

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 88**

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

*Illegal Logging Prohibition Act 2012*

*Illegal Logging Prohibition Amendment Regulation 2013 (No. 1)*

#### **Legislative Authority**

Section 86 of the *Illegal Logging Prohibition Act 2012* (the Act) provides that the Governor-General may make Regulations prescribing all matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Regulation commences on 30 November 2014.

#### **Purpose**

The purpose of the *Illegal Logging Prohibition Amendment Regulation 2013 (No. 1)* (the Regulation) is to give effect to various sections of the Act and for various related purposes. This includes prescribing: regulated timber products; due diligence requirements for persons importing regulated timber products; and due diligence requirements for persons processing raw logs into another form.

The Regulation gives effect to Part 2 of the Act that allows for regulations to prescribe regulated timber products along with due diligence requirements which apply to persons that import the prescribed products. The due diligence requirements are prescribed to minimise the risk of importing regulated timber products that are made from, or contain, illegally logged timber.

The Regulation also gives effect to Part 3 of the Act that allows for due diligence requirements to be prescribed for persons that process a raw log into something other than a raw log. Under Part 3 of the Act the due diligence requirements apply only to certain types of persons (e.g. corporations) or in certain circumstances (see section 15).

The Regulation prescribes civil penalty provisions for contraventions of the Regulation.

#### **Consultation**

During the development of the Act, the Department of Agriculture, Fisheries and Forestry (the department) formed a working group comprising of industry associations, non-government organisations with interests in social justice and conservation, state and foreign government representatives and private business. The working group was consulted extensively throughout the development of the Regulation. Four workshops were held by the department from December 2012 to March 2013 to consult on various aspects of the regulatory framework.

The Office of Best Practice Regulation was consulted in the preparation of the Regulation (ID 9816).

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out below.

## **Details of the *Illegal Logging Prohibition Amendment Regulation 2013 (No. 1)***

### **Section 1 – Name of Regulation**

This section provides for the title of the *Illegal Logging Prohibition Regulation 2013 (No. 1)*.

### **Section 2 – Commencement**

This section provides that the Regulation will commence on 30 November 2014.

### **Section 3 – Authority**

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

### **Section 4 – Schedule(s)**

This section would provide for each instrument specified in a Schedule to be amended or repealed as set out in the Schedule.

### **Schedule 1 – Amendments**

**Item 1** amends section 1.1 to renumber as section 1.

**Item 2** amends section 1.2 to renumber as section 2.

**Item 3** amends section 1.3 to renumber as section 3.

**Item 4** inserts a definition relating to the term ‘*country specific guideline*’.

**Item 5** inserts a definition relating to the term ‘*State specific guideline*’.

**Item 6** inserts a definition relating to the term ‘*timber legality framework*’.

**Item 7** inserts the following Parts, Divisions and sections.

### **Part 2—Importing**

#### **Division 1—Importing illegally logged timber**

##### *5 Regulated timber products*

1. Section 5 prescribes that the products listed in Schedule 1 of the Regulation are regulated timber products for the purpose of the Act. Subsection 9(3) of the Act gives authority to prescribe regulated timber products in regulations.

##### *6 Regulated timber products that are exempt*

2. Subsection 6(1) prescribes products that are exempt for the purposes of paragraph 12(d) and paragraph 13(d) of the Act. The exemptions are:
  - a regulated timber product that is entirely made from recycled material, or the recycled content, that is timber, of a regulated timber product that is partially made from such material; and
  - a regulated timber product or products with a combined value of \$1000 or less, per consignment. In practice, the 'value' is expected to mean the value of the product as declared to Customs in accordance with *Customs Act 1901*.

Products prescribed as exempt are not subject to the due diligence requirements prescribed in *Division 2—Due diligence requirements for importing regulated timber products* of the Regulation.

3. Subsection 6(2) sets out what constitutes recycled material, in relation to timber, in a regulated timber product. Generally speaking, this is material that was removed from another product—which had come to the end of its life cycle—and that has been used as raw material in making the regulated timber product. An example would be newsprint which is used, as raw product, to make recycled tissue or printing paper.
4. Subsection 6(3) sets out what does not constitute a recycled product.

#### *6A Regulated timber products that are partially exempt—due diligence requirements not required*

Section 6A states that due diligence requirements do not apply for the part of the regulated timber product that is exempt under section 6 of the Regulation.

