties for breaches of transport or customs laws than to prove the timber has been illegally harvested. Such a move would also allow the Act to consider relevant international treaties, including CITES.

However, any expansion of the definition of illegal logging may significantly increase the complexity of establishing the legality of timber products and could impact the effectiveness of the Act. For example, importers and processors would need to consider a wider range of legal requirements when conducting their due diligence. In some supply chains, it could be difficult to gather information to determine whether the timber product has complied with all relevant laws (notwithstanding the fact that importers/processors would still only need to collect information where reasonably practicable).

By adding to the Act's complexity, the time that importers and processors would spend in understanding relevant legal frameworks and undertaking due diligence would be likely to increase, with an associated increase in regulatory cost. Further, compliance data suggests that some businesses already struggle to understand their obligations. Incorporating additional requirements to the Act may increase confusion and associated levels of noncompliance.

Summary: The Act contains a narrower definition of 'illegally logged' than comparable instruments in key jurisdictions. While the current definition of 'illegally logged' has not been tested before the courts, targeted expansion of scope could include further activities commonly associated with the illegal trade in timber and timber products. However, balanced against this objective is the potential impact on importers and processors, and their ability to make effective assessments on a broader range of issues, together with the department's capacity to effectively enforce compliance with a larger set of illegal logging considerations.

Issue: Definition of 'timber'

Numerous sections of the Act and Regulation make reference to 'illegally logged timber'. This includes the key offence set out in section 8 of the Act, which notes:

> (1) A person commits an offence if:
>
> (a) the person imports a thing; and
>
> (b) the thing is, is made from, or includes, illegally logged timber; and
>
> (c) the thing is not prescribed as exempt by the regulations for the purposes of this paragraph.
>
> Penalty: 5 years imprisonment or 500 penalty units, or both.

While section 7 of the Act clearly sets out what is meant by 'illegally logged', which, in relation to timber, means 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'; and 'timber product', which is 'a thing that is, is made from, or includes, timber', it does not specifically define what is meant by 'timber'.

The lack of a definition of 'timber' in the Act has the potential to cause confusion within the regulated community. In some commercial sectors 'timber' has a very specific trade meaning and generally refers to 'wood prepared for building or carpentry' (Oxford Living Dictionary). If taken this way, some parties could assume that the Act and some of its key provisions only apply to products that fall within this narrow scope.

While it is clear that the Act and Regulation are intended to be applied to a wide range of wood, pulp and paper products, there may be value in amending the Act to include a precise definition of 'timber'. This would provide improved clarity about the Act and Regulation's scope.

Summary: The creation of a definition in the Act for the term 'timber' to specifically include a wide range of wood, pulp and paper products may assist the regulated community to better understand the broad scope of products covered by the Act. It may also help clarify what is not included within the scope of the Act.

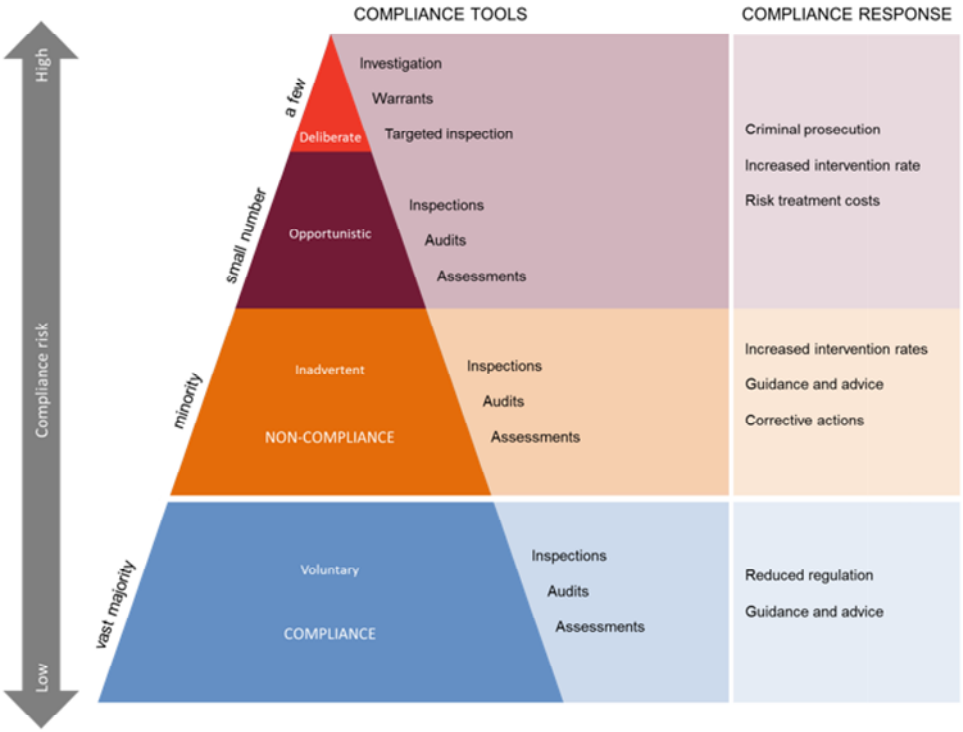
7 Experience in administering the Act

7.1 Compliance and enforcement activities

The department administers the Act, with compliance functions carried out by the department's Compliance Division. This division carries out compliance and enforcement functions for all of the department's key regulatory responsibilities (including its biosecurity functions).

