

9 December 2011

Committee Secretary
Senate Rural Affairs and Transport References Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Committee

Submission to the Illegal Logging Prohibition Bill 2011

Background

Australian Forest Growers (AFG) is the national association representing and promoting the interests of private forest owners in Australia. AFG members are predominately managers of native forest on private land; growers of small woodlots integrated into other agricultural enterprises; and consultants and academics with an abiding interest in farm forestry. AFG, via its Chief Executive, has been a member of the AFS Ltd Board and remains a member of the Board of the International Family Forestry Alliance. Both of these organisations also have an interest in the ongoing reform of resource exploitation to underpin the legality and/or sustainability of the forest growing sector.

AFG Policy Position

AFG develops policy by reference to a representative group of members at a biennial event known as the Policy Forum. The 5th AFG Policy Forum was held in October 2011. Delegates therefore had an opportunity to review AFG policies including addressing illegal imports. Thus AFG currently have a developed and supported policy that has taken account of the recent developments in the debate, though does not necessarily include the position of the current bill. This policy is as follows:

Australian Forest Growers supports government action to combat the importation of illegally sourced wood products and to protect Australian growers who produce timber under existing legal frameworks. Practices enforced under legal frameworks in Australia ensure superior environmental and workplace protection measures, compared with many overseas harvesting practices, and activities relating to timber access and processing.

AFG advocates that current compliance requirements under existing legislative framework prevailing in various jurisdictions within Australia are substantial and well implemented. They are more than adequate to demonstrate legal access.

AFG does not support the application of certification standards as a surrogate for existing domestic legislation and codes of practice.

AFG supports no more than a statement of legal access to the land and/or timber resource, compliance with the prevailing regulation and type of resource as demonstration of legality.

AFG supports a process declaration of legality supported by an individual company's chosen system for due diligence in preventing the importation of illegally logged products.

In addition to the above policy AFG has determined a set of preferred outcomes also in relation to this issue which are as follows:

- ***Efforts to address the import of illegally sourced forest products do not result in compliance requirements greater than those which the existing legislative framework already imposes on Australian private forest growers.***
- ***Certification standards are not used as surrogates for existing domestic legislation and codes of practice.***
- ***That the Australian Government's primary policy objective regarding illegal logging is to exclude illegally sourced product from Australian markets. Compulsory import restrictions should be considered, within the scope of agreements under the World Trade Organisation.***
- ***That the Australian Government policy to address illegal logging focuses on bilateral and/or multilateral agreements which aim to build capacity for improved forest governance and lawful forest management and harvesting in those developing countries most at risk of illegal logging.***

Given these parameters were developed in clear recognition of the current debate they will form a substantive benchmark for AFGs position in this process.

AFG has been a long term participant in this debate and has provided a range of submissions and views to the process to date, and will continue to do so.

Comments on latest Bill

Attached to this submission is AFGs submission to the previous senate committee inquiry on this same subject. By and large many of the issues raised within that submission remain alive, though the reconstruction of the architecture will see some of those issue referred to regulation which does not diminish the concern and in fact in some cases gives rise to less comfort.

Nevertheless, AFG are much more content with the construct of this bill than of its predecessor. The fundamental improvement is the abolition of the 'Timber Industry Certifier' framework and its replacement with a due diligence mechanism, this seems to be as was advocated by A3P (and supported by AFG) in the previous round.

In terms of the Bill as now written AFG makes the following observations:

1] In respect of clause 9 (3) AFG advocates that the implementation of this, especially in the context of a 'regulated timber product' be closely monitored in its implementation. There is a real risk that the introduction of illegal logging tests for imports will exacerbate the practice of 'forum shopping' for timber products. 'Forum shopping' is where exporters to Australia seek to classify a product to minimise an excise or duty, this is likely to be also used to avoid compliance with illegal logging requirements. Further, the extent of the product definition needs to be considerable here, as it is relied on in the definitions, this needs to include the concerns raised below in respect of 'imported raw logs'. AFG struggles, given the time that has been available, to understand why a comprehensive definition cannot be now proposed by the Department.

2] In respect of clause 15 (1) (b) seems to be poorly written, it could be concluded that 'a person commits an offence if the person is a constitutional corporation', it is also clumsy in that a person usually is not (cannot be?) a corporation.