#### *7 Customs declaration*

5. Section 7 of the Regulation is made for the purposes of subsection 13(c) of the Act. Section 7 of the Regulation prescribes how a declaration must be made, when importing a regulated timber product, about a person's compliance with the due diligence requirements. The declaration must be made to that effect and included in an import entry lodged consistently with the *Customs Act 1901*.

#### Division 2—Due diligence requirements for importing regulated timber products

6. Division 2 sets out the due diligence requirements for importing a regulated timber product.
7. The requirements for a due diligence system may be summarised as a four step process to be put in place by an importer as set out below.

Step 1: Information gathering (section 10)

  - An importer must obtain as much of the prescribed information as is reasonably practicable. The Regulation includes a list of types of information to be obtained by an importer.

Step 2: Optional process - assessing and identifying risk against a timber legality framework (section 11) or a country specific guideline (once they are prescribed) (section 12)

- Under the Regulation, in certain circumstances, an importer may elect to assess the risk that the timber in the product they are importing has been illegally harvested using either:
  - a timber legality framework that is prescribed in Part 1 of Schedule 2 to the Regulation; or
  - a country specific guideline (once they are prescribed in Part 2 of Schedule 2 to the Regulation).
- The Regulation requires that, should an importer elect to use this optional process, they must:
  - assess whether the information and evidence obtained by the use of the framework or the guideline (such as a licence or certificate) is accurate and reliable;
  - identify and assess the risk that the product is, is made from, or includes, illegally logged timber. To identify and assess this risk, the importer should use the framework/guideline. They should also consider the other information gathered in accordance with Step 1, as well as any other relevant information that the importer knows or ought reasonably to know.
- Should an importer elect to use this optional process and, in doing so, assess that there is a low risk that the timber product is illegally logged, then the requirements under section 13 do not apply. In circumstances where section 13 does not apply, risk mitigation (section 14) also does not apply.
- However, risk mitigation does apply in circumstances where the importer is required to use section 13 and the risk that the timber product was illegally logged, as assessed under section 13, is not a low risk.

Step 3: Risk assessment (section 13)

- Where an importer has not used the optional process set out in Step 2, or where they have used the Step 2 process but they have identified a risk that the timber is illegally logged and the risk is other than a low risk, an importer must undertake a risk assessment in accordance with section 13.
- The Regulation requires the importer, as part of this process, to identify and assess any risks by taking into consideration the risk factors that are referred to in subsections 13(2) and (3).

Step 4: Risk mitigation (section 14)

- Where an importer has, during Step 3, identified a risk that the timber was illegally logged and the risk was not a low risk, an importer must undertake a risk mitigation process in accordance with the Regulation.
- The Regulation requires the risk mitigation process to be adequate and proportionate to the identified risk.

## 8 Purpose of Division 2

8. Section 8 states that Division 2 of Part 2 of the Regulation prescribes, for the purposes of subsection 14(1) of the Act, the due diligence requirements for a person who imports a regulated timber product. A person who imports a regulated timber product into Australia is an importer for the purposes of Division 2. Section 6 of the Regulation details the conditions under which a regulated timber product is exempt from the due diligence requirements in this Division.

## 9 Importer to have a due diligence system

9. Subsection 9(1) states that an importer must have a due diligence system before importing a regulated timber product into Australia. The underlying purpose of this section is to require that an importer has a due diligence system in place prior to any import of a regulated timber product. This is intended to ensure that they have the appropriate processes to meet the relevant requirements of Division 2.
10. Under subsection 9(2) an importer's due diligence system must: be in writing (note that 'writing' can include any mode of representing or reproducing words, figures, drawings or symbols in a visible form)<sup>1</sup>; set out the process by which an importer will meet the due diligence requirements; contain certain information about the importer's company or business; and include certain information about the person responsible for maintaining the system and/or carrying out the due diligence process. The importer must also make a written record of the system, which may include information stored or recorded by means of a computer<sup>2</sup>.
11. Subsection 9(3) prescribes a civil penalty for an importer who fails to comply with subsection 9(1) and therefore the mandatory requirements under subsection 9(2).

