



Australian Government
Department of Agriculture,
Fisheries and Forestry

Sunsetting review of the Illegal Logging Prohibition Regulation 2012

Regulation impact statement



© Commonwealth of Australia 2022

Ownership of intellectual property rights

Unless otherwise noted, copyright (and any other intellectual property rights) in this publication is owned by the Commonwealth of Australia (referred to as the Commonwealth).

Creative Commons licence

All material in this publication is licensed under a [Creative Commons Attribution 4.0 International Licence](#) except content supplied by third parties, logos and the Commonwealth Coat of Arms.

Inquiries about the licence and any use of this document should be emailed to copyright@awe.gov.au.



Cataloguing data

This publication (and any material sourced from it) should be attributed as: DAFF 2022, *Sunsetting review of the Illegal Logging Prohibition Regulation 2012: regulation impact statement*, Department of Agriculture, Fisheries and Forestry, Canberra. CC BY 4.0.

OBPR ID 43974

ISBN 978-1-76003-531-0

This publication is available at haveyoursay.agriculture.gov.au/illegal-logging-sunsetting-review

Department of Agriculture, Fisheries and Forestry

GPO Box 858 Canberra ACT 2601

Telephone 1800 900 090

Web agriculture.gov.au

Disclaimer

The Australian Government acting through the Department of Agriculture, Fisheries and Forestry has exercised due care and skill in preparing and compiling the information and data in this publication. Notwithstanding, the Department of Agriculture, Fisheries and Forestry, its employees and advisers disclaim all liability, including liability for negligence and for any loss, damage, injury, expense or cost incurred by any person as a result of accessing, using or relying on any of the information or data in this publication to the maximum extent permitted by law.

Acknowledgement of Country

We acknowledge the Traditional Custodians of Australia and their continuing connection to land and sea, waters, environment and community. We pay our respects to the Traditional Custodians of the lands we live and work on, their culture, and their Elders past and present.

Contents

1	Background	1
1.1	Illegal logging	1
1.2	The economic costs of illegal logging.....	1
1.3	The environmental and social costs of illegal logging.....	1
2	Illegal logging in Australia	3
2.1	Australia’s laws.....	3
2.2	The sunseting review	3
2.3	Impacts of Australia’s illegal logging laws.....	4
2.4	Market access benefits for Australian timber exports.....	5
2.5	Australia’s exposure to illegally logged products.....	6
2.6	Problem.....	7
3	Need for government action	10
4	Options	12
4.1	Option 1: The status quo	12
4.2	Option 2: Allowing the Regulation to sunset.....	12
4.3	Option 3: Reform the legislative framework.....	12
5	Impacts of Option 1 – The status quo	16
5.1	Regulatory impacts.....	16
5.2	Regulatory burden impacts.....	17
6	Impacts of Option 2 – Allowing the Regulation to sunset	18
6.1	Regulatory impacts.....	18
7	Impacts of Option 3 – Reform the legislative framework	20
7.1	Regulatory Impacts.....	20
7.2	Regulatory burden impacts.....	22
8	Consultation	25
8.1	Key stakeholders.....	25
8.2	Input from stakeholders on potential reforms.....	26
8.3	Communication of the review process.....	27
8.4	Previous consultation	28
9	Recommended option	30
10	Implementation and evaluation	32
10.1	Implementation.....	32
10.2	Evaluation	32
	Appendix A: Data and assumptions	34
	Data collection.....	34

Receiving due diligence information upfront	34
Adding sampling, seizure and detainment powers	34
Streamlined due diligence for certified products	34
Reducing repeated due diligence.....	34
Glossary.....	35
References.....	36

Tables

Table 1 Relevance of Australia's illegal logging laws to illegal logging impacts in Australia and overseas.....	4
Table 2 Estimated due diligence costs associated with importing sector	17
Table 3 Level of impact the potential reforms are predicted to have on reducing illegally logged products entering the Australian market.....	21
Table 4 Estimated regulatory cost changes of the potential reforms	22
Table 5 Differences of regulatory burden between the status quo (Option 1) and a reformed framework (Option 3) by regulatory scheme component	23

Figures

Figure 1 Interaction between the potential legislative reforms.....	22
---	----

1 Background

1.1 Illegal logging

Illegal logging is a global problem, with significant impacts for Australia's forest industries. The theft, laundering and trade of illegally logged timber occurs in both developed and developing countries with widespread economic, environmental and social consequences. It is a practice linked to organised crime, civil wars, murder, corruption, species extinction and environmental destruction and is the largest global environmental crime by value. It is an omnipresent global phenomenon that requires sophisticated, evolving regulatory practices to combat effectively.

Illegal logging is driven mostly by profit, and economic costs of the illicit trade in forest products are significant, with governments losing billions of dollars in revenue annually. Illegal operators avoid many costs associated with sustainable forestry management, such as payment of royalties to governments and traditional owners, compliance with harvest controls, labour costs and other legitimate costs. This has a negative impact on domestic market prices, which can affect business decisions, industry investment, profitability, and jobs in the Australian economy.

1.2 The economic costs of illegal logging

Illegally logged timber entering Australia's timber market exposes our domestic forest industry to price suppressing effects. An economic analysis based on the Global Forest Products Model suggested that illegally logged timber depresses world prices by an average of 7 to 16% depending on the product (Seneca Creek Associates 2004). This suppressive effect has impacts on Australian domestic producer competitiveness as well as international timber prices and creates long-term negative outcomes across the supply chain.

A joint United Nations Environment Programme and INTERPOL report released in 2016 estimated that illegal logging represents an annual cost to the global community of between US\$51 billion and US\$152 billion, with illegally logged timber representing 15 to 30% of global trade (Nellemann et al. 2016). Another report done in 2006 also estimated that illegal logging on public land cost developing nations US\$10 billion per year, with government revenue losses around US\$5 billion per year (The World Bank 2006).

1.3 The environmental and social costs of illegal logging

High levels of illegal logging cause large-scale forest degradation that have significant negative impacts on the environment and livelihoods of local communities (Burivalova et al. 2016). The environmental impacts of illegal and unregulated logging are immediate, with the loss of biodiversity, erosion and subsequent water pollution changing the ecological balance of large swathes of forest areas (Lawson & MacFaul 2010).

The World Bank (2019) estimated that the full economic cost of illegal logging in relation to ecosystem service degradation is at least US\$887 billion per year. This damage is compounded by the costs to approximately 'one billion forest dependent people', with additional stresses created as a result of criminal groups increasing instances of corruption, fraud, money laundering, extortion and murder in regions neighbouring forests (Nellemann & INTERPOL 2012).

Illegal logging also imposes a range of intangible costs on forest-dependent communities. These include reducing the standard of living; eroding sustainable livelihoods; destroying customary, spiritual and heritage values; encouraging a wide range of human rights abuses; using and exploiting foreign workers; reducing the quality of the forest environment; and contaminating food and water resources (Australian Government 2012).

A study completed in 2019 found that 46% of Australians regarded environmental concerns as the major problem facing the world (Roy Morgan 2019). Australian's collective social conscious is likely to be impacted by the effects of illegal logging internationally, as it contributes to loss of habitat to many species of charismatic megafauna and the detrimental impacts of global climate change. There are also many within the Australian community who are concerned about the human impacts of illegal logging. These impacts can involve the destruction of Indigenous community land, underground illegal activities that impact on local communities, and endangerment of logging workers. In recent years, Australians have called on government to assist and take action in addressing these issues.

2 Illegal logging in Australia

2.1 Australia's laws

Australia's *Illegal Logging Prohibition Act 2012* and *Illegal Logging Prohibition Regulation 2012* were among the first of their kind internationally. The key objective of the laws is to reduce the harmful environmental, social and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber products in Australia. The legislation does this by prescribing requirements for timber processors and importers that help them to identify and avoid importing or processing illegally logged timber.

The Act makes it a criminal offence to import illegally logged timber and timber products into Australia or to process domestically grown raw logs that have been illegally logged. The legislation requires entities to obtain information and conduct a structured risk assessment process before a business or individual imports a 'regulated timber product' into Australia or processes domestically grown raw logs.

The Regulation requires importers and domestic processors of regulated timber products to establish a due diligence system, before importing or processing that product.

The Regulation also allows importers and domestic timber processors to use third-party timber legality frameworks to assess risks associated with a regulated timber product. Two frameworks are recognised under the Regulation, the Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification systems (PEFC). These certification schemes operate globally and accredit products, harvest operations and supply chains against set criteria and standards to attest to the legality and sustainability of harvesting and subsequent production of timber products.

Importers may elect to use a country specific guideline, and processors may elect to use a state specific guideline, under the Regulation to conduct due diligence, if a specific guideline applies to the timber for the area of harvest. The guidelines list a range of relevant information about legal timber from the applicable jurisdiction. The Regulation also allows importers and domestic timber processors to use country specific guidelines and state specific guidelines respectively when gathering information to meet their due diligence requirements.

