

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

*Illegal Logging Prohibition Act 2012*

*Illegal Logging Prohibition Amendment (Country Specific Guidelines) Regulations 2020*

### **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 12 of Division 2 of Part 2 of the Act provides that a person commits an offence if the person imports a thing, the thing is a regulated timber product, the person does not comply with the due diligence requirements for importing the product and the thing is not prescribed as exempt by the Regulations.

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.

Subsection 14(1) of the Act provides that the regulations must prescribe due diligence requirements for importing regulated timber products. Under subsection 14(2), the requirements must be prescribed only for the purposes of reducing the risk that imported regulated timber products are, are made from, or include, illegally logged timber.

Subsection 14(5) of the Act relevantly provides that the regulations may provide for due diligence requirements for importing regulated timber products to be satisfied, wholly or partly, by compliance with specified laws, rules, or processes, including laws, or processes under laws, in force in a State or Territory or another country.

Section 8 of Division 2 of Part 2 of the *Illegal Logging Prohibition Regulation 2012* (the Principal Regulation) prescribes due diligence requirements for importing regulated timber products for the purposes of subsection 14(1) of the Act (among other things). Consistent with subsection 14(2) of the Act, the due diligence requirements are prescribed to reduce the risk that imported regulated timber products are made from, or include, illegally logged timber.

Subsection 10(1) of the Principal Regulation provides that an importer must, before importing a regulated timber product, obtain as much of the information about the product mentioned in subsection 10(2) as it is reasonably practicable for the importer to obtain. The information includes, if a country-specific guideline applies to the timber in the product, or the place in which the timber is harvested – the information or evidence (such as a certificate, license or other document) relating to the product that the guideline requires the importer to obtain.

Section 12 of the Principal Regulation sets out the due diligence requirements for identifying and assessing risk against country-specific guidelines (as an optional risk mitigation process).

Section 12 applies to an importer in relation to the importation of a regulated timber product if a country-specific guideline prescribed in Part 2 of Schedule 2 applies to the timber in the product, or the area in which the timber is harvested, and the importer elects to use the process in subsection 12(2).

Subsection 12(2) provides that the importer must, before importing the product:

- assess the information gathered in accordance with subsection 10(1), by the use of the guideline; and
- identify and assess (to the standard set out in subsection (2A)), by the use of the guideline and consideration of the information gathered in accordance with subsection 10(1), whether there is a risk that the product is, is made from, or includes, illegally logged timber; and
- in the identification and assessment of risk mentioned in paragraph (b), consider any other information the importer knows, or ought reasonably to know, that may indicate whether the product is, is made from, or includes, illegally logged timber; and
- make a written record of the identification and assessment undertaken in accordance with this section.

The country specific guidelines are set out in the table in Part 2 of Schedule 2 of the Principal Regulation. They include country specific guidelines for Finland (item 2), Malaysia (item 4A) and New Zealand (item 5).

## **Purpose**

The purpose of the *Illegal Logging Prohibition Amendment (Country Specific Guidelines) Regulations 2020* (the Amendment Regulations) is to amend various items in the table in Part 2 of Schedule 2 to the Principal Regulation to add a new country specific guideline for Chile and to replace the country specific guidelines for New Zealand, Finland and Malaysia with updated versions of those guidelines.

## **Background**

The addition of the country specific guideline for Chile provides an additional option by which importers of regulated timber products from Chile may conduct due diligence to reduce the risk that imported regulated timber products from that country are, are made from, or include, illegally logged timber.

The amendments to add the revised versions of the country specific guidelines for New Zealand, Finland and Malaysia enable importers of regulated timber products from these countries to access the most up-to-date guidance material on forestry legal frameworks in those countries in order to carry out their due diligence.

## **Impact and Effect**

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

## **Consultation**

The governments of Chile, New Zealand, Malaysia and Finland were consulted during the development or revision of the individual country specific guidelines and co-endorsed the final guidelines. This consultation was undertaken through a range of bilateral meetings undertaken with these governments and the exchange of correspondence.

The Amendment Regulations are machinery in nature and do not add any new requirements to the existing due diligence process and will not create any additional regulatory burden for affected stakeholders. Consequently, importers of timber products have not been consulted in relation to the amendments. This is consistent with the approach used for the development of all previous country-specific guidelines.

The Office of Best Practice Regulation has been consulted and has advised that the amendments are minor in nature, with the regulatory cost burden unlikely to be affected, and that a Regulation Impact Statement is not required (OBPR ID Number: 25828).

