

EXPLANATORY STATEMENT

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

Illegal Logging Prohibition Act 2012

Illegal Logging Prohibition Rules 2024

Legislative Authority

The *Illegal Logging Prohibition Act 2012* (the Act), as amended by the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Act 2024* (the Amendment Act), provides measures to protect the Australian market from illegally logged timber and support sustainable and legal timber trade.

Section 86 of the Act as amended by the Amendment Act provides that the Minister may make rules required or permitted by the Act to be prescribed by the rules or necessary or convenient to be prescribed for carrying out or giving effect to this Act. The Amendment Act commences by Proclamation on 3 March 2025.

Section 4 of the *Acts Interpretation Act 1901* (the Acts Interpretation Act) provides authority for legislative instruments, including rules, to be made after enactment but before the commencement of the relevant enabling legislation. Subsection 4(2) of the Acts Interpretation Act enabled the Minister to make the *Illegal Logging Prohibition Rules 2024* (the Rules) before commencement of the Act as if the Act had already commenced.

The Rules replace the *Illegal Logging Prohibition Regulation 2012* (the Regulation) that is scheduled to sunset on 1 April 2025 and will be repealed by the Amendment Act.

Purpose

The purpose of the Rules is to provide detailed requirements in relation to regulated timber products and due diligence for the purposes of the Act. Specifically, the Rules prescribe:

- the regulated timber products for the purposes of the Act;
- the regulated timber products that are exempt from the offences and the civil penalty for importing regulated timber products without complying with one or more due diligence requirements;
- the circumstance where a processor of raw log is exempt from the offences and civil penalty associated with processing a raw log without complying with one or more due diligence requirements for processing the raw log; and
- the due diligence requirements for importers of regulated timber products and processors of raw logs.

Background

Illegal logging and its associated trade are recognised as a significant global problem with wide-reaching environmental, social and economic impacts, including undermining prices of legally harvested products. The illegal logging prohibition legislation seeks to reduce the

harmful impacts of illegal logging by minimising the risk of illegally logged timber, timber products, and raw logs entering the Australian market.

The *Sunsetting Review of the Illegal Logging Prohibition Regulation* (the Sunsetting Review) identified several challenges with implementing and enforcing the current legislation. Many of these issues have been addressed through the reforms made by the Amendment Act, including:

- consolidating offences in the Act with the civil penalty provisions currently in the Regulation for clarity and consistency in accordance with the principles in the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers;
- providing for alternative and more flexible enforcement options, including through the addition of strict liability offences which are subject to the infringement notice framework in the Act as it triggers the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) and civil penalties for the provision of false or misleading information;
- providing for the time period within which an infringement notice may be given under the Regulatory Powers Act in respect of a strict liability offence or a civil penalty provision of the Act to be 24 months;
- triggering the provisions in the Regulatory Powers Act relating to injunctions and enforceable undertakings;
- enabling the Secretary of the Department to require information to be provided or an audit to be carried out to determine compliance with the due diligence requirements relating to regulated timber products;
- enabling disallowable rules to be made by the Minister under the Act to ensure regulatory settings are appropriate and effective; and
- moving the key due diligence requirement that importers and processors have a due diligence system from the Regulation to the Act.

The Regulation Impact Statement (RIS) completed in 2022 through the *Sunsetting Review of the Illegal Logging Prohibition Regulation* (the Sunsetting Review) also identified a number of issues for stakeholders associated with the Regulation, including the complexity of the due diligence requirements and the associated high costs of compliance.

The Sunsetting Review identified two ways of reducing the regulatory burden of the due diligence process. These are to remove the current requirement to conduct repeat due diligence on the same product line within a certain period of time in certain circumstances; and to streamline the due diligence requirements for certified products, in recognition of the fact that third-party certification should suggest a lower illegal logging risk.

To address concerns among regulated entities and implement the recommendations of the Sunsetting Review, the Rules update the information gathering provisions and consolidate the risk assessment requirements of the due diligence processes. The Rules also reduce the need for importers and processors who import certified regulated timber products and process certified raw logs and who have imported or processed identical products within the previous

12 months to repeat the due diligence process for each subsequent importation or instance of processing, in certain circumstances.

The Rules reduce the regulatory burden on industry associated with due diligence in certain circumstances, while maintaining the effectiveness of the legislation in preventing illegally logged timber and illegally logged raw logs from entering the Australian market.

Impact and Effect

The Rules will benefit importers of regulated timber products and processors of raw logs by streamlining the due diligence requirements for importers of regulated timber products and processors of raw logs in certain circumstances.

Consultation

An exposure draft of the Rules was released for public consultation on the Department's "Have your say" webpage for 4 weeks from 19 August 2024 to 13 September 2024. The Department also held a webinar on the exposure draft Rules on 29 August 2024.

Stakeholders were generally supportive of the proposed reforms and offered suggested changes to improve the accuracy of key concepts and terminology. These are reflected in the final Rules.

In 2021, the Office of Best Practice Regulation (renamed the Office of Impact Analysis in November 2022) was consulted in relation to the proposed reforms in the Rules and assessed the associated regulatory burden to be low (OBPR ID 47934).

Details/ Operation

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

Other

The Rules 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 Rules will commence on 3 March 2025.

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

Details of the *Illegal Logging Prohibition Rules 2024*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of this instrument is the *Illegal Logging Prohibition Rules 2024* (the Rules).

Section 2 – Commencement

Subsection 2(1) provides that 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.

Item 1 of the table specifies that the whole of the instrument commences at the same time as the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Act 2024* commences. The Amendment Act is proclaimed to commence on 3 March 2025.

The note to subsection 2(1) provides that 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.

Subsection 2(2) provides that 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.

Section 3 – Authority

This section provides that this instrument is made under the *Illegal Logging Prohibition Act 2012*.

Section 4 – Definitions

This section provides the following definitions as set out in the table.

Term	Definition
<i>ABN</i>	has the meaning given by section 41 of the <i>A New Tax System (Australian Business Number) Act 1999</i> (Taxation Act).
<i>ACN</i>	has the meaning given by section 9 of the <i>Corporations Act 2001</i> (Corporations Act).
<i>Act</i>	means the <i>Illegal Logging Prohibition Act 2012</i> .
<i>certified raw logs</i>	has the meaning given by subsection 11(3). Subsection 11(3) of Part 3 of the Rules provides that raw logs are <i>certified raw logs</i> if the processor of the raw logs: (a) has obtained a copy of a record from a database maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification, to the effect that the raw

Term	Definition
	<p>logs fall within the scope of the certification held by the supplier in accordance with a forest certification standard; and</p> <p>(b) has verified that the details in the record about the supplier of the raw logs, and the other details in the record, are true and correct; and</p> <p>(c) has obtained from that supplier a sales or delivery document for the raw logs that contains a certification claim that is consistent with the certification referred to in paragraph (a).</p>
<i>certified timber product</i>	<p>has the meaning given by subsection 8(4). Subsection 8(4) of Part 2 of the Rules provides that a regulated timber product is a <i>certified timber product</i> if the importer of the regulated timber product:</p> <p>(a) has obtained a copy of a record from a database maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification, to the effect that the following fall within the scope of the certification held by the supplier in accordance with a forest certification standard:</p> <ul style="list-style-type: none"> (i) the regulated timber product; (ii) if the record refers to the species of timber that is, or is in, the regulated timber product—that species of timber; and <p>(b) has verified that the details in the record about the supplier of the regulated timber product, and the other details in the record, are true and correct; and</p> <p>(c) has obtained from that supplier a sales or delivery document for the regulated timber product that contains a certification claim that is consistent with the certification referred to in paragraph (a).</p>
<i>CITES</i>	<p>means the Convention on International Trade in Endangered Species of Wild Fauna and Flora done at Washington on 3 March 1973, as amended and in force for Australia from time to time.</p> <p>The note to this definition states that the Convention is in Australian Treaty Series 1976 No. 29 ([1976] ATS 29) and could in 2024 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).</p> <p>Subsection 86(2) of the Act provides that despite subsection 14(2) of the <i>Legislation Act 2003</i>, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.</p> <p>CITES is an international treaty to which Australia is a signatory. CITES can be used by importers and processors to consider the conservation status of the relevant regulated timber product or raw</p>