An amendment to the Regulation to exempt importers or processors from completing due diligence for products accredited under either of these frameworks was disallowed by the Australian Senate in 2018. The amendment and subsequent disallowance highlighted that providing exemptions to due diligence requirements carry inherent risks that need to be carefully managed.

2.2 The sunset review

The Regulation will cease to have effect (sunset) on 1 April 2023. Australian Government policy encourages the department to conduct a review to consider whether the instrument continues to be 'fit for purpose' prior to sunset.

The department is currently conducting this review. The main objective of the review is to ensure the Act and the Regulation delivers on Australia's commitment to reduce the harmful

impacts of illegal logging. The review focused on meeting the Regulation’s sunsetting requirements as outlined in the *Legislative Instruments Act 2003*, and the department also considered the operating context of the sunsetting legislation, and broader legislative and policy context. This includes broader domestic and international law developments, and deregulation agendas.

On 6 July 2021, the department published the [Sunsetting Review of the Illegal Logging Prohibition Regulation 2012: consultation paper](#), which sought feedback on a number of potential reforms to strengthen the Act and Regulation including whether it was ‘fit-for-purpose’. Stakeholders representing timber importers, customs brokers, industry bodies, non-government organisations, foreign governments, and other interested parties provided input. Based on this consultation, several reforms to Australia’s illegal logging laws have been considered. These reforms are outlined under Option 3 of this RIS and the consultation process is further detailed in [Chapter 7](#).

There was also a [statutory review](#) of the associated Act in completed in 2019. Consideration of the potential Act amendments identified through the Statutory Review was deferred until the Sunsetting Review of the Regulation. The Sunsetting Review has utilised the recommendations from the Statutory Review of the Act as the starting basis for the reforms considered.

2.3 Impacts of Australia’s illegal logging laws

The Australian Government introduced the illegal logging laws ‘to combat illegal logging and associated trade by establishing systems that will promote trade in legally logged timber and, in the long term, trade in timber and wood products from sustainably managed forests’ (Australian Government 2012, p. 46). The government sought to promote a strong, competitive and sustainable international trade in legal timber products, while also reducing the significant environmental, economic and social costs of illegal logging. The impacts of illegal logging, mitigated through Australia’s illegal logging laws, are listed in Table 1 in terms of scale of impacts to the Australian community or overseas.

There are currently one to two million annual imports of regulated timber products across 20,000 importers captured under the laws, as well as any Australian-grown raw logs that have been processed by the domestic industry.

Table 1 Relevance of Australia's illegal logging laws to illegal logging impacts in Australia and overseas

Impact category	Domestic impact	Overseas impact	Risk assessment
Environmental	Low	High	Illegal logging is associated with deforestation and climate change, which have significant environmental impacts including biodiversity loss, soil erosion and loss of water retention. Global studies show that illegal logging activity is more common overseas, hence the higher likelihood of environmental impacts overseas.
Social	Low	High	As illegal logging is more common overseas, the likelihood of direct social impacts, such as local communities losing local habitat and income sources are greatest.
Economic: government & communities	Low	High	Illegal logging costs governments and local communities through lost royalties and resources.

Impact category	Domestic impact	Overseas impact	Risk assessment
Economic: timber producers	High	Low	<p>Illegal logging undermines the efforts of legally harvested activities by making available cheaper illegally logged timber and timber products on the market.</p> <p>As the laws concern timber entering the Australian market, the price impacts are felt greatest by competing Australian timber producers.</p>
Consumers	High	Low	<p>Illegal logging affects consumers, most commonly through misrepresented products in terms of their timber type, origin and sustainability.</p> <p>Australian consumers are increasingly concerned about the environmental and social impacts of illegal logging.</p> <p>As the laws target timber entering the Australian market, they are most likely to impact Australian consumers, and less so overseas consumers.</p>
Market access	High	n/a	<p>The association of illegally logged timber and weak timber legality laws with particular markets, can in turn impact market access from that location.</p> <p>Australia's laws help ensure that other markets accept Australian timber as legal and do not place further regulatory requirements on timber arriving from Australia.</p>

2.4 Market access benefits for Australian timber exports

Some overseas jurisdictions have moved in recent years to require exporting markets to attest to the legality of each timber export where they do not have illegal logging laws in place. Exporters are typically required to obtain government certificates or other verification that they are sending legally harvested products into these jurisdictions.

Timber products exported from Australia in recent years have largely avoided these burdens due to recognition for the illegal logging laws that we have in place. In one instance, where recognition for our current laws has not yet been fully established, some exporters are now required to obtain an export certificate that demonstrates that the timber has been harvested legally and sustainably. The Australian Government must review and approve each application before the products can be exported. This creates burden for both exporters and government that can slow transactions and complicate dealings with overseas importers.

As well as largely avoiding regulatory burden for our exports, the illegal logging laws have ensured that Australian exporters continue to realise the benefits of Australia's strong reputation for sustainable, legal timber products. Australia's illegal logging laws place obligations on domestic timber processes to ensure they avoid processing any Australian-grown illegally logged timber.

Recent research undertaken by the Independent Market Monitoring of Forest Law Enforcement, Governance and Trade (FLEGT) – Licensed Timber Program has suggested that premium markets are favouring sourcing timber from locations that have laws in place like Australia's that ensure the legality of the timber (Storck 2021).

The department also works with key trading partners and influences international policy to advance Australia's market access and trade position. Continued and effective international engagement helps Australia advance our interests to combat illegal logging, which also extends to the department's illegal logging laws compliance and regulatory activities.

2.5 Australia's exposure to illegally logged products

The available estimates suggest that Australia's exposure to the trade in illegally logged products may be significant. In 2013, the United Nations Office on Drugs and Crime estimated that up to US\$500 million (approximately A\$700 million) of Australia's timber and wood-based imports were potentially sourced from illegally logged timber harvested in Asia and the Pacific (UNODC 2013). This represented approximately 10% of Australia's annual timber and wood-based imports at the time, which totalled A\$6.8 billion in 2013 (ABARES 2016). Earlier reports have provided similar estimates, with an Australian study from 2005 suggesting around 9% of Australia's timber product imports could come from illegal sources (Jaako Pöyry Consulting 2005).

In recent years, Australia's timber imports have grown to a total of A\$8.9 billion in 2020–21 (ABARES 2022). Assuming Australia's exposure to illegally logged timber has remained relatively static (i.e. not considering the potential long-term impact of the Act), this would see Australia's share in the trade in illegally logged timber products sitting at approximately A\$890 million per annum.

Australia is facing a sustained, long-term wood shortage due to an increasing global demand for wood products and a limited increase in the size of Australian timber plantations. To meet domestic timber demand, imported products routinely supplement domestic supply. ABARES predict that by 2050, if domestic production remains unchanged, we will need to supplement it with 200% more imported softwood sawn wood by volume to meet the increased demand. Also, as the carbon conscious economy progresses, the benefits of wood for carbon abatement and storage will likely also increase demand. These supply pressures may also increase the risk of illegally logged timber products entering Australia.

The exact price suppression effects of trade in illegally logged timber on Australia's industry has not been studied in detail. However, it's considered to be substantial given that globally illegal logging is estimated to suppress prices of timber products by 7 to 16%.

The department has commissioned a series of illegal logging studies that aim to assess these and related impacts, including:

- Australia's current and future exposure to illegally logged timber imports
- the impacts of illegally logged timber products on Australian industry
- how Australia's laws have reduced demand for illegally logged timber
- where enforcement efforts under the laws can be tailored to emerging risks.

These studies will harness specialist knowledge and skillsets in illegal logging, trade, regulatory implementation and policy, in order to strengthen implementation of the illegal logging laws. While these studies will not be complete for some time, they will be used to inform the implementation of the proposed reforms outlined under Option 3 in this RIS.

2.6 Problem

2.6.1 Pilot testings suggests still large volumes of illegal timber on the market

In late 2020, the department undertook a timber identification testing pilot program that verified the species and origin of imported timber sold at retail outlets. From a small set of samples taken, the results showed a up to 40% were potentially misrepresented in terms of their species and origin.

2.6.2 The current reliance on desktop audits for compliance action is often inefficient and ineffective

It remains challenging under the laws to verify whether imported or processed timber was legally harvested, and if the claims made about regulated timber products are valid. This is largely due to the current due diligence arrangements and the powers available to compliance and enforcement officers.

Importers and processors are required to collect a range of information about the regulated timber products they are importing or processing. This information informs a subsequent risk assessment on whether the timber within the products was illegally harvested. This information must also be provided to the department if requested. These requests occur after importation, once regulated imports become visible through trade data and must allow at least 28 days for the importer or provider to provide the requested information.

The Act provides for forfeiture powers but using these have proven difficult. This is because the goods are likely to have been sold or progressed through the supply chain by the time an audit is conducted, making forfeiture unfeasible.

