



Australian Government

Department of Agriculture, Fisheries and Forestry

Department of Agriculture, Fisheries and Forestry

Submission to the Senate Standing Committees on Rural Affairs and Transport Public Inquiry into the Exposure draft and explanatory memorandum of the Illegal Logging Prohibition Bill 2011

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DAFF SUBMISSION ON DRAFT ILLEGAL LOGGING PROHIBITION BILL (2011)

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EXECUTIVE SUMMARY

Illegal logging causes significant social, economic and environmental problems in developing countries. The problem is further exacerbated through the lack of measures in consumer countries restricting or prohibiting the importation of timber and wood products that contain illegally logged timber. In response to this, major timber product consumers, such as the United States and European Union, have, or are putting in place, measures to prevent trade in illegally logged timber products. Timber producing countries, such as Indonesia and Papua New Guinea, are in the early stages of developing timber legality verification schemes to demonstrate the legal origins of their timber products.

It is estimated that 9 per cent of timber products entering the Australian market have been illegally sourced. Currently, only a small number of Australian businesses who import timber and wood products and industry associations directly implement legality assurance measures. Industry, on a whole, is uncertain as to what constitutes an adequate level of legality verification for timber products and not all businesses undertake equivalent levels of legality verification.

The Australian Government made a 2007 election commitment to address illegal logging. In particular, commitments were made to require disclosure at point of sale of species, country of origin and any certification; and identify illegally logged timber and restrict its import into Australia.

During the 2010 election the government announced it would implement a policy that:

- restricts the importation of illegally logged timber products into Australia
- implements a code of conduct to ensure suppliers who first place timber into the Australian market carry out the proper tests to ensure wood coming into the country is legal
- implements a trade description for legally verified timber products and specify the circumstances under which it can be used.

The draft Illegal Logging Prohibition Bill 2011 (the draft Bill) aims to implement the government's 2007 and 2010 election commitments for restricting imports of illegally logged timber.

Following the 2007 commitment, the Department of Agriculture, Fisheries and Forestry (the department) commissioned a number of integrated projects to inform the development of the policy. From the commissioned projects, the department developed a final Regulation Impact Statement, which assessed the costs and benefits for domestic business, individuals and the Australian economy of three regulatory options designed to restrict the importation of illegally logged timber into Australia. A co-regulatory due diligence approach was recommended as the most effective means of fulfilling the government's election commitment.

The department focussed on developing a co-regulatory legislative framework that:

- Effectively and efficiently excludes imports of illegally logged timber at the border.
- Does not impose an unnecessary regulatory burden on Australia's timber importers and processors who largely operate their businesses on a legal and sustainable basis.
- Minimises the government's compliance and enforcement costs.
- Promotes industry partnerships.

- Allows for continuous improvement to systems and processes to align with advances made to existing processes.

The draft Bill targets the border and Australian timber processing mills as the key points of entry where the legality of both imported and domestically processed timber products can be effectively and efficiently screened for compliance with the legislation. This approach provides an assurance that timber products further down the timber supply chain have been verified as legally logged, thereby removing the need for full timber supply chain traceability and reducing overall business compliance costs.

The draft Bill provides a high-level legislative framework to effectively implement the government's policy to combat illegal logging. It provides the necessary authority to develop subordinate legislative instruments, such as regulations, that detail specific requirements for parties to undertake. Specifying these details in subordinate legislation allows for requirements that may be subject to periodic change, such as the coverage of regulated timber products, as well as providing flexibility to ensure there are opportunities for continuous improvement.

The draft Bill will restrict the importation and sale of illegally logged timber in Australia in three main ways. Firstly, it prohibits the importation of regulated timber products containing illegally logged timber. The products to be regulated are to be introduced in subordinate legislation, and will be developed in consultation with industry and key stakeholders. The maximum penalty for the importation of illegal timber products is prescribed at five years imprisonment, which, at the discretion of a court when sentencing, equates to a maximum fine for an individual of \$33,000, and \$165,000 for a corporation or body corporate.

Secondly, it requires importers of regulated timber products and Australian processors of raw logs to gain approval of a timber industry certifier or the responsible minister by meeting 'legal logging requirements'. The legal logging requirements will provide an acceptable level of assurance on the legal origins of the timber and wood products or processed raw logs placed onto the Australian market. Timber industry certifiers are to be established by industry or other organisations and would act as approval bodies for importers and processors who are regulated under the proposed legislation. The legal logging requirements and requirements of the timber industry certifiers are to be introduced in subordinate legislation, and will be developed in consultation with industry and key stakeholders. The maximum penalty for importing or processing timber products without approval is 100 penalty units, which equates to a maximum of \$11,000 for an individual or up to \$55,000 for a corporation.

Thirdly, it allows for regulations to require timber products that are placed onto the Australian market to be accurately described. This requirement will give Australian consumers confidence that they are purchasing legally sourced wood.

The draft Bill allows for a number of key areas to be prescribed in regulations. This allows for greater flexibility to continually improve the legislative framework for the policy over time, and provides the government with further opportunity for consultation which aligns with its co-regulatory policy approach. The key issues that are not contained in the draft Bill and will be further defined in regulations include:

- imported timber products and wood to be regulated;
- the legal logging requirements, which may include due diligence and a code of conduct
- importers and domestic processors approval process
- timber industry certifier requirements

- requirements for accurately describing imported timber products.

Industry will be given a period of 24 months from the commencement of the primary legislation to comply with any legality verification requirements and obtain the necessary approvals from timber industry certifiers or the responsible minister.

In order to ensure compliance with the legislation, the draft Bill establishes an offence and penalty regime and the authority to appoint officers to investigate offences. The department will continue to work with other key government agencies regarding enforcement and monitoring of the legislation.

The department will continue to involve industry and other stakeholders throughout the implementation of the policy, in particular in the development of the regulations.

The department established a stakeholder working group to provide input to the development of the regulations. Membership of the working group is representative of the broad range of stakeholders who maintain an ongoing interest in the development and implementation of the legislation.

The working group met for the first time on 15 April 2011 and the department will work closely with the group, which is scheduled to meet on a regular basis over the next two years, to review progress and debate any issues that may arise throughout implementation of operational requirements associated with the legislation.

1. INTRODUCTION

The purpose of this submission is to inform the Senate Standing Committee on Rural Affairs and Transport, and its inquiry, on the proposed legislation and underlying policy.