Term	Definition
	<p>log in the risk identification and assessment process in subparagraphs 8(6)(b)(v) and 11(5)(b)(v) of the Rules.</p> <p>CITES can be viewed free of charge on the AustLII website as mentioned in the note to this definition.</p>
<i>country specific guideline</i>	<p>means a guideline mentioned in the table to that definition, as the guideline is in force from time to time. There are country specific guidelines for Canada, Chile, Finland, Indonesia, Italy, Malaysia, New Zealand, Papua New Guinea, the Republic of Korea and Thailand.</p> <p>The note to this definition states that the country specific guidelines could in 2024 be viewed on the Department’s website (http://www.agriculture.gov.au).</p> <p>Subsection 86(2) of the Act provides that despite subsection 14(2) of the <i>Legislation Act 2003</i>, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.</p> <p>The country specific guideline is a document developed by the Australian Government in consultation with the government of a trading partner. The guideline lists a range of relevant information about legal timber from a country of harvest which may be used by importers in the risk identification and assessment process in subparagraph 8(6)(b)(ii) of the Rules.</p> <p>All the country specific guidelines can be viewed free of charge on the Department’s website as mentioned in the note to this definition.</p>
<i>customs value</i>	<p>of goods means the customs value of the goods worked out or determined in accordance with Division 2 of Part VIII of the <i>Customs Act 1901</i>.</p>
<i>forest certification standard</i>	<p>means the following:</p> <ul style="list-style-type: none"> (a) a standard of a country, or part of a country, that was developed in accordance with the international standard known as the “FSC Principles and Criteria for Forest Stewardship” (FSC-STD-01-001), as those standards are in force from time to time; (b) the international standard known as the Chain of Custody Certification (FSC-STD-40-004), as that standard is in force from time to time; (c) a standard of a country, or part of a country, that was: <ul style="list-style-type: none"> (i) developed in accordance with the international standard known as the “Sustainable Forest Management – Requirements” (PEFC ST 1003:2018); and (ii) endorsed by the international organisation known as the Programme for the Endorsement of Forest Certification;

Term	Definition
	<p>as those standards are in force from time to time;</p> <p>(d) a standard of a country, or part of a country, that was:</p> <ul style="list-style-type: none"> (i) developed in accordance with the international standard known as the “Chain of Custody of Forest and Tree Based Products – Requirements” (PEFC ST 2002:2020); and (ii) endorsed by the international organisation known as the Programme for the Endorsement of Forest certification; <p>as those standards are in force from time to time.</p> <p>Note 1 to this definition explains that information about the international standards mentioned in paragraphs (a) and (b) could in 2024 be viewed on the website of the Forest Stewardship Council (http://www.fsc.org).</p> <p>Note 2 to this definition explains that information about the international standards mentioned in paragraphs (c) and (d) could in 2024 be viewed on the website of the Programme for the Endorsement of Forest Certification (http://www.pefc.org).</p> <p>Subsection 86(2) of the Act provides that despite subsection 14(2) of the <i>Legislation Act 2003</i>, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.</p> <p>The standards covered by this definition are internationally recognised forest certification schemes that provide recognition of regional and national standards that meet their criteria for sustainable forest management. As stated in the relevant notes to this definition, information about the FSC Principles and Criteria for Forest Stewardship and the Chain of Custody Certification is freely available on the website of the Forest Stewardship Council. Information about the Sustainable Forest Management Requirements and the Chain of Custody of Forest and Tree Based Products – Requirements is freely available on the website of the Programme for the Endorsement of Forest Certification.</p> <p>A person claiming they import a <i>certified timber product</i> or process <i>certified raw logs</i> as defined in the Rules should have access to the relevant standard of a country or part of a country in order to meet the requirements in the Rules. Further information on the national standard of each country may also be found on the websites mentioned in the notes and by contacting the Forest Stewardship Council and the Programme for the Endorsement of Forest Certification.</p>
<i>recycled material</i>	<p>has the meaning given by section 6.</p> <p>Subsection 6(2) provides that timber, or a product derived from timber, is <i>recycled material</i> if:</p>

Term	Definition
	<p>(a) the timber or the product has been, or has been part of, another thing; and</p> <p>(b) the timber or product has ceased to be the other thing, or has been removed from the other thing, and, at the time of the cessation or removal, the other thing was no longer used for its intended purpose.</p> <p>Subsection 6(3) clarifies that timber, or a product derived from timber, is not recycled material if the timber or the product is the by-product of a manufacturing process. An example is off-cuts from sawn timber used to make particle board or medium density fibreboard.</p>
<i>State specific guideline</i>	<p>means a guideline mentioned in the table, as the guideline is in force from time to time. There are State specific guidelines for New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania.</p> <p>The note to the table specifies that the State specific guidelines could in 2024 be viewed on the Department’s website (http://www.agriculture.gov.au).</p> <p>Subsection 86(2) of the Act provides that despite subsection 14(2) of the <i>Legislation Act 2003</i>, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.</p> <p>A State specific guideline is a document developed by the Australian Government in consultation with an Australian State or Territory Government. The State specific guidelines list a range of relevant information about legal timber from the relevant state of harvest which may be used by processors of raw logs in the risk identification and assessment process in subparagraph 11(5)(b)(ii) of the Rules.</p> <p>All the state specific guidelines are freely available online on the Department’s website as mentioned in the note to this definition.</p>

Section 5 – Regulated timber products

This section prescribes regulated timber products for the purposes of the definition of ***regulated timber product*** in section 7 of the Act. The timber products prescribed are timber products classified to a heading or subheading of Schedule 3 to the *Customs Tariff Act 1995* that are specified in column 1 of an item in the table to this section (and with the description covered by column 2 of that item). They include a variety of timber and timber products, paper products, furniture and parts of furniture made of wood and prefabricated buildings made of wood.

Part 2—Importing

Section 6 – Exempt regulated timber products

Section 6 of the Rules prescribes the regulated timber products that are exempt from the fault-based offence, strict liability offence and civil penalty for importing a regulated timber product without complying with one or more due diligence requirements for importing the regulated timber product in section 12 of the Act.

Subsection 6(1) of the Rules provides that for the purposes of paragraphs 12(1)(d), (2)(d) and (3)(d) of the Act, the following regulated products are prescribed as exempt:

- a regulated timber product:
 - that is recycled material; or
 - that is entirely made from recycled material; or
 - where all timber, and products derived from timber, included in the regulated timber product are recycled material; or
- a regulated timber product that is imported as part of a consignment if the total customs value of the regulated timber products in the consignment, on import, does not exceed \$1,000.

Subsection 6(2) provides that timber, or a product derived from timber, is *recycled material* if:

- the timber or product has been, or has been part of, another thing; and
- the timber or product has ceased to be the other thing, or has been removed from the other thing, and, at the time of the cessation or removal, the other thing was no longer used for its intended purpose.

Subsection 6(3) provides that however, timber, or a product derived from timber, is not recycled material if the timber or the product is the by-product of a manufacturing process.

The example to this subsection is off-cuts from sawn timber used to make particle board or medium density fibreboard.

The exemption for regulated timber products that are recycled encourages the consumption of post-consumer recycled material and avoids placing the unreasonable burden on importers to conduct due diligence on recycled timber products.

The exemption in paragraph 6(1)(b) aligns with existing requirements under the *Customs Act 1901*, whereby importers of goods under \$1000 are not required to complete an import declaration and are exempt from providing certain data.

Section 7 – Due diligence requirements—due diligence system

Section 7 of the Rules prescribes the information that must be included in a person's due diligence system for the purposes of paragraph 13A(2)(c) of the Act.

Subsection 13A(1) of the Act provides that a due diligence requirement for importing regulated timber products is that the person importing such products has a due diligence system for importing such products. Subsection 13A(2) sets out the features of a due diligence system, including that it is in writing (paragraph 13A(2)(a)), sets out the process by which the

person will meet the due diligence requirements, covered by subsection 14(1), for importing regulated timber products (paragraph 13(2)(b)) and includes the information prescribed by the rules for the purposes of this paragraph (that is, paragraph 13A(2)(c)).