The Act also provides for a range of monitoring, investigation and enforcement powers. It does not adequately provide for any 'at-border' sampling, seizure or detainment powers. This makes it difficult to identify illegally logged timber and prove the physical element of the offences of the Act i.e. that the timber imported or processed was actually harvested illegally. Illegally logged timber products are generally indistinguishable from legally logged products without taking samples and conducting professional testing, which the laws do not currently allow for.

While the Act triggers most of the powers available under the *Regulatory Powers (Standard Provisions) Act 2014*, it does not trigger injunction and enforceable undertakings powers. The enforceable undertakings powers in that Act enable a person to give a written undertaking to the department that the person will take or refrain from taking particular action in order to comply with a particular law; or that the person will take specified action directed towards ensuring that the person does not contravene a particular law. Those undertakings can be enforced by court order, and the court may direct the person to comply with the undertaking, pay the Commonwealth an amount up to the amount of financial benefit the person has obtained from the contravention, compensate another person, or make any other orders the court sees fit. An injunction may be used to restrain a person from contravening a law, or to compel compliance with such a law. Without access to these powers, compliance and enforcement officers have fewer options available to conduct illegal logging investigations and resolve instances of suspected contravention.

The legislation also contains several provisions around undertaking due diligence to identify and assess the risk that a product comprises illegally logged timber. These provisions require that identification and assessment to be 'reasonable'. Given the due diligence process was completely new when introduced in Australia in 2014 and has only been implemented in a couple of other jurisdictions worldwide, establishing what is a reasonable standard in each instance has proven challenging for compliance and enforcement officers in practice. This means it is difficult for authorities to establish breaches of the due diligence processes and take compliance actions. As these standards are unclear, the tendency is to further pursue cooperative and educational measures where stronger compliance responses may be more likely to coerce improvements.

2.6.3 Legislation does not provide for the emerging technical solutions

Developments with timber legality laws elsewhere since the introduction of Australia's laws, have identified legislative and technical solutions to these challenges to consider, including introducing timber testing powers and gathering key information on regulated products through import declarations.

Timber testing technologies, which can identify the species and harvest location of timber within products, are rapidly advancing and have since been added to regulatory frameworks overseas. They are generally implemented under powers to sample and seize timber products at the border and are supported by improved international databases for identifying timber.

To know what to target for timber testing interventions, authorities need good information on the products entering the market. Australia's illegal logging laws do not feature the ability to gather most key information about regulated products before they enter the market, unless that information is gathered in the course of executing a warrant. Without this, it is not possible to verify whether importers and processors are making accurate assessments about the timber species, origin and risk of illegal logging under their due diligence obligations.

Internationally, this issue has been solved through legislative approaches that better align when the regulated community provides due diligence information, collecting the information ahead of importation or processing through tailored systems.

2.6.4 Overseas approaches advance, while laws here remain unchanged

Australia's illegal logging laws were among the first of their kind internationally when they commenced in 2012. They were preceded only by the US Lacey Act, which from 2008 has prohibited the import of illegally harvested or traded plant material. Since this time, the EU, Japan, Malaysia and the Republic of Korea have introduced laws to combat illegal logging and an international best practice is emerging because of this. China, Chinese Taipei, New Zealand and Thailand are also all understood to be developing their own timber import legality frameworks.

Each new overseas framework has brought their own nuance to regulating timber legality. Australia's illegal logging laws do not feature several best practice elements and advancing technologies that have been implemented elsewhere. Australia engages regularly with these nations through forums such as the *APEC Experts Group on Illegal Logging and Associated Trade* and the *Timber Regulation Enforcement Exchange* and shares relevant information on combating illegal logging. This includes technological and regulatory developments, which have progressed substantially since Australia's laws were implemented.

These advances and regular exchanges with overseas counterparts provide opportunities to identify best practice and implement these under Australian laws. Not implementing these measures has the potential to jeopardise Australia's reputation as a global leader at combating illegal logging and the market access benefits this reputation brings.

2.6.5 A large regulated community, with limited regulatory resources to cover

Australia's current regulatory approach centres almost entirely on conducting a relatively small number of targeted audits across a regulated community of 20,000 entities, which is in line with other frameworks internationally. The current regulatory burden of the laws is about \$38 million annually and is not cost recovered. Due to this, increasing the department's audit resourcing many times over would still not provide adequate coverage across the regulated community. Other international leaders that also face this problem have undertaken actions to streamline the due diligence process in order to increase its efficiency and effectiveness.

3 Need for government action

In establishing the Act and the Regulation, the Australian Government's policy objective was:

'to combat illegal logging and associated trade by establishing systems that will promote trade in legally logged timber and, in the long term, trade in timber and wood products from sustainably managed forests' (Australian Government 2012).

This policy objective still guides the implementation of the illegal logging laws, with a focus on minimising the risks of the trade in illegally logged timber. At the same time, the Australian Government is committed to creating an efficient regulatory framework and ensuring its regulations do not burden businesses and individuals any more than necessary.

As discussed in Chapter 2, challenges with identifying noncompliance and undertaking subsequent enforcement action have been found since the illegal logging laws came into effect. This is largely due to the current due diligence arrangements and the powers available to compliance and enforcement officers, which requires government action to rectify.

Considering these priorities, the department's objective for any reforms developed through this Regulatory Impact Statement is to:

Ensure that the Illegal Logging Prohibition Regulation 2012 does not impose any unnecessary compliance costs on regulated businesses and individuals, while continuing to be effective in combatting illegal logging and its associated trade.

Many overseas governments have similar priorities to reduce illegally logged timber entering their markets but the approaches to achieve this can differ. For example, some sizeable timber producing nations such as Canada do not have laws in place regulating trade in illegally logged products. Under Japan's illegal logging framework, businesses can voluntarily establish their own processes for determining the legality of imported or domestically produced timber products, and where registered, advertise their products as legally sourced. Other countries have paper-based certification systems that do not impose due diligence obligations on timber traders. These latter approaches carry less regulatory burden compared to Australia, whilst still promoting trade in legal timber. However, they may risk higher amounts of illegally logged timber entering respective markets, due to the reduced obligations imposed on traders to assess their supply chains.

Despite imposing a higher regulatory burden than some overseas government actions to combat the trade in illegally logged products, the regulated community captured under Australia's laws and other stakeholders generally support Australia's framework. Public consultation suggests this is because the laws are seen to reduce demand for illegally logged timber and timber products, supports trade in legal products, and supports the Australian timber sector. Certain exporters also value the market access benefits of having a comprehensive timber legality framework in place as this has ensured our exports receive streamlined access into other markets with timber legality laws.

These market access benefits would likely be negatively impacted or lost if Australia reduced the illegal logging laws' requirements or allowed the Regulation to sunset. Industry and

international counterparts would likely view these actions as Australia weakening its commitment to reduce illegal logging and associated trade. This would be counterproductive and would likely reduce established market access benefits and contradict the strong international stance Australia has historically taken in this space.

4 Options

Three regulatory options are assessed in this RIS:

- **Option 1: The status quo** – Under this option, the regulation would be remade without amendments and the regulated community would continue to be subject to the current obligations. The effectiveness of the current legislation in combatting the trade in illegally logged timber products would be the same, as would the efficiency of approach in terms of regulatory burden.
- **Option 2: Allow the regulation to sunset** – This option would allow the regulation to sunset, removing the regulated community’s substantiated due diligence obligations, but maintaining the prohibitions on importing or processing illegally logged timber contained in the Act.
- **Option 3: Reform the legislative framework** – Option 3 would pursue legislative reforms identified through the Illegal Logging Regulation Sunsetting Review. Legislative amendments would address known challenges with implementing the laws, and balance adjustments to the obligations placed on regulated entities for an overall decrease in regulatory burden.

4.1 Option 1: The status quo

This option would continue with the current regulatory framework, which aims to promote trade in legal timber through due diligence obligations placed on timber importers and processors. It would not involve any additional Australian Government intervention other than to remake the existing Regulation, which is scheduled to sunset on 1 April 2023, and to implement any amendments to the Act necessary to enable remaking the Regulation. The regulated community would continue to comply with the current legislation in this scenario. This includes maintaining the due diligence requirements, current definitions, and the department’s current compliance and enforcement powers.

4.2 Option 2: Allowing the Regulation to sunset

This option would allow the Regulation to be repealed. Regulation sets out the due diligence requirements that importers and domestic processors must follow ahead of importing or processing a regulated timber product for which due diligence must be undertaken. The Act contains prohibitions on the importation of any illegally logged timber, regardless of whether it is a product prescribed in the Regulation. If the Regulation were allowed to sunset, the prohibitions would be maintained, and the due diligence obligations would cease. If the Regulation were to sunset without being remade, amendments to the Act would be required.