3] In respect of clause 15 (1) (d) causes AFG concern that there might be a 'list' of persons in the same vein as the Carbon Farming Initiative positive and negative list process. Care will need to be taken in the construct of the regulations to ensure that this is prevented.

4] In respect of clause 15 (2) specifically excludes a raw log imported into Australia. While this seems a sensible legislative construct (ie separating imported logs from domestic logs from a processing perspective) a search for complementary wording designed to cover 'imported raw logs' does not seem to be picked up elsewhere. The logical place would be to make it explicit in clause 9 (3) that this includes imported raw logs thus removing the doubt created by 'imported raw logs' being specifically excluded elsewhere in the Bill.

AFG remain concerned that the issues raised in its previous submission especially in relation to bureaucratic burden, costs to domestic growers and methodology are recognised as live risks in the development of subsequent regulations. Again it must be said that given the time elapsed that not having draft regulations to consider is significantly disappointing. AFG urges the committee to recommend that there are a range limitations and guidance applied to the development of regulations. The AFG policy and previous submission can be a base for such recommendations, especially in terms of scope and cost impacts.

AFG will continue to be engaged in consultations with the Government and Department on these issues, care still needs to be taken to get the balance right.

AFG looks forward to close consideration of the issues raised herein and are content to clarify any issues with the secretariat or committee members.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Warwick Ragg'.

Warwick Ragg
Chief Executive

Attachment:- AFG submission to the inquiry into the exposure draft and explanatory memorandum of the illegal logging prohibition bill 2011.

11 May 2011

Committee Secretary
Senate Rural Affairs and Transport
References Committee
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**RE: AFG SUBMISSION TO THE INQUIRY INTO THE EXPOSURE DRAFT
AND EXPLANATORY MEMORANDUM OF THE ILLEGAL LOGGING
PROHIBITION BILL 2011**

Australian Forest Growers (AFG) is the national association representing the private forest growing sector. AFG's members include farm plantation growers, private native forest managers and private commercial plantation companies. Since 1969, AFG has been advocating responsible establishment and management of plantations on agricultural land, which provide the multiple outcomes that the community increasingly demands. The growing of commercial plantations and active management of private native forests by our members has been delivering improved landscape health outcomes for decades, as well as complementing existing productive agricultural land use practices.

AFG welcomes the opportunity to provide a submission to the Senate inquiry into the Exposure Draft and Explanatory Memorandum of the Illegal Logging Prohibition Bill 2011. AFG supports the Federal Government's 2007 election commitment to address illegal logging and supports the Australia Government's bilateral and multilateral agreements addressing illegal logging in those countries most at risk.

However, AFG is concerned that Australian private forest growers should not be subject to increased regulatory burdens in order to address illegal logging that occurs elsewhere in the world. AFG seeks to ensure that Australian small-scale private forest growers are recognised as having minimal to no risk of producing illegal timber. AFG does not support the development of a code of conduct to regulate legal logging; however should one be introduced small-scale growers should be required to do no more than provide a declaration-type document which should suffice for proof of legality.

The following submission will address concerns AFG has about the method chosen by the Australian Government to address illegal logging and the effect it could have on small-scale private growers. AFG will also detail some in-principle arguments relating to the Bill and Explanatory Memorandum.

The impact of another layer of bureaucracy on small-scale Australian growers

It is recognised on page 10 of the Explanatory Memorandum that only a small amount of timber product is sourced from small-scale forest growers in Australia: *"the remaining 10 percent of timber product [produced in Australia] that is not certified*

comes from wood supplied by small scale forest growers who are, nevertheless, required to comply with the relevant state and territory regulations for growing and harvesting wood". Thus, it is recognised that mechanisms are already in place to ensure growers harvest their timber legally.

This is further supported by the statement on page 5 of the Explanatory Memorandum *"In Australia, domestic timber harvesting is controlled through a comprehensive framework of laws, regulations and policies"*. Thus, further regulations on private growers would be a misdirected action to addressing illegal logging.

Small-scale private forest growers in Australia are legal and subject to many layers of bureaucracy. As such a simple declaration confirming their legality should be all that is required in any legal logging requirements. Small-scale private forest growers should not be required to certify their forests, as AFG does not support the application of certification standards as a surrogate for existing domestic legislation and Codes of Forest Practice.