Section 7 of the Rules provides that for the purposes of paragraph 13A(2)(c) of the Act, the prescribed information is the following information:

- the importer's name, street address, postal address, telephone number and email address;
- if the importer is not an individual—the name, position and contact details (including telephone number and email address) of the individual who is responsible for maintaining the system;
- if the regulated timber products are 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 (if any) and ACN (if any).

The requirement that an importer of regulated timber products has a due diligence system in place before importing the product was previously in the Regulation. This requirement was elevated to the Act by the Amendment Act, as it is unlikely to be subject to frequent change. It is appropriate for the detailed information required to be included in a due diligence system to be prescribed in the Rules.

Section 18E of the Act empowers the Secretary to require, from a person who has imported a regulated timber product, information or documents relevant to the person's due diligence system in place at the time of import or their compliance with due diligence requirements, including the personal information in section 7 of the Rules.

This requirement was previously in the Regulation and was elevated to the Act. This personal information could also potentially be disclosed for the purposes of administering the Act and the Rules and monitoring compliance with the Act and the Rules, in accordance with section 34 of the Act. Any collection, storage and disclosure of this information will be undertaken in accordance with the Australian Privacy Principles contained in the *Privacy Act 1988* (the Privacy Act). Specifically, Australian Privacy Principle 11.1 will apply to require reasonable steps to be taken to protect that information from misuse, interference or loss, and from unauthorised access, modification and disclosure.

Section 8 – Due diligence requirements—other requirements

Section 8 of the Rules sets out the other due diligence requirements with which an importer of regulated timber products must comply. Importers of regulated timber products who do not comply with the requirement to have a due diligence system in section 13A of the Act, or with one or more of the other due diligence requirements covered by this section may be subject to the offences and civil penalty in section 12 of the Act.

While the due diligence requirements for importers of regulated timber products in the Regulation are largely preserved in the Rules, the due diligence requirements in the Rules are simplified and streamlined in certain circumstances. These proposed measures aim to reduce the regulatory burden on importers while minimising the risk of illegally logged timber entering the Australian market.

Subsection 8(1) of the Rules provides that for the purposes of subsection 14(1) of the Act, the other due diligence requirements for importing regulated timber products are the requirements set out in this section.

The note to subsection 8(1) provides that section 12 of the Act (as amended by the Amendment Act) contains offences and a civil penalty for a person who imports a regulated timber product and who does not comply with one or more due diligence requirements for importing the regulated timber product.

Subsection 8(2) provides that the requirements in this section do not apply in relation to a regulated timber product to the extent that it is made from, or includes, recycled material. **Recycled material** is defined in subsection 6(2) as explained above. This exemption clarifies that the due diligence requirements in section 8 of the Rules do not apply to part(s) of the regulated timber product that is or are recycled material, to avoid placing the unreasonable burden on importers to conduct due diligence on recycled timber products. Due diligence requirements still apply to the other part(s) of the regulated timber product that are not recycled material.

Information gathering requirements

Subsection 8(3) of the Rules provides that the importer must, before importing a regulated timber product, obtain as much information as is reasonably practicable to obtain. The objective of this requirement is for importers to gather enough information to be able to reasonably conclude whether the risk of illegal logging is low. It will not be sufficient for an importer to rely on others, such as a supplier, to gather this information on their behalf.

What is reasonably practicable is a factual question that is determined objectively (that is, the standard of behaviour expected is that of a reasonable person in the importer's position). Whether an importer has met their obligation to obtain as much information as is reasonably practicable may involve considering factors such as:

- availability of information at the relevant time;
- what information the importer did obtain;
- what steps were taken to obtain the information;
- further steps that could have been taken to obtain the information;
- the time, expense and difficulty involved in obtaining the information;
- the importance of the information;
- whether the information relates to information that is already known by the importer;
- the scale and sophistication of the importer's business (for example, the number of suppliers the importer deals with); and
- the complexity of the supply chain.

The information gathering requirements for importers of regulated timber products are largely the same as those in the Regulation, except importers are no longer required at this stage to gather evidence that the timber in the product was not illegally logged. Instead, this is now

included in the risk identification and assessment requirements for importers of regulated timber products.

Further, the requirement in the Regulation to gather information relating to any relevant timber legality frameworks specified in Part 1 of Schedule 1 that apply to timber in the product or area in which it was harvested is no longer required at this stage. In the Rules, this is now required when determining if a product is a certified timber product, prior to the risk identification and assessment process.

Similarly, if a Country Specific Guideline (CSG) applies to the timber in the product, or the place in which the timber was harvested, importers are now required to consider this information as part of the risk identification and assessment process for non-certified timber products.

Paragraph 8(3)(a) of the Rules requires the importer to obtain a description of the product. Specifically, subparagraphs 8(3)(a)(i) and (ii) require the importer to obtain a description of the product, including the type of product and the trade name (if any) of the product and the common name and scientific name of the tree from which the timber, or the timber in the product, was derived.

Examples of product type for the purposes of subparagraph 8(3)(a)(i) of the Rules may be sawn wood or plywood. An example of the trade name of a regulated timber product may be Spruce Pine Fir/SPF. Consistent with the requirement that an importer obtain as much of the information in subsection 8(3) as is reasonably practicable to obtain, if an importer is only able to obtain the common name of the species of tree from which the timber is derived and has taken measures to obtain the scientific name but has been unable to do so, the importer may obtain only the common name.

Paragraph 8(3)(b) of the Rules requires the importer to obtain the country, and the area of the country, in which the timber, or the timber in the product, was harvested. This requirement updates the requirement in paragraph 10(2)(b) of the Regulation and reflects modern drafting practices.

Paragraph 8(3)(c) of the Rules requires the importer to obtain the country in which the product was processed or manufactured (if applicable). This may be particularly relevant for complex manufactured products with complex supply chains where information about the country of harvest cannot be obtained. Conversely, this requirement would not be relevant for non-manufactured products.

Paragraph 8(3)(d) of the Rules requires the importer to obtain the name, address, trading name and business registration number (if any) of the supplier of the product.

Paragraph 8(3)(e) of the Rules requires the importer to obtain the quantity of the shipment of the product, expressed in volume, weight or number of units. As these are alternative options, an importer should obtain the most appropriate expression for the volume of the relevant shipment.

Paragraph 8(3)(f) of the Rules requires the importer to obtain the sales or delivery document in relation to the purchase of the product by the importer. This requirement is similar to the requirement in paragraph 10(2)(f) of the Regulation that the importer obtain the documentation provided, or that will be provided, by the supplier to the person importing the

regulated timber product. However, the requirement in paragraph 8(3)(f) of the Rules is more specific and is anticipated to be easier for an importer to comply with.

Identifying and assessing the risk

The next due diligence requirement requires an importer of a regulated timber product to identify and assess the risk that a regulated timber product is, is made from, or includes, illegally logged timber. Consistent with the objective of reducing the regulatory burden associated with this aspect of the due diligence process, this requirement will differ depending on whether the regulated timber product is a certified timber product or not.

Certified timber products

Subsection 8(4) of the Rules provides that a regulated timber product is a ***certified timber product*** if the importer of the regulated timber product:

- has obtained a copy of a record from a database maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification, to the effect that the following fall within the scope of the certification held by the supplier in accordance with a forest certification standard:
 - the regulated timber product;
 - if the record refers to the species of timber that is, or is in, the regulated timber product—that species of timber; and
- has verified that the details in the record about the supplier of the regulated timber product, and the other details in the record, are true and correct; and
- has obtained from that supplier a sales or delivery document for the regulated timber product that contains a certification claim that is consistent with the certification referred to in paragraph (a).

Paragraph 8(4)(a) reflects that the species of timber from which the regulated timber product is made is relevant to whether that product is a certified timber product insofar as the whole product must be made of certified timber.

An importer can verify that the details in the record about the supplier are true and correct, by, for example, checking that the information on the database record about the supplier matches the information they gathered about the supplier under subsection 8(3).