4.3 Option 3: Reform the legislative framework

The department undertook consultation with stakeholders and the wider public on a number of potential reforms to the Act and Regulation (see [Chapter 8](#)). These reforms include:

- receiving due-diligence information ahead of importation
- adding ‘at-border’ powers

- optimising the regulatory burden for low frequency importers
- implementing licencing or third-party audits for high frequency importers
- optimising regulatory burden for repeat pathways
- streamlined due diligence for certified products
- optimising the products regulated including broadening exemptions and reducing burden for low-risk products
- publication powers
- injunctions and enforceable undertakings
- other minor potential reforms such as providing further definitions within the legislation.

The potential reforms for Option 3 were informed directly by the feedback received from stakeholders during the consultation process. Broadly, stakeholders either supported these reforms or provided some reservations about their implementation that the department use to inform attentive legislative design. Due to a lack of support for, or not receiving definitive feedback on, the listed proposed reforms, the department has decided not to pursue them at this time but may consider them again in the future:

- optimising the regulatory burden for low frequency importers
- implementing licencing or third-party audits for high frequency importers
- optimising the products regulated including broadening exemptions and reducing burden for low-risk products.

The department will pursue seven reforms to the legislation under Option 3.

Reform 1: Receiving due diligence information upfront

Due diligence information would be provided to the department ahead of importation, such as at the time of making the Declaration to the Customs Minister that due diligence has been undertaken as per s7 of the Regulation. Currently, an importer makes a declaration to the Customs Minister about the person's compliance with the due diligence requirements, but is not required to provide any particulars of the due diligence undertaken. Once the product has been imported, the Secretary of the Department of Agriculture, Water and the Environment may require the importer to provide such information, but the secretary must allow at least 28 days for the person to comply with the request. By this time the timber may have already entered the market.

Reform 2: Adding sampling, seizure and detainment powers

Powers would be provided to sample, seize and detain timber and timber products, including at the border. These powers would allow the department's officers to hold and sample potentially high-risk goods and detain them if necessary while claims made about the goods are verified. Timber identification technologies would also be used to verify claims about the origin and legality of timber. The intention is that these powers would generally be used on a targeted basis, where there are heightened indications of risk. However, they may also be used from time to time on randomised basis.

Reform 3: Streamlined due diligence for low-risk pathways

For certified products, the importer or processor would not be required to complete the full information gathering process currently prescribed under sections 10 and 19 of the Regulation respectively. Instead, they would only be required to gather select information in order to assess a relatively limited set of factors to ensure that the product is accredited or genuinely represented, such as verifying documentation, checking that the timber legality scheme operates in the given location and checking that the harvest location is not subject to conflict.

This streamlining approach would build on the existing provision of the Regulation at paragraphs 11(2)(c) and 20(2)(c), which respectively require importers and processors using a 'timber legality framework' assessment pathway to also consider any other information the importer knows, or ought reasonably to know in relation to whether the timber is illegally logged. The Regulation would, in streamlining, attempt to clarify minimum expectations.

Reform 4: Reducing repeated due diligence

Only one due diligence assessment would be required for a repeat import or processing pathway within a set period (e.g. 12 months). For example, an identical import pathway has the same product, importer and exporting country combination. Minimal obligations could be imposed to ensure that the regulated entity checks no pertinent elements of the supply chain have changed ahead of using a repeat pathway. A repeated due diligence process would still be required where the importer cannot provide such assurance.

Reform 5: Adding injunction and enforceable undertaking powers

The department would only enact enforceable undertakings in very specific circumstances and only if it were considered to provide a more effective regulatory outcome. For example, where an importer has failed to undertake due diligence requirements for a timber product, the importer could negotiate an enforceable undertaking to complete due diligence in the future as an alternative to other regulatory actions under the Act.

Reform 6: Publication powers for compliance findings and instances of non-compliance

A new power to publicise findings around the verification of claims of species and harvest origin, as well as around specific instances of serious non-compliance with due diligence and other obligations, would be added to strengthen the laws.

For the department to publicise findings on the verification of claims of species and harvest origin, timber testing technology will need to be integrated into the regulatory framework as proposed under Reform 2. It proposed that the department will publicise anonymous findings from timber testing to support education and outreach activities on legal and sustainable timber trade. For example, publicising that the department has tested 500 regulated timber products and found 50 were misrepresented and from a high-risk location, could help regulated entities avoid these products.

The publication of specific instance of non-compliance with due diligence obligations would only be used where they are repeated or very serious, and from which the publicising of the instances would be expected to compel a constructive response. Such instances, for example, may be where an entity repeatedly refuses to undertake due diligence or continues to import a species that sampling has found to be misrepresented, without undertaking further checks or adjusting

practices. Such a notice could warn consumers about the potential presence of illegally logged timber of the market, and, in the public interest, better equip them to make decisions about purchasing.

Reform 7: Clarifying certain definitions

Several terms used in the Act that do not have definitions causes ambiguity for when the law applies and, potentially, additional regulatory burden as entities may consider themselves subject to obligations that were not intended to apply to them. For example, under s15 of the Act, it is an offence to 'process' a 'raw log' that has been illegally harvested. There are no definitions of 'processing', 'raw log' and 'timber' within the Act.

Timber

The Act does not currently specifically define what is meant by 'timber'. The Act would be amended to include a definition for 'timber'.

Processing

The Act would be amended to include a definition of what constitutes 'processing' or who is a 'processor' to clarify that it is an offence to process a domestically grown log that has been illegally logged.

Raw log

The Act would be amended to clarify what constitutes a 'raw log'.

Illegally logged

The Act would be amended to clarify the term 'illegally logged' and which laws must have been complied with in the place of harvest for the timber to have been legally logged.

5 Impacts of Option 1 – The status quo

5.1 Regulatory impacts

Under this option, there will be no additional administrative burden placed on the regulated community. This is because they are already required to comply with the current legislative framework. Despite this, the problems with the laws as outlined in Chapter 2 will also remain under this option. These issues include challenges with identifying breaches of the laws and possible illegally logged timber entering Australia's timber market, not using emerging timber identification technologies, and that Australia's laws will not align with international best practice.

It will also remain challenging under the status quo to verify whether imported or processed timber was legally harvested, and if the claims made about regulated timber products are valid. This means there is a risk that illegally logged timber will enter the Australian market undetected.

During consultation, stakeholders were asked if they thought the current legislative framework was 'fit-for-purpose' and delivering what was intended in an efficient and effective manner. Stakeholder feedback suggested that the current framework was 'fit-for-purpose', however there were areas where the laws could be strengthened and regulatory burden could be optimised. Some stakeholders also raised concerns around whether their activities were captured and regulated under the laws. For example, there are instances where a tree is logged, stripped of its branches and transported without much additional processing. There is not a definition currently in the laws for 'processing', which can make it unclear whether the due diligence requirements apply. These instances of ambiguity would remain under this option.

A benefit to this option is that it provides consistency for the regulated community, with all the current administrative processes and costs for importers and domestic processors to comply with the legislation remaining the same. Many members of the regulated community have taken proactive steps to comply with the illegal logging laws since they came into force. Some industry groups have prepared and distributed information on how to comply with the laws to their members and employees. For example, the Australian Timber Importers Federation, an industry group, organised and ran seminars on the laws with interested stakeholders, and the Australasian Furniture Association among others have published due diligence templates and guidance.

Since 2014, the department has also run extensive outreach and engagement on implementing the laws, including hosting in-country workshops with relevant foreign governments, exporters and timber manufacturers overseas. The department also hosted a series of webinars in 2018 when the soft-start arrangements (where no penalties in relation to the due diligence requirements under the Regulation would be issued) ended to help stakeholders better understand their legal obligations.

5.2 Regulatory burden impacts

A stock measure estimate of the annual administrative costs for the importing sector to comply with the status quo option is outlined in Table 2.

Table 2 Estimated due diligence costs associated with importing sector

Category	Cost
Annual costs	\$38,251,232
Average annual costs per entity	\$1,935
Average cost per consignment	\$188
Annual cost as a percentage of the total value of regulated imports	0.48%

Because of the limited data available, the costing figures do not include a formal estimate for the domestic processing sector. This reflects the challenges in identifying the number of regulated businesses in this sector, as well as some of the difficulties of quantifying how often domestic processors need to undertake due diligence.

However, an estimate based on a percentage share of the overall cost suggests that the domestic processing sector in total may potentially incur costs of approximately \$602,000 per year (based on an estimate of 315 processors and 19,767 importers). This figure may overstate the costs incurred by processors, who are likely to have shorter and less complex supply chains (given that they are assessing domestically grown raw logs) and who are likely to structure their due diligence on a stable supply chain basis rather than individual imports.

6 Impacts of Option 2 – Allowing the Regulation to sunset

6.1 Regulatory impacts

It is estimated the due diligence process creates approximately \$38 million worth of regulatory burden for the importing sector and a total of \$602,000 per year (approximate calculation) for the processing sector. If the Regulation was allowed to sunset and not remade, the due diligence requirements would cease. The prohibitions on importing or processing illegally logged timber would remain under the Act, which carry penalties of 5 years imprisonment or 500 units, or both. Several other offences in the Act would become inoperable. It is anticipated that the ongoing regulatory burden from these offences remaining in place would be similar to keeping due diligence obligations in place.