## 10 Due diligence requirements—gathering information

12. Under subsection 10(1), before importing a regulated timber product into Australia, the importer must obtain as much of the information set out in subsection 10(2) as is reasonably practical. In practice, an importer must *endeavour* to obtain all the information listed, but they do not have to obtain it all, if it is not reasonably practicable to do so (for example, where the information does not exist).
13. Subsection 10(2) lists the information required by subsection 10(1) to be obtained if it is reasonably practicable to do so.
  - Paragraph 10(2)(a) requires a description of the product, including:
    - Subparagraph 10(2)(a)(i) requires the product type and trade name. An example of a product type may be sawn wood or plywood and an example of a trade name may be Spruce Pine Fir (SPF);
    - Subparagraph 10(2)(a)(ii) requires the common name, genus and scientific name of the tree from which the timber is derived. The intention is that an

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<sup>1</sup> Acts Interpretation Act 1901.

<sup>2</sup> Acts Interpretation Act 1901.

importer must obtain as many of these pieces of information as possible. For example, if an importer is only able to obtain the common name of the tree species and has taken measures to obtain the genus and scientific name that are reasonably practicable, but unsuccessful, then that importer is justified in only obtaining the common name.

- Paragraph 10(2)(b) requires that the country of harvest, the region within the country and the forest harvesting unit within the region. An importer must attempt to obtain as much of this information as is reasonably practicable. The term 'forest harvesting unit' is a broad, overarching term that is intended to be read expansively to apply to all jurisdictions where timber is harvested. The 'harvesting unit' may be, for example, a concession, forest management unit or coupe of harvest – the relevant term will be identified by reference to the jurisdiction of harvest.
- Paragraph 10(2)(c) requires information about the country of manufacture of the regulated timber product. This may be particularly relevant for complex manufactured products with complex supply chains where information about the country of harvest, region and forest harvesting unit cannot be obtained. Conversely, this would not be relevant for non-manufactured products.
- Paragraph 10(2)(d) prescribes the details of the supplier that should be obtained by the person importing a regulated timber product. Some details may not be relevant in all cases e.g. where a supplier is an individual, there may be no company registration number.
- Paragraph 10(2)(e) requires that details about the quantity of the shipment or consignment of the product. The paragraph provides a number of options for an importer to supply quantity details, these are: volume, weight or number of units. An importer should use the most appropriate expression for the volume of the shipment.
- Paragraph 10(2)(f) requires the documentation provided, or that will be provided, by the supplier to the person importing the regulated timber product. This documentation may include: receipts of purchase, tax invoices, the method of payment (i.e. cash, cheque, electronic funds transfer), order forms, or other relevant documents.
- Paragraph 10(2)(g) is intended to apply in circumstances where a timber legality framework listed in Part 1 of Schedule 2 applies to the timber in the product, or the area in which the timber is harvested. Paragraph 10(2)(g) is intended to require the importer, in such circumstances, to obtain a copy of the licence or certificate issued to the harvester of the timber (or other relevant person in relation to the timber) that provides evidence of compliance with the standards or requirements of the framework. For example, for a product that is certified under the Forest Stewardship Council (FSC) sustainable forest management certification, an importer should obtain the relevant FSC certificate that is evidence of this. In practice, in most cases, the certification will be provided by a supplier.
- Paragraph 10(2)(h) is intended to apply in circumstances where a country specific guideline listed in Part 2 of Schedule 2 to the timber in the product, or the place in which the timber is harvested. Paragraph 10(2)(g) is intended to require the

importer, in such circumstances, to obtain the information (such as a certificate, license or other document) set out in the guideline as demonstrating the relevant evidence that the regulated timber product was not illegally harvested. For example, the relevant country specific guideline may stipulate that the legality of a timber product is adequately demonstrated by an export certificate. In this instance, an importer should obtain an export certificate that complies with the requirements set out in the guideline.

- Paragraph 10(2)(i) is intended to require the importer to obtain evidence that the timber in the product was legally harvested (i.e. that it has not been illegally logged). Subparagraphs (i) to (iv) provide a list of the kinds of evidence that may be relevant to determining whether or not it is legal to harvest timber in a particular place or within a particular jurisdiction.

14. Subsection 10(3) prescribes a civil penalty for an importer who fails to comply with subsection 10(1).

#### *11 Due diligence requirements—assessing and identifying risk against timber legality framework (optional process)*

15. A person importing a regulated timber product may elect to use the process in section 11 if a timber legality framework prescribed in Part 1 of Schedule 2 applies to the timber in the product to be imported, or the area in which the timber is harvested (subsection 11(1)). Should an importer elect to use this optional process and, in doing so, identify no risk or a low risk that the timber product was illegally logged, then the requirements under section 13 do not apply. In circumstances where section 13 does not apply, risk mitigation (section 14) also does not apply.