In administering the Act, the department uses principles to manage illegal logging compliance that are similar to the ones it uses for its broader biosecurity compliance responsibilities. The approach focuses on encouraging and prompting voluntary compliance while responding to noncompliance in a way that is commensurate with the behaviours involved.

Figure 3 The department's differentiated response to noncompliance



Source: Department of Agriculture and Water Resources 2018

As shown in Figure 3, the department's compliance model assumes that most regulated entities will comply, or try to comply, with their obligations under the Act. For these entities, the department responds by providing clear guidance and advice to facilitate voluntary compliance.

Despite having the intention to comply, some entities will inadvertently fail to comply because they do not understand the due diligence requirements. In addition to providing supporting guidance and advice, the department may increase its assessment and audit rates for these entities until compliance with the Act can be established.

However, it is recognised that a small number of entities will deliberately seek to contravene the Act and take steps to avoid regulatory actions. In these circumstances, the department will respond to deliberate acts of noncompliance with the full force of the law. This includes formal investigation, administrative actions (including additional requests for information or the issuing of infringement notices) and, where necessary, prosecution.

The Act provides for a range of civil and criminal penalty provisions and civil remedies for certain contraventions. The penalties associated with breaches of the due diligence requirements are civil in nature and will not result in imprisonment or criminal convictions. However, the financial penalties issued by the department or the courts for such breaches could be sizeable.

Compliance audits

Beginning in March 2015, the department started to audit importers and domestic processors to assess their compliance with the due diligence requirements. The audits were undertaken to raise awareness of the laws and to educate the regulated community about how they should comply with the requirements. The audits also provided a valuable opportunity for the department to learn more about key timber supply chains and test its own procedures.

The audits undertaken between March 2015 and December 2017 (i.e. when the laws were still in soft-start) were divided into three key categories:

- assessments of over 500 of the largest importers of regulated timber products. These entities represented almost 80 per cent of all regulated timber imports into Australia
- assessments focused on importers of products and pathways that were considered to come from higher risk sources
- assessments of a selection of domestic-level processors.

These assessments found that around 60 per cent of the importers assessed were noncompliant with some or all of their due diligence obligations. However, this appeared to be largely inadvertent noncompliance. In most cases, these entities wanted to comply but were initially not aware of the laws and/or misunderstood how to comply the Act and Regulation's requirements.

Like importers, many domestic processors were also found to be unfamiliar with the laws. However, there was significant 'effective compliance' within the sector, largely due to their application of forest certification systems (PEFC and FSC) and strong forest sector regulation and enforcement at the state level. The simpler supply chains associated with domestically grown raw logs also made the due diligence process easier to undertake.

As the initial compliance audits were undertaken during the 'soft-start' compliance period (which ran until 1 January 2018), noncompliant entities were generally issued a Notice of Advice that set out how their practices did or did not comply with the due diligence requirements and, where appropriate, what they needed to improve to comply with the requirements.

Issue: Levels of ongoing noncompliance

Despite the department's efforts over the review period to raise awareness and understanding of the Act, the compliance audit process has shown that there continue to be high levels of noncompliance in the regulated community. This could be attributed to a number of factors, including:

- ignorance of the laws—this is likely to reflect both the relative newness of the laws and the broad range of industries present in the regulated community (many of which do not necessarily see themselves as being in the 'timber' business)
- the number of personal/one-off importers within the community—both of these groups are likely to have limited experience in importing regulated timber products and are unlikely to be aware of or in an easy position to comply with their legal obligations
- lack of consequence—the initial 'soft-start' compliance period is likely to have delayed some businesses' responses to the laws. With the end of this period on 1 January 2018 and the implementation of a full compliance regime, this may be less of a factor in the future

- subjectivity of the due diligence process—some businesses have found the subjective nature of the due diligence process to be challenging. A number have expressed a desire for a simple checklist process or document that satisfies all of their obligations
- misconceptions and misunderstandings—particularly with the role of the forestry certification schemes, a number of parties have demonstrated a lack of understanding of what certain documents mean and how risk can be effectively managed
- complexity of overseas forestry arrangements—depending on the country and supply chains involved, it can be difficult to determine what legality looks like and what sorts of documents can be sourced to prove legality.

In light of this level of noncompliance, the department will need to continue to dedicate resources to educating the regulated community about the Act and the due diligence obligations. While the department has developed a sound set of guidance and education materials (most of which are accessible from its illegal logging webpages: www.agriculture.gov.au/illegallogging), additional efforts to reach out to the regulated community, representative associations and other stakeholders will be required.

An improved compliance rate can be achieved through a proactive compliance program that continues to educate and discourage inadvertent noncompliance while punishing deliberate or repeat noncompliance.

Summary: The compliance assessments undertaken during the review period reveal varied levels of compliance with the Act. Noncompliance can be attributed to a number of factors. Continued education and outreach activities for the regulated community, combined with an effective and targeted ongoing compliance program, will be essential to improving rates of compliance.