Risk identification and assessment process for certified timber products

Subsection 8(5) of the Rules sets out the risk identification and risk assessment requirements that an importer must comply with before importing a regulated timber product that is a certified product.

Paragraph 8(5)(a) of the Rules requires the importer to identify and assess the risk that the regulated timber product is, is made from, or includes, illegally logged timber.

Paragraph 8(5)(b) of the Rules sets out the factors the importer must consider in the identification and assessment of that risk. Specifically:

- subparagraph (i) requires the importer to consider the information the importer obtained under subsection (3) (information gathering requirements);
- subparagraph (ii) requires the importer to consider the extent of illegal logging in general involving entities, known to the importer, in the supply chain for the timber that is, or the timber that is in, the regulated timber product; and
- subparagraph (iii) requires the importer to consider any other information the importer knows that may indicate whether the regulated timber product is, is made from, or includes, illegally logged timber.

Paragraph 8(4)(c) of the Rules provides that in the identification and assessment of that risk, the importer must consider the source, validity and reliability of the matters the importer considered under paragraph 8(5)(b).

Paragraph 8(5)(d) of the Rules requires the importer to make a written record of the risk identification and assessment made by the importer.

The risk assessment requirements for certified timber products in subsection 8(4) of the Rules recognise that certification works to reduce the risk that the relevant timber product has been illegally logged. The simplified risk assessment process does not rely on certification as the sole indicator of legality. Rather, it recognises that both the internationally recognised forest certification standards (PEFC and FSC) work to demonstrate legality and minimise the risk that forest products have been illegally harvested.

Risk identification and assessment process for non-certified timber products

Subsection 8(6) of the Rules sets out the risk identification and risk assessment requirements that an importer must comply with before importing a regulated timber product that is not a certified product.

Paragraph 8(6)(a) of the Rules requires the importer to identify and assesses the risk that the regulated timber product is, is made from, or includes, illegally logged timber.

Paragraph 8(6)(b) of the Rules sets out the factors the importer must consider as part of the identification and assessment of that risk. Specifically:

- subparagraph (i) requires the importer to consider any information the importer obtained under subsection (3) (information gathering requirements);
- subparagraph (ii) requires the importer to consider any country specific guideline that relates to the timber that is, or the timber that is in, the regulated timber product;
- subparagraph (iii) requires the importer to consider the extent of illegal logging in general involving entities, known to the importer, in the supply chain for the timber that is, or the timber that is in, the regulated timber product;
- subparagraph (iv) requires the importer to consider the extent of illegal logging in general of the species or genus of tree from which the timber that is, or the timber that is in, the regulated timber product was derived;
- subparagraph (v) requires the importer to consider the conservation status (if any) of that species or genus, including if that species or genus is included in Appendix I, II or III to CITES;

- subparagraph (vi) requires the importer to consider the extent of illegal logging in general in the area or country in which the timber that is, or the timber that is in, the regulated timber product was harvested;
- subparagraph (vii) requires the importer to consider the extent of armed conflict in that area or country;
- subparagraph (viii) requires the importer to consider the extent of corruption in that area or country;
- subparagraph (ix) requires the importer to consider the governance arrangements for forest management in that area or country;
- subparagraph (x) requires the importer to consider any other information the importer knows that may indicate whether the regulated timber product is, is made from, or includes, illegally logged timber.

Paragraph 8(6)(c) of the Rules provides that as part of the identification and assessment of that risk, the importer must consider the source, validity and reliability of the matters the importer considered under paragraph 8(6)(b).

Paragraph 8(6)(d) of the Rules requires the importer to make a written record of the risk identification and assessment made by the importer.

The matters that importers must consider as part of the risk identification and assessment process have been drawn from similar legislation in other countries, as well as independent research and reports on illegal logging. They have been identified as key risk factors that most strongly correlate with illegal logging activities, and for which relevant public information and resources are available.

Non-certified regulated timber products do not come with the same level of assurance as certified products, especially regarding matters such as the conservation status of the species of tree from which the timber in the regulated timber product was harvested and the extent of armed conflict and corruption in the country of harvest. It is for this reason that the importer must take these additional matters (and the other matters in paragraph 8(6)(b)) into account in the risk identification and assessment stage of the due diligence process.

Identification and assessment of risk must be to a reasonable standard

Subsection 8(7) of the Rules provides that the identification and assessment of the risk mentioned in paragraph 8(5)(a) or 8(6)(a) must be to a reasonable standard. This concept is based on a similar requirement in the Regulation and is intended to apply to all the facts and considerations in the risk assessment process, including the requirement to consider the source, reliability and validity of documents used in the process.

Risk mitigation

The next due diligence requirement concerns the need for an importer to conduct a risk mitigation process in certain circumstances.

Paragraph 8(8)(a) of the Rules requires an importer to conduct a risk mitigation process before importing a regulated timber product if the importer has identified a risk that the product is, is made from, or includes, illegally logged timber and the risk is not a low risk.

Paragraph 8(8)(b) of the Rules requires that, before importing a regulated timber product, the importer must ensure that the risk mitigation process the importer conducts is reasonable and

proportionate to the identified risk mentioned in paragraph 8(8)(a). The requirement that the risk mitigation process be reasonable and proportionate is intended to ensure that importers put appropriate risk mitigation measures in place that will have the desired impact of reducing the risk level to low. The use of scientific methods relating to timber identification in paragraph 8(9)(b) is an example of this.

Paragraph 8(8)(c) of the Rules requires that, following the risk mitigation process, the importer is to reassess the risk that the regulated timber product is, is made from, or includes, illegally logged timber. Re-assessment of the risk at this stage is necessary for the importer to determine if the risk mitigation measures applied have had the desired effect of reducing the risk level to low, or if further mitigation measures are necessary to achieve this.

Paragraph 8(8)(d) of the Rules requires the importer to make a written record of the risk mitigation process the importer conducted, setting out:

- following that process, the level of risk that the regulated timber product is, is made from, or includes, illegally logged timber; and
- any further information the importer obtained as part of that process.

The written record of the risk mitigation process should contain details of what the importer did, what they considered, and how they reached the risk assessment outcome for the regulated timber product. Providing an overview or a summary of the risk mitigation process will not be sufficient to meet this requirement.

Subsection 8(9) of the Rules provides that without limiting subsection (8), the risk mitigation process may include the following steps:

- obtaining further information about the risk that the regulated timber product is, is made from, or includes, illegally logged timber;
- the use of scientific methods relating to timber identification in order to identify the scientific name of the tree from which the timber that is, or the timber that is in, the regulated timber product was derived and the country in which the timber was harvested.

The risk mitigation process for importers is largely based on that in the Regulation in that an importer must undertake this process if they have identified that the relevant risk is not a low risk. The requirements that the importer ensure the risk mitigation process is reasonable and proportionate and must make a record of that process is also based on similar requirements in the Regulation.

The option to use scientific methods relating to timber identification testing in paragraph 8(9)(b) of the Rules is new and recognises the value such methods have in helping to identify timber that may have been illegally logged. However, this would be optional. It would be open to the importer to undertake any other risk mitigation steps, provided they are reasonable and proportionate to the identified risk.

Digital and other scientific technical timber testing methods for timber identification are playing an increasingly important role in facilitating compliance with due diligence requirements under timber laws in other countries, including regulations related to deforestation. This rule provides that importers may use these scientific methods relating to timber identification to mitigate the risk of importing regulated timber products as part of their due diligence. However, it is the importer's responsibility to ensure that any such

technical solution is sufficiently robust to accurately assess illegal logging risk and that they comply with the other due diligence requirements for importing a regulated timber product.

