



Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2017

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 09 October 2017

Peter Cosgrove
Governor-General

By His Excellency's Command

Anne Ruston
Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Deputy Prime Minister and Minister for Agriculture and Water Resources

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1 Name

This instrument is the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2017*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 January 2018.	1 January 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Illegal Logging Prohibition Act 2012*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Illegal Logging Prohibition Regulation 2012

1 Section 3 (note at the end of the definition of *timber legality framework*)

Omit “11(1)(a) and 20(1)(a)”, substitute “9A(1)(a) and 18A(1)(a)”.

2 Paragraphs 9(2)(c) and (d)

Repeal the paragraphs, substitute:

- (c) include the following information:
 - (i) the importer’s name, street address, postal address, telephone number and email address;
 - (ii) if the importer is not an individual—information about the person who is responsible for maintaining the system, including the person’s name, position and contact details, including telephone number and email address;
 - (iii) if the regulated timber product is to be imported in connection with a business carried on by the importer—the principal business activity conducted by the importer and the importer’s ABN or ACN; and

3 After section 9

Insert:

9A Due diligence requirements—use of timber legality framework (optional process)

- (1) This section applies to an importer in relation to the importation of a regulated timber product if:
 - (a) a timber legality framework prescribed in Part 1 of Schedule 2 applies to the timber in the product; and
 - (b) the importer elects to use the procedures in subsection (2).
- (2) Before importing the product, the importer must:
 - (a) obtain a copy of the licence or certificate issued under the timber legality framework to the person (the *supplier*) who is to supply the product to the importer; and
 - (b) use the code or number (however described) for the licence or certificate to confirm that:
 - (i) the supplier is the licence or certificate holder; and
 - (ii) the product falls within the scope of the licence or certificate; and
 - (iii) the licence or certificate will be valid when the product is supplied to the importer; and
 - (c) check the invoice or contract of sale for the product to confirm that:
 - (i) any claim made on the invoice or contract for the product in relation to the timber legality framework is consistent with the licence or certificate; and

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- (ii) the code or number (however described) for the licence or certificate appears on the invoice or contract; and
 - (d) make a written record of the procedures undertaken in accordance with this subsection.

Civil penalty provision

- (3) An importer is liable to a civil penalty if the importer contravenes subsection (2).

Civil penalty: 100 penalty units.

4 Before subsection 10(1)

Insert:

- (1A) This section applies to an importer in relation to the importation of a regulated timber product if the importer does not elect to use the procedures in subsection 9A(2).

5 Subsection 10(1)

Omit “An importer must, before importing a regulated timber product”, substitute “The importer must, before importing the product”.

6 Paragraph 10(2)(a)

Omit “regulated timber”.

7 Paragraph 10(2)(g)

Repeal the paragraph.

8 Section 11

Repeal the section.

9 Paragraph 12(2)(b)

After “assess”, insert “(to the standard set out in subsection (2A))”.

10 After subsection 12(2)

Insert:

- (2A) The identification and assessment of risk mentioned in paragraph (2)(b), and any outcome of that identification and assessment, must be reasonable.

11 Section 13 (heading)

Repeal the heading, substitute:

13 Due diligence requirements—identifying and assessing risk (alternative to sections 9A and 12)

12 Paragraph 13(1)(a)

Omit “11(2)”, substitute “9A(2)”.

13 Subparagraph 13(1)(b)(i)

Omit “11(2) or”.

14 Paragraph 13(2)(a)

After “assess”, insert “(to the standard set out in subsection (2A))”.

15 After subsection 13(2)

Insert:

(2A) The identification and assessment of risk mentioned in paragraph (2)(a), and any outcome of that identification and assessment, must be reasonable.

16 Paragraph 14(3)(b)

Omit “11(2),”.

17 Subsection 16(1) (after table item 1)

Insert:

1A	Record of procedures carried out in relation to the use of a timber legality framework	Paragraph 9A(2)(d)	5 years from the day the product is imported
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18 Subsection 16(1) (table item 3, column headed “Kind of record”)

Omit “a timber legality framework or”.