Mandatory customs declaration

Section 13 of the Act requires importers to make a declaration to the customs minister 'about the person's compliance with the due diligence requirements for importing the product' when they import a regulated timber product. This declaration is made in the form of a Community Protection Question (CPQ) asked as part of the larger import declaration process. The CPQ is:

> Has the importer complied with due diligence requirements of the *Illegal Logging Prohibition Act 2012* and associated regulations? (if the product is exempt or does not contain timber, answer yes).

The CPQ must be answered for each regulated product line in a consignment. In answering it, importers need to identify whether they have completed their due diligence responsibilities.

The CPQ was intended to provide a useful additional step to support the due diligence requirements and to provide a transparent means of assessing compliance with the requirements. However, it has also played an important role in reminding the importing community of their responsibilities. In many cases (particularly amongst smaller businesses or private individuals), the CPQ may be an importer's first interaction with the illegal logging laws.

The CPQ commenced with the due diligence requirements on 30 November 2014. Since then, it has been answered over 3.4 million times. During the period from 1 January 2015 to 31 December 2017, approximately 71 per cent of respondents declared that they had complied with their due diligence requirements.

Table 4 Responses to the CPQ between 1 January 2015 and 31 December 2017

	No	Yes
Value	$6,386,380,607.38	$15,799,781,562.20
Frequency	837,004	2,618,805
Percentage (by value)	28.8%	71.2%
Percentage (by frequency)	24.2%	75.8%

Source: Analysis of 2015–2017 trade data, Department of Agriculture and Water Resources

Analysis of the CPQ data shows there are significant differences in the associated responses between product types and country of supply. Throughout the three-year period, wood in the rough, densified wood, prefabricated buildings, paper and veneer all had relatively high (over 30 per cent) 'no' responses. Pulp and sawnwood had lower 'no' response levels (less than 20 per cent). On a country basis, importers were more likely to answer 'no' for certain countries that might be considered low risk, while other countries (which might be considered of a higher risk) had very low 'no' responses during the review period.

While being outside of the review period, the level of 'yes' answers to the CPQ increased significantly after the 'soft-start' compliance period ended on 1 January 2018. Throughout 2018, approximately 80 per cent of all respondents have declared that they have complied with the due diligence requirements.

Considerable caution needs to be taken when interpreting the CPQ data. As the answer to the question is self-assessed, it is likely to be influenced by the importer's knowledge of the laws, their assessment of their own efforts (which may be incorrect) and their understanding of the CPQ question. Some importers may also be deliberately answering the question incorrectly. Certainly, the initial outcomes of the department's compliance assessments (which found that 60 per cent of the audited businesses were noncompliant) suggest that importers may be significantly overestimating their compliance with the laws.

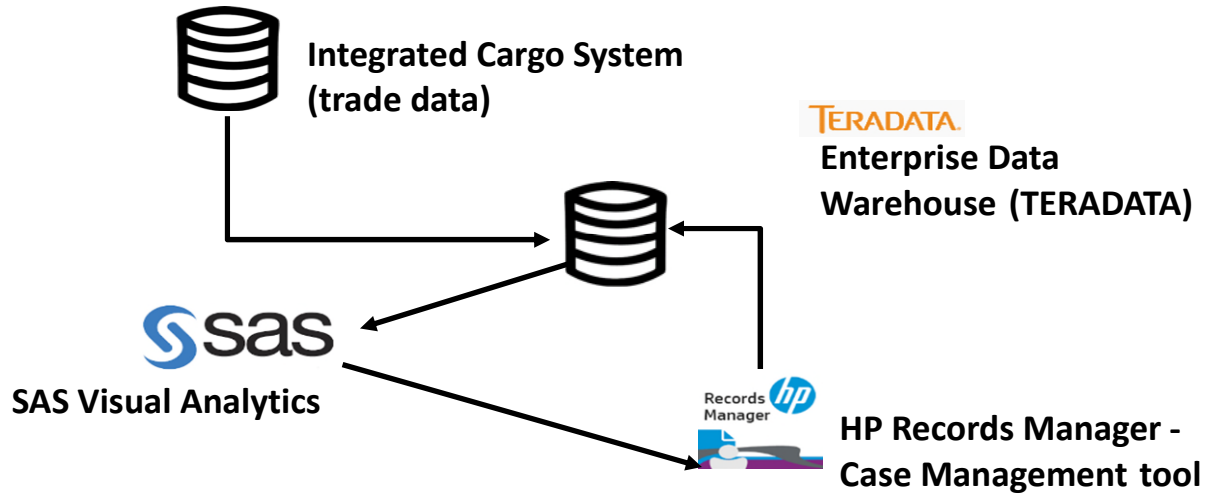
The CPQ is often answered by customs brokers acting on behalf of their clients. This has meant that the broker community has had a strong interest in the due diligence requirements. Customs brokers have regularly participated in the department's education and outreach activities. In many cases, customs brokers have also acted as an important communication channel between the department and importers, directing their clients to relevant information.

Supporting analytical systems

In planning its audits and compliance interventions, the department has implemented a range of approaches to identify and detect possible incidents of noncompliance. This has included the use of bespoke analytical software to examine trends in regulated timber imports and to profile and target consignments that may be at a higher risk of being illegally logged.

