

Parliament of Australia: Illegal Logging Prohibition Act 2011

A Bill for an Act to combat illegal logging, and for related purposes

1. Entry into force

The Bill has just been transferred from the Australian Ministry for Agriculture, Fisheries and Forestry to a Senate Standing Committee on Rural Affairs and Transport. It will likely be introduced into Parliament later in 2011 and undergo changes before being voted and officially becoming an Act. The prohibition elements of the Bill would apply from the date the legislation comes into effect. It will then take another 2 years for the other offenses and obligations to enter into force.

2. What constitutes an offence under the Act?

The Act prohibits the following three activities:

1. The importation of regulated timber products that contain illegally logged timber
2. The importation of regulated timber products by persons who are not approved as importers
3. The processing of raw logs by persons who are not approved as processors

3. Definition of “illegally logged”

The Act defines “illegally logged” as the following: “Illegally logged, 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.” It is not clear yet what laws exactly need to be respected in the country of harvest, eg if compliance with environmental and social laws is required.

- Timber is stolen
- Timber is harvested without the required approvals or in breach of a harvesting licence or law
- Timber is bought, sold, exported or imported and processed in breach of law
- Timber is harvested or trade is authorised through corrupt practices

In contrast, the definition of “legally sourced” timber is when timber suppliers have:

- The right of access to the forest
- Complied with the legal right to harvest
- Paid all taxes and royalties

4. Approval process for importers and processors

Importers or processors can only import or process timber in Australia if they have been approved by either the Minister or so-called “Timber Industry Certifiers”. Approval will only be given if importers and processors comply with “Legal Logging Requirements” which, among others, could include requirements to follow due diligence codes of conduct. Individual companies who are signatories to the due diligence codes of conduct would be responsible to undertake third-party independent auditing of compliance with the codes’ requirements.

5. Legal Logging Requirements

The details of the Legal Logging Requirements (LLR) are not clear yet. The Act however clarifies three objectives of LLR, namely:

- to ensure that imported timber products don't contain illegally logged timber
- to ensure that illegally logged timber is not being processed
- to ensure that timber products are accurately described

The Bill lists the following activities that may be included in LLR, but additional or different activities could be added:

- a) assess the risk of importing or processing illegally logged timber and implement appropriate risk management measures
- b) adhere to a code of conduct
- c) comply with or implement complaints resolution processes
- d) retain and produce records or documents
- e) undergo audits
- f) provide reports
- g) provide training for employees
- h) undertake remedial action

LLR may be different for different types of products, importers and processes for raw logs.

The Senate Committee takes the view that an explicit requirement for declaration and due diligence would provide verification of legality and establish Chain of Custody. It recommends that the Bill prescribes importers and processors to demonstrate "Due Diligence" by

1. purchasing products certified against an internationally recognised third-party certification scheme, or
2. purchasing products from an individual country initiative (FLEGT licensed timber), or
3. having in place a management system to ensure legal compliance

6. Declaration requirement

The draft Illegal Logging Bill does not explicitly mention a requirement to declare information such as species or country of harvest at the point of importation like the US Lacey Act or the EU Timber Regulation do. However, companies will have to provide information on species, country of harvest and certification in their annual compliance reports which are part of the Code of Conducts as required under the "Legal Logging Requirements". DAFF further believes that Customs will monitor consignments of timber and compile and report through existing customs schemes and an eventual new Customs declaration.

Nevertheless, the Senate committee recommends the following:

- include a mandatory and explicit declaration of legality of product at the first point of entry which forms part of the basis of the offence
- make the declaration requirement consistent with US Lacey Act and EU TR requirements
- require importers to regularly publish declarations in a publicly accessible form
- require importers to undergo an annual audit to determine legality of their timber and to publish the outcome of the audit in a report
- make the Government to undertake random audits of importer declarations

7. Timber Industry Certifiers

Timber Industry Certifiers (TIC) are responsible for ensuring that importers and processors comply with Legal Logging Requirements. As such, they are similar to “Monitoring Organisations” as laid out in the EU Timber Regulation.

TICs are persons or bodies that have been approved by the Minister and comply with “Timber Industry Certifier Requirements”.

The requirements may include the following activities:

- a) develop and implement codes of conduct for persons approved by certifiers
- b) comply with or implement complaints resolution processes
- c) retain and produce records or documents
- d) undergo audits
- e) provide reports
- f) provide training for persons employed or approved by certifiers
- a) undertake remedial action

Timber Industry Certifier Requirements may be different for different classes of Timber Industry Certifiers.

The Minister may cancel the approval of a TIC if he believes that the TIC did not effectively monitor compliance of importers or processors with legal logging requirements or if a TIC does not comply with Timber Industry Certifier requirements.

In the Senate Committee report, Greenpeace feared that provisions for TICs were weaker than the ones for Monitoring Organisations under the EU Timber Regulation, but DAFF emphasized that the draft bill allows for a broad range of options on how to establish TICs.

8. Products covered

It is not clear yet what timber products will be covered by the Illegal Logging Policy. DAFF noted that the following three product categories may be included: 1. Solid timber and wood products; 2. Processed timber and wood products; 3. Complex wood products; DAFF seemed to like the US Lacey Act approach of applying the prohibition to all products but phasing in the Declaration requirement for certain products groups – it is possible that something similar may be applied for the Illegal Logging Policy, too.

9. Enforcement

The Act creates an authority for “officers” employed by the Commonwealth and empowered by court-issued warrants to

- a) Monitor compliance with the Act and legal logging requirements
- b) Investigate offenses against the Act (including searching premises etc.)

10. Penalties

Penalties will vary depending on the offence committed.

- For importing timber that is made from, or includes, illegally logged timber, the penalty will be 5 years of imprisonment and/or 300 penalty units for an individual (33'000 AUS \$) and 1500 penalty units for businesses (165'000 AUS \$).
- For importing or processing timber without being approved by the Minister or a Timber Industry Certifier, the penalty will be a fine of 100 penalty units (corresponding to approximately 1200 Australian Dollars)
- There are provisions present in the Bill which could allow for forfeiture of goods, too

11. Resources

- <http://www.daff.gov.au/forestry/international/illegal-logging>
- http://www.aph.gov.au/Senate/committee/rat_ctte/logging_bill_2011/explanatory_memo_randum.pdf

This document is for informational purposes only. Persons seeking legal advice on compliance with the Illegal Logging Prohibition Act 2011 should consult with a legal professional.