This is a complex policy area and international benchmarks are either difficult to establish or are new in their implementation and there is little established practice.

The draft Illegal Logging Prohibition Bill 2011 (the draft Bill) if passed in its current form, would for the first time establish a prohibition on the importation of illegally logged timber. The importance of introducing this legislation is to:

- promote global trade in legally logged timber products
- contribute to an increase in legal timber production by a larger proportion of overseas timber producers
- help reduce deforestation, forest degradation and the harmful environmental, social and economic impacts of illegal logging
- align Australia's efforts to fight illegal logging with those of the United States and the European Union, where similar measures have been introduced
- provide greater certainty for businesses and consumers that timber products sold in Australia are from legal sources.

The draft Bill aligns with the Australian Government's approach to developing contemporary legislation. The scope of the draft Bill provides a high-level legislative framework to effectively implement the government's policy to combat illegal logging. The draft Bill would provide government with the necessary authority to develop subordinate legislative instruments, such as regulations, that detail specific requirements for parties to undertake. The draft Bill presents three offences that would impose significant criminal penalties and provides the government with the necessary monitoring, investigation and enforcement powers needed to maintain compliance with the proposed legislation.

The draft Bill would also allow for a number of key areas to be prescribed in regulations. This will allow for greater flexibility for government and industry in designing compliance systems and processes. It will also provide government with further opportunity for consultation which aligns with its co-regulatory policy approach

The key issues that are not contained in the draft Bill, and will be further defined in regulations, include:

- imported timber products and wood to be regulated;
- the legal logging requirements, which may include due diligence and a code of conduct
- importers and domestic processors approval process
- timber industry certifier requirements
- requirements for accurately describing imported timber products.

2. BACKGROUND

2.1 Illegal logging - the problem

Illegal logging causes significant social, economic and environmental problems in developing countries where there is little capacity to enforce existing forestry laws and where forest governance is weak and subject to corruption. The problem is further exacerbated through the lack of laws in consumer countries restricting or prohibiting the importation of timber and wood products that contain illegally logged timber.

2.2 Illegal logging - the cost

The World Bank¹ estimates financial losses to the global market of more than US\$10 Billion a year and losses of government revenues of about US\$5 Billion a year. Social and environmental costs are estimated at around US\$60.5 Billion per annum². Significant intangible costs are also imposed by illegal logging on forest-dependent communities. These include loss of sustainable livelihoods, destruction of customary, spiritual and heritage values, human rights abuses, exploitation of illegal foreign workers, and a reduction in standards of living. Intangible costs also extend to the citizens of consumer countries, such as Australia, who place a high value on the conservation and sustainable use of forests subjected to illegal logging.

2.3 Combating illegal logging – an international perspective

In an effort to stop illegal logging and associated trade, major consumer countries have, or are putting in place, measures to prevent trade in illegally logged timber products. These initiatives are supported by capacity building programs to assist developing countries improve their forest law enforcement and governance. To combat illegal logging and meet the import requirements of consumer countries, timber producing countries, such as Indonesia and Papua New Guinea and organisations such as the Association of Southeast Asian Nations (ASEAN), are also developing timber legality verification schemes to demonstrate the legal origins of their timber products. The emergence of these complementary approaches has established a new international policy context for combating illegal logging and associated trade. The Australian Government has taken into account the range of measures and initiatives being developed and implemented by timber producer and consumer countries during development of the policy.

2.3.1 The United States and European Union

The United States (US) and European Union (EU) have, or are putting in place, measures restricting the importation of illegally sourced timber products. The US placed a prohibition on illegally logged timber product imports through the Lacey Act Amendment in 2008. Substantive provisions of the Act were enforced on May 22 2008³; however the declaration requirement for timber products is being phased in according to the category of timber product⁴.

The European Commission is finalising a regulation for prescribing the due diligence requirements for all timber product sellers who first place timber products onto the EU market.

¹ World Bank (2002), Forest Concession Policies and Revenue Systems, World Bank Technical Paper No. 522 (prepared by John A Grey), Washington DC.

² Centre for International Economics (2010), A Final Report to inform a Regulation Impact Statement for the proposed new policy on illegally logged timber, 29 January 2010.

³ United States Department of Agriculture, Animal and Plant Health Inspection Service – Lacey Act, http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml

⁴ US Government Federal Register 2009, US Department of Agriculture - Animal and Plant Health Inspection Service, Implementation of Revised Lacey Act Provisions Vol. 79, No. 169, September 2 2009.

Sellers will be required to exercise due diligence through a system of measures and procedures which minimise the risk of placing illegally harvested timber on the EU market. The regulation was established 2010, however, its date of application will occur 27 months later, in the first quarter of 2013. Requirements for implementing the legislation will be drafted in this period⁵.

The EU due diligence requirement is supported by Voluntary Partnership Agreements between the EU and a small number of developing countries. These agreements provide funding for targeted capacity building and the development of a licensing system for legally sourced timber products exported to the EU market⁶.

More detail on the regulatory approaches of the US and EU, and how they compare to the draft Australian Bill, is provided in section 3.6 of this submission.

2.3.2 Timber producer countries

Indonesia, Papua New Guinea (PNG) and organisations such as ASEAN are developing timber legality verification schemes to demonstrate the legal origins of their timber products. However, these schemes are at early stages of implementation.

Indonesia implemented a national legality assurance scheme (SVLK) in September 2009 for round logs and designated categories of processed timber for both domestic and export markets. PNG uses a timber legality and traceability verification system as the current standard for legality verification. The legality verification components of these schemes are similar to the legality components of the voluntary sustainability certification schemes used by timber industries in developed countries. However, these schemes are in various stages of implementation and may require more time and capacity building assistance before being recognised as fully operational.

2.4 Australia's current approach to sourcing legally logged timber

2.4.1 Legality of imported timber products

It is estimated that approximately 90 percent of Australia's timber imports are legal⁷. The legality of these products is verified using voluntary measures, including a mix of guidelines, codes of conduct and legal timber procurement policies. However, there is only limited independent auditing or monitoring of the performance of these measures⁸. In a report commissioned by the department in 2005, it was estimated that 60 per cent of importers registered with industry associations had policies for the legal verification of the timber they purchased, 26 per cent had no formal policies in place, but had developed ethical relationships with suppliers to provide legal assurances, and 14 per cent had no policies in place⁹.