Figure 4 shows the key elements of the department's supporting IT systems. These systems draw on import data downloaded on a daily basis from the ICS. The ICS is used by the Department of Home Affairs for a variety of purposes, including import and export management, cargo risk assessments, client registration, tracking cargo movement and other client functions.

Figure 4 Supporting analytical systems



Source: Department of Agriculture and Water Resources 2017

The ICS data is stored in the department's Enterprise Data Warehouse. The department uses a range of analytical tools provided by a bespoke SAS Entity Targeting and Reporting Tool to observe patterns and identify opportunities for further analysis and potential follow-up compliance assessments. This system allows the department to query and target its compliance assessments based on a range of parameters, including, among other things, the importing entity, their supplier, the goods description, and country of origin.

The department has also developed a linked HP Case Management system to store and manage all of its associated client records, compliance assessment outcomes and correspondence. This provides a seamless client management system where all relevant documents (including any due diligence documents), case notes and correspondence can be stored and easily accessed.

Issue: Collection of supporting data

Under existing arrangements, the Department of Home Affairs provides the ICS data that is used to inform the department's illegal logging analytical systems. The data is provided via a memorandum of understanding between the two agencies and relies on the broad information-gathering powers provided by the *Customs Act 1901*. Further corroborating data and documents are also sourced (where available) from the Department's Agriculture Import Management System (AIMS).

While the existing arrangements have provided the department with access to relevant ICS and AIMS data, there could be value in establishing a specific information-gathering 'head of power' in the Act itself. This would ensure that the department would continue to have access to relevant import data in the future (regardless of any changes to other external legislation or arrangements) while also clarifying the type of data that can be collected for the Act's purposes.

Such a change is unlikely to have significant impacts on the importer community. The required data would still be collected through the existing import declaration process and is unlikely to create any new regulatory obligations. A similar approach has already been taken with the *Biosecurity Act 2015*, which specifies the information that must be provided to the government when unloading goods in Australia.

Summary: The department has access to a range of data sources to support its administration of the Act. The department should continue to use and apply the CPQ and customs data to inform its compliance activities. The creation of a specific information-gathering 'head of power' in the Act could reduce the reliance on other instruments for access to relevant import data.

Intelligence/information networks

Since the introduction of the laws, the department has established relationships with counterparts in a range of international and state governments and non-government organisations. These relationships allow the department to remain alert to potential high-risk products entering Australia's supply chains. It has also helped to focus the department's communication and education activities.

The department is an active member of several international and national forums on forestry and wildlife crime enforcement. These include the INTERPOL Forestry Crime Working Group, the Timber Regulation Enforcement Exchange (TREE), the APEC Expert Group on Illegal Logging and Associated Trade (EGILAT), and the Australasian Environmental Law Enforcement and Regulators Network (AELERT) Forest Working Group.

The department has also collaborated closely with other Australian agencies involved in monitoring forest-related crime. This includes the Department of the Environment and Energy, which regulates the importation of endangered plants and animals under CITES.

There are also a number of environmental non-government organisations that monitor and track illegal logging. These groups have people on the ground in high-risk countries, and in some cases they have gathered evidence regarding high-risk pathways and supply chains. The department continues to monitor information presented through reports prepared by these organisations as a source of information to support its compliance operations.

Tip-offs also continue to be an important source of information for the department about potential illegal activities. The department operates a confidential Redline (1800 803 006) to receive allegations of noncompliance or deliberate illegal trafficking. Allegations can also be provided to the department's illegal logging compliance inbox: ilca@agriculture.gov.au

7.2 Monitoring, investigation and enforcement powers

The Act provides the department with a range of monitoring, investigation and enforcement powers. These powers allow the inspectors appointed under the Act to investigate potential incidents of noncompliance with the Act's provisions.

The monitoring, investigation and enforcement powers in the Act were amended in 2017 through the introduction of the *Regulatory Powers (Standardisation Reform) Act 2017*, which incorporated the *Regulatory Powers (Standard Provisions) Act 2014* powers into the Act. This amendment standardised the use of regulatory powers across several pieces of legislation for consistency.

The department's monitoring, investigation and enforcement powers include the ability to:

- enter, search and observe activities conducted at a particular premises
- inspect, examine, take measurements and conduct tests on things at a premises
- request, inspect and makes copies of any documents at a premises
- operate and secure any electronic equipment at a premises
- use reasonable force to obtain evidential material
- take samples of any wood products as part of monitoring or investigation activities
- secure evidence of a contravention of the Act
- ask questions.

These powers need to be in conjunction with a warrant or the consent of the premises' owner.

Issue: Development of new at-border compliance powers

While the Act provides for a range of monitoring, investigation and enforcement powers, it does not currently contain any 'at-border' assessment and hold powers. One of the Act's key objectives is to stop the importation of illegally logged timber into Australia. However, under the Act's existing range of powers, the department has a limited capacity to prevent the importation of a high-risk timber product prior to its entry into Australia. While the Act allows for the forfeiture of goods that breach the prohibition on the importation of illegally logged timber, the nature of these offences mean that it may be challenging to use the forfeiture power.

