



# Sunset Review of the Illegal Logging Prohibition Regulation 2021 (Part 1)

## Webinar Q&A's

Please note that the following questions and responses are not all questions that were received during the webinar held on 31 August 2021. The remaining questions have a focus on the US Lacey Act and will be provided at a later date.

### Questions answered live at the webinar<sup>1</sup>

1. This question has come from a few people who note that brokers may not be the most appropriate people to provide the due diligence information prior to products entering the country. They would like to know how the department will ensure that brokers are not responsible for providing this information and would like to know what a purpose-built system to collect this information could look like?

(Similar question included for reference) An online system for registering the products before they reach the border would be very valuable. Is this on the radar?

This is something that we are very conscious of. We understand the difficulty with processing large volumes of information while also having to potentially provide even more information under new requirements for our laws. This could place a lot of burden on customs brokers. Due to this, one of the things we have been looking at, is how we could best design a system to get this additional information and make sure that it works for everyone.

There are challenges with the customs Integrated Cargo System (ICS) as it is set up to do very particular things. This means that we are quite limited in terms of what we could actually do in getting more information through that system. Due to this we are looking at potentially creating a purpose-built system run by the department that would operate in a way where that is sufficient for processors, importers or anyone else that has obligations under laws, to be able to log in and complete everything they need to for that week or for that month in one go. This system would also need to connect to the ICS, so we are looking at ways to integrate this as well. Ultimately, we're looking at something that's quite user friendly, links customs information for your regulated products and allows you to upload any of the information we're requiring from you at the set time.

This is something that we are quite interested in hearing your thoughts on in terms of what works, what would be the most user-friendly approach, and making sure it's for

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<sup>1</sup> Please note that the responses provided within this document have been paraphrased for readability and the exact wording differs slightly to the responses given within the webinar presentation.



the right people to be able to use rather than potentially putting the burden on someone doing large data turn around on behalf of someone else.

We also note that the US has a couple of different systems that we are also looking to for guidance on how a purpose-built system could work here.

2. Are there any additional commodities planned to be added to the list i.e. charcoal? (Answered live)

A few potential additions that we have put forward are charcoal, musical instruments and print media which the EU has, or is looking at also implementing. We are looking for input from the regulated community and other interested stakeholders on whether or not there is a reason why something that is not included should be included, or vice versa.

An example of this reasoning could be that under our current laws a process log can be imported and then further processed into a print media product. There is due diligence done on the raw log that becomes print media but not on imported print media products. We would like to know of any other examples where there might be good reason to change the laws such as this.

3. The consultation paper notes the regulatory burden/costs to Australian businesses, but what consideration has been given to the costs to Australian businesses having to compete with illegal supply?

The premise for our laws is being able to ensure that the competition from illegal supply isn't undercutting the price of legal timber in Australia on the Australian market. We have some historical information to show that illegally logged timber can depress prices around the world by 7 to 16% in international markets. We are currently seeking more current figures to support this. It is essential that the laws continue to be in force and ensuring these laws work effectively. The approach globally is to regulate across a large volume of trade, with light touch compliance, but also trying to compel voluntary compliance. We are trying to optimize and streamline our laws as much as possible to ensure that where there are problems, we identify them early and are able and well equipped to deal with them appropriately. Protecting our market from illegally logged timber is something that's front of mind in terms of these reforms, but it is something that is quite hard to quantify at the same time.

4. Is there a time frame you are working to for implementing the up-front data collection requirement?

We don't have a specific time frame, it's really the review process. The next steps is forming recommendations for government in the end of this year. So public consultations will close September 30th. we'll then make a set of recommendations for government to consider. It's once they're being considered by cabinet and we have



clarity around what's the way forward, and then we can really start to outline timeframes. So we have as much time as we need. We can essentially set out some of these provisions in their regulations that allow us to gather this information up front, but in terms of implementing them, it's up to us and working with developing systems and all the time frames that will need around those in terms of actually delivering it. So don't have a concrete time frame for you, but I would think developing and testing and implementing a pretty extensive system for getting this information upfront does take quite a number of months just to develop, and yet alone to actually implement. So we're probably looking at timeframes extending over 12-18 months before we start to really see an end product.

5. Are the current laws effective in relation to due diligence requirements?

Australia's laws by themselves are not going to solve the issue of illegal logging. We represent only a percentage of the broader international market, so our efforts need to be considered in the context of broader international efforts. We were one of the first nations to put illegal logging laws in place and our laws have had a strong influence on a lot of international markets and governments.

Our laws have an important role to play, and our enforcement and implementation of the laws will continue to contribute toward broader efforts in this space. The nature of illegal logging makes it hard to assess effectiveness, and it's also important to remember that these laws are still relatively new. What we can confidently say is that the laws are having a positive effect, particularly when combined with a number of other emerging legislation around the world.

## Questions not answered at the webinar

6. With regard the provision of due diligence information to government - the people who are doing the wrong thing are not going to tell you. This will only become an additional regulatory burden.