⁵ European Commission (2011), Illegal Logging Timber Regulation, http://ec.europa.eu/environment/forests/timber_regulation.htm

⁶ European Commission (2011), Illegal Logging – FLEGT Action Plan, http://ec.europa.eu/environment/forests/illegal_logging.htm

⁷ Jaako Poyry Consulting (2005), Overview of Illegal Logging – Prepared for the Australian Government Department of Agriculture Fisheries and Forestry, September 2005.

⁸ Timber Development Association (2009), A generic code of conduct to support procurement of legally logged wood based forest products, December 2009.

⁹ Timber Development Association (2006), A Review of the Current Policies and Practices Employed by the Timber and Timber Product Importers to determine the Legality of Supply.

Only a small number of businesses and industry associations directly implement legality assurance measures, e.g. Bunnings, and large industry associations, such as the Australian Plantation Pulp and Paper Association (A3P) and the Australian Timber Importers Association (ATIF), have policies and practices in place for sourcing legal timber products. These approaches are now seen as a pre-requisite for supporting any claims of timber legality¹⁰.

Industry, on a whole, is uncertain as to what constitutes an adequate level of legality verification for timber products and not all businesses undertake equivalent levels of legality verification. Some businesses undertake no legality verification and may obtain an unfair market advantage from sourcing cheap, potentially illegal timber that undermines market prices for legally sourced timber.

The development of legislation that provides a national approach to the verification of the legality of timber products grown in Australia and overseas will remove the uncertainty over what constitutes legal timber and contribute to the government policy outcomes.

2.4.2 Legality of domestic timber products

In Australia, domestic timber harvesting is controlled through a comprehensive framework of laws, regulations and policies¹¹. Third Party forest certification standards, such as those of the Forest Stewardship Council or Australian Forestry Certification Scheme, are increasingly used to provide an assurance that domestic timber is sustainably produced. These certification schemes often include a legality verification component. It is estimated that the vast majority of Australian production timber is sourced from forests which have been certified by a third party, with uncertified timber originating from wood supplied by small forest growers. Therefore, demonstration of legal timber production by domestic forest growers in accordance with relevant state and territory regulations should be a relatively straight forward process¹².

2.5 Australian Government policy on illegal logging

2.5.1 Government election commitments and the work to date

This draft Bill aims to implement the government's 2007 and 2010 election commitments for restricting imports of illegally logged timber. The government made a 2007 election commitment to work with regional governments and industry to:

- Build capacity within regional governments to prevent illegal harvesting
- Develop and support certification schemes for timber and timber products sold in Australia
- Identify illegally logged timber and restrict its import into Australia
- Require disclosure at point of sale of species, country of origin¹³ and any certification
- Argue that market-based incentives aimed at reducing emissions from deforestation and forest degradation should be included in a future international climate change agreement.

¹⁰ Australian Government Department of Agriculture, Fisheries and Forestry (2010), Final Regulation Impact Statement.

¹¹ URS Forestry (2009), Review of the regulatory frameworks and documentation relating to the legality of timber production in Australia.

¹² Callum (2010), Illegal Logging Policy - Small Business Impact Statement, March 2010.

¹³ Country of origin in this context refers to 'country of harvest'.

Following the 2007 commitment, the department commissioned a number of projects to inform the policy development process. These projects included a report informing the Regulation Impact Statement (RIS) undertaken by the Centre for International Economics (CIE), a final RIS developed by the department, three key projects undertaken following direction of the Forest and Wood Products Council, plus three additional reports that were undertaken to support the Regulation Impact Statement. The projects commissioned by the Council were funded from the \$1 million allocated from the government's 2007 election commitment. These projects provided an integrated source for the development of the policy.

The Minister for Agriculture, Fisheries and Forestry, brought these reports to the Senate's attention when referring the draft Bill to this inquiry. A short summary of each project follows:

A generic code of conduct to support procurement of legally logged wood-based forest products

The project was completed in December 2009 and described a possible due diligence framework for industry. It provided guidance on undertaking a risk assessment of the legality of the origins of timber products. It also provided examples of suitable systems and schemes for verifying the legal origins of timber products that can effectively address the identified risks.

Report to inform a Regulation Impact Statement for the proposed new policy on illegally logged timber

This project incorporated a final report that included amendments to a draft report based on stakeholder comments. It describes viable options for implementing the government's illegal logging election commitment, a cost-benefit analysis of those options and a recommended policy option. The final report was released in January 2010 and used to assist the department with its preparation of the final RIS.

A report on methods for assessing the legality risks of timber and wood products imported into Australia

This project examined methods to estimate the value of illegally harvested timber being imported, and was completed in February 2010. The report proposed a risk assessment model where systems of forestry governance in timber producing countries were evaluated and linked to corruption indices.

An assessment of compliance costs for small business in the forest and timber industry

This report was completed in March 2010 and categorised the structure and nature of small businesses operating within the Australian forest and timber industry. It estimated the compliance cost for small businesses that might be associated with meeting a legality verification requirement.

A framework for differentiating legality verification and chain of custody schemes

This report provided guidance to industry on how they can differentiate between the available systems of legality verification based on the scheme requirements, governance processes and independence of compliance auditing procedures. The report was completed in March 2010.

ABARE additional economic analysis in support of the illegal logging policy

The ABARE analysis provided additional sensitivity analyses with respect to the compliance costs associated with the three policy options considered by the Centre for International Economics and estimated costs of the due diligence approach. The analysis was provided in May 2010.

A review of the social costs of illegal logging

This report focused on the impacts of illegal logging on forest dependent communities and in particular, the impacts on the five elements of capital associated with forests. It indicated that forest dependent communities are often more vulnerable to impacts given their typically lower socio-economic status relative to urban communities, providing broader description of these impacts to complement the social cost estimate provided in the final report from the Centre for International Economics. The final report was released in June 2010.

The final Regulation Impact Statement

The final Regulation Impact Statement assessed the costs and benefits for domestic business, individuals and the Australian economy from three regulatory options designed to restrict the importation of illegally logged timber into Australia. A due diligence approach was recommended as the most effective means of fulfilling the government's election commitment. The Office of Best Practice Regulation advised the department the report met the government's Best Practice Regulation requirements. The final RIS was released in May 2010.

