

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources

Illegal Logging Prohibition Act 2012

Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018

Legislative Authority

The *Illegal Logging Prohibition Act 2012* (the Act) aims to reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber in Australia. The Act requires importers of regulated timber products and processors of domestically grown raw logs to conduct a due diligence process in order to reduce the risk that illegally logged timber is imported or processed.

Section 86 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Illegal Logging Prohibition Regulation 2012* (principal Regulation) prescribes due diligence requirements for importing regulated timber products and processing domestically grown raw logs. The due diligence requirements are prescribed to minimise the risk of a regulated timber product containing illegally logged timber in the Australian market.

Purpose

The purpose of the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018* (the Amendment Regulations) is to amend the principal Regulation to add to Schedule 2 a new country specific guideline for the Republic of Korea and to replace the country specific guidelines for Malaysia and Indonesia with updated versions. The amending Regulations also provide a 'reasonableness' standard an importer or processor must meet when using the 'timber legality frameworks' risk assessment optional process as part of their due diligence.

Background

The amendment to add the new country specific guideline for the Republic of Korea provides an additional option for importers of regulated timber products from the Republic of Korea to conduct due diligence. Importers may elect to use the country specific guideline option provided for in section 12 of the principal Regulation if the country specific guideline for the Republic of Korea applies to the timber in the product, or the area in which the timber is harvested. The amendments to add the revised versions of the country specific guidelines for Malaysia and Indonesia enable importers of regulated timber products from these countries to access the most up-to-date guidance material on forestry legal frameworks in order to carry out their due diligence.

The other amendment, which provides that the identification and assessment of risk, and any outcome of that identification and assessment, must be ‘reasonable’ is designed to ensure that importers and processors carry out the due diligence requirements in a reasonable and defensible way.

Impact and Effect

The principal Regulation has been amended to add the new country specific guideline for the Republic of Korea, and the revised versions of the country specific guidelines for Malaysia and Indonesia. These documents offer importers guidance on how to meet their due diligence obligations for regulated timber products originating from those countries.

The principal Regulation has also been amended to establish the standard which importers and processors must meet when identifying and assessing risk using the timber legality frameworks option as part of their due diligence. The amendment requires the identification and assessment of risk, and the outcome of that identification and assessment, to be reasonable. This is an objective test that may be assessed by reference to the records that an importer and processor is required to keep under section 11 and section 20 of the principal Regulation.

For example, where an importer or processor identifies and assesses, by the use of the timber legality framework and consideration of the information gathered under section 10 of the principal Regulation, that a regulated timber product or raw log may be at risk of being illegally logged, the importer or processor cannot then reach an inconsistent finding that the regulated timber product or raw log is at low risk of being illegally logged. The outcome reached must be reasonable and justifiable based on the written record of the identification and assessment of risk undertaken.

This amendment establishes a ‘reasonableness’ standard consistent with the standard already provided for in the ‘prescribed risk factors’ and ‘country specific guideline and state specific guideline’ risk assessment optional processes prescribed in Division 1 of Part 3 of the principal Regulation.

Consultation

In February 2016, in response to the ‘Independent Review of the Impact of the Illegal Logging Regulations on Small Business’, the government agreed to the review recommendation to fast track the development of additional country specific guidelines to ensure businesses had access to increased guidance on the information they can gather from suppliers in key trading partner countries. The governments of Malaysia, Indonesia, and the Republic of Korea were consulted during the development or revision of the individual country specific guidelines and co-endorsed the final guidelines.

The Office of Best Practice Regulation has been consulted and has advised that the amendments are machinery in nature and a regulation impact statement is not required (OBPR ID Number: 23960).

Details/ Operation

Details of the Amendment Regulations are set out in the [Attachment A](#).

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018*

Section 1 – Name

This section provides that the name of the Amendment Regulations is the *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018*.

Section 2 – Commencement

This section provides for the Amendment Regulations to commence on the day after the Regulation is registered.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Illegal Logging Prohibition Act 2012*.

Section 4 – Schedules

This section provides that the *Illegal Logging Prohibition Regulation 2012* (the principal Regulation) is amended as set out in Schedule 1.

