

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture and Northern Australia

*Illegal Logging Prohibition Act 2012*

*Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021*

### **Legislative Authority**

The *Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021* (the Regulation) makes regulation amendments to the *Illegal Logging Prohibition Regulation 2012* (the Principal Regulation) to amend codes and descriptions of regulated timber products, remove a country specific guideline, add a new country specific guideline and revise State specific guidelines.

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 processing of illegally logged timber in Australia. The Principal Regulation gives effect to various sections of the Act. This includes prescribing timber products that are regulated under the Act; the due diligence requirements for persons importing regulated timber products, including listing country specific guidelines for importers; and the due diligence requirements for persons processing domestically grown raw logs, including listing State specific guidelines for processors.

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.

### **Regulated timber products**

The Harmonized Commodity Description and Coding System (the Harmonized System) is a framework of codes and descriptions used to identify all tradeable goods, administered by the Department of Home Affairs. This Harmonized System is updated every 5 years, and the Harmonized System of 2022 is due to enter into force on 1 January 2022.

The *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021* received Royal Assent on 2 September 2021. This Act amends the *Customs Tariff Act 1995* (the Tariff Act) to replace the codes and descriptions of the Harmonized System of 2017 and replace them with the codes and descriptions of the Harmonized System of 2022. This will ensure that, from 1 January 2022, the codes and description used to identify goods imported into Australia are consistent with those in the latest version of the Harmonized System.

Schedule 1 to the Principal Regulation also refers to the codes and descriptions used in the Tariff Act, which in turn uses the codes and descriptions in the Harmonized System. The Regulations update the codes and descriptions of two items within Schedule 1 of the Principal Regulation, which refer to wooden frames and wooden parts of furniture, respectively. This ensures that the codes and descriptions of regulated timber products listed in Schedule 1 reflect current information.

### Country specific guidelines

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

The removal of the country specific guideline for the Solomon Islands ensures that the prescribed country specific guidelines under the Principal Regulations reflect reasonably current information. The country specific guidelines listed in Schedule 2 of the Principal Regulation are periodically reviewed and updated where needed, in consultation with the respective jurisdiction to ensure they continue to accurately detail timber legality information. The department has engaged with the Solomon Islands country specific guideline through the periodic review process and as a result of this engagement, a decision has been made that this country specific guideline should now be removed from incorporation under the Principal Regulation.

### State specific guidelines

The addition of the revised versions of the State specific guidelines for Tasmania and South Australia enables processors of raw logs to access the most up-to-date guidance material on legal frameworks in those States in order to carry out their due diligence obligations.

## **Purpose**

The purpose of the Regulations is to: amend Schedule 1 to update codes and descriptions of regulated timber products as a result of changes made to the Harmonized Commodity Description and Coding System; amend Part 2 of Schedule 2 to the Principal Regulation to add a new country specific guideline for Thailand; remove the country specific guideline for the Solomon Islands; and amend Part 3 of Schedule 2 to provide revised State specific guidelines for the States of Tasmania and South Australia.

## **Background**

The amendments to the codes and descriptions of regulated timber products listed in Schedule 1 ensures that the Principal Regulations reflect current information.

The purpose of the new country specific guideline for Thailand is to provide an additional option by which importers of regulated timber products containing timber harvested in Thailand may conduct due diligence to reduce the risk that imported regulated timber products containing timber harvested in that country are, are made from, or include, illegally logged timber.

The removal of the country specific guideline for the Solomon Islands ensures that the prescribed country specific guidelines under the Principal Regulations reflect reasonably current information.

The amendments to the State specific guidelines for Tasmania and South Australia enable processors of raw logs to access the most up-to-date guidance material on legal frameworks in those States, in order to carry out their due diligence obligations.

## **Consultation**

The Regulations are machinery in nature and will not add any new obligations to the existing due diligence process or create any additional regulatory burden for affected stakeholders. New and amended country and State specific guidelines provide additional options to satisfy the Principal Regulation's requirements. In delisting a country specific guideline there remains two pathways for affected importers to undertake due diligence assessments under the Principal Regulation: the timber legality frameworks process set out in section 11 of the Principal Regulation; and the identifying and assessing risk process set out in section 13 of the Principal Regulation. Consequently, importers of timber products and processors of raw logs have not been consulted in relation to the proposed amendments. This is consistent with the approach used for the development of all previous country specific and State specific guidelines.

In respect of the proposed amendments related to regulated timber products, the department consulted with the Department of Home Affairs in respect of the amendments to the codes and descriptions of regulated timber products. The Government of Thailand was consulted during the development of its country specific guidelines and co-endorsed the final guidelines. This consultation was undertaken through a range of bilateral meetings undertaken with this Government and the exchange of correspondence.

The department has consulted with the Government of Solomon Islands and the Department of Foreign Affairs and Trade post in the Solomon Islands regarding the delisting of the Solomon Islands country specific guideline.

The department has consulted with the Tasmanian and South Australian governments in updating their State specific guidelines, and each government co-endorsed their respective updated guideline.

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: 44796).

## **Details/ Operation**

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

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

**Section 1 – Name**

This section provides that the name of the Regulation is the *Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021*.