These projects, in particular the generic code of conduct, the report informing the RIS, the review of the social costs of illegal logging and the final RIS, involved thorough consultation with individual companies and stakeholder groups. The following parties made formal submissions to the CIE report to inform the development of the final RIS:

- Australian Timber Importers Federation
- Furniture Industry Association of Australia
- Australian National University
- Uniting Church of Australia
- Australian Forest Growers
- Humane Society International
- National Association of Forest Industries
- European Union
- Timber Queensland
- A3P
- Australian Window Association
- Window and Door Industry Council
- Greenpeace
- Decorative Wood Veneers Association
- East Gippsland Shire Council
- Department of Infrastructure
- Energy and Resources (Tasmania)
- Construction, Forestry, Mining and Energy, Union

During the 2010 election the government announced it would implement a policy that:

- restricts the importation of illegally logged timber products into Australia
- implements a code of conduct to ensure suppliers who first place timber into the Australian market carry out the proper tests to ensure wood coming into the country is legal
- implements a trade description for legally verified timber products and specifies the circumstances under which it can be used.

A similar policy was also announced by the Coalition during the 2010 election.

In December 2010 the government announced it would implement key aspects of the illegal logging policy by introducing legislation to make it an offence to import a timber product that contains illegally logged timber.

Since this announcement, the department held several information seminars for interested stakeholders. These sessions informed stakeholders on aspects of the policy's co-regulatory approach and elements of the draft Bill. They also gave an indication that there will be ongoing

consultation with industry and other stakeholders in drafting the subordinate legislation. The details of the sessions held are detailed below:

- **Melbourne** – 7 February 2011
- **Sydney** – 7 February 2011
- **Brisbane** – 9 February 2011
- **Perth** – 14 April 2011
- **Adelaide** – 29 April 2011

In addition to the stakeholder seminars, the department has established a stakeholder working group to provide input to the development of the regulations. The first meeting of the working group was held on the 15 April 2011, and the group will meet further over the next two years to finalise the regulations. The key issues to be developed with the working group are:

- imported timber products to be regulated;
- framework for the legal logging requirements, which may include due diligence and a code of conduct
- importers and domestic processors approval process
- timber industry certifier requirements
- industry capacity building, training and education to facilitate development of due diligence systems and processes.

2.6 Regulatory options - Regulation Impact Statement

Of three options - full regulation, co-regulation, self-regulation - that were analysed in the department's RIS¹⁴, a due diligence co-regulation approach for identifying illegally logged timber and restricting its importation into Australia was decided as the best approach by government. This approach recommended by the RIS was multi-faceted involving co-regulation, continued bilateral cooperation with other countries in the region and multilateral engagement on forestry through existing forums. This multi-faceted approach was supported by the findings of the cost-benefit analysis and a consideration of the intangible costs of illegal logging.

Co-regulation was also seen to provide the most cost effective approach for the legislation, where industry could build on existing timber legality verification systems and processes for the responsible procurement of legally sourced timber and wood products.

2.7 Factors considered in drafting the legislation

The final RIS (included in the draft Illegal Logging Prohibition Bill 2011 Explanatory Memorandum) states:

The World Bank (2006) estimates financial losses to the global market from illegal logging of more than US\$10 billion a year and losses of government revenues of about US\$5 billion a year. These figures are based on undeclared values and may therefore represent a significant under-estimation of the global cost of illegal logging. They equal only 1.5 per cent of global timber production. The CIE, in their assessment of the global problem, assumed that illegal logging and trade in illegally logged timber was

¹⁴ Australian Government Department of Agriculture, Fisheries and Forestry (2010), Final Regulation Impact Statement.

10 percent of the respective totals of total timber production and global timber products trade. That is, world trade in illegally logged timber products is valued at US\$15 billion per annum.¹⁵

The proportion of illegally sourced timber products entering the Australian market has been estimated at 9 per cent—from total imports of A\$4.4 Billion—or around of A\$400 million¹⁶. Australian annual imports of timber and wood products (excluding furniture) are equivalent to 0.034 per cent of global timber production¹⁷. Therefore the effectiveness of reducing the extent and impact of illegal logging on a global scale through unilateral legislative action by Australia will be very small¹⁸.

However when legislative action is taken in concert with other nations such as the U.S. and EU, in addition to the efforts of developing countries, effective steps can be taken towards the eradication of illegal logging. Therefore the actions of the US and EU to take measures to address illegal logging mean that Australia will not be acting alone, and will share in global efforts to reduce the incidence of illegal logging and associated trade.

These are important factors in determining the nature and extent of legislation required to exclude illegally logged timber and wood products imported into Australia.

It is also important to recognise the level of awareness and motivation of the Australian timber industry to demonstrate their environmental credentials, and the availability of existing legality verification and forest certification schemes that may be adopted by industry. The government recognises the substantial efforts of some businesses and organisations to put in place policies and systems for the procurement of legally sourced timber products. There is also a willingness of other businesses to establish legality verification systems to exclude illegally logged timber from their supply chains.

In taking into account these factors when designing the legislative measure to combat illegal logging and trade, the draft Bill focussed on developing a co-regulatory legislative framework that:

- (a) Effectively and efficiently excludes imports of illegally logged timber at the border.
- (b) Does not impose an unnecessary regulatory burden on Australia's timber importers and processors who largely operate their businesses on a legal and sustainable basis.
- (c) Minimises the government's compliance and enforcement costs.
- (d) Promotes industry partnerships.
- (e) Allows for continuous improvement to systems and processes to align with advances made to existing processes.

2.8 Drafting of the legislation

In line with the current approach to developing contemporary legislation the scope of the draft Bill would provide a high-level legislative framework to effectively implement the government's

¹⁵ Australian Government Department of Agriculture, Fisheries and Forestry (2010), Final Regulation Impact Statement.

¹⁶ Poyry (2010) Legal Forest Products Assurance - a risk assessment framework for assessing the legality of timber and wood products imported into Australia.

¹⁷ Australian Government Department of Agriculture, Fisheries and Forestry (2010), Final Regulation Impact Statement.

¹⁸ Centre for International Economics (2010), A Final Report to inform a Regulation Impact Statement for the proposed new policy on illegally logged timber, 29 January 2010.

policy to combat illegal logging. The draft Bill provides government with the necessary authority to develop subordinate legislative instruments, such as regulations, that detail specific requirements for parties to undertake. For example, Part 3 of the draft Bill imposes fundamental obligations on importers and domestic processors, however, the detail of what actions parties will be required to undertake to meet those obligations are to be included in subordinate legislation.