This option would necessitate a complete restructuring of how the department conducts its compliance efforts under the laws. At present, these are centred on auditing the due diligence undertakings of regulated entities, which provide information bases for identifying issues and problematic trade. Without the information derived from the due diligence obligations, the department would have substantially less information to detect concerns and follow up with investigations. While the powers under the *Regulatory Powers (Standard Provisions) Act 2014* would still be available to compliance and enforcement officers, information collected under other legal frameworks, such as customs and biosecurity information, and public tipoffs would become the primary sources of information relied on to identify potential breaches of the prohibitions on processing or importing illegally logged timber products.

Whilst there would be some regulatory cost savings associated with allowing the Regulation to sunset, there are also the broader impacts of illegal logging to consider, which would increase with weaker laws.

Weakened illegal logging laws could have impacts on elements of Australia's timber products trade that aren't directly regulated by the laws. For example, the perception of Australia's illegal logging laws as relatively strong, which ensures that timber products exported from Australia receive preferential treatment in jurisdictions overseas where similar illegal logging laws have been implemented. Without this recognition, exporters may be required to produce government certificates or other verification that they are sending legally harvested products from Australia into these jurisdictions. For example, exporters sending wood products to Indonesia are currently required by the Indonesian Government to complete an export certificate application to demonstrate wood harvested outside a Regional Forest Agreement area is done so legally and sustainably. The Australian Government must review and approve each application before the products can be exported. Assuming the top 5 markets for exported wood products introduce a similar system in lieu of the due diligence requirements, the cost to Australian exporters is estimated to be over \$11 million annually.

If the Regulation is allowed to sunset, regulatory efforts to reduce illegally logged timber entering the Australian market over the last decade will be partially undone. Previous discussion with industry and non-government organisations has suggested an awareness of Australia's

laws amongst overseas suppliers. Sources have stated some country's producers now differentiate supply based on the importing country's laws, with legal timber directed towards markets that require legality to be assessed and demonstrated, such as Australia.

Australia's position on illegal logging and stance as a global leader has, in the past, proven key in multilateral discussions and free trade agreements. By removing the Regulation and only maintaining the prohibitions contained in the Act, Australia's international status will be severely damaged. Australia has a strong leadership position in multilateral forums such as the APEC Experts Group on Illegal Logging and Associated Trade. In addition, recent trade agreement discussions have had strong influence from issues surrounding deforestation and illegal logging matters.

If the Regulation was to sunset and not be replaced, many provisions in the Act would not be operative and, as a result, fail to realise the overarching policy intent. The Regulation's key features include:

- the due diligence framework – a large part of the Regulation consists of due diligence provisions, which create a requirement for an importer or processor to have a due diligence system
- provisions that are necessary for the operation of the offences created in sections 9, 12, 13 and 17 of the Act
- all civil penalties related to the scheme
- the form and requirements for making a customs declaration.
- listing of the regulated timber products
- listing of the country specific guidelines and state specific guidelines that can be used as part of undertaking due diligence, which are documents co-developed with foreign and state and territory governments.

Significant amendments to the Act would need to be pursued to ensure that many of its key features, including the offences discussed, remain operable.

7 Impacts of Option 3 – Reform the legislative framework

7.1 Regulatory Impacts

The department will pursue seven reforms to the legislation under this option to ensure that the illegal logging laws are creating an efficient regulatory framework in line with international best practice. This option will also ensure the regulatory impacts do not burden businesses and individuals any more than necessary.

Under Australia's current illegal logging laws, identifying breaches and taking appropriate and timely action is challenging. This is because the due diligence information is being provided after timber is imported or processed, and it is difficult to prove that timber comes from an illegal source. By amending the due diligence requirements (Reform 1) and the implementation of timber testing technologies, supported by sampling and seizure powers (Reform 2), this will support industry and regulators verify claims about the origin and legality of timber.

The US Lacey Act requires importers to submit a declaration that includes the harvest origin, species, and risk of illegal logging rating ahead of importation. Having this information upfront allows compliance officers to focus their actions on riskier supply chains and products. In line with this, Reform 1 will allow similar information to be available upfront to the Australian Government and therefore support increases in efficiency and effectiveness when undertaking compliance and enforcement actions.

Sampling technologies, including timber testing are an emerging technology globally and could be integrated into the legislation to broadly provide for their use to assist in verifying the legality of timber, and confirm whether regulated entities have accurately represented their origins and composition. Greater use of these timber identification technologies is occurring in many leading countries such as the US and EU and they are becoming an important tool in establishing non-compliance. A linked benefit to the introduction of timber testing powers, utilised by the department, will be the improvement of timber testing services available in Australia to other users. Regulated entities could use these services to undertake their own timber testing for example, and strengthen their due diligence efforts.

The implementation of timber testing technologies, supported by sampling and seizure powers, and increased information from importers products before they arrive in Australia, will also ensure Australia's laws align with international best practice for regulating legal timber supply chains. As noted in [section 2.6.4](#), there are trade benefits for Australian timber products from having strong, well reputed laws in place concerning timber legality.

Enforceable undertakings and injunctions (Reform 5) provides further options to address compliance issues. For example, where an importer has failed to undertake due diligence requirements for a timber product, the importer could negotiate an enforceable undertaking to complete due diligence in the future as an alternative to other administrative actions under the Act. An enforceable undertaking has the potential to provide an effective and flexible resolution to an identified instance of non-compliance because a range of outcomes can be achieved with a single remedy.

Publication powers (Reform 6) will encourage compliance and promote responsible conduct by the regulated community. Publicising information about non-compliance matters will raise awareness and the consequences of non-compliance, thereby deterring people from engaging in similar conduct and promoting better practices.

The power to publicise findings from timber testing will also help educate the regulated community on which supply chains and suppliers to avoid and will help them source legally harvested timber.

Clarifying certain definitions in the legislation (Reform 7) will have a positive regulatory impact as it will minimise confusion for applying the laws. This should also facilitate improved compliance with the laws overall.

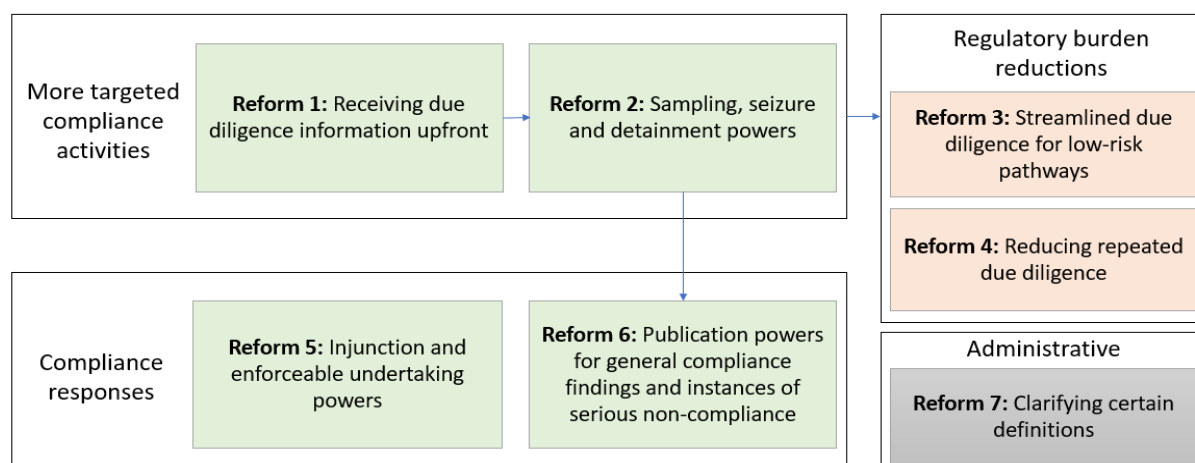
The overall level of impact each of the reforms will have on reducing illegally logged timber entering the Australian market is summarised in Table 3. It is expected the reforms that will improve the timeliness of information provided to the department (Reform 1 and 2), enable timber product sampling and seizure (Reform 2), and extend compliance and enforcement options (Reform 5 and 6), will have the greatest impact to this end. The reforms that reduce regulatory burden (Reform 3, 4 and part 7) will have a low or negligible impact. While it is acknowledged that these reductions to regulatory burden could increase the risk of illegally logged products entering the market, they can be mitigated with careful legislative design and implementation to lower that risk to low or negligible levels. These latter reforms appropriately balance the increases in regulatory burden from the other reforms.