19 Subsection 16(1) (table item 3, column headed “Relevant provision”)

Omit “11(2)(d) or”.

20 Paragraphs 18(2)(c) and (d)

Repeal the paragraphs, substitute:

(c) include the following information:

- (i) the processor’s name, street address, postal address, telephone number and email address;
- (ii) if the processor is not an individual—information about the person who is responsible for maintaining the system, including the person’s name, position and contact details, including telephone number and email address;
- (iii) if the raw log is to be processed in connection with a business carried on by the processor—the principal business activity conducted by the processor and the processor’s ABN or ACN; and

21 After section 18

Insert:

18A Due diligence requirements—use of timber legality framework (optional process)

- (1) This section applies to a processor in relation to the processing of a raw log if:
 - (a) a timber legality framework prescribed in Part 1 of Schedule 2 applies to the log or the area in which the log was harvested; and
 - (b) the processor elects to use the procedures in subsection (2).
- (2) Before processing the log, the processor must:

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- (a) obtain a copy of the licence or certificate issued under the timber legality framework to the person (the *supplier*) who is to supply the log to the processor; and
 - (b) use the code or number (however described) for the licence or certificate to confirm that:
 - (i) the supplier is the licence or certificate holder; and
 - (ii) the log falls within the scope of the licence or certificate; and
 - (iii) the licence or certificate will be valid when the log is processed; and
 - (c) check the invoice or contract of sale for the log to confirm that:
 - (i) any claim made on the invoice or contract for the log in relation to the timber legality framework is consistent with the licence or certificate; and
 - (ii) the code or number (however described) for the licence or certificate appears on the invoice or contract; and
 - (d) make a written record of the procedures undertaken in accordance with this subsection.

Civil penalty provision

- (3) A processor is liable to a civil penalty if the processor contravenes subsection (2).

Civil penalty: 100 penalty units.

22 Before subsection 19(1)

Insert:

- (1A) This section applies to a processor in relation to the processing of a raw log if the processor does not elect to use the procedures in subsection 18A(2).

23 Subsection 19(1)

Omit “A processor must, before processing a raw log”, substitute “The processor must, before processing the raw log”.

24 Paragraph 19(2)(e)

Repeal the paragraph.

25 Section 20

Repeal the section.

26 Paragraph 21(2)(b)

After “assess”, insert “(to the standard set out in subsection (2A))”.

27 After subsection 21(2)

Insert:

- (2A) The identification and assessment of risk mentioned in paragraph (2)(b), and any outcome of that identification and assessment, must be reasonable.

28 Section 22 (heading)

Repeal the heading, substitute:

22 Due diligence requirements—identifying and assessing risk (alternative to sections 18A and 21)

29 Paragraph 22(1)(a)

Omit “20(2)”, substitute “18A(2)”.

30 Subparagraph 22(1)(b)(i)

Omit “20(2) or”.

31 Paragraph 22(2)(a)

After “assess”, insert “(to the standard set out in subsection (2A))”.

32 After subsection 22(2)

Insert:

(2A) The identification and assessment of risk mentioned in paragraph (2)(a), and any outcome of that identification and assessment, must be reasonable.

33 Paragraph 23(3)(b)

Omit “20(2),”.

34 Subsection 25(1) (after table item 1)

Insert:

1A	Record of procedures carried out in relation to the use of a timber legality framework	Paragraph 18A(2)(d)	5 years from the day the raw log is processed
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35 Subsection 25(1) (table item 3, column headed “Kind of record”)

Omit “a timber legality framework or”.

36 Subsection 25(1) (table item 3, column headed “Relevant provision”)

Omit “20(2)(d) or”.

37 Clause 1 of Schedule 2 (table item 1)

Repeal the item.

38 Clause 1 of Schedule 2 (note 1)

Repeal the note.