The *Biosecurity Act 2015* and the *Imported Food Control Act 1992* include a range of 'at-border' powers that may be useful for the department's administration of the Act. These include:

- secure and movement powers—these would allow for high-risk timber products to be secured and held without interference while information and documents are received and any testing is conducted
- document provision powers—these would allow for documents to be requested at the border so that a high-risk product could be assessed before it enters Australia
- inspection and sampling powers—these would allow for the testing of a timber product to determine whether any claims or documents provided by an importer are accurate
- notice powers—these would allow the department to affix a notice to a particular timber product that clearly sets out an importer's responsibilities when a product is being assessed or held by the department
- management and additional forfeiture powers—these would allow the department to manage a product that is found to be noncompliant with the Act. They could include official warnings, the re-exporting of the product or the forfeiture of the product to the government.

A key consideration in the development of a suite of at-border powers would be how and when they would be used by the department. It is recognised that at-border assessment and hold powers may be perceived as having the potential to interrupt trade. As such, any powers would need to be used judiciously and only when the department has reason to believe that high-risk timber products are being imported or where an importer has a clear and established history of noncompliance.

Summary: The Act has been implemented as a 'post-border' measure, with compliance activities primarily occurring once the products have entered Australia. The effectiveness of the Act could potentially be enhanced by introducing 'at-border' powers giving the department a broader suite of options to address specific risks of illegally harvested timber products entering Australia.

7.3 Offences and civil penalty provisions

The Act contains a range of offence provisions. They range from five years imprisonment and/or 500 penalty units ($105,000 at current penalty rates) for the most serious offences to 100 penalty units ($21,000) for less serious offences. By contrast, the Regulation only contains civil penalty provisions of 100 penalty units ($21,000), which can be extended to 500 penalty units ($105,000) for corporate bodies. 'Penalty units' is defined in the *Crimes Act 1914.*

Issue: Infringement notice penalties

The Act allows inspectors to issue an infringement notice for a strict liability offence against the Act, a civil penalty provision of the Act or an offence against the *Crimes Act 1914* or the Criminal Code. The maximum and only amount that an infringement notice can be issued for is 12 penalty units ($2,520) for an individual and 60 penalty units ($12,600) for a body corporate.

Infringement notices are intended to provide an administrative tool for dealing with low-level contraventions and offences and to provide an alternative to court resolution. The department may issue an infringement notice if there are reasonable grounds to believe an offence has been committed and where an infringement notice is considered to be the most appropriate sanction.

Section 524 of the *Biosecurity Act 2015* provides the government with the power to prescribe, through regulation, a different number of penalty units for an alleged breach of the legislation. In practice, this power is used to issue smaller penalties for infringement notices issued to passengers at international airports.

While the department has had limited experience with issuing infringement notices under the Act (with the first notice issued in October 2018), there could be value in the longer term in establishing a power to prescribe, through regulation, differing penalties for alleged breaches of the Act. This would bring the Act into alignment with the *Biosecurity Act 2015* and provide the department with flexibility if it was decided in the future that different penalty levels would better support the Act's implementation. However, any differentiation of penalty levels would need to be based on further experience with applying the Act together with an analysis of the impact of the existing infringement notice framework on the regulated community.

Summary: The penalties under the Act have only had limited application during the review period. However, amending the Act to provide the government with the power to prescribe, through regulation, differing penalties for alleged breaches may provide greater flexibility in pursuing compliance outcomes.

Issue: Scope of regulated conduct

The Act places regulatory obligations on the two main methods of entry into the Australian market: the importation of timber products and processing of raw logs. While the importation and processing of illegally harvested timber is captured by the Act, other conduct, such as the possession, sale, or export of illegally logged timber, is not. This means that in some situations an entity could potentially trade or deal in illegal timber and still fall outside the Act's scope.

By comparison, the US Lacey Act makes it unlawful to 'import, export, transport, sell, receive, acquire or purchase in interstate or foreign commerce, any plant taken or traded in violation of the laws of the US, a US State, or relevant foreign laws'. The US has used these offences to successfully prosecute a domestic sawmill for purchasing and then selling illegally harvested Big Leaf Maple logs taken from a US National Forest (United States Department of Justice 2015).

There may be value in amending the Act to introduce new offences that prohibit one or more of the following activities: the transport, receipt, purchase, sale and export of illegally logged timber.

This approach would be consistent with the Act's stated objectives, which are to 'reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged products in Australia' (Australian Government 2012). It would also address certain circumstances in which entities can receive, sell and export unprocessed timber yet fall outside the scope of the Act. A more comprehensive regulatory approach would address all aspects of illegal trade and cover the 'downstream' trade in such products.

However, in considering whether to broaden the scope of conduct regulated under the Act, thought needs to be given to whether the Act is the most effective tool to police such interactions and whether it would duplicate other existing legislative frameworks. Further, the broadening of the definition of 'illegal logging' to include other conduct has the potential to significantly increase the number of businesses and individuals that fall within the Act's scope. This would exacerbate challenges faced by the department in effectively communicating and enforcing the laws.