16. Subsection 11(2) sets out the procedure that the importer must follow if they elect to use a timber legality framework for importing timber.

- Under paragraph 11(2)(a), the importer must determine whether the information obtained by the use of the timber legality framework (i.e. the certificate or licence) is accurate and reliable (e.g. is not fraudulent or counterfeit).
- Paragraph 11(2)(b) requires the importer to identify and assess the risk that the product is, or contains, illegally logged timber, through use of the framework and information gathered under section 10. In practice, an importer must identify and assess any identifiable risks that have emerged, either through their assessment of the certificate or licence, or the information they have gathered under regulation 10(1).
- Paragraph 11(2)(c) requires the importer to consider any other relevant information that indicates whether the product is, or includes, illegally logged timber where: this information is known to the importer; or this is information that the importer reasonably ought to know. For example, an importer may be aware of a recent court case where their supplier was found to be dealing with illegal logged timber. In this instance, the importer should consider the findings of the court case in their assessment of the legality of the product. The intention is that an importer may not use a timber legality framework to assure themselves of the legality of a

product if there is information known to them that would otherwise call into question the legality of that product.

- Paragraph 11(2)(d) requires the importer to make a written record of the process undertaken to fulfil the requirements listed under section 11. Information stored or recorded on a computer is a written record for these purposes.

17. Subsection 11(3) prescribes a civil penalty for an importer who chooses to use the procedure in subsection 11(2) and fails to comply with the requirements listed in that subsection.

*12 Due diligence requirements—assessing and identifying risk against country specific guidelines (optional process)*

18. A person importing a regulated timber product may elect to use the process in section 12 if a country specific guideline prescribed in Part 2 of Schedule 2 applies to the timber in the product to be imported, or the area in which the timber is harvested (subsection 12(1)). Since no country specific guidelines have yet been prescribed, the process section 12 is not currently available to importers. However, in future should an importer elect to use this optional process and, in doing so, identify no risk or a low risk that the regulated timber product was illegally logged, then the risk assessment requirements under section 13 do not apply. In circumstances where section 13 does not apply, risk mitigation (section 14) also does not apply.

19. Subsection 12(2) sets out the procedure that the importer must follow if they elect to use a country specific guideline for importing timber.

- Under paragraph 12(2)(a) the importer must assess the information obtained under subsection 10(1) by the use of the guideline. In practice, an importer should read and understand the relevant guideline and ascertain whether the information they have obtained is the information set out in the guideline. In some circumstances, an importer may be able to use the guideline to assure themselves of the legality of a product by matching up the information they have gathered with the information set out in the guideline. In other circumstances, the use of the guideline may enable an importer to identify information that they have not been able to obtain that may indicate a risk that the timber was illegally harvested.
- Paragraph 12(2)(b) requires the importer to identify and assess the risk that the product is, or contains, illegally logged timber, by the use of the guideline and consideration of all the information gathered in accordance with subsection 10(1).
- Paragraph 12(2)(c) requires that the importer, in that assessment, consider any other relevant information that indicates whether the product is, or contains, illegally logged timber where: this information is known to the importer; or this is information that the importer reasonably ought to know. For example, an importer may be aware of a court case where their supplier was found to be dealing with illegal logged timber. In this instance, the importer should consider the findings of the court case in their assessment of the legality of the product. The intention is that an importer may not use a country specific guideline to assure themselves of

the legality of a product if there is information known to them that would otherwise call into question the legality of that product.

- Paragraph 12(2)(d) requires the importer to make a written record of the process undertaken to fulfil the requirements listed under section 12. Computers may be used for this purpose.

20. Subsection 12(3) prescribes a civil penalty for an importer who elects to use the procedures listed under subsection 12(2) and fails to comply with the requirements in that subsection.

### *13 Due diligence requirements—assessing and identifying risk (alternative to sections 11 and 12)*

21. Under subsection 13(1), section 13 is applicable only to importers who:

- Do not elect to use the processes set out in subsection 11(2) or 12(2) (including for example where this was simply because none of the timber legality frameworks listed in Part 1 of Schedule 2 apply); or
- Do elect to use the processes set out in subsection 11(2) or 12(2); but in doing so identified a risk that the timber was illegally harvested, and the risk was other than no risk or low risk.