Exception

Subsection 8(10) of the Rules provides an exception to the requirements in subsections 8(5) to (8). It does not provide an exception to the information gathering requirements in subsection 8(3), which apply to importers prior to every instance of importing a regulated timber product. The risk identification and assessment requirements in subsections 8(5) to (8) do not apply in relation to the importation of a regulated timber product (the **current product**) by an importer if:

- the importer, in the previous 12 months, imported a regulated timber product (the **earlier product**); and
- the importer complied with subsections 8(3) and 8(5) to (8), as applicable, in relation to the importation of the earlier product; and
- either:
 - the current product and the earlier product are certified timber products; or
 - the current product and the earlier product are not certified timber products; and
- the importer has obtained the information covered by paragraphs 8(3)(a) to (d) for the current product and that information is the same as the information for the earlier product; and
- the importer:
 - has considered whether, since the importer complied with subsections 8(3) and 8(5) to (8), as applicable, in relation to the importation of the earlier product, there has been a significant change in circumstances that has increased the risk the current product is, is made from, or includes, illegally logged timber; and
 - if the importer is satisfied that there has not been such a significant change in circumstances – has made a written record to that effect.

Subsection 8(10) of the Rules seeks to reduce the due diligence obligations for importers who have imported the same regulated timber products within the previous 12 months, provided the requirements of that provision are met. It is expected that importers will conduct a full due diligence process involving all steps—information gathering, identifying and assessing the risk and risk mitigation (where applicable)—every 12 months. The exception seeks to balance the objectives of reducing the regulatory burden on industry and minimising the risk of illegally logged timber entering the Australian market.

Paragraph 8(10)(e) of the Rules is intended to capture significant changes to the certification status of regulated timber products or particular illegal logging risk factors that could substantially increase the level of risk associated with importing a regulated timber product. Examples of such significant changes are:

- the outbreak of war or armed conflict in the area or country of harvest;
- a military coup occurs in the area or country of harvest;
- the relevant certification for timber harvested in certain areas is suspended or revoked;
- a significant increase in the reports of illegal logging in a particular area;
- the introduction of a log export ban or similar measure in the country or area of harvest;
- the conservation status of the relevant species of tree has changed.

Recordkeeping

The final due diligence requirement for importers of regulated timber products concerns the record-keeping obligations.

Subsection 8(11) of the Rules provides that the importer must:

- keep a record of the information the importer obtained under subsection 8(3) for the period of 5 years beginning on the day the regulated timber product is imported; and
- keep a copy of the record referred to in paragraph 8(4)(a), and the sales or delivery document referred to in paragraph 8(4)(c), for the period of 5 years beginning on the day the regulated timber product is imported; and
- keep the record referred to in paragraph 8(5)(d), (6)(d), (8)(d) or 10(e) for the period of 5 years beginning on the day the regulated timber product is imported.

Subsection 8(11) of the Rules is based on section 16 of the Regulation. The records of information gathered under subsection 8(3), the records of the risk assessment process for paragraph 8(5)(d) or 8(6)(d), records of the risk mitigation process for paragraph 8(8)(d) and the written records for the purposes of paragraph 8(10)(e) will be relevant to the exercise of the new information gathering and audit powers in sections 18E and 29 of the Act, respectively.

Copies of the records referred to in paragraph 8(4)(a) of the Rules (records from databases maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification) and the sales and delivery documents referred to in paragraph 8(4)(c) are relevant to determining whether regulated timber products come within the definition of *certified timber product* under subsection 8(4) and by extension, whether the importer was able to use the risk identification and assessment process for certified timber products in subsection 8(5).

Part 3—Processing

Section 9—Exempt circumstances

Section 9 of the Rules prescribes, for the purposes of subsection 17(5) of the Act, the circumstances in which a processor of raw logs is exempt from the fault-based offence, the strict liability offence and the civil penalty for processing a raw log into something other than a raw log in certain circumstances without complying with one or more due diligence requirements for processing the raw log. The prescribed circumstance is that the person who processed the raw log is the person who harvested the raw log.

The purpose of due diligence in the context of Part 3 of the Rules is to assess, and where appropriate, mitigate the risk that raw logs have been illegally logged. The policy position is that harvesters of raw logs who are processors should not have to conduct due diligence. This is because such people are already bound to comply with relevant State or Territory laws governing harvesting. Requiring processors to conduct due diligence into their own previous activities increases the administrative burden on processors without decreasing the risk of illegally logged timber entering the supply chain.

Section 10—Due diligence requirements--due diligence system

Section 10 of the Rules prescribes the information that must be included in a processor's due diligence system for the purposes of paragraph 17A(2)(c) of the Act.

Subsection 17A(1) of the Act provides that a due diligence requirement for processing raw logs is that the person doing the processing has a due diligence system for processing raw logs. Subsection 17A(2) sets out the features of a due diligence system, including that it is in writing (paragraph 17A(2)(a)), sets out the process by which the person will meet the due diligence requirements, covered by subsection 18(1), for processing raw logs (paragraph 17A(2)(b)) and includes the information prescribed by the rules for the purposes of this paragraph (that is, paragraph 17A(2)(c)).

Section 10 of the Rules provides that for the purposes of paragraph 17A(2)(c) of the Act, the prescribed information is the following information:

- the name, street address, postal address, telephone number and email address of the person doing the processing;
- if the person is not an individual—the name, position and contact details (including telephone number and email address) of the individual who is responsible for maintaining the system;
- if the raw logs are to be processed in connection with a business carried on by the person—the principal business activity conducted by the person and the person’s ABN (if any) and ACN (if any).

The requirement that a processor of raw logs has a due diligence system was previously in the Regulation. This requirement was elevated to the Act by the Amendment Act, as it is unlikely to be subject to frequent change. It is appropriate for the detailed information required to be included in a due diligence system to be prescribed in the Rules.

Section 18F of the Act (inserted by the Amendment Act) empowers the Secretary to require, from a person who has processed a raw log, information or documents relevant to the person’s due diligence system in place at the time of processing or their compliance with due diligence requirements, including the personal information in section 10 of the Rules. This requirement was previously in the Regulation and was elevated to the Act. This personal information could also potentially be disclosed for the purposes of administering the Act and the Rules and monitoring compliance with the Act and the Rules, in accordance with section 34 of Part 4A of the Act. Any collection, storage and disclosure of this information will be undertaken in accordance with the Australian Privacy Principles contained in the Privacy Act. Specifically, Australian Privacy Principle 11.1 will apply to require reasonable steps to be taken to protect that information from misuse, interference or loss, and from unauthorised access, modification and disclosure.

Section 11—Due diligence requirements—other requirements

Subsection 18(1) of the Act provides that the rules may prescribe other due diligence requirements for processing raw logs.

Section 11 of the Rules sets out the other due diligence requirements with which a processor of raw logs must comply. Processors of raw logs who do not comply with the requirement to have a due diligence system in section 17A of the Act, or with one or more of the other due diligence requirements covered by this section may be subject to the offences and civil penalty in section 17 of the Act.

While the due diligence requirements for processors of raw logs in the Regulation are largely preserved in the Rules, the due diligence requirements in the Rules are simplified and streamlined in certain circumstances. There are simplified due diligence requirements for

processors of certified raw logs in certain circumstances. There are also streamlined due diligence requirements for processors who regularly process the same kind of raw log in certain circumstances. These proposed measures aim to reduce the regulatory burden on processors while minimising the risk of illegally logged timber entering the Australian market.

Subsection 11(1) of the Rules provides that for the purposes of subsection 18(1) of the Act, the other due diligence requirements for processing raw logs by a person (the *processor*) are the requirements set out in this section.

A note to section 11 provides that section 17 of the Act contains offences and a civil penalty for a person who processes a raw log and who does not comply with one or more due diligence requirements for processing the raw log.

Information gathering requirements

Subsection 11(2) of the Rules provides that the processor must, before processing raw logs, obtain as much of the following information as is reasonably practicable to obtain:

- a description of the raw logs, including the common name and scientific name of the tree from which the raw logs were derived;
- the State or Territory, and the area in the State or Territory, in which the raw logs were harvested;
- the name, address, trading name, ABN (if any) and ACN (if any) of the supplier of the raw logs;
- the quantity of raw logs processed, expressed in volume, weight or number of units;
- the sales or delivery document in relation to the purchase of the raw logs by the processor.

As is the case with the information gathering requirements in subsection 8(3) for importers, the objective of this particular due diligence requirement is for a processor to gather enough information to be able to reasonably conclude whether the risk of processing an illegally logged raw log is low. It will not be sufficient for a processor to rely on others, such as a supplier of raw logs, to gather this information on their behalf.