Table 3 Level of impact the potential reforms are predicted to have on reducing illegally logged products entering the Australian market

Reform	Level of impact
Reform 1: Receiving due diligence information upfront	High
Reform 2: Sampling, seizure and detainment powers	High
Reform 3: Streamlined due diligence for low-risk pathways	Low/negligible
Reform 4: Reducing repeated due diligence	Low
Reform 5: Injunction and enforceable undertaking powers	High
Reform 6: Publication powers for general compliance findings and instances of serious non-compliance	Medium
Reform 7: Clarifying certain definitions	Low

As described earlier in this chapter, these reforms interact with one another. These interactions are displayed in Figure 1 Interaction between the potential legislative reforms

Reforms that allow for more targeted compliance activities relate to reforms that provide regulators with additional compliance response options by ensuring the compliance activities can be properly enforced. In addition to this, by having an optimised compliance and enforcement structure, appropriate regulatory burden reductions are possible. This is because the risks associated with having a lower burden on the regulated community are mitigated by optimising the framework.

Figure 1 Interaction between the potential legislative reforms

7.2 Regulatory burden impacts

Costs and savings associated with the proposed reforms are summarised in Table 4. Reforms 1, 2 and 7 carry increased regulatory costs to regulated entities, whereas reforms 3 and 4 will attract regulatory savings.

The department has benchmarked the reforms against the status quo position as it best demonstrates to the regulated community the additional costs and savings associated with the reforms. The change in cost per individual reform are presented in Table 4. The overall changes from all reforms combined are discussed later in this chapter, noting that there is some overlap between reforms 3 and 4 that is adjusted for to avoid double counting when combined.

Table 4 Estimated regulatory cost changes of the potential reforms

Potential reform	Per each	Cost of status quo (\$)	Cost of reforming the framework (\$)	Change (\$)
1. Receiving due diligence information upfront	Consignment	0	9	9
	Entity	0	94	94
2. Adding sample, seizure and detainment powers	Consignment	0	1	1
	Entity	0	11	11
3. Streamlined due diligence for low-risk pathways	Consignment	44	17	-27
	Entity	457	180	-277
4. Reduced repeated due diligence	Consignment	158	133	-25
	Entity	1,633	1,385	-248

Reforms 1 and 2 aim to ensure that regulators can identify concerns within the regulated trade and respond, as well as specifying information needed to establish breaches and support sanctions. These two regulatory reforms together would increase costs to the regulated community by \$105 annually per entity.

Reforms 3 and 4 aim to offset the increases in regulatory burden associated with Reforms 1 and 2 by introducing substantial regulatory burden savings by reducing due diligence obligations around relatively low risk product pathways. It is acknowledged that by reducing these due

diligence obligations, the risk of illegally logged timber entering the Australian market may be heightened. It is anticipated that these risks can be managed so that there is negligible impact, if any. The effects of the other reforms are anticipated to greatly outweigh these, and result in a strong overall reduction of the amount of illegally logged timber entering the Australian market.

A comparison between the costs and savings between the status quo and reforming the framework for due diligence is summarised in Table 5. This summarises establishing and maintaining due diligence system, key tasks, assessments, and providing due diligence information to the department upon request.

Table 5 Differences of regulatory burden between the status quo (Option 1) and a reformed framework (Option 3) by regulatory scheme component

Component	Status quo (\$)	Reformed framework (\$)	Change in cost (\$)
Establishing and maintaining a due diligence system	4,578,701	4,578,701	0
Gathering information and conducting a risk assessment for the first time importing from a supplier	1,322,784	1,322,784	0
Gathering information and conducting a risk assessment for subsequent imports	32,139,604	27,269,968	-4,869,636
Providing due diligence information upfront	0	1,858,565	1,858,565
Direct broker's response to Community Protection Question	144,398	144,398	\$0
Responding to a request for information or having goods sampled, detained or seized by the department	65,745	272,050	206,305
Total annual regulatory cost	38,251,232	35,446,466,	-2,804,766
Total annual regulatory cost per entity	1,935	1,793	-142
Total annual regulatory cost per consignment	188	174	-14

Key changes between the options include that the 'gathering information and conducting a risk assessment for subsequent imports' task would be reduced by \$4.9 million annually if the potential reforms are implemented due to reform 4. This regulatory saving more than offsets the increased cost of providing due diligence information upfront under reform 1, which is estimated to cost approximately \$1.9 million annually. The other tasks associated with the due diligence requirements are consistent between the status quo and reforming the framework and the net regulatory saving for the regulated community from the reforms is over \$2.8 million annually.

Decreasing the amount of illegally logged timber entering the Australian market would alleviate some of the price suppression these products can create for legally harvested timber. Given the uncertainty of the extent to which illegally logged timber is currently entering Australia, and the extent to which Option 3 will further restrict supply, it is not clear that there would be any impact in relation to price. To the extent that there is a benefit for consumers from access to cheaper timber, there is also a cost to the Australian timber industry in having to compete against illicit timber products. Given Australia's annual log production value is \$2.7 billion annually (ABARES 2021a), any increase in price from reducing illegally logged timber on the market would benefit the regulated timber industry in Australia and be consistent with the overall objective of restricting illegally logged timber.

If the reforms under this option are not implemented, Australia would not minimise its exposure to illegally logged products appropriately. Given that our demand for timber products is projected to increase by 200% in coming years (ABARES 2019), our exposure is only likely to grow in the absence of implementing further mitigating factors.

Some costs of undertaking due diligence and other activities to comply with Australia's illegal logging laws may be passed onto the consumer. Despite this, studies have demonstrated consumers are willing to pay more (between 5% and 15%) for eco-labelled forest products (Higgins, Hutchinson, & Longo 2020). Eco-labelled forest products are products that are 'environmentally-friendly' and have encouraged sustainable forest management. By extension, it is considered consumers will tolerate a modest increase in prices in knowledge that the timber has been legally harvested.

Additionally, timber prices domestically and internationally have increased due to supply shortages. For example, structural timber prices increased by an average of 26% in the September quarter of 2021 compared to the September quarter of 2020. The cost of complying with the laws is 0.48% of the total value of regulated imports. This suggests costs from the illegal logging laws are negligible compared to the other factors that affect timber prices.

The reforms to the legislation under Option 3 have a net reduction in regulatory burden of \$2.8 million annually. The reforms are expected to reduce illegally logged timber entering the market by improving compliance with the laws through more frequent identification of breaches, the sharing of information with the regulated community around high-risk timber and expanded measures to address non-compliance.

8 Consultation

On 6 July 2021, the department published the [Sunsetting Review of the Illegal Logging Prohibition Regulation 2012: consultation paper](#), which sought feedback on a number of potential reforms to the Act and Regulation. The consultation paper provided the opportunity for stakeholders and the wider public to comment on a number of potential reforms.

To better target submissions, the consultation document included a consolidated list of questions that respondents were encouraged to address in addition to any matters not explicitly addressed in the consultation document. A survey was also used to collect stakeholders' input on potential reforms.

The department accepted submissions on the consultation paper until 30 September 2021. A total of 20 written and 30 survey responses were received from 47 respondents. This included:

- 10 industry representatives/associations
- 7 timber importers
- 5 customs brokers
- 11 non-government organisations
- 12 other interested parties
- 2 foreign governments.

The potential reforms outlined in Option 3 were informed directly by the feedback received from stakeholders during the consultation process. Broadly, stakeholders either supported these reforms or provided some reservations about their implementation that the department considers can be addressed through attentive legislative design.

The department has also engaged with the Department of Home Affairs, including the Australian Border Force, throughout the review process on how the potential reforms may impact officials and cargo at the border.

8.1 Key stakeholders

Australia's illegal logging 'due diligence' requirements are of interest to a wide range of international and domestic stakeholders. These include:

- importers of timber and wood-based products
- processors of domestically grown raw logs
- customs service providers (brokers and freight forwarders)
- relevant industry associations
- foreign businesses exporting to Australia
- Australian state and territory governments
- foreign governments

- social and environmental organisations
- members of the general public.

8.2 Input from stakeholders on potential reforms

The consultation document released on 6 July 2021 outlined a number of potential reforms to the illegal logging laws. The input received from stakeholders during this process helped to inform the final suite of reforms outlined in Option 3. Responses to the input received from stakeholders is included in the following subsections where concerns were raised during the consultation process.

8.2.1 Receiving due diligence information upfront

There was a high level of support for receiving key due diligence information about regulated timber products ahead of importation, such as timber species and location of harvest.

Some stakeholders raised concerns about potential increases in regulatory burden resulting from this reform. Despite this, importers are already required to collect and store this information under the current arrangements, providing this information upfront will increase the regulatory burden by \$94 per consignment. This increase is offset by the other potential reforms as outlined in table 5.

Some stakeholders also suggested that customs brokers should not be required to provide this information as they do not collect it. As importers are required to collect and store this information, it was suggested that the task of providing this information would best sit with them. This stakeholder feedback helped inform the reform's design as the importer is required to provide this information to the department, rather than the broker.