The inclusion of specific detail within subordinate legislation, such as regulations, is also in line with the co-regulatory nature of the legislation. Industry stakeholders have an important role in the development of the requirements and will be extensively consulted under the co-regulatory approach. The subordinate legislative instruments will also include any requirements that may be subject to periodic change, such as the coverage of regulated timber products. This gives the legislative framework the flexibility to ensure there are opportunities for continuous improvement. This approach to the drafting of subordinate legislation meets the guidelines established in the *Legislation Handbook*¹⁹.

In addition to the draft Bill providing the overarching legislative framework, it has also been drafted to include any high-level penalties to be applied for breaches of the legislation. This is also consistent with the guidance provided in the *Legislation Handbook* which states that in drafting primary legislation consideration should be given for the inclusion of:

“provisions creating offences which impose significant criminal penalties (imprisonment or fines equal to more than 50 penalty units for individuals or more than 250 penalty units for corporations)”.

¹⁹ Department of Prime Minister and Cabinet (2000), *Legislation Handbook*.
http://www.dpmc.gov.au/guidelines/docs/legislation_handbook.pdf

3. KEY ISSUES

3.1 The objective of the legislation

A restriction on the importation of illegally logged timber products into Australia and a due diligence requirement for sourcing legally harvested timber will:

- promote global trade in legally logged timber products
- contribute to a global approach to combating illegal logging by taking action that is complementary to that being adopted by the US and EU
- contribute to an increase in legal timber production by a larger proportion of overseas timber producers
- help reduce deforestation, forest degradation and the harmful environmental, social and economic impacts of illegal logging
- provide greater certainty for businesses and consumers that timber products sold in Australia are from legal sources.

3.2 Sections of the supply chain that are targeted by the legislation

The draft Bill minimises the risk of illegally logged timber products entering the Australian timber supply chain by targeting two key points of entry where the legality of timber products can be effectively and efficiently screened for compliance with the legislation:

- At the border - for Australian importers bringing timber and wood products into the country, and
- At timber processing mills - for domestic processors of raw logs.

This approach provides an assurance that timber products further down the timber supply chain have been verified as legally logged, thereby removing the need for full timber supply chain traceability and reducing overall business compliance costs.

3.3 The approval process for certifiers and importers

The draft Bill makes it an offence to import regulated timber products or to process raw logs domestically without the approval of the responsible minister or an accredited timber industry certifier. A fine of 100 penalty units applies which equates to a maximum of \$11,000 for an individual or up to \$55,000 for a corporation.

The requirement for approval of importers and processors to import or process timber provides certainty that regulated products placed onto the Australian market have been subjected to an adequate due diligence process.

Approval will be subject to the establishment and audit of a due diligence system that complies with the legal logging requirements. Approval of due diligence systems will be required within two years after the commencement of the prohibition on importing illegally logged timber. This gives industry a reasonable period of time to comply with the legal logging requirements and to obtain the necessary approval.

Approval to import regulated timber products or process raw logs will be granted by a timber industry certifier or the responsible minister once they are satisfied that the applicant is able to meet the legal logging requirements.

The responsible minister would have power to approve importers and processors in the event that no appropriate timber industry certifier is established to implement the approval. This provision is also designed to accommodate businesses, industry associations or organisations

who do not seek to become a timber industry certifier or to join a timber industry certifying body. This may occur for importers of particular categories of product which are not administered by a timber industry certifier, such as importers of specialised timber products. In this circumstance, approval by the responsible minister avoids the legislation having perverse impacts on importers whose products are not covered by a timber industry certifying entity.

Timber importers and processors who seek approval by the responsible minister are likely to have their own codes of conduct for the procurement of legally verified timber products or legality verification schemes in place. These entities may directly seek approval of the responsible minister by adapting or developing their own due diligence systems to comply with the legal logging requirements.

3.4 The penalty provisions of the legislation

The penalty provisions associated with the prohibition are designed to deter importers who knowingly or recklessly import illegally logged timber, and to provide a strong incentive for importers to be aware of inadvertently sourcing illegally logged timber.

The draft Bill sets a maximum penalty of five years imprisonment for committing an offence under the prohibition. The absence of a prescribed financial penalty within the draft Bill does not exclude the possibility of one being imposed by the court. The *Crimes Act 1914* (s4B) allows for a financial penalty to be imposed instead of or in addition to imprisonment. Under this provision a five year term of imprisonment would equate to a maximum of 300 penalty units for an individual and 1500 penalty units for a corporation/body corporate. Currently one penalty unit is equal to \$110, which equates to a maximum fine for an individual of \$33,000, and \$165,000 for a corporation/body corporate. It is important to note that the range of the penalty imposed is at the discretion of the court when sentencing.

The penalty provision prohibiting the importation of timber and wood products containing illegally logged timber is only one element of the legislation. Importers will also be required to be approved by a timber industry certifier or the responsible minister to import timber into Australia, predicated upon the importer having a due diligence system in place and having undertaken due diligence of the timber products before they are purchased and imported into Australia. This offence and penalty regime, in combination with the approval process, provides a further incentive for importers and domestic processors to source legally harvested timber.

As described in the Illegal Logging Prohibition Bill 2011 Explanatory Memorandum, the draft Bill does not prescribe any direct forfeiture for regulated timber products that are found to be in breach of the prohibition. However, Section 229 of the *Customs Act 1901* may be invoked by the Commonwealth to direct the forfeiture of goods found in breach of the prohibition and thereby prevent their entry onto the Australian market. Forfeiture provisions are also present in existing legislation such as Parts 2-2 and 2-3 of the *Proceeds of Crimes Act 2002*.

3.5 The enforcement and monitoring of the legislation

The draft Bill requires importers of regulated timber and wood products to be approved by a timber industry certifier or the responsible minister, and will be required to provide information to this effect upon importation of their product.

It is likely information to monitor consignments of timber and timber products entering Australia will be compiled and reported through the use of existing systems administered by Customs. Customs will provide the relevant information to the department to analyse and

monitor compliance. The department will take the lead role in enforcement of breaches under the legislation, but may require Customs assistance to enable officers of the department to take action on illegal imports through new—if necessary—and existing arrangements. Details that will be required during the importation process will be established under regulations.