What is reasonably practicable is a factual question that is determined objectively (that is, the standard of behaviour expected is that of a reasonable person in the processor's position). Whether a processor has met their obligation to obtain as much information as is reasonably practicable may involve considering factors such as:

- availability of information at the relevant time;
- what information the processor did obtain;
- what steps were taken to obtain the information;
- further steps that could have been taken to obtain the information;
- the time, expense and difficulty involved in obtaining the information;
- the importance of the information;

- whether the information relates to information that is already known by the processor;
- the scale and sophistication of the processor’s business (for example, the number of suppliers the processor deals with); and
- the complexity of the supply chain.

The information gathering requirements for processors of raw logs are largely the same as those in the Regulation, except processors are no longer required at this stage to gather evidence that the raw log was not illegally logged. Instead, this is now included in the risk identification and assessment requirements for processors of raw logs.

Further, the requirement in the Regulation to gather information relating to any relevant timber legality frameworks in Part 1 of Schedule 2 that apply to the raw log or the area in which it was harvested is no longer required at the information gathering stage. This is now required when determining if a raw log is a certified raw log, prior to the risk identification and assessment process.

Similarly, if a State Specific Guideline (SSG) relates to the raw logs processors are now required to consider this information as part of the risk identification and assessment process for non-certified raw logs.

Identifying and assessing the risk

The next due diligence requirement requires a processor to identify and assess the risk that raw logs are illegally logged. Consistent with the objective of reducing the regulatory burden associated with this aspect of the due diligence process, these requirements will differ depending on whether the raw log is certified or not.

Certified raw logs

Subsection 11(3) of the Rules provides that logs are ***certified raw logs*** if the processor of the raw logs:

- has obtained a copy of a record from a database maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification, to the effect that the raw logs fall within the scope of the certification held by the supplier in accordance with a forest certification standard; and
- has verified that the details in the record about the supplier of the raw logs, and the other details in the record, are true and correct; and
- has obtained from that supplier a sales or delivery document for the raw logs that contains a certification claim that is consistent with the certification referred to in paragraph (a).

A processor can verify that the details in the record about the supplier of the raw logs are true and correct by, for example, checking that the information on the database record about the supplier matches the information they gathered about the supplier under subsection 11(2).

Risk identification and assessment process for certified raw logs

Subsection 11(4) of the Rules sets out the risk identification and risk assessment requirements that a processor must comply with before processing certified raw logs.

Paragraph 11(4)(a) of the Rules requires the processor to identify and assess the risk that the raw logs have been illegally logged.

Paragraph 11(4)(b) of the Rules sets out the factors the processor must consider in the identification and assessment of that risk. Specifically:

- subparagraph (i) requires the processor to consider the information the processor obtained under subsection (2) (information gathering requirements);
- subparagraph (ii) requires the processor to consider the extent of illegal logging in general involving entities, known to the processor, in the supply chain for the raw logs;
- subparagraph (iii) requires the processor to consider any other information the processor knows that may indicate whether the raw logs are illegally logged.

Paragraph 11(4)(c) of the Rules provides that in the identification and assessment of that risk, the processor must consider the source, validity and reliability of the matters the processor considered under paragraph (b).

Paragraph 11(4)(d) of the Rules requires the processor to make a written record of the risk identification and assessment made by the processor.

The risk assessment requirements for raw logs in subsection 11(4) of the Rules recognise that certification works to reduce the risk that the raw log has been illegally logged. The simplified risk assessment process does not rely on certification as the sole indicator of legality. Rather, it recognises that both the internationally recognised forest certification standards (PEFC and FSC) work to demonstrate legality and minimise the risk that forest products have been illegally harvested.

Risk identification and assessment process for non-certified raw logs

Subsection 11(5) of the Rules sets out the risk identification and risk assessment requirements that a processor must comply with before processing a raw log that is not certified into something other than a raw log.

Paragraph 11(5)(a) of the Rules requires the processor to identify and assess the risk that the raw logs have been illegally logged.

Paragraph 11(5)(b) of the Rules sets out the factors the processor must consider in the identification and assessment of that risk. Specifically:

- subparagraph (i) requires the processor to consider the information the processor obtained under subsection (2) (information gathering requirements);
- subparagraph (ii) requires the processor to consider any State specific guideline that relates to the raw logs;
- subparagraph (iii) requires the processor to consider the extent of illegal logging in general involving entities, known to the processor, in the supply chain for the raw logs; and
- subparagraph (iv) requires the processor to consider the extent of illegal logging in general of the species or genus of tree from which the raw logs were derived; and
- subparagraph (v) requires the processor to consider the conservation status (if any) of that species or genus, including if that species or genus is included in Appendix I, II or III to CITES; and

- subparagraph (vi) requires the processor to consider the extent of illegal logging in general in the area in which the raw logs were harvested; and
- subparagraph (vii) requires the processor to consider any other information the processor knows that may indicate whether the raw logs are illegally logged.

Paragraph 11(5)(c) of the Rules further requires the processor to consider, in the identification and assessment of that risk, the source, validity and reliability of the matters the processor considered under paragraph 11(4)(b) as part of that process.

Paragraph 11(5)(d) of the Rules requires the processor to make a written record of the risk identification and assessment made by the processor.

The matters that processors must consider as part of the risk identification and assessment process have been drawn from similar legislation in other jurisdictions, as well as independent research and reports on illegal logging. They have been identified as key risk factors that most strongly correlate with illegal logging activities, and for which relevant public information and resources are available.

Non-certified raw logs do not come with the same level of assurance as certified raw logs, especially regarding matters such as the conservation status of the species of tree from which the timber in the regulated timber product was harvested and the extent of illegal logging in general in the relevant supply chain for the raw logs. It is for this reason that the processors must take these additional matters (and the other matters in paragraph 11(5)(b)) into account in the risk identification and assessment stage of the due diligence process.

Identification and assessment of risk must be to a reasonable standard

Subsection 11(6) of the Rules provides that the identification and assessment of the risk mentioned in paragraph 11(4)(a) or (5)(a) must be to a reasonable standard. This concept is based on a similar requirement in the Regulation and is intended to apply to all the facts and considerations in the risk assessment process, including the requirement to consider the source, reliability and validity of documents used in the process.

Risk mitigation

The next due diligence requirement concerns the need for a processor to conduct a risk mitigation process before processing raw logs in certain circumstances.

Paragraph 11(7)(a) of the Rules requires a processor to conduct a risk mitigation process before processing raw logs if the processor has identified a risk that the raw logs are illegally logged, and the risk is not a low risk.

Paragraph 11(7)(b) of the Rules provides that the processor must ensure that the risk mitigation process the processor conducts is reasonable and proportionate to the identified risk mentioned in paragraph 11(7)(a). Application of the reasonable standard is again used here for consistency throughout the Rules. The requirement that the risk mitigation process be reasonable and proportionate is intended to ensure that processors put appropriate risk mitigation measures in place that will have the desired impact of reducing the risk level to low. The use of scientific methods relating to timber identification in paragraph 11(8)(b) is an example of this.

Paragraph 11(7)(c) of the Rules requires that, following the risk mitigation process, the processor is to reassess the risk that the raw logs are illegally logged. Re-assessment of the

risk at this stage is necessary for the processor to determine if the risk mitigation measures applied have had the desired effect of reducing the risk level to low, or if further mitigation measures are necessary to achieve this.

Paragraph 11(7)(d) of the Rules requires the processor to make a written record of the risk mitigation process the processor conducted, setting out:

- following that process, the level of risk that the raw logs are illegally logged; and
- any further information the processor obtained as part of that process.

The written record of the risk mitigation process should contain details of what the processor did, what they considered, and how they reached the risk assessment outcome for the raw log. Providing an overview or a summary of the risk mitigation process will not be sufficient to meet this requirement.

Subsection 11(8) of the Rules provides that without limiting subsection (7), the risk mitigation process may include the following steps:

- obtaining further information about the risk that the raw logs are illegally logged;
- the use of scientific methods relating to timber identification in order to identify the scientific name of the tree from which the raw logs were derived and the area in which the raw logs were harvested.