8.2.2 Adding sampling, seizure and detainment powers

There was general support for adding sampling, seizure and detainment powers. Stakeholders largely supported the introduction of timber testing to the regulatory framework, with a preference for minimising any delays that may result from its use. Conversely, some stakeholders highlighted that the risk of having goods held or tested will create a strong enticement for regulated entities to fulfil their due diligence requirements, and that timber testing has improved accountability and effectiveness of regulatory schemes overseas.

It is expected these powers would generally be used on a targeted basis, where there are clear indications of risk. The emphasis will remain on desktop assessments as well as educational and collaborative efforts with industry. This helps to ensure broad compliance within the regulated community and reduces the need for too many at-border compliance interventions. Based on stakeholder feedback it is the intent to ensure that holding of goods or testing will be undertaken in the most efficient way possible to avoid delays and costs.

8.2.3 Optimising the regulatory burden

There was general support for reducing requirements when using repeat pathways. Reducing due diligence requirements in these cases would reduce the regulatory burden. Some stakeholders suggested this reform is not necessary. This is because creating the initial due diligence system has the highest regulatory burden and the subsequent burden for undertaking each due diligence assessment is relatively low, particularly when using repeat pathways.

There was a mixed to low level of support for reducing requirements for low frequency importers and for requiring high-volume importers and processors to be licensed by government. Some stakeholders mentioned low frequency importers can still pose a high risk of importing illegally logged products as these importers make up a large portion of the regulated community. Due to this input, a reform for reducing the requirements for infrequent importers was not progressed.

8.2.4 Streamlined due diligence requirements for low-risk pathways

There was a mixed level of support for streamlining the due diligence requirements for low-risk pathways. Some stakeholders suggested this reform had the potential to create 'loopholes' to the assurances in place for regulated timber products. Others supported this reform due to the anticipated reduction in regulatory burden for potentially low-risk products.

For certified products, the potential streamlined approach would build on the existing provision of the Regulation at paragraphs 11(2)(c) and 20(2)(c), which respectively require importers and processors using the 'timber legality framework' assessment pathway to also consider any other information the importer knows, or ought reasonably to know in relation to whether the timber is illegally logged. It is believed this will reduce the risk of 'loopholes' being established to increase the importation of illegally logged timber.

8.2.5 Optimising the products regulated

There was a mixed level of support for this reform. Most stakeholders were supportive of the current scope of products captured by the laws. Some stakeholders were also supportive of adding potentially high-risk products such as charcoal and musical instruments. Stakeholders most likely to be affected by this particular reform largely did not provide input to the review. Further, targeted consultation with these groups will be needed to gather their views before there would be any consideration of including the coverage of these products.

8.2.6 Other potential reforms

There was general support for each of these further reforms consulted on. These were:

- adding or amending definitions in the Act to clarify some trade and illegal logging terminology
- reducing the legislative burden associated with updating Country Specific Guidelines (CSGs) and State Specific Guidelines (SSGs)
- enabling the department to apply for injunctions and enter into enforceable undertakings
- introducing powers to publish timber testing results and instances of non-compliance.

8.3 Communication of the review process

Given the diversity of stakeholders interested in reforms, the department used a range of channels to promote the consultation, including:

- a webinar hosted by the department that provided a background of Australia's illegal logging laws, an overview of the potential reforms discussed in the consultation paper, and the US experience from implementing similar reforms
- a Have Your Say webpage that outlined key dates of the review process, provided consultation materials, information about and links to the webinar

- meetings held with key and interested stakeholders to discuss the potential reforms outlined in the consultation document
- advertisements placed in industry press inviting written submissions on the potential reforms outlined in the consultation document
- notifications sent via the department's illegal logging e-update mailing list

The department also worked with industry organisations to promote the consultation document on their websites and through their contact lists.

8.4 Previous consultation

The department has consulted with stakeholders throughout each stage of the development and implementation of the due diligence requirements.

Statutory Review of the Illegal Logging Prohibition Act 2012

This review was released in November 2018 and examined the first 5 years of Australia's illegal logging laws. It assessed the extent that the Act and associated Regulation met our illegal logging policy objectives, highlighted operational issues encountered during the Act's first 5 years of operation, and identified potential options for improving the Act's operation. In October 2019, consideration of these options was deferred until the Sunsetting Review of the Illegal Logging Prohibition Regulation 2012.

2017 Regulation Impact Statement

The 2017 RIS built on the findings of the earlier KPMG Independent review. The RIS looked at options for reducing costs associated with complying with the due diligence requirements. It examined 6 potential regulatory options: continue with the 'status quo', change the consignment value threshold, remove personal imports, establish a deemed to comply arrangement for timber legality frameworks, establish a deemed to comply arrangement for CSGs and SSGs, and establish a deemed to comply arrangement for low-risk countries. The RIS resulted in a series of proposed regulatory amendments being tabled in Parliament in October 2017. On 8 February 2018, the proposed 'deemed to comply' arrangement was debated in the Australian Senate and the associated regulatory amendments were disallowed. Other minor technical amendments that were progressed in the same package were not affected by the disallowance.

KPMG Small Business Review

As part of this 2015 review, KPMG undertook a range of structured interviews with 65 businesses impacted on by the due diligence requirements. The business interviews gathered detailed information on the impacts of the requirements and identified potential reform options. KPMG also held a series of feedback workshops with key stakeholder groups to test its findings and to gather additional insights from business groups and other stakeholders on reform options.

Implementation of the due diligence requirements

During the periods leading up to and following commencement of the due diligence requirements on 30 November 2014, the department facilitated a range of consultative meetings. This included facilitating industry discussions with government ministers, workshops with key trading partners, face-to-face meetings with industry associations, industry roadshows and question and answer sessions, and dedicated information sessions. Regular consultations

were also undertaken through relevant forums, such as the department's Cargo Consultative Committee, the Forestry and Forest Products Committee, the APEC Experts Group on Illegal Logging and Associated Trade, and interdepartmental committees with relevant government agencies.

Design and development of the due diligence requirements

The Illegal Logging Stakeholder Working Group was formed in 2011 to consult on key areas of the Australian Government's illegal logging policy. The now defunct group included representatives from a range of industry bodies, businesses, international trading partner representatives and social justice and conservation groups. The working group was also engaged in the development of the Regulation and the associated due diligence requirements. This included participation in a series of drafting workshops and a range of follow-up meetings with the department.

9 Recommended option

Option 3, to reform the legislative framework, is the preferred policy option. This is because it will primarily improve the effectiveness of the illegal logging laws and reduce regulatory burden for business and individuals, while Option 1 and 2 will not.

Option 1 maintains the current regulatory framework and does not involve any additional Australian Government intervention other than to remake the existing Regulation, and amending the Act as needed to enable this. This will likely result in the level of illegally logged timber products entering the Australian market either remaining at the same level or increasing. An increase could be seen due to a multitude of reasons, however any weakness in the legal system is likely to be identified and targeted by criminal activity, especially as other international markets increase their compliance capabilities. Option 2 allows the Regulation to sunset, and while this will still maintain prohibitions on the importation or processing of any illegally logged timber, implementation of this option would result in a reduced ability to undertake any compliance activity to address breaches of the laws and likely will result in higher volumes of illegally logged timber entering the market.

While the department is unable to quantify the amount of illegally logged timber that would enter the market under each option, the review has highlighted that potentially a greater proportion of illegally logged timber would go through undetected if the reforms proposed under Option 3 are not implemented. In particular, the reforms to better identify breaches of non-compliance through the due diligence requirement and timber testing technology.

In addition to minimising the risks of the trade in illegally logged timber, Option 3 will also provide an efficient regulatory framework that:

- ensures our illegal logging laws feature best practice elements
- provides for emerging technical solutions
- provides for a broader range of monitoring, investigation and enforcement powers
- clarifies areas of ambiguity
- ensures that we continue to maintain our reputation as a global leader in the control of illegal logging.

This option will also have regulatory savings for importers and processors. The department has estimated a net reduction in regulatory burden of \$2.8 million per annum. While there is an increase in regulatory burden for providing due diligence information upfront of over \$1.8 million per annum, this is offset by the reduction of \$4.8 million per annum associated with information gathering and conducting risk assessment for subsequent imports (Table 5). This is a significant saving across the regulated community while minimising the risks of the trade in illegally logged timber.

Through consultation, it was found that key stakeholders, including the regulated community and environmental non-government organisations were supportive of remaking the Regulation with Option 3. Stakeholders mentioned there are benefits to amending the legislation to ensure it continues to be effective in combatting illegal logging and associated trade.

This option would ensure that the illegal logging laws continue to be effective in combatting illegal logging and associated trade. Given that the regulated community features about 20,000 entities, and regulates over 2 million imported product lines annually, it is important to the operation of the laws that regulatory efforts are efficient and well targeted.

10 Implementation and evaluation

10.1 Implementation

Implementation of Option 3 will require amendments to both the Act and the Regulation. It is intended that drafting for these amendments will begin in 2022. The majority of reforms can be introduced with minimal adjustments to the current activities of the department, however education programs, IT systems and timber identification testing programs will need to be implemented.