22. Subsection 13(2) sets out the risk assessment requirements that must be complied with before importing a regulated timber product where section 13 applies.

- Under paragraph 13(2)(a) an importer must, before importing, identify and assess the risk that the regulated timber product is, is made from, or includes, illegally logged timber. In doing so, they must assess the information gathered in accordance with subsection 10(1) and consider the factors listed in paragraph 13(3).
- Paragraph 13(2)(b) requires the importer to make a written record of the process undertaken to fulfil the requirements listed under section 13. Computers may be used for this purpose.

23. Subsection 13(3) lists a number of factors that the importer must consider when identifying and assessing the risk that the timber product is made from, or includes, illegally logged timber – namely:

- the prevalence of illegal harvesting in the area in which the timber was harvested;
- the prevalence of illegal harvesting of the tree species from which the product is derived;
- the prevalence of armed conflict in the area where the timber was harvested;
- the complexity of the product that is to be imported; and
- any other information the importer knows, or ought reasonably to know, that may indicate whether the product is, is made from, or includes, illegally logged timber.

24. Subsection 13(3) prescribes a civil penalty for an importer who fails to comply with the requirements listed in subsection 13(2).

### *14 Due diligence requirements—risk mitigation*

25. Under subsection 14(1), section 14 is applicable only to an importer where:

- section 13 applies in relation to the product; and
- in complying with section 13, the importer has identified that the regulated timber product is at risk of containing, or being made from, illegally logged timber, and the risk is not a low risk.

If these circumstances do not apply then there is no requirement for the importer to undertake the risk mitigation process in subsection 14(2).

26. Under subsection 14(2) an importer, to whom the section applies, must carry out a risk mitigation process before importing a regulated timber product. The risk mitigation process must be adequate and proportionate to the risk that the importer has identified. An importer must make a written record of the process undertaken to fulfil the requirements listed under section 14. Computers may be used for this purpose.
27. Subsection 14(3) sets out certain steps that an importer may include when undertaking the risk mitigation process. These include: collecting more information about the product, such as certification or third party assessments; reassessing the risk that the regulated timber product is, is made from, or includes, illegally logged timber; or potentially not importing the product (instead the person could, for example, source an alternative product). This section is intentionally flexible as the adequate and proportionate risk mitigation process must be determined by an importer based on the specific risks they have identified.
28. Subsection 14(4) prescribes a civil penalty for an importer who fails to comply with the requirements listed in subsection 14(2).

#### *15 Due diligence requirements—provision of information to Secretary*

29. Section 15 allows for the Secretary to request information from an importer about their due diligence system and their compliance with this system in relation to the import of a regulated timber product.
30. If the Secretary, or delegate, chooses to request information from an importer, under subsection 15(2), that the request must be in writing and allow the importer a minimum of 28 days (from the date of the request) to provide the information to comply with the request.
31. Subsection 15(4) prescribes a civil penalty for an importer who fails to comply with the request in the specified timeframe as further described in subsection 15(3).

#### *16 Due diligence requirements—records*

32. The table in subsection 16(1) lists the period of time that an importer must keep certain information and records.
33. Subsection 16(2) prescribes a civil penalty for an importer that fails to retain certain information and records for the period of time listed in subsection 16(1).

## Part 3—Processing

### Division 1—Due diligence requirements for processing raw logs

34. Division 1 sets out the due diligence requirements for processing a raw log.

35. The requirements for a due diligence system may be summarised as a four step process to be put in place by a processor as set out below.

Step 1: Information gathering (section 19)

- A processor must obtain as much of the prescribed information as is reasonably practicable. The Regulation includes a list of types of information to be obtained by a processor.