The Australian Federal Police, on request by the department, will investigate serious breaches of the legislation, and where appropriate refer the possible breach to the Commonwealth Director of Public Prosecutions for consideration of prosecution, in accordance with existing arrangements and procedures.

Domestic processors of raw logs, (for example, saw mills, veneer mills, plywood mills, green mills, dry mills, pulp mills and paper mills) will also be required to be approved by a timber industry certifier or the responsible minister, and will be required to provide information to this effect upon sourcing their product. How these requirements will be implemented will be worked through with stakeholders and state governments

The responsible minister may cancel the approval of an importer, processor or timber industry certifier provided the responsible minister is satisfied that the importer or processor, or importer or processor approved by the timber industry certifier, has not complied with, or is not able to comply with the applicable legal logging requirements. This provision provides a strong incentive for importers and processors to comply with the legal logging requirements. The decision to cancel approval may be based on a major breach of a legislative requirement or on a series of minor non-compliance instances, as identified through independent third party audits of compliance.

The department will continue to work with other key government agencies regarding enforcement and monitoring of the legislation.

3.6 Comparison of the legislation to the regulatory approaches of the US and EU

3.6.1 Definition of illegally logged

When comparing the definitions of illegal timber, the definition in Australia's draft Bill is broad, and refers to timber harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.

The US Lacey Act amendment²⁰ applies to any plant that is 'taken, possessed, transported or sold in violation of any US law or regulation, or any foreign law', that protects plants or regulates:

- the theft or taking of plants
- the payment of royalties, taxes or stumpage fees required for the harvest
- the governance of export or transshipment of plants.

The EU regulation²¹ states that illegally harvested means timber that is harvested in contravention to 'applicable legislation' in the 'country of harvest'. Applicable legislation covers:

²⁰ US Government (2008), Amendments to the Lacey Act from H.R.2419, Sec. 8204, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf

²¹ Office Journal of the European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

- 'rights to harvest timber within legally gazetted boundaries'
- 'payments for harvest rights', including 'duties related to timber harvesting'
- 'timber harvesting'
- 'third parties legal rights'
- 'trade and customs'.

3.6.2 Prohibition

The draft Bill prohibits the importation of regulated timber products containing illegally logged timber. This is similar to the amendments to the US Lacey Act, which make it unlawful to trade in any plant that is 'taken, possessed, transported, or sold' in violation of any US law or regulation, or any foreign law that protects plants²². The EU regulation prohibits 'the placing on the market of illegally harvested timber or timber products derived from such timber'²³.

3.6.3 Due diligence requirements

The draft Bill requires importers of regulated timber products and processors of raw logs to be approved by a timber industry certifier or the responsible minister by meeting legal logging requirements. Legal logging requirements are to be established in regulations. The requirements will provide an acceptable level of assurance that the origins of imported timber and wood products and processed raw logs placed onto the Australian market are legal.

The amendments to the Lacey Act do not have a requirement to put in place a due diligence system for providing assurance of legality of imported timber products. The Lacey Act requires *due care* to be exercised in making sure shipments of timber are obtained legally. The onus of proof rests with the US Government to prove an importer has violated the Act. Such proof is to be based on information gained from foreign governments, non-government organisations, private citizens, anonymous tips, data analysis (e.g. declarations), industry members (whistle blowers and competitors) and agents on the border²⁴.

The EU regulation requires operators to exercise due diligence when first placing timber or timber products on the market. The regulation sets out that any due diligence system must contain²⁵:

- measures and procedures to allow access to information on the operator's supply of timber or timber products placed on the market
- risk assessment procedures which analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market
- except where risk identified in the course of assessment is negligible, risk mitigation measures and procedures that are adequate and proportionate to minimise effectively that risk.

²² US Government (2008), Amendments to the Lacey Act from H.R.2419, Sec. 8204, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf

²³ Office Journal of the European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

²⁴ United States Department of Agriculture, Animal and Plant Health Inspection Service (2010), Lacey Act Primer, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf

²⁵ Office Journal of the European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

The European Commission will adopt more detailed rules on the due diligence system by 3rd June 2012²⁶.

The government will be following the progress of the EU and US measures carefully throughout the development and implementation of its own policy and legislative measures.

3.6.4 Penalties

The draft Bill sets a maximum penalty of five years imprisonment. This penalty may, at the discretion of the court when sentencing, be equated to a maximum fine for an individual of \$33,000, and \$165,000 for a corporation/body corporate.

By comparison, violations of the Lacey Act attract penalties of²⁷:

- (a) Five years imprisonment and a \$250,000 fine (US\$500,000 for corporations) for knowingly importing illegally logged plant products with a value of more than US\$350.
- (b) One year imprisonment and a fine of US\$100,000 (US\$200,000 for corporations) for misdemeanours where an individual or corporation should have known that the plant was illegally taken, possessed, transported or sold in the exercise of *due care* plant products with a value of more than \$350.
- (c) Forfeiture of unlawful plants or products on the basis of strict liability.

The EU regulation sets out that Member States shall lay down the rules on penalties applicable to any infringement of the regulation, and take all measures necessary to ensure they are implemented. The regulations state the penalties must be effective, proportionate and dissuasive, and may include fines, the seizure of the timber and timber products concerned, or immediate suspension of authorisation to trade. Member States must notify the European Commission of these provisions²⁸.

3.6.5 Declaration requirement

The draft Bill also prepares the way for the introduction of a requirement for the accurate description of imported timber products. It is envisaged this requirement will apply at the first point of sale of the imported timber product.

The amendments to the US Lacey Act make it an offence to import certain plants and plant products without an import declaration. The products requiring the import declaration are being phased-in. The import declaration must include the scientific name of any plant, value, quantity, and the name of the country from which the plant was taken²⁹.

²⁶ European Commission (2011), Illegal Logging Timber Regulation
http://ec.europa.eu/environment/forests/timber_regulation.htm#due_diligence

²⁷ United States Department of Agriculture, Animal and Plant Health Inspection Service (2010), Lacey Act Primer, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf

²⁸ Office Journal of the European Union, Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

²⁹ United States Department of Agriculture, Animal and Plant Health Inspection Service (2010), Lacey Act Primer, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/LaceyActPrimer.pdf

The EU regulation requires measures and procedures to be in place to allow access to information on the timber or timber products placed on the market, this information must be made available throughout the supply chain, and include³⁰:

- description, including trade name, type of product and tree species
- country of harvest, and where applicable sub-national region and concession of harvest
- quantity
- documents or other information indicating compliance of the timber and timber products with the applicable legislation
- details of the supplier to the operator
- details of the trader to whom the timber or timber products have been supplied.