Summary: The Act regulates a narrower scope of conduct than other key jurisdictions (which can include the possession, sale and export of timber). While the current scope of activities has not been tested, expansion of the regulated conduct could reach other actors that have exposure to illegally harvested timber. The benefits of expanding the Act to include these actors is unclear, and it may challenge the department's capacity to effectively communicate and enforce compliance.

7.4 Administrative processes and challenges

Negotiation of CSGs and SSGs

The Regulation allows importers and domestic processors to use a CSG or an SSG to support their due diligence. This option is available where a CSG/SSG is in place for the country or Australian state the timber has been sourced from.

CSGs and SSGs are intended to help importers and domestic processors to understand the legal frameworks in place in the country or the Australian state from which they source their timber products or raw logs. They are detailed documents that explain what legal frameworks are in place while also providing examples (where available) of key documents that can be sought to show that the products being imported or processed are at low risk of having been illegally logged.

CSGs are negotiated by the department and the government of the exporting country or relevant Australian state. As of November 2018, the department has finalised nine CSGs—with Canada, Finland, Indonesia, Italy, Malaysia, the Republic of Korea, New Zealand, Papua New Guinea and the Solomon Islands. The department is also undertaking negotiations on new CSGs with China, Chile, Vietnam, France and Thailand. SSGs for all of Australia's states have also been published.

Issue: Providing for regular CSG/SSG updates

The CSGs and SSGs are prescribed in Parts 2 and 3 of Schedule 2 to the Regulation. They are listed by the date the guideline was co-endorsed by Australia and the relevant country/state government.

One of the policy objectives for using CSGs/SSGs to support due diligence requirements is to enable importers to have access to the most up-to-date information on forestry laws and timber legality documentation of a trading partner / state government. This allows importers and processors to more effectively assess the level of risk that a timber product has been illegally harvested.

In order to achieve this objective, CSGs and SSGs undergo regular updates and review. Once an updated SSG or CSG is co-endorsed by the relevant governments, it is uploaded to the department's illegal logging webpages for use by processors or importers.

Under the current provisions in the Act, the department must amend the Regulation each time a new or updated CSG or SSG is finalised. Amending the Regulation can be a lengthy and resource-intensive process. The resultant lag time between co-endorsement of an updated CSG or SSG and its inclusion in the Regulation poses a risk that importers and processors are not obtaining the correct information required to effectively undertake due diligence.

In order to overcome this issue, an amendment to the Act to enable the Regulation to apply or incorporate CSGs and SSGs as they are updated would ensure importers and processors have timely access to the latest information to conduct an informed due diligence process.

Summary: CSGs and SSGs play an important role in the Act in guiding the due diligence processes of importers and processors respectively. The department should continue to negotiate additional CSGs and maintain a program to update CSGs and SSGs to reflect developments in the legal frameworks that they describe. The administration of the Act could be improved through an amendment to the Act to allow reference to CSGs and SSGs as updated from time to time.

8 Opportunities to improve the operation of the Act

Since its implementation in 2012, the Act has been in a state of development and transition. The development process has included the following key elements:

- development and introduction of the due diligence requirements in the Regulation
- the KPMG review
- the government response to the KPMG review
- the 2017 RIS process and introduction of associated amendments to the Regulation
- the disallowance of 'deemed to comply' arrangements in early 2018.

The series of reviews has created uncertainty for the regulated community, which has been waiting for a 'landing' on key issues in order to take decisions on how the Act affects them and how they should implement its requirements.

In addition, the Act's due diligence obligations were implemented for much of the review period under a soft-start arrangement. It is arguable that under the extended soft-start arrangements, which were appropriate to allow businesses time to adjust to the requirements of the laws which had the potential to change, the Act was not fully implemented during the review period.

Accordingly, it is difficult to determine with any certainty what impact the Act has had in achieving its policy objectives of reducing or removing illegally logged timber from the Australian market.

8.1 Potential improvements

Nevertheless, the review has identified the potential for a number of regulatory and non-regulatory improvements that could enable the Act to better achieve its overall policy objectives. These include improvements that would:

- provide clarity on the Act (development of definitions for key terms such as 'processor' and 'timber'; published advice on due diligence requirements for complex products)
- increase the reach of the laws to broaden the conduct regulated under the Act to include activities beyond importation and processing
- provide the department with more tools and greater flexibility in undertaking compliance activities ('at-border' powers and the option to revise penalties for Infringement Notices)
- facilitate the department's efficient administration of the Act (referencing CSGs and SSGs as amended from time to time; head of power for import data).

While some of these initiatives would provide useful outcomes for importers and processors and allow them to better understand the requirements of the Act, other proposals would be likely to have a significant impact on who is a regulated entity and what their obligations are under the Act.

Any changes to the Act and Regulation would need to be carefully considered to ensure that there are not any negative consequences for the overall operation of the Act, and that changes would not unduly burden Australia's importing and processing communities. For more significant reforms, this could include formal and detailed consultation and consideration as part of a RIS process.

Noting the need for the regulated community to have a period of stability and certainty in understanding the practical implications of the Act on their operations, there may be a case for keeping the broader policy and legislative settings in the Act unchanged for a period. This could see the government progress only those initiatives that would provide clarity for regulated entities and those initiatives that are required for the department's effective administration of the Act while leaving the core obligations and scope of the Act unchanged.