Step 2: Optional process - assessing and identifying risk against a timber legality framework (section 20) or a State specific guideline (once they are prescribed) (section 21)

- Under the Regulation, in certain circumstances, a processor may elect to assess the risk that the raw log they intend to process has been illegally logged using either:
  - a timber legality framework that is prescribed in Part 1 of Schedule 2 to the Regulation; or
  - a State specific guideline (once they are prescribed in Part 3 of Schedule 2 to the Regulation).
- The Regulation requires that, should a processor elect to use this optional process, they must:
  - assess whether the information and evidence obtained by the use of the framework or the guideline (such as a licence or certificate) is accurate and reliable;
  - identify and assess the risk that the raw log was illegally logged. To identify and assess this risk, the processor should use the framework and/or guideline. They should also consider the other information gathered in accordance with Step 1, as well as any other relevant information that the processor knows, or ought reasonably to know.
- Should a processor elect to use this optional process and, in doing so, assess that there is a low risk that the raw logs were illegally logged, then the risk assessment requirements under section 22 do not apply. In circumstances where section 22 does not apply, risk mitigation (section 23) also does not apply.
- However, risk mitigation does apply in circumstances where the processor is required to use section 22 and the risk that the timber product was illegally logged, as assessed under section 22, is not a low risk.

Step 3: Risk assessment (section 22)

- Where a processor has not used the optional process set out in Step 2, or where they have used the Step 2 process but they have identified a risk that the timber was

illegally logged and the risk is other than a low risk, a processor must undertake a risk assessment in accordance with section 22.

- The Regulation requires the processor, as part of this process, to identify and assess any risks by taking into consideration the risk factors that are referred to in subsections 22(2) and 22(3).

#### Step 4: Risk mitigation (section 23)

- Where a processor has, during Step 3, identified a risk that the raw log is illegally logged and the risk was not a low risk, a processor must undertake a risk mitigation process in accordance with the Regulation.
- The Regulation requires the risk mitigation process to be adequate and proportionate to the identified risk.

### *17 Purpose of Division 2*

36. Section 17 states that Division 2 of Part 2 of the Regulation prescribes, for the purposes of subsection 18(1) of the Act, the due diligence requirements for a person who processes a raw log. A person who processes a raw log into something other than a raw log is a processor for the purposes of Division 2.

### *18 Processor to have a due diligence system*

37. Subsection 18(1) states that a processor must have a due diligence system before processing a raw log. The underlying purpose of this section is to require a processor to have a due diligence system in place prior to processing a raw log. This is intended to ensure that they have the appropriate processes to meet the relevant requirements of Division 1.

38. Subsection 18(2) a processor's due diligence system must: be in writing (note that 'writing' can include any mode of representing or reproducing words, figures, drawings or symbols in a visible form)<sup>3</sup>; set out the process by which the processor will meet the due diligence requirements; contain certain information about the processors company or business; and include certain information about the person responsible for maintaining the system and/or carrying out the due diligence process. The processor must also make a written record of the system, which may include information stored or recorded by means of a computer.<sup>4</sup>

39. Subsection 18(3) prescribes a civil penalty for a processor who fails to comply with subsection 18(1).

### *10 Due diligence requirements—gathering information*

40. Under subsection 19(1), before processing a raw log, a processor must obtain as much of the information set out in subsection 19(2) as is reasonably practicable. In practice, a processor must *endeavour* to obtain all the information listed, but they do not have to

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<sup>3</sup> *Acts Interpretation Act 1901.*

<sup>4</sup> *Acts Interpretation Act 1901.*

obtain it all, if it is not reasonably practicable to do so (for example, where the information does not exist).

41. Subsection 19(2) lists the information required by subsection 19(1) to be obtained if it is reasonably practicable to do so.