The risk mitigation process for processors is largely based on that in the Regulation, as a processor must undertake this process if they have identified that the relevant risk is not a low risk. The requirements that the processor ensure the risk mitigation process is reasonable and proportionate to the identified risk and must make a record of that process is also based on similar requirements in the Regulation.

The option to use scientific methods relating to timber identification testing in paragraph 11(7)(b) is new and recognises the value such methods have in helping to identify raw logs that may have been illegally logged. However, this would be optional. It would be open to the processors to undertake any other risk mitigation steps, provided they are reasonable and proportionate to the identified risk.

Digital and other scientific technical timber testing methods for timber identification are playing an increasingly important role in facilitating compliance with due diligence requirements under timber laws in other countries, including regulations related to deforestation. This rule provides that processors may use these scientific methods relating to timber identification to mitigate the risk of processing illegally logged raw logs as part of their due diligence. However, it is the processor's responsibility to ensure that any such technical solution is sufficiently robust to accurately assess illegal logging risk and that they comply with the other due diligence requirements for processing a raw log.

Exception

Subsection 11(9) of the Rules provides an exception to the requirements in subsections 11(4) to (7). It does not provide an exception to the information gathering requirements in subsection 11(2), which apply to processors prior to every instance of processing raw logs. The risk assessment requirements in subsections 11(4) to (7) (where applicable) do not apply to the processing of raw logs (the **current logs**) by a processor if:

- the processor, in the previous 12 months, processed raw logs (the *earlier logs*); and
- the processor has complied with subsections 11(2) and 11(4) to (7), as applicable, in relation to the processing of the earlier logs;
- either:
 - the current logs and the earlier logs are certified raw logs; or
 - the current logs and the earlier logs are not certified raw logs; and
- the processor has obtained the information covered by paragraphs 11(2)(a) to (c) for the current logs and that information is the same as the information for the earlier logs; and
- the processor:
 - has considered whether, since the processor complied with the requirements of subsections 11(2) and 11(4) to (7), as applicable, in relation to the processing of the earlier logs, there has been a significant change in circumstances that has increased the risk the current logs are illegally logged; and
 - if the processor is satisfied that there has not been such a significant change in circumstances – has made a written record to that effect.

Subsection 11(9) of the Rules seeks to reduce the due diligence obligations for processors who have processed the same raw logs within the previous 12 months, provided the requirements of that section are met. It is expected that processors will conduct a full due diligence process involving all steps—information gathering, identifying and assessing the risk and risk mitigation (where applicable)—every 12 months. This exception seeks to balance the objectives of reducing the regulatory burden on industry and minimising the risk of illegally logged raw logs entering the supply chain.

Paragraph 11(9)(e) of the Rules is intended to capture significant changes to the certification status of raw logs or particular illegal logging risk factors that could substantially increase the level of risk associated with processing raw logs. Examples of such significant changes are:

- the relevant certification for timber harvested in certain areas is suspended or revoked;
- a significant increase in the reports of illegal logging in a particular area;
- the conservation status of the relevant species of tree has changed.

Recordkeeping

The final due diligence requirement for processors of raw logs concerns the record-keeping obligations.

Subsection 11(10) of the Rules provides that the processor must:

- keep a record of the information the processor obtained under subsection 11(2) for the period of 5 years beginning on the day the raw logs are processed; and
- keep the copy of the record referred to in paragraph (3)(a), and the sales or delivery document referred to in paragraph (3)(c), for the period of 5 years beginning on the day the raw logs are processed; and
- keep the record referred to in paragraph 11(4)(d), (5)(d), (7)(d) or 9(e) for the period of 5 years beginning on the day the raw logs are processed.

Subsection 11(10) of the Rules is based on section 25 of the Regulation. The records of information gathered under subsection 11(2), the records of the risk assessment process for paragraph 11(4)(d) or 11(5)(d), records of the risk mitigation process for paragraph 11(7)(d) and the written records for the purposes of paragraph 11(9)(e) will be relevant to the exercise

of the new information gathering power concerning processors in section 18F of the Act and audit power in section 29 of the Act.

Copies of the records referred to in paragraph 11(3)(a) of the Rules (records from databases maintained by the Forest Stewardship Council, or the Programme for the Endorsement of Forest Certification) and the sales or delivery documents referred to in paragraph 11(3)(c) are relevant to determining whether raw logs come within the definition of *certified raw logs* under subsection 11(3) and by extension, whether the processor was able to use the risk identification and assessment process for certified raw logs in subsection 11(4).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*
Illegal Logging Prohibition Rules 2024

This disallowable 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* and advances certain of those rights.

Overview of the Legislative Instrument

The *Illegal Logging Prohibition Act 2012* (the Act), as amended by the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Act 2024* (the Amendment Act), provides measures to protect the Australian market from illegally logged timber and support sustainable and legal timber trade.

The purpose of the Rules is to provide for detailed requirements in relation to regulated timber products and due diligence for the purposes of the Act. Specifically, the Rules prescribe:

- the regulated timber products for the purposes of the Act;
- the regulated timber products that are exempt from the offences and the civil penalty for importing regulated timber products without complying with one or more due diligence requirements;
- the circumstance where a processor of raw log is exempt from the offences and civil penalty associated with processing a raw log without complying with one or more due diligence requirements for processing the raw log; and
- the due diligence requirements for importers of regulated timber products and processors of raw logs.

The Rules replace the *Illegal Logging Prohibition Regulation 2012* which is due to sunset on 1 April 2025.

The legislative instrument commences on 3 March 2025 at the same time as the Amendment Act.

Human rights implications

Aspects of the Amendment Act were assessed as engaging human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, as set out in the Explanatory Memorandum to the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024* (the Bill). That assessment concluded that the Amendment Act was compatible with human rights because where the measures engaged and limited specified human rights, those limitations were reasonable, necessary, and proportionate to the Amendment Act's legitimate objectives (at pages 60-79 of the Explanatory Memorandum to the Bill). For an analysis of the human rights implications of the Amendment Act as a whole, the Explanatory Memorandum to the Bill should be referred to.

The Parliamentary Joint Committee on Human Rights examined the Statement of Compatibility with Human Rights to the Bill in Report 3 of 2024 (17 April 2024 at 3), in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011* and made no comment on the Bill on the basis that it did not engage, or only marginally engaged human rights; promoted human rights; and/or permissibly limited human rights.

This legislative instrument, by extension, engages the following rights:

- criminal process rights – Articles 14(1), 14(2), 14(3) and 14(7) of the *International Covenant on Civil and Political Rights* (ICCPR); and
- the right to protection from arbitrary interferences with privacy – Article 17 of the ICCPR.

The legislative instrument also indirectly engages, and potentially promotes, the right to work and rights at work - Articles 6 and 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Criminal process rights

The right to a fair trial and other guarantees in relation to legal proceedings are established under Article 14 of the ICCPR. Australia interprets the Article 14 rights to extend to the right to a fair trial or fair hearing in both criminal and civil proceedings, before both courts and tribunals. Article 14 also affords minimum guarantees in the determination of a criminal charge, and other criminal process rights.

Right to the presumption of innocence

Article 14(2) of the ICCPR protects the right to be presumed innocent until proven guilty according to law. Strict liability provisions will not violate the presumption of innocence as long as they are reasonable in the circumstances and maintain rights of defence.

Strict liability offences and civil penalties

Subsections 12(1), (2) and (3) of the Act contain the fault-based offence, the strict liability offence and civil penalty in relation to importing a regulated timber product without complying with due diligence requirements for importing regulated timber product.

Section 13A of the Act relevantly provides that a due diligence requirement for importing regulated timber products is that the person importing such products has a due diligence system for importing such products. Section 8 of the Rules sets out the other due diligence requirements with which an importer of regulated timber products must comply. They concern information gathering, identification and assessment of risk, risk mitigation and record-keeping. Importers of regulated timber products who do not comply with due diligence requirements may be subject to the offences and civil penalty in section 12 of the Act.