**Section 2 – Commencement**

This section sets out, in a table, the date on which each of the provisions contained in the Regulations commence. This table provides that sections 1 to 4 of the Regulations commence the day after this instrument is registered. Schedule 1, Part 1 of the Regulations commences on 1 January 2022, to align with the commencement of the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021*. Schedule 1, Part 2 of the Regulations commences on the day after the end of the period of 2 months beginning on the day this instrument is registered to allow any importers that are using the Solomon Islands country specific guideline, or processors using the superseded State specific guidelines to make any necessary adjustments.

**Section 3 – Authority**

This section provides that the 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**

***Illegal Logging Prohibition Regulation 2012***

**Part 1—Regulated timber products**

**Item 1 – At the end of Part 5**

This item inserts section 28, which provides that the amendments made by items 2 and 3 of this instrument apply in relation to the importation of a thing on or after 1 January 2022. This aligns the changes to regulated timber products with the changes made to the corresponding product descriptions in the *Customs Tariff Amendment (2022 Harmonized System Changes) Act 2021*, which commences on 1 January 2022.

**Item 2 – Clause 1 of Schedule 1 (table item 10)**

This item repeals the reference number in column 1 of table item 10 (4414.00.00) and substitutes a new reference number of 4414.

This amendment reflects the updating of the Harmonized System within the Tariff Act that split the previous description of ‘WOODEN FRAMES FOR PAINTINGS, PHOTOGRAPHS,

MIRRORS OR SIMILAR OBJECTS’, into two new sub-categories, specifying items made of ‘tropical wood’, and items made of ‘other’, respectively. This item ensures both of these sub-categories are still covered by the Principal Regulation as regulated timber products.

### **Item 3 – Clause 1 of Schedule 1 (table item 45)**

This item repeals the table item 45 and substitutes a new table item. This new item provides a new reference number of 9403.91.00 in column 1, and updates the item description at column 2 to add ‘of wood’.

This item reflects the updating of the Harmonized System within the Tariff Act that split the previous description of ‘OTHER FURNITURE AND PARTS THEREOF: Parts’ into two new sub-categories, specifying parts made of ‘wood’ and ‘other’, respectively. This item ensures that only parts of furniture made of wood are still covered by the Principal Regulation as a regulated timber product.

## **Part 2—Country and State specific guidelines**

### **Item 4 – Clause 2 of Schedule 2 (table item 6)**

This item repeals table item 6 of section 2 of Schedule 2 to the Principal Regulation, being the country specific guideline for the Solomon Islands.

This item substitutes a new table item 6, which lists the country specific guideline for Thailand, co-endorsed by the Government of Australia and the Government of Thailand on 24 August 2021.

The new country specific guideline for Thailand 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 containing timber harvested in Thailand 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 Thailand applies to the timber in the product, or the area in which the timber is harvested.

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

This item repeals the existing note and substitutes a note that explains that the country specific guidelines could in 2021 be viewed on the Department’s website (<http://awe.gov.au>). This is consistent with the expectation that, as a principle of justice, that every person subject to the law should be able to readily and freely access its terms, without cost. This note explains that the incorporated documents, being the country specific guidelines, are freely available online, with website details provided.

### **Item 6 – Clause 3 of Schedule 2 (table item 4)**

This item repeals the date of co-endorsement of the State specific guideline for South Australia in table item 4 of section 3 of Schedule 2 to the Principal Regulation and substitutes a new date of 27 April 2021.

This item reflects the updating of this document by the Australian Government and the Government of South Australia. Processors are required to use this updated version of the

State specific guideline for South Australia when they elect to use the State specific guidelines optional process, provided for in section 21 of the Principal Regulation, to conduct due diligence, or when required to obtain information about raw logs where a State specific guideline applies, as provided for in section 19 of the Principal Regulation.

**Item 7 – Clause 3 of Schedule 2 (table item 5)**

This item repeals the former date of co-endorsement of the State specific guideline for Tasmania in table item 5 of section 3 of Schedule 2 to the Principal Regulation and substitutes a new date of 7 April 2021.

This reflects the updating of this document by the Australian Government and the Government of Tasmania. Processors are required to use this updated version of the State specific guideline for Tasmania when they elect to use the State specific guidelines optional process, provided for in section 21 of the Principal Regulation, to conduct due diligence, or when required to obtain information about raw logs where a State specific guideline applies, as provided for in section 19 of the Principal Regulation.

**Item 8 – Clause 3 of Schedule 2 (note)**

This item repeals the existing note and substitutes a note that explains that the State specific guidelines could in 2021 be viewed on the Department’s website (<http://awe.gov.au>). This is consistent with the expectation that, as a principle of justice, every person subject to the law should be able to readily and freely access its terms, without cost. This note explains that the incorporated documents, being the country specific guidelines, are freely available online, with website details provided.

**Statement of Compatibility with Human Rights**

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

**Illegal Logging Prohibition Amendment (2021 Measures No. 1) Regulations 2021**

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 (2021 Measures No. 1) Regulations 2021* amends the *Illegal Logging Prohibition Regulation 2012* to revise codes and descriptions of regulated timber products at Schedule 1, to remove a country specific guideline, to add a new country specific guideline and to revise two State specific guidelines in 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 and Northern Australia**