

Chapter 3

Conclusions and Recommendations

3.1 The committee notes the broad support for the bill, and commends the extensive, and ongoing, process of consultation undertaken by Government with a wide variety of stakeholders both domestically and in the international arena. This has resulted in a bill that has substantially addressed concerns raised by submitters during the Legislation Committee's inquiry into the exposure draft of the bill. The ongoing consultation process will help ensure the development of Regulations that balance good regulation with the cost of compliance.

3.2 The committee notes that this is the first legislation in the world designed from the outset to address illegally logged timber. This demonstrates the commitment that the Government is making to combating illegal logging, with its multiple adverse environmental, social and economic effects.

3.3 The committee notes that the markets for wood and wood-based products are in the process of rapid change. Australia's housing and construction, interior fit-out, and secondary wood processing industries are increasingly dependent on imported timber and wood-based raw materials, including an increase in the import of manufactured products of uncertain origin. The committee is concerned that this poses a significant challenge for importers and regulators alike, as ascertaining the sometimes diverse origins and legality of some of the more complex material will prove difficult. The committee is of the view that it is imperative that the challenges of regulating the import of increasing amounts of complex wood-based materials receives due consideration during consultations regarding the Regulations.

3.4 The committee appreciates that timber exporting countries face a number of complex challenges in ensuring the legality of exported timber. The committee is of the view that consultations on this issue should be undertaken through continued bilateral cooperation with timber exporting countries in the region, and through multilateral engagement on forestry through existing forums. This will be complemented by Australia's non-regulatory capacity building programmes aimed at combating illegal logging.

3.5 The committee notes that Australia has significant obligations to combat corruption under various treaties including the UN Convention Against Corruption; OECD Convention on Combating Bribery of Foreign Public Officials in International Business; and the UN Convention against Transnational Organised Crime. The committee is of the view that, as part of these obligations, there is a significant role that Australia can continue to play in assisting timber exporting countries to improve their forest governance, as well as assisting law enforcement agencies in those countries to develop data system and strategies to combat corruption. The committee regards the ongoing consultation process as an opportunity to examine the most

effective contribution that due diligence processes can make to Australia fulfilling its treaty obligations to combat corruption.

3.6 The committee notes submitters' concerns regarding Australia's international trade obligations, however it is reassured by the Explanatory Memorandum noting that the bill does not contravene these obligations as 'like measures for imported timber would also be applied to domestic timber'.¹ The committee notes the importance of ensuring that the subordinate regulations also remain consistent with Australia's trade obligations.

3.7 The committee also notes submitters comments that the bill attempts to reach into the legal systems of other countries. However, the committee is of the view that this is not the case. Rather, the bill introduces a prohibition on importation of illegally logged timber into Australia, with attendant requirements for importers to carry out due diligence. These two approaches can be distinguished.

3.8 The committee recognises that the Government has explicitly taken a broad approach to the definition of illegally logged, without being prescriptive. The committee commends this approach, noting that a prescriptive definition of illegally logged may have unintended consequences, or may result in some elements of applicable legislation being overlooked or excluded through omission. The committee is also of the view that this approach provides scope and flexibility for importers and processors of raw logs to undertake appropriate due diligence, which may be prescribed by regulations.

3.9 The committee notes that in the Legislation Committee's inquiry into the exposure draft of the bill, the majority of submitters supported harmonisation with the United States Lacey Act and European Union legislation to the fullest extent possible. The committee remains of the view that it is desirable that the bill should to the greatest extent possible be aligned with other international regimes.

3.10 Further, the committee finds that in establishing the Regulations, it would be highly desirable for the Government to align closely with the measures being introduced in the United States under the 2008 amendments to the Lacey Act and the European Union Timber Regulation 2010. This would minimise the cost of compliance, guard against product substitution, and help facilitate greater compliance amongst exporting countries. The committee notes the concerns of submitters in relation to possible unintended consequences of the Lacey Act, but is of the view that caution should be applied in drawing conclusions based on the yet to be concluded actions against the Gibson Guitar Corporation.

3.11 The committee notes that similar issues about the purpose of the bill, and whether an objects clause should be included, were raised during the Legislation

1 *Explanatory Memorandum, Illegal Logging Prohibition Bill 2011*, p. 54.

Committee's inquiry into the exposure draft of the bill.² The view of the committee at that time was that 'there would be no value added in including an object clause in the draft bill'.³ clause 6 of the amended bill makes it clear that the purpose of the Act is to 'prohibit[s] the importation of illegally logged timber and the processing of illegally logged raw logs' and 'requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed'.⁴ The committee remains of the view that an object clause does not add anything to clause 6.

3.12 The committee appreciates that many concerns raised by submitters relate to uncertainty about the nature of the due diligence requirements that will be prescribed by regulation. The committee is of the view that ongoing consultations with stakeholders on the nature and content of the due diligence requirements will be critical to ensuring that the requirements are robust, yet flexible and responsive to emerging situations and developing knowledge and technologies.

3.13 The committee is concerned that a number of submitters appear confused by the difference between the immediate prohibition on illegal logging and the subsequent due diligence requirements that will be addressed by regulations. It appears that many of the submissions were based on a misunderstanding regarding the burden of proof for a criminal conviction in such a case. The committee is of the view that this matter needs to be clarified, in a timely manner, through an information campaign that forms part of a broader outreach strategy. This will be an important step in gaining broader support for the objectives of the bill.

3.14 The committee emphasises again the importance of ensuring that due diligence requirements are developed in a way that reflects the best regulatory practice, while ensuring this is balanced by consideration of the cost and burden of compliance on importers and processors. The committee is of the view that using pre-existing laws, rules or processes, individual country initiatives and national schemes including national timber legality verification and forest certification schemes, where they are found to be appropriate, will contribute greatly to reducing compliance costs.

3.15 The committee is of the view that significant and well-targeted outreach efforts, domestically and internationally, to explain the purpose and operation of the bill and accompanying Regulations will be critical to the successful implementation of the bill. This will complement Australia's non-regulatory capacity building initiatives designed to combat illegal logging in the region.

Recommendation 1

2 Senate Rural Affairs and Transport Committee, *Exposure draft and explanatory memorandum of the Illegal Logging Prohibition Bill 2011*, June 2011, p. 26.

3 Senate Rural Affairs and Transport Committee, *Exposure draft and explanatory memorandum of the Illegal Logging Prohibition Bill 2011*, June 2011, p. 70.

4 Clause 6, *Illegal Logging Prohibition Bill 2011*.

3.16 The committee recommends that the Illegal Logging Prohibition Bill 2011 be passed.

Senator Glenn Sterle

Chair