3.6.6 Timing of implementation

An exposure draft and explanatory memorandum of the Australian Illegal Logging Prohibition Bill 2011 was referred to the Senate Standing Committee on Rural Affairs and Transport, for a public inquiry on 23 March 2011. The government has publicly stated its intention to introduce the draft Bill into Parliament in 2011.

The amendments to the US Lacey Act were enforced on 22 May 2008, however the declaration requirement for timber products is being phased in according to the category of timber product³¹. The first phase-in schedule of the declaration requirement began on 1 April 2009.

The EU regulation was established in October 2010, however, its date of application is 3 March 2013. Requirements for implementing the due diligence aspects of the legislation will be adopted by 3 June 2012³².

3.6.7 Product coverage

The timber and wood products to be regulated under the draft Australian legislation will be prescribed in regulations to coincide with the enforcement of the prohibition which will occur upon proclamation of the legislation. A list of product categories that may be regulated has been identified in the RIS. Further work is being undertaken with ABARES and stakeholders to identify timber and wood products that may be effectively regulated, taking into account the complexity of the product.

Under the amendments to the US Lacey Act, the prohibition applies to all plants and plant products³³. The products which require the import declaration are being phased in, and currently include sawn wood, chipped wood, shaped wood, sheets for veneers, wood for joinery or carpentry, plywood, wooden frames and seats with wood frames. Products which have not

³⁰ Office Journal of the European Union (2010), Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

³¹ US Government Federal Register 2009, US Department of Agriculture - Animal and Plant Health Inspection Service, Implementation of Revised Lacey Act Provisions Vol. 79, No. 169, September 2 2009.

³² European Commission (2011), Illegal Logging Timber Regulation, http://ec.europa.eu/environment/forests/timber_regulation.htm

³³ US Government (2008), Amendments to the Lacey Act from H.R.2419, Sec. 8204, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/background--redlinedLaceyamndmnt--forests--may08.pdf

yet been phased in and do not currently require the import declaration include particle board, fibreboard, packing cases and pulp and paper products³⁴.

The EU regulation provides an annex to the regulation which prescribes the timber and timber products that the regulation applies to. These include³⁵:

- 4401—Fuel wood
- 4403—Wood in the rough
- 4406—Railway or tramway sleepers
- 4407—Wood sawn or chipped lengthwise
- 4408—Sheets for veneering
- 4409—Wood continuously shaped
- 4410—Particle board
- 4411—Fibreboard
- 4412—Plywood, veneered panels
- 4413—Densified wood
- 4414—Wooden frames
- 4415— Packing cases, boxes, crates, drums
- 4416— Casks, barrels, vats, tubs
- 4418—Builders' joinery and carpentry of wood
- 47 & 48 chapters—Pulp and paper
- 9403—Wooden furniture (940330,40,50,60 & 90)
- 94060020—Prefabricated buildings

³⁴ United States Department of Agriculture, Animal and Plant Health Inspection Service, Phase-In Schedule of Enforcement of the Declaration Requirement for Goods of, or Containing, Plants or Plant Products, http://www.aphis.usda.gov/plant_health/lacey_act/downloads/2009-09ImplementationScheduleLaceyAct.pdf

³⁵ Office Journal of the European Union (2010), Regulation (EU) No 995/2010 of the European Parliament and of the Council, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:295:0023:0034:EN:PDF>

4. THE WAY FORWARD

The draft Bill provides a legislative framework for requirements to be established in subordinate legislation. In developing the detail of these requirements, the department will:

- Consult with industry, including those who have existing processes to assess and mitigate the risk of sourcing illegally harvested timber products.
- Consult with non-government environment organisations and church groups.
- Consult with state agencies to assist in determining the requirements for domestic processors under the legislation.
- Monitor the development of requirements in the EU and US, in particular the development of due diligence requirements for the EU regulation, and due care requirements for the US Lacey Act Amendment.
- Monitor the developments in advancing legality verification in timber producing countries such as Indonesia and PNG.

Further details, in particular the stakeholder consultation and key issues to be resolved are outlined further in this section.

4.1 Stakeholder consultation

Under the co-regulatory approach of the draft legislation, industry and other stakeholders will be extensively consulted in the development of the subordinate legislation. This allows the government to clearly convey its intent to stakeholders, provides flexibility to the government and industry in designing compliance systems and processes, and enables the participation of key stakeholders in developing the details of the requirements of the legislation

To effectively consult stakeholders on the specifics of the regulations, a stakeholder working group has been convened. More details of the stakeholder working group and key matters for its consideration are outlined in section 4.2 and 4.3 of this submission.

In addition to the work of the stakeholder consultation group, the department will continue to hold information seminars to a broader range of stakeholders around Australia outlining the development and content of the requirements.

4.2 Stakeholder working group

The department established the illegal logging policy stakeholder working group to provide input to the development of the regulations. Membership of the working group is representative of the broad range of stakeholders who maintain an ongoing interest in development and implementation of the legislation (see table for complete membership of the working group).

The working group met for the first time on 15 April 2011 and the department will work closely with the group, which is scheduled to meet on a regular basis over the next two years, to review progress and debate any issues that may arise throughout implementation of operational requirements associated with the legislation. The times, venues and scope for future meetings will be arranged with the working group. A preliminary meeting schedule and an indication of the agenda for upcoming working group meetings are outlined below.

June 2011	Focussing on the development of the list of timber products that will be covered by the legislation. The format and work schedule of the bi-monthly meetings will also be discussed.
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August 2011 Focussing on further development of the regulations.

October 2011 Focussing on further development of the regulations.

Meetings will then be scheduled every eight weeks over the next two years.