A further review of the Act in a future period (e.g. at the commencement of 2023 to allow for a period of five years following the end of soft start) could consider the other more substantive changes identified in this review. This review would occur in the context of a more informed understanding of the full implementation of the Act in achieving its policy objectives.

9 Related matters

9.1 2018 and beyond

The soft-start compliance period ended on 1 January 2018. After this date, businesses and individuals who import regulated timber products into Australia or who process domestically grown raw logs may face penalties for failing to comply with the due diligence requirements.

Reflecting this change to a full compliance model, the department published its 2018 Compliance Plan in February 2018. This document outlines the department's focus for its compliance activities and assessments during 2018. During this period, the department is focusing its compliance efforts on the following areas:

- products from fragile and conflict-affected regions—these regions are characterised by weak institutional capacity, ineffective laws and governance arrangements and political instability
- CITES-listed species and other species of concern—the department will continue to target species from regions of concern, looking particularly for where illicit substitution may occur and/or where products made from threatened or illegally harvested species may be imported
- complex supply chains—these may also increase the risk of a product containing illegally harvested timber, as each additional step in the supply chain represents another potential point where illegal timber could be used in the product
- tip-offs and recommendations—the department takes allegations of noncompliance seriously and encourages members of the public to report information
- environmental non-government organisations' reports and studies—the department will continue to work with these groups, sourcing information to support our compliance operations
- previous instances of noncompliance—where the department found instances of noncompliance with due diligence requirements during the soft start, clients may have been flagged for follow-up.

The 2018 Compliance Plan also notes the opportunities provided by new and evolving evidence building techniques and forensic capabilities. These technologies include mass spectrometry, fibre analysis, near infrared spectroscopy, stable isotopes, DNA barcoding, population genetics and DNA profiling for individualisation.

The 2018 Compliance Plan commits the department to engaging with researchers who are developing timber testing and forensic capabilities capable of supporting its compliance and enforcement work. The first of these trials was conducted in mid-2018. In that trial, the department partnered with the University of Adelaide to trial DNA tests on selected off-the-shelf timber products. At the time of this report, the outcomes of these tests were still being considered.

More broadly, to further the achievement of the Act's policy objectives, the department is continuing to advocate international actions to combat illegal logging and associated trade. By developing and utilising its bilateral relationships with key partners and encouraging a focus on forest governance and legality in multilateral fora, Australia is working to progress approaches that will promote the trade in legal timber products. There is also some interest in the development of an international instrument to support a harmonised approach to addressing the trade in illegal timber.

Appendix A: Overview of the due diligence requirements

The due diligence elements are set out in the Illegal Logging Prohibition Regulation 2012 (the Regulation), which came into effect on 30 November 2014. The Regulation divides the due diligence process into four key steps. The information below outlines the key steps required of an importer. A domestic processor is also required to carry out almost identical due diligence steps:

- **Establish a due diligence system.** If a business or an individual imports regulated timber products into Australia, they are required to have a documented due diligence system. This system needs to be in writing and needs to include the processes by which the importer will meet the due diligence requirements.
- **Gather relevant information.** Before importing a regulated timber product, an importer must try to gather certain prescribed information, including the type and trade name of the timber product; the common name or scientific name of the tree from which the timber has been derived; the country, region or harvesting unit from which the timber was harvested; and any documentation that could prove the legality of the product.

  An important proviso in collecting this information is that it must be 'reasonably practicable' to gather. This recognises that in some circumstances it may be difficult for importers to source some of the information. What is 'reasonably practicable' will depend on the importer's individual circumstances.
- **Assess risk.** Once the importer has tried to gather the required information, they need to use the information they have collected to assess the product's risk. The Regulation allows an importer to use one of three potential risk assessment options:
  - *Timber legality frameworks*—this option is available where a product is certified under the Forest Stewardship Council scheme (FSC), the Programme for the Endorsement of Forest Certification (PEFC) or the European Union's Forest Law Enforcement, Governance and Trade standards
  - *Country Specific Guidelines (CSGs)*—this option is available where a CSG applies to the timber in the product or the area where the timber was harvested
  - *Regulated risk factors*—this is the default method. It can be used for all regulated products. The factors that need to be considered include the prevalence of illegal logging in the area where the timber was harvested; whether the tree species is being illegally harvested in that area; the prevalence of armed conflict in the area; the complexity of the product; and any other information that the importer knows.
- **Mitigate risk.** If the importer assesses the risk that the product may be illegally logged as not being a low risk, they must apply a risk mitigation process. The Regulation does not prescribe how this needs to be done, only that it needs to be 'adequate and proportionate' to the identified risk.

One additional step that only applies to importers is:

- **Answer the community protection question.** Before importing a regulated timber product into Australia, an importer is required to make a declaration as to whether they have complied with the due diligence requirements. This is made in the form of a specific Community Protection Question.