It is foreseen that further consultation, engagement and guidance material will be created to ensure successful implementation. The department's International Forest Policy Section will work closely with the Compliance and Enforcement Branch to develop an appropriate education program to introduce the changes to the regulated community. This would also involve discussions with industry and their representatives to ensure a good foundation of understanding for their new obligations. The proposed reforms will not change the current regulated community.

In order to implement the collection of due diligence information up front, the department will need to consider options for a purpose-built data collection point, as well as whether any existing systems or reform initiatives may provide opportunities. Any new system could also look at how to collect due diligence information from processors of raw logs. Opportunities to increase the useability of the data collected and the automation of data cleaning will also be explored to increase the efficiency of compliance activities.

As neither departmental compliance officers nor the regulated community have regularly used timber identification testing previously to our knowledge, the department will need to develop a testing program that includes selecting appropriate sampling and testing methods, and provide training. This will be done in collaboration with Australian based laboratories who have expertise in this type of testing. In addition, the Australian Government may need to work with these laboratories to address data gaps in international data bases that are used to verify test results. Measures to implement a timber testing program are currently being explored by the department and will not be funded by the regulated community.

10.2 Evaluation

A key piece of information to evaluate the performance of the laws will be to determine the amount of illegally logged timber entering the Australian market. Determining this figure and tracking it annually will allow policy makers to evaluate if the laws are minimising the risk of illegally logged timber entering Australia's market. A series of studies commissioned by the department and currently underway will provide a baseline against which this can be assessed. The proposed reform to introduce a timber ID program will then assist in tracking how much timber is accurately represented, providing further information that can be used to assess the effectiveness of the laws.

In addition to continual evaluation of the level of illegally logged timber entering the market, the Regulation will be due to sunset in a further 10 years after registration, as per the *Legislative*

Instruments Act 2003. This will trigger further review and overall evaluation of the fitness-for-purpose of the instrument at that time.

Appendix A: Data and assumptions

Data collection

These estimates are based on 2020 trade data collected by the Department of Home Affairs.

Receiving due diligence information upfront

It is estimated that this reform would require 5 to 10 minutes of effort from an administrative officer undertaking data entry for most imported products. Most complex products in terms of species composition taking up to 15 to 20 minutes, due to a larger number of species and origins to provide information on. For example, assuming an average time cost of 7.5 minutes per consignment to provide due diligence information upfront, the regulatory burden cost is expected to increase total regulatory burden from of \$9.

Adding sampling, seizure and detainment powers

It is estimated that holding goods worth \$6,500, the average value of a product line imported, for two weeks whilst awaiting sampling results would result in approximately \$1,068 of delay costs for the affected businesses.

This estimate considers that the importer would need to pay storage costs and would not be able to fulfil supply contracts whilst awaiting release of their held goods. It is estimated that storing goods costs 15% of the total value, which is \$975 per import. The lost income associated with clearance of the goods is calculated as interest paid on the value of the goods during the time the goods are held. An interest rate of 8% is used in the calculations based on the average of recent business overdraft interest rates for the 4 major banks. It is estimated holding goods at the border would cost the affected entity an hour of business time or \$73.05 in dealing with the logistical implications. If 200 samples are taken per year, this would amount to \$195,000 in regulatory burden across the entire community annually.

Where goods are sampled, but not held by authorities, it is estimated that it would cost half an hour of business time to the entity involved. This equates to \$36.53 per sample taken. This would amount to \$7,306 in regulatory burden annually across the entire community if 200 samples were taken per year.

Streamlined due diligence for certified products

By reducing the requirements for importers to gather some information regarding FSC and PEFC certified products, there is a regulatory saving. The cost of this activity decreases by \$0.3 per consignment, or \$3 per entity.

Reducing repeated due diligence

By removing the requirement for due diligence on repeated imports other than a brief check to ensure nothing has changed, there will be a regulatory saving. This reduction is \$25 per consignment and \$248 per entity.

Glossary

Term	Definition
ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
APEC	Asia-Pacific Economic Cooperation
Country-specific guidelines (CSG)	A document developed by the department in partnership with key trading partners that assists importers to understand the legal frameworks governing timber harvesting in the country of supply.
Domestic processor	An entity that processes domestically grown raw logs into another form.
Due diligence	In the context of Australia's illegal logging laws, the process of assessing and managing the risk that a timber product includes, or is derived from, illegally logged timber.
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
Illegally logged	Defined in the <i>Illegal Logging Prohibition Act 2012</i> as timber that has been 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.
Importer	A business or individual who imports regulated timber products into Australia.
PEFC	Programme for the Endorsement of Forest Certification
RBM Framework	Regulatory Burden Measurement (RBM) Framework
Regulated community	Businesses and individuals affected by the <i>Illegal Logging Prohibition Act 2012</i> and its associated regulation. It is generally made up of importers of wood, pulp and paper products into Australia and processors of domestically grown raw logs.
Regulated timber product	A timber product that is regulated under Australia's illegal logging laws. For timber imports, this is defined by their customs tariff code. This includes most timber and wood-based products, such as sawn timber, pulp, paper, veneer, mouldings, wood panels, flooring, medium-density fibreboard, particle board, plywood and furniture.
State-specific guideline (SSG)	A document negotiated by the department with Australian state counterparts that assists domestic processors to understand the legal frameworks governing timber harvesting in that state.
Statutory Review of the <i>Illegal Logging Prohibition Act 2012</i>	A review of the first 5 years of operation of the <i>Illegal Logging Prohibition Act 2012</i> was required to be provided to the responsible Minister by 29 November 2019.
Timber legality framework	An independent third-party certification scheme, or licence, that is listed in Schedule 2 to the <i>Illegal Logging Prohibition Regulation 2012</i> .
Timber products	For the purposes of this document, includes all timber and wood-based products.

References

ABARES 2016, [Australian forest and wood product statistics: September and December quarters 2015](#), Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.

—2021a, [Australian forest and wood product statistics: March and June quarters 2021](#), Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.

—2021b, [Snapshot of Australia's forest industry](#), Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.

—2022, ABARES Economic trade summaries – wood imports for 2020–21, Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra.

Australian Government 2012, Illegal Logging Prohibition Bill 2012: revised explanatory memorandum, Minister for Agriculture, Fisheries and Forestry, Canberra.

Burivalova, Z, Hua, F, Pin Koh, L, Garcia, C & Putz, F 2016, 'A Critical Comparison of Conventional, Certified, and Community Management of Tropical Forests for Timber in Terms of Environmental, Economic, and Social Variables', *Conservation Letters*, pp. 4–14, DOI: 10.1111/conl.12244.

Higgins, K, Hutchinson, WG & Longo, A 2020, 'Willingness-to-Pay for Eco-Labelled Forest Products in Northern Ireland: An Experimental Auction Approach'. *Journal of Behavioral and Experimental Economics*, pp. 88–100.

Jaako Pöyry Consulting 2005, [Overview of illegal logging \(PDF 170 KB\)](#), prepared for the Australian Government Department of Agriculture, Fisheries and Forestry, Canberra.

Lawson, S & MacFaul, L 2010, Illegal logging and related trade: indicators of the global response, briefing paper, Chatham House, London.

Nellemann, C, Henriksen, R, Kreilhuber, A, Stewart, D, Kotsovou, M, Raxter, P, Mrema, E & Barrat, S (eds) 2016, The rise of environmental crime: a growing threat to natural resources, peace, development and security, United Nations Environment Programme and RHIPTO Rapid Response – Norwegian Center for Global Analyses, Norway, p. 7.

Nellemann, C & INTERPOL Environmental Crime Programme (eds) 2012, Green carbon, black trade: illegal logging, tax fraud and laundering in tropical forests, United Nations Environment Programme, GRID Arendal.

Roy Morgan 2019, Australians see the Environment as the World's biggest problem but in Australia it's the Economy, Finding No. 8044, accessed 1 March 2022.

Seneca Creek Associates 2004, Illegal logging and global world markets: the competitive impacts on the US wood products industry, Seneca Creek Associates, Poolesville, p. 17.

Storck, S 2021, FLEGT VPA Independent Market Monitoring (IMM), International Tropical Timber Council Item 10, pp. 2–6.

UNODC 2013, Transnational organised crime in east Asia and the Pacific: a threat assessment, United Nations Office on Drugs and Crime, Vienna, pp. 95–96.

Whittle, L, Lock, P & Hug, B 2019, [Economic potential for new plantation establishment in Australia: outlook to 2050](#), ABARES research report, Australian Bureau of Agricultural and Resource Economics and Sciences, Canberra, DOI: 10.25814/5c6e1da578f9a, accessed date 4 March 2022.

World Bank 2006, Strengthening forest law enforcement and governance: addressing a systematic constraint to sustainable development, report 36638, World Bank, Washington, DC.

———2019, Illegal Logging, Fishing and Wildlife Trade: The costs and how to combat it, World Bank, Washington DC, accessed 22 February 2022.