The membership of the stakeholder working group currently includes:

Contact Name	Affiliation
Juel Briggs	Briggs Veneers & Decorative Wood Veneers Association
Allen Broome	Decorative Wood Veneers Association
Colin Fitzpatrick	Timber and Building Materials Association Australia
Bronwyn Foord	Window and Door Industry Council
Lyn Gabriel-Kenworthy	JazCorp Australia Pty Ltd (timber and building materials)
Gerry Gardiner	Queensland Timber Importers, Exporters and Wholesalers Association
Mark Gomm	Bunning's/Wesfarmers
John Halkett	Australian Timber Importers Federation
Allan Hansard	National Association of Forest Industries
Rod Holesgrove	Humane Society International
Kevin Hoole	Gunn Timbers
Nils Koren	Gunnersens
Norman Long	Australian Timber Importers Federation
Armineh Mardirossian	Woolworths Limited
Gavin Matthew	Australian Plantation and Paper Industry Council
Warwick Ragg	Australian Forest Growers
Peter Roberts	Timber Merchants Association
Richard Stanton	Australian Plantation and Paper Industry Council
Jeremy Tager	Greenpeace
Chris Woodhouse	Queensland Timber Importers, Exporters and Wholesalers Association
Dr Mark Zirnsak	Uniting Church

4.3 Key matters for the stakeholder working group

The key matters to be detailed in subordinate legislation and developed with input from the stakeholder working group are:

- Prescribing imported timber and wood products for regulation.
- Prescribing the legal logging requirements.
- Developing codes of conduct incorporating legal logging requirements.
- Establishing requirements for timber industry certifiers.
- Establishing requirements for accurately describing imported timber products.

4.3.1 Prescribing imported timber and wood products for regulation

The timber and wood products to be regulated under the legislation will be prescribed in regulations to coincide with the enforcement of the prohibition. A list of product categories that may be regulated has been identified in the RIS which included three broad categories; solid timber and wood products; processed timber and wood products; and complex wood products. Further work is being undertaken with ABARES and stakeholders to identify timber and wood products that may be effectively regulated, taking into account the complexity of the product.

4.3.2 Prescribing the legal logging requirements

Timber importers and processors will be required to meet legal logging requirements to provide an acceptable level of assurance that the origins of imported timber and wood products and processed raw logs placed onto the Australian market are legal. Details of the requirements will be established in regulations to cover the level of detail necessary to enable importers and processors to readily comply with the legislation. This provision also requires importers and processors to accurately describe regulated timber.

Other matters that may be included in legal logging requirements, the regulations will allow for industry to:

- carry out proper due diligence, in the form of a risk assessment and mitigation for timber placed on the Australian market
- become signatories to a code of conduct – industry has been provided with a generic code of conduct which provides a basis to develop their own code.

It is envisaged that these requirements will be implemented by importers and processors in the form of a due diligence system. The due diligence approach is a key element of co-regulation as it enables importers and processors to set up their own systems in a flexible and cost effective way according to the category of product. Due diligence would be defined as 'the degree of care that a reasonably prudent person would exercise under a particular set of circumstances to ensure that they are not violating the law'.

Prior to the development of the draft Bill, the department commissioned a number of reports on Australia's timber imports, domestic legislation and regulations for legal timber production, risk assessment, legality verification and codes of conduct. These reports will be used to assist importers and processors to better understand the requirements of the legislation and to facilitate the development of schemes that are compliant with the legal logging requirements.

The department will consult with businesses and industry organisations that have developed processes to assess and mitigate the risk of sourcing illegally harvested timber products. Overseas officials who are currently developing due diligence requirements for the EU

regulation, and due care requirements for the Lacey Act Amendment, will also be consulted. This work will be ongoing during the development of the regulations.

The department will develop the regulations in consultation with stakeholders, including industry and non-government organisations. Again the stakeholder working group will provide the best forum for the government to consult with these groups in the development of the legal logging requirements.

4.3.3 Developing codes of conduct incorporating legal logging requirements

The purpose of a code of conduct is to provide guidance to importers and processors in establishing and implementing their due diligence system for particular categories of regulated timber and wood products. Codes are envisaged to be developed by timber industry certifiers for particular timber and wood product import categories and their respective supply chains, such as solid wood, pulp and paper and manufactured wood products. A code of conduct is also envisaged for processors of raw logs based on a much simpler supply chain between the raw log producer and the raw log processor. The regulation would establish requirements for a code of conduct consistent with the above due diligence risk assessment and mitigation criteria, indicators and actions. All codes of conduct developed by industry would require approval by the responsible minister as complying with the legal logging requirements.

4.3.4 Establishing requirements for timber industry certifiers

The illegal logging policy stakeholder working group will provide an appropriate forum to discuss the roles and responsibilities of timber industry certifiers. These discussions will inform the timber industry certifier requirements to be finalised in the regulations.

The responsible minister may approve in writing a person or body as a timber industry certifier unless the responsible minister is not satisfied that the certifier will comply with timber industry certifier requirements (section 12 of the draft Bill) or ensure that approved persons will comply with applicable legal logging requirements (sections 13 and 14 of the draft Bill).

The draft Bill allows for a broad range of options regarding timber industry certifiers to be prescribed in the regulations, including their establishment. Possibilities exist for industry to form their own timber industry certifier body individually or in conjunction with other companies or organisations. For example, an independent company may wish to form its certifying body or choose to pair up with multiple businesses. Opportunities may also exist for businesses to pair with non-traditional partners such as environmental non-government organisations or social justice groups. Through the working group and other consultation activities the government will determine requirements for how best to establish timber industry certifiers.

To provide an assurance that timber industry certifiers will comply with these provision, the responsible minister may, by writing given to a timber industry certifier, cancel the certifier's approval if the responsible minister is satisfied that the certifier has not complied, or is not able to comply, with applicable timber industry certifier requirements; or one or more persons approved by the certifier as importers of regulated timber products or processors of raw logs have not complied with applicable legal logging requirements.

The draft Bill allows for timber industry certifier requirements to be prescribed in the regulations. These requirements may represent the administrative arrangements for industry in implementing the legal logging requirements of the legislation, and are to be developed in consultation with stakeholders through the stakeholder working group.

Different timber industry certifier requirements may be prescribed for different classes of timber industry certifiers.

4.3.5 Establishing requirements for accurately describing imported timber products

The draft Bill allows for prescribing a requirement in subordinate legislation for the accurate description of timber products. This requirement will fulfil part of the government's 2010 election commitment to develop a trade description and circumstances under which it can be used. It is envisaged that the accurate description will be transferred on first sale after the regulated timber product enters the market.