Costs to Australian Growers associated with taking action on illegal logging

AFG disagrees with the statement on page 3 of the Explanatory Memorandum that *"no significant financial impact will arise from the introduction of this Bill"*. This statement seems simplistic and fails to take note of the bigger picture – such as production costs being cheaper in "high-risk" countries, including the Asia-Pacific and the difficulty of identifying illegally logged timber. It is also contradictory to the CIE report, which recognised the difficulty in preventing illegally logged timber entering Australia. Thus, to imply that the timber prices in Australia will suddenly reflect a market where only legal timber is available and reflects true production costs, is naive.

Further, there are bound to be transaction costs associated with the *"legal logging requirements"* and the development of *"specific codes of conduct"*. The development of specific codes of conduct, their review (including annual reports), and educating the sector about the new requirements will have associated costs, and AFG advocates that the Australian Government should meet those costs.

Specifically, Australian small-scale growers must be reassured by the Australian Government that they will not be subject to any further costs and layers of bureaucracy as a result of the Government taking action to address illegal logging. AFG supports a declaration being the method in which Australian small-scale private forest growers confirm their legality. A declaration is easy to produce, could be made available from a Government website for download, and this requirement would have a minimal impact in terms of costs and time on small-scale private forest growers. AFG would be in a position to assist in the development of such a mechanism.

Proposed methodology to address illegal logging

The current proposed methodology for regulating illegally sourced timber entering Australia seems overly bureaucratic and costly.

As opposed to legal logging requirements and a code of conduct, AFG advocates that importers and domestic processors should be required to provide the necessary documentation to prove that they have sourced the timber from a legal source. Thus, if

a domestic processor is processing timber from a small-scale grower he/she would be able to provide the necessary regulator with the declaration as proof that the timber is from a legal source. This would remove the need and cost to develop a code of conduct. If an importer or domestic processor is unable to prove the legality of their sourced timber, then necessary sanctions should be imposed (with a grace period and ability to appeal the decision).

AFG believes that random auditing of importers and domestic processors by Government officials would be a far more efficient method (both in time and money) to regulating illegally sourced timber entering Australia, than a code of conduct. The statement on page 2 of the Explanatory Memorandum that *“By following these requirements...domestic processors of raw logs will avoid breaching relevant State and Territory legislation in regards to the harvesting of timber within Australia”* seems to undermine the success of the systems that Australia already has in place to regulate the Australian timber industry.

AFG supports the Australian Forest Products Associations (AFPA) proposed alternative to address illegal logging, as detailed on page 5-7 of their submission under the heading “AFPA proposed alternative policy framework”. AFG advocates that the option proposed by AFPA is a better and more sensible option.

Comments specifically pertaining to the Exposure Draft

- AFG seeks that Part 3, Section 12.1a is changed to read *“develop and implement due diligence for persons approved by certifiers”*.
- In Part 3, Section 13.2c, AFG queries why and to what degree *“timber products [need to be] accurately described”*.
- AFG seeks further details pertaining to the statement in Part 3, Section 13.3c that *“Different legal logging requirements may be prescribed for different kinds of processes for raw logs”*. How will this impact small-scale growers who have a portable mill on their property and process their own timber as well as their neighbours?
- AFG supports Part 5, Division 2, Section 20.2.

Regulations

It is difficult to pass judgement on the legal logging requirements without seeing the regulations. As such, AFG seeks reassurance that it will have the opportunity to provide feedback on the regulations as soon as they are made available. Further it is critical that the legislation does not limit compliance options, e.g. by reference to codes of conduct, thus removing the option of other compliance or evidentiary processes to be used.

Conclusion

AFG supports Australian Government action to combat the importation of illegally sourced wood products and to protect Australian growers who produce timber under legal frameworks. Practices enforced under legal frameworks in Australia ensure superior environmental and workplace protection measures, compared with many overseas harvesting practices, and activities relating to timber access and processing.

AFG seeks that effort to address the import of illegally sourced forest products does not result in compliance requirements greater than those which the existing legislative

framework already imposes on Australian private forest growers. Thus, AFG supports a declaration as the maximum burden for small-scale private forest growers to prove they have harvested their timber legally.

AFG advocates that the current proposed mechanism adopted by the Australian Government to address illegal logging is misdirected, overly bureaucratic and costly.

Thank you for the opportunity to provide a submission. Please contact the undersigned should you wish to discuss any of the matters raised herein.

Yours sincerely,

Warwick Ragg
Chief Executive