## **Details/ Operation**

Details of the Amendment Regulations are set out in [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 (Country Specific Guidelines) Regulations 2020***

**Section 1 – Name**

This section provides that the name of the Amendment Regulations is the *Illegal Logging Prohibition Amendment (Country Specific Guidelines) Regulations 2020*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

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

**Section 4 – Schedules**

The effect of this section is that the *Illegal Logging Prohibition Regulation 2012* (the Principal Regulation) is amended as set out in Schedule 1.

**Schedule 1 – Amendments**

**Item 1 – Clause 2 of Schedule 2 (after table item 1)**

This item inserts a new table item 1A in clause 2 of Schedule 2 to the Principal Regulation, to list the Country specific guideline for Chile, which was co-endorsed by the Government of Australia and the Government of Chile on 19 February 2020.

The new country specific guideline for Chile provides guidance material for importers when gathering information to meet their due diligence requirements in section 10 of the Principal Regulation to reduce the risk that imported regulated timber products from Chile are, are made from, or include, illegally logged timber. Importers may elect to use the country specific guideline optional process under section 12 of the principal Regulation to conduct due diligence, if the country specific guideline for Chile applies to the timber in the product, or the area in which the timber is harvested.

The version of the country specific guideline for Chile that is incorporated by reference is the version of that document as at 19 February 2020.

The country specific guideline for Chile is freely available at:

<https://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines>

### **Item 2 – Clause 2 of Schedule 2 (table item 2)**

This item repeals the existing date of co-endorsement of the country specific guideline for Finland in table item 2 in clause 2 of Schedule 2 to the Principal Regulation and substitutes a new date of co-endorsement of 16 April 2020.

This amendment reflects the updating of this document by the Australian Government and the Government of Finland. Importers are required to use this revised and updated version of the country specific guideline for Finland when they elect to use the country specific guidelines optional process provided for in section 12 of the Principal Regulation to conduct due diligence.

The Country specific guideline for Finland that is incorporated by reference is the version of that document as at 16 April 2020.

The country specific guideline for Finland is freely available at:

<https://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines>

### **Item 3 – Clause 2 of Schedule 2 (table item 4A)**

This item repeals the existing date of co-endorsement of the country specific guideline for Malaysia in table item 4A in clause 2 of Schedule 2 to the Principal Regulation and substitutes a new date of co-endorsement of 12 May 2020.

This amendment reflects the updating of this document by the Australian Government and the Government of Malaysia. Importers 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 for in section 12 of the Principal Regulation to conduct due diligence.

The Country specific guideline for Malaysia that is incorporated by reference is the version of that document as at 12 May 2020.

The country specific guideline for Malaysia is freely available at:

<https://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines>

### **Item 4 – Clause 2 of Schedule 2 (table item 5)**

This item repeals the existing date of co-endorsement for the country specific guideline for New Zealand in table item 5 of clause 2 of Schedule 2 to the Principal Regulation and substitutes a new date of co-endorsement of 16 September 2019.

This amendment reflects the updating of this document by the Australian Government and the Government of New Zealand. Importers are required to use this revised and updated version of the country specific guideline for New Zealand when they elect to use the country specific guidelines optional process provided for in section 12 of the Principal Regulation to conduct due diligence.

At the request of the Government of New Zealand, the updated country specific guideline for New Zealand notes that it was prepared by the Australian Government and Ministry for Primary Industries of New Zealand. However, in line with the letter of co-endorsement provided by the Government of New Zealand, item 5 refers to the guideline being co-endorsed by the Government of Australia and the Government of New Zealand.

The Country specific guideline for New Zealand that is incorporated by reference is the version of that document as at 16 September 2019.

The country specific guideline for New Zealand is freely available at:

<https://www.agriculture.gov.au/forestry/policies/illegal-logging/importers/resources#country-specific-guidelines>

**Item 5 – Clause 2 of Schedule 2 (note)**

This item repeals the existing reference to the year “2018” in the note in Clause 2 of Schedule 2 to the Principal Regulation and substitutes “2020”. This amendment reflects that as at 2020, the country specific guidelines can be viewed on the website of the Department of Agriculture, Water and the Environment.

**Statement of Compatibility with Human Rights**

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

**Illegal Logging Prohibition Amendment (Country Specific Guidelines) Regulations 2020**

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 (Country Specific Guidelines) Regulations 2020* amend the *Illegal Logging Prohibition Regulation 2012* to add new and revised country specific guidelines to Schedule 2.

**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.

**The Hon. David Littleproud MP**  
**Minister for Agriculture, Drought and Emergency Management**