Appendix B: Regulated timber products

Table 5 Regulated timber products (2017 import data) + EUTR / US Lacey Act comparison

Tariff Code		Value ($)	Lines	Importers	Australia[6]	EUTR[7]	Lacey Act [8]
4403	Wood in rough	2,495,250	33	18			
4407	Wood sawn or chipped lengthwise	373,441,531	12,302	260			
4408	Sheets of veneering	20,381,871	523	62			
4409	Continuously shaped wood	398,582,516	9,436	388			
4410	Particleboard	56,054,637	4,945	138			
4411	Fibreboard of wood	129,900,122	8,222	490			
4412	Plywood	393,642,275	9,707	690			
4413	Densified wood	6,984,801	341	48			
4414	Wooden frames	30,726,408	17,863	592			
4416	Casks, barrels	61,765,830	1,957	139			
4418	Builders' joinery, doors	449,933,361	16,346	1,280			
4701	Mechanical wood pulp	2,078,980	81	3			
4702	Chemical wood pulp, dissolving grades	478,603	3	1			
4703	Chemical wood pulp, soda or sulphate	214,070,794	731	15			
4704	Chemical wood pulp, sulphite	2,380,729	107	10			
4705	Mechanical or chemical wood pulp	2,885,187	37	3			
4801	Newsprint	35,807,242	332	21			
4802	Uncoated writing paper	224,412,749	13,191	370			
4803	Toilet or facial tissue	214,213,227	2,914	210			
4804	Uncoated kraft paper and paperboard	98,726,815	2,594	161			
4805	Other uncoated paper and paperboard	59,017,003	1,903	217			
4806	Glazed/translucent papers	22,435,085	1,027	166			
4807	Composite paper and paperboard	7,441,972	288	44			
4808	Corrugated paper and paperboard	4,948,291	665	132			
4809	Carbon and self-copy paper	14,059,041	1,157	147			
4810	Coated paper and paperboard	492,695,104	13,711	265			
4811	Paper products coated/surfaced	386,949,900	27,939	1293			
4813	Cigarette paper	37,903,342	875	42			
4816	Other carbon and self-copy paper	3,988,851	722	110			
4817	Envelopes, letter cards	28,454,311	4,953	759			
4818	Toilet paper, tissues, serviettes	257,202,755	41,753	1,080			
4819	Cartons, boxes made of paper	343,807,256	58,352	5,896			
4820	Paper booklets	160,839,130	32,224	2,163			
4821	Paper labels	68,855,376	14,984	2,231			
4823	Other paper	221,866,548	34,067	2,782			
9401	Seats	803,065,359	162,113	5,084		Being considered	
9403	Other furniture	1,572,241,517	592,632	8,930			
9406	Prefabricated buildings	3,357,091	203	96			

Source: ABARES 2018b

[6] Green-filled squares indicate where products are currently regulated in Australia.

[7] The EU is also considering extending the EUTR to all timber or wood-based products. If this occurs then all of the tariff codes in this table are likely to be included in the EUTR.

[8] Unlike the *Illegal Logging Prohibition Act 2012* and EUTR, the US Lacey Act does not require an importer to undertake due diligence. Instead, it identifies certain products for which an importer needs to make a customs declaration that includes certain prescribed information (such as species and country of harvest). The products marked in green here are the types of products that require such a declaration.

Appendix C: Non-regulated timber products

Table 6 Non-regulated timber products (2017 import data) + EUTR / US Lacey Act comparison

Tariff Code	Value ($)	Lines	Importers	EUTR[9]	Lacey Act [10]
4401 Fuel wood	8,714,462	655	85		
4402 Wood charcoal	13,912,127	960	169		
4404 Hoopwood, poles, piles, stakes	1,866,518	135	19		
4405 Wood wool, wood flour	152,264	19	10		
4406 Railway sleepers	9,782	2	2		
4415 Packing cases, boxes, crates	14,357,236	2,833	349		
4417 Tools, tool handles, broom handles	2,458,243	441	119		
4419 Table/kitchenware of wood	45,363,941	16,783	1,032		
4420 Wood marquetry, caskets, statuettes	36,555,384	17,160	1,645		
4421 Other articles of wood	113,186,082	21,488	1,979	Being considered	
4812 Filter blocks, slabs and plates of paper pulp	1,565,092	129	24		
4814 Wallpaper and similar coverings	5,659,502	5,916	451		
4822 Bobbins, spools, caps and supports of paper pulp	1,284,235	97	39		
Chapter 49—Printed books, newspapers, pictures, etc.	2,942,449,193	147,864	17,290	Being considered	
6602 Walking sticks	3,517,083	1,084	188		
8201 Hand tools	43,470,238	7,122	423		
8903 Yachts and other vessels for pleasure or sports	458,301,240	6,063	1,210	Being considered	
9201 Pianos	37,668,807	764	137	Being considered	
9202 Other stringed instruments	27,430,001	2,519	814	Being considered	
9703 Sculptures	109,523,138	1,814	1,266		

Source: ABARES 2018b

[9] The EU is also considering extending the EUTR to all timber or wood-based products. If this occurs then all of the tariff codes in this table are likely to be included in the EUTR.

[10] Unlike the Illegal Logging Protection Act 2012 and EUTR, the US Lacey Act does not require an importer to undertake due diligence. Instead, it identifies certain products for which an importer needs to make a customs declaration that includes certain prescribed information (such as species and country of harvest). The products marked in green here are the types of products that require such a declaration.

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