The United States' illegal logging legislation, the Lacey Act, requires importers to submit a declaration that includes the harvest origin, species, and risk of illegal logging rating ahead of importation. This requirement has been successful to date and has assisted in better targeting compliance and enforcement activities.

The potential addition of testing powers will also mean that the department can identify those that misrepresent their products. A detection of this nature can result in substantial penalties to those who are doing the wrong thing.

Importers are currently required under section 10 of the Regulation to collect a range of information about the regulated timber products they are importing. As this information is currently required to be gathered by importers prior to importation, requiring that it is also submitted ahead of importation would be expected to add minimal burden. We



estimate that this would require 5 to 10 minutes of effort from an administrative officer undertaking data entry for most imported products.

As stated under question 1, we understand that it may be not be appropriate for brokers to provide this information. Due to this we are considering that it may be more appropriate to build a purpose-built system for importers to provide this information outside of the ICS. A purpose-built system will look to minimise any inconveniences associated with providing this information upfront and reduce regulatory burden as much as possible while significantly improving our compliance and enforcement capabilities.

6a. With regard the provision of due diligence information to government and requirements to provide due diligence information by Australian processors of local Australian raw logs, what is the scale and scope of this requirement? What type of info will be required and in what form? How will this information be sent to the regulator and how often? This will become an additional regulatory burden on Australian processors of Australian logs for what appears to be very little gain given the extent of any local illegal logging would be extremely small.

The focus of the reform is on receiving due-diligence information from importers ahead of goods arriving at the border, which will complement the use of the proposed at border powers. Any broader changes affecting processors will be dependent on the feedback we receive in the ongoing consultation period, as well as any future system designs that may lead to streamlining the provision of information to the department.

Under section 18 of the current Illegal Logging Prohibition Regulation 2012, processors are required to have a due diligence system in place before processing a raw log. Similar to the current requirements on importers, this due diligence information must be provided to the department within 28 days when requested. We will only consider changes to these arrangements where there is a sound basis for doing so. We are conscious of imposing burdensome requirements and any future decisions regarding processors' due diligence requirements will take this into account.

A further reform proposed in the consultation paper suggests that both importers and processors could also be required to notify the department when they become aware of harvest legality issues from due diligence checks. This would encourage a cooperative approach to compliance between the department and regulated entities.

7. Is the department considering Approved Arrangement for a secured supply chain in relation to illegal logging?

The department will not be considering approved arrangements for a secured supply chain in relation to illegal logging. Approved arrangements are voluntary arrangements entered into with the Department of Agriculture, Water and the Environment to manage biosecurity risks. These arrangements reduce the need to repeat regulatory processes by allowing operators to manage biosecurity risks and/or perform the documentary



assessment of goods in accordance with departmental requirements, without constant supervision by the department and with occasional compliance monitoring or auditing.

The Illegal logging regulatory approach is based on a different legislative framework and operates from the premise that importers are required to implement their own due diligence processes for their supply chains. The department then has powers to ensure that importers are meeting their obligations.

The department is considering reforming the due diligence requirements, and only requiring one due diligence assessment for an identical import pathway within a set period. This has some similarity to approved arrangements, in that the proposed reform will reduce the need to repeat burdensome regulatory processes.

Minimal obligations would be imposed to ensure that the importer checks no pertinent elements of the supply chain have changed ahead of each repeat import. A repeated due diligence process would still be required where the importer cannot assure themselves that no pertinent elements have changed.

8. What is the threshold for the Illegal Logging Prohibition Act 2012 in terms of investigating alleged domestic logging breaches of state timber codes of practice or other non-conformance to timber harvesting regulations?

The laws place obligations on Australian timber processors to ensure any domestically grown raw logs that they process have not been illegally harvested by undertaking 'due diligence'. Under the laws, the department does not directly investigate breaches of harvesting prescriptions, as the laws do not regulate harvesting itself, rather they regulate timber processors who must ensure they are not processing illegally harvested logs. The department takes allegations of timber processors not undertaking their obligations seriously and will investigate such allegations where this is substantial basis to do so.

Australian timber processors are subject to substantial penalties and imprisonment if found to have processed illegally logged timber. Aside from the illegal logging laws, the Regional Forest Agreements and the Wood Rules under the Export Control Act provide additional assurances and controls at the national level around the legality of timber harvesting and exporting from Australia.

9. In relation to timber testing, how big a sample is proposed to be taken and will this hold up any imports?

Timber testing technologies vary in terms of the sample required and the time taken to obtain a result. Some technologies using wood anatomy methods do not require any samples to be taken and generate near instant results. Other technologies such as DNA and isotope testing, which can provide more detailed results, require destructive samples and can take substantial time to return a result. The different technologies can



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be deployed according to the risk and accuracy of result needed. Most technologies will not require goods to be held up as samples can be taken quickly. The power to hold goods is only anticipated to be used where there is a strong reason for not letting the product enter the Australian market, such as a high level of concern over the good's origins.

It is anticipated that where goods need to be destroyed to obtain a sample, the department will consider appropriate compensation arrangements. However, these arrangements will need to be determined in consultation with industry closer to implementing any testing regime.