Schedule 1 – Amendments

Item 1 amends paragraph 11(2)(b) to provide that the risk identification and assessment process set out in that paragraph would be subject to the standard set out in the subsection 11(2A). Subsection 11(3) of the principal Regulation already provides that an importer who contravenes subsection 11(2) is liable to a maximum civil penalty of 100 penalty units.

Item 2 inserts subsection 11(2A) to establish the standard by which the risk identification and assessment process set out in paragraph 11(2)(b) must be measured. Subsection 11(2A) provides that the identification and assessment of risk mentioned in paragraph 11(2)(b) and any outcome of that identification and assessment, must be reasonable. This is an objective test that may be assessed by reference to the record that an importer is required to keep under section 11 of the principal Regulation.

Item 3 amends paragraph 20(2)(b) to provide that the risk identification and assessment process set out in that paragraph would be subject to the standard set out in subsection 11(2A). Subsection 20(3) of the principal Regulation already provides that a processor who contravenes subsection 20(2) is liable to a maximum civil penalty of 100 penalty units.

Item 4 inserts subsection 20(2A) to establish the standard by which the risk identification and assessment process set out in paragraph 20(2)(b) would be measured. Subsection 20(2A) provides that the identification and assessment of risk, mentioned in paragraph 20(2)(b), and any outcome of that identification and assessment, must be reasonable. This is an objective test that may be assessed by reference to the record that a processor is required to keep under section 20 of the principal Regulation.

Item 5 omits the references to the year “2014” in notes 2 and 3 in Clause 1 of Schedule 2 to the principal Regulation and substitutes the references in both notes with the year “2018”, to reflect that, as at 2018, the information about the Forest Stewardship Council (FSC) forest management certification and chain of custody standards, and the Programme for the Endorsement of Forest Certification (PEFC) forest management certification and chain of custody standards, could be viewed on the FSC and PEFC websites.

Item 6 repeals table item 3 in clause 2 of Schedule 2 to the principal Regulation which lists the country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 21 October 2014. The item substitutes a new table item 3 which lists the country specific guideline for Indonesia, co-endorsed by the Government of Australia and the Government of Indonesia on 1 October 2018. Importers of regulated timber products from Indonesia are required to use this revised and updated version of the country specific guideline for Indonesia when they elect to use the country specific guidelines optional process provided in section 12 of the principal Regulation.

Item 7 repeals table item 4A in clause 2 of Schedule 2 to the principal Regulation, which lists the country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 13 February 2015. The item substitutes a new table item 4A which lists the country specific guideline for Malaysia, co-endorsed by the Government of Australia and the Government of Malaysia on 10 March 2017. Importers of regulated timber products from Malaysia are required to use this revised and updated version of the country specific guideline for Malaysia when they elect to use the country specific guidelines optional process provided in section 12 of the principal Regulation.

Item 8 inserts table item 5B in clause 2 of Schedule 2 to the principal Regulation to list the country specific guideline for the Republic of Korea, co-endorsed by the Government of Australia and the Government of the Republic of Korea on 26 June 2018. The new country specific guideline for the Republic of Korea provides guidance material for importers of regulated timber products from the Republic of Korea when gathering information to meet their due diligence requirements provided in section 10 of the principal Regulation. Importers may elect to use the country specific guideline optional process under section 12 of the principal Regulation, if the country specific guideline for the Republic of Korea applies to the timber in the product, or the area in which the timber is harvested.

Item 9 omits the reference to the year “2014” in the notes in Clauses 2 and 3 of Schedule 2 to the principal Regulation and would substitute it with a reference to the year “2018” to reflect that, as at 2018, the country specific guidelines and state specific guidelines could be viewed on the website of the Department of Agriculture and Water Resources.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

**Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations
2018**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The *Illegal Logging Prohibition Amendment (Due Diligence Improvements) Regulations 2018* amend the *Illegal Logging Prohibition Regulation 2012* to add new and revised country specific guidelines to Schedule 2, and to apply a ‘reasonableness’ standard an importer or processor must meet when using the ‘timber legality frameworks’ risk assessment optional process as part of their due diligence.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Richard Colbeck
Assistant Minister for Agriculture and Water Resources
Parliamentary Secretary to the Minister for Agriculture and Water Resources**