Subsections 17(1), (2) and (3) of the Act contain the fault-based offence, strict liability offence and civil penalty in relation to processing a raw log without complying with one or more due diligence requirements for processing the raw log, in certain circumstances. Section 17A of the Act relevantly provides that a due diligence requirement for processing raw logs is that the person doing the processing has a due diligence system for processing raw logs. Section 11 of the Rules sets out the other due diligence requirements with which a processor of raw logs must comply. They concern information gathering, identification and assessment

of risk, risk mitigation and record-keeping. Processors of raw logs who do not comply with one or more of these due diligence requirements may be subject to the offences and civil penalty in section 17 of the Act.

Article 14 is engaged because the strict liability offences and civil penalty provisions in sections 12 and 17 of the Act are potentially enlivened by conduct that is contrary to the Rules.

The application of strict liability to an element of an offence in the Act engages the right to be presumed innocent as it allows for the imposition of criminal liability without the need for the prosecution to prove fault. The Rules, by extension, also engage this right by providing for matters relating to the strict liability offences in the Act for those who fail to comply with due diligence requirements in the Rules. The civil penalty provisions in subsections 12(3) and 17(3) of the Act, which are also enlivened in the Rules, may engage criminal process rights under Article 14 of the ICCPR, regardless of the distinction between criminal and civil penalties in domestic law. As such, prescribing conduct in the Rules that is subject to a civil penalty and applying the civil penalty provisions of the *Regulatory Powers (Standard Provisions) Act 2014* could engage criminal process rights if the imposition of civil penalties is classified as ‘criminal’ under international human rights law.

The due diligence requirements in the Rules are essential to the effective operation and administration of the illegal logging prohibition legislation, so it is appropriate that failure to comply with these requirements attract strict liability offences and civil penalties.

The purpose of the strict liability offences and civil penalty provisions in sections 12 and 17 of the Act is to encourage compliance with the due diligence requirements in the Act and the Rules. Application of strict liability to the offences in the Act concerning failure to comply with due diligence requirements is consistent with the guidelines of the Attorney-General's Department as set out in *A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers* (the Guide) and are imposed to further the legitimate objective of regulating the conduct of importers and processors. The civil penalty provisions in subsections 12(3) and 17(3) of the Act (which may also be enlivened by failure to comply with due diligence requirements) are civil penalties and are imposed for provisions which are regulatory in nature, where a pecuniary penalty is the appropriate remedy for non-compliance. They have been set by reference to the Guide and do not impose criminal liability.

The strict liability offences and civil penalty provisions in sections 12 and 17 of the Act, as potentially enlivened in the Rules, are necessary to achieve the legitimate objective of supporting sustainable timber trade by reducing the harmful environmental, social and economic impacts of illegal logging. The Rules and the Act achieve this by prescribing due diligence requirements for timber importers and processors of raw logs that help them to identify and assess the risks of importing illegally logged timber or processing illegally logged raw logs and mitigating those risks. Further, exceptions to the strict liability offences provide a safeguard that appropriately limits the scope of the offence provisions.

The measures are compatible with, and do not impermissibly limit, the presumption of innocence. This is because they are necessary and proportionate to implementing the legitimate policy objective of minimising the risk of illegally logged timber entering Australia's market.

Reverse evidentiary burden in exceptions to other due diligence requirements

Any provision which requires a defendant to carry an evidential burden of proof in relation to the existence of some fact, known as a "reverse burden", engages and potentially limits the right to a presumption of innocence under Article 14(1).

A reverse evidentiary burden applies to the exceptions contained in subsection 8(10) and subsection 11(9) of the Rules. These exceptions exempt, respectively, an importer or a processor from certain due diligence requirements in relation to the importation of a regulated timber product or the processing of a raw log.

The exceptions are necessary to ensure that processors and importers are not inadvertently captured by the offence provisions where certain factual circumstances apply. They relate to factual circumstances which are peculiarly within the knowledge of the person to whom the exception would apply, such as, for example, whether the information required to be collected for current logs is the same as that collected in relation to earlier logs. It would be extremely difficult for the prosecution to disprove the existence of these facts if the evidentiary burden for these defences was not reversed.

The information to which the exceptions apply is within the direct knowledge of importers or processors who are generally commercial operators that are aware, or ought to be aware, of the obligations placed on them when importing regulated timber products or processing raw logs. It would not be unreasonably difficult for them to discharge the evidentiary burden in those circumstances. As such, the provisions are consistent with the Guide and to the extent that they limit human rights, those limitations are reasonable and proportionate to the legitimate aims of the instrument.

The right to protection from arbitrary interference with privacy and reputation - Article 17 of the ICCPR

Article 17 of the ICCPR prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and protects a person's honour and reputation from unlawful attacks. The right to privacy includes respect for informational privacy and is engaged by any provision which permits the disclosure of personal information. The right to privacy includes: the right to respect of confidential and private information, particularly the storing, use and sharing of information, and the right to control the dissemination of information about one's private life and protects against arbitrary and unlawful interferences with an individual's privacy.

For an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and must be necessary in the circumstances of any given case (*Communication No. 488/1992* (March 1994)).

Information to be provided by processors and importers as part of due diligence requirements

Section 7 of the Rules prescribes the information that must be included in an importer's due diligence system for the purposes of paragraph 13A(2)(c) of the Act. The prescribed information is the name, street address, postal address, telephone number and email address of the importer and, for an importer who is not an individual, the name, position, and contact

details (including telephone number and email address) of the individual who is responsible for maintaining the system.

Section 10 of the Rules prescribes the information that must be included in a processor's due diligence system for the purposes of paragraph 17A(2)(c) of the Act. The prescribed information is the name, street address, postal address, telephone number and email address of the person doing the processing and, for a processor who is not an individual, the name, position and contact details (including the telephone number and email address) of the individual who is responsible for maintaining the system.

The right to privacy is engaged by sections 7 and 10 of the Rules because the prescribed information includes personal information of an importer and processor and, for importers and processors who are not individuals, personal information of the person who is responsible for maintaining the importer's or processor's due diligence system. Sections 7 and 10 of the Rules may limit the right to privacy by requiring the collection and potential disclosure of this personal information.

The purpose of due diligence requirements in Parts 2 and 3 of the Rules is to reduce the risk of illegally logged timber entering Australia's market. Personal information is required from importers and processors as part of their due diligence systems for the specific purpose of assessing their compliance with the due diligence requirements. Without such information, the Department would have substantially less ability to identify and investigate potential lack of compliance with the due diligence requirements and take appropriate compliance action.

To the extent that these provisions limit the right to privacy, they are reasonable, necessary and proportionate to the legitimate policy objective of ensuring that due diligence is undertaken in relation to the importation of regulated timber products and the processing of raw logs and by extension, minimising the risk of illegally logged timber entering Australia's market. It is therefore not an impermissible limitation on the right to privacy for importers of regulated timber products and processors of raw logs to be required to provide the personal information specified in sections 7 and 10 of the Rules.

Further, the use or disclosure of personal information is governed by a legal framework that provides safeguards against unauthorised use or disclosure. Specifically, the collection, storage and disclosure of this personal information will be undertaken in accordance with the Australian Privacy Principles (APPs) contained in the *Privacy Act 1988* (the Privacy Act). This includes APP 11.1, which requires an APP entity to take reasonable steps to protect personal information from misuse, interference or loss, and from unauthorised access, modification or disclosure.

The right to work and rights at work - Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 6 of the ICESCR provides that States Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted and will take appropriate steps to safeguard this right. Article 7 of the ICESCR further specifies the right of everyone to the enjoyment of just and favourable conditions of work. The Rules potentially engage this right through the due diligence requirements for importers of regulated timber products and processors of raw logs.

In a labour context, importers of illegally logged timber and processors of illegally logged raw logs potentially undercut and outcompete importers and processors of legally sourced timber

products, thereby undermining the livelihoods of these legitimate Australian businesses and their workforce. The due diligence requirements disincentivise and disrupt the importation and processing of illegally logged timber, thereby promoting the right to just and favourable work, and progressive realisation of optimal conditions of work.

Conclusion

The 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*. To the extent that it may limit human rights, those limits are reasonable, necessary and proportionate to the instrument's legitimate objectives.

The Hon. Julie Collins

Minister for Agriculture, Fisheries and Forestry