- Paragraph 19(2)(a) requires a description of the raw log including:
  - Subparagraph 19(2)(a)(i) requires that the common name, genus and scientific name of the raw log, be obtained. The intention is that a processor must obtain as many of these pieces of information as possible. For example, if a processor is only able to obtain the common name of the tree species and has taken measures to obtain the genus and scientific name that are reasonably practicable, but unsuccessful, then that processor is justified in only obtaining the common name.
- Subparagraph 19(2)(a)(ii) requires that information about the area in which the log is harvested is obtained. This information should include the State or Territory as well as the forest harvesting unit within the region. A processor must attempt to obtain as much of this information as is reasonably practicable. The term 'forest harvesting unit' is a broad, overarching term that is intended to be read expansively to apply to all jurisdictions where raw logs are harvested. The 'harvesting unit' may be, for example, a concession, forest management unit or coupe of harvest – the relevant term will be identified by reference to the jurisdiction of harvest.
- Paragraph 19(2)(b) prescribes the details of the supplier that should be obtained by the person processing a raw log. Some details may not be relevant in all cases e.g. where a supplier is an individual, there may be no company registration number.
- Paragraph 19(2)(c) requires details about the quantity of the raw logs. The paragraph provides a number of options for a processor to supply quantity details, these are: volume, weight or number of units. A processor should use the most appropriate expression for the volume of the raw logs.
- Paragraph 19(2)(d) requires the documentation provided, or that will be provided, by the supplier to the person processing the raw log. This documentation may include: receipts of purchase, tax invoices, the method of payment (i.e. cash, cheque, electronic funds transfer), order forms, or other relevant documents.
- Paragraph 19(2)(e) is intended to apply in circumstances where a timber legality framework listed in Part 1 of Schedule 2 applies to the raw log, or the area in which the timber is harvested. Paragraph 19(2)(e) is intended to require the importer, in such circumstances, to obtain a copy of the licence or certificate issued to the harvester of the timber (or other relevant person in relation to the timber) that provides evidence of compliance with the standards or requirements of the framework. For example, for raw logs that are certified under the Forest Stewardship Council (FSC) sustainable forest management certification, a processor should obtain the relevant FSC certificate that is evidence of this. In practice, in most cases, the certification will be provided by a supplier.
- Paragraph 19(2)(f) is intended to apply in circumstances where a State specific guideline listed in Part 3 of Schedule 2 applies to the raw log, or the place in which the raw log is harvested. Paragraph 19(2)(f) is intended to require the processor, in

such circumstances, to obtain the information (such as a certificate, licence or other document) set out in the guideline as demonstrating the relevant evidence that the raw log was not illegally harvested. For example, the relevant State specific guideline may stipulate that the legality of a raw log is adequately demonstrated by a forest management plan, in this instance, a processor should obtain a forest management plan that complies with the requirements set out in the guideline.

- Paragraph 19(2)(g) is intended to require the process to obtain evidence that the raw log was legally logged (i.e. that it has not been illegally logged). Subparagraphs (i) to (iv) provide a list of the kinds of evidence that may be relevant to determining whether or not it is legal to harvest timber in a particular place or within a particular jurisdiction.

42. Subsection 19(3) prescribes a civil penalty for a processor who fails to comply with subsection 19(1).

*20 Due diligence requirements—assessing and identifying risk against timber legality framework (optional process)*

43. A processor may elect to use the process in Regulation 20 if a timber legality framework prescribed in Part 1 of Schedule 2 applies to the raw log, or the area in which the raw log is harvested (subsection 20(1)). Should a processor elect to use this optional process and, in doing so, is able to identify no risk or a low risk that the raw log was illegally logged, then the risk assessment requirements under section 21 do not apply. In circumstances where section 21 does not apply, risk mitigation (section 22) also does not apply.

44. Subsection 20(2) prescribes the procedure that the processor must follow if they elect to use a timber legality framework for assessing the legality before processing a raw log.

- Under paragraph 20(2)(a), the processor must determine whether the information obtained by the use of the timber legality framework (i.e. the certificate or licence) is accurate and reliable (e.g. is not fraudulent or counterfeit).
- Paragraph 20(2)(b) requires the processor to identify and assess the risk that the raw log was illegally logged, through use of the framework and information gathered under section 19. In practice, a processor must identify and assess any identifiable risks that have emerged, either through their assessment of the certificate or licence, or the information they have gathered under regulation 19(1).
- Paragraph 20(2)(c) requires the processor to consider any other relevant information that indicates whether the raw log was illegally logged where: this information is known to the processor; or this is information that the processor reasonably ought to know. For example, a processor may be aware of a recent police investigation into an alleged theft of timber from private property in the place where the raw log was harvested. In this instance, a processor should consider the findings of the investigation in their assessment of the legality of the product. The intention is that a processor may not use a timber legality framework to assure themselves of the legality of the raw log, if there is information known to them that would otherwise call into question the legality of that raw log.

- Paragraph 20(2)(d) requires the processor to make a written record of the process undertaken to fulfil the requirements listed under section 20. Information stored or recorded on a computer is a written record for these purposes.
45. Subsection 20(3) prescribes a civil penalty for a processor who chooses to use the procedure in subsection 20(2) and fails to comply with the requirements listed in that subsection.

*21 Due diligence requirements—assessing and identifying risk against State specific guidelines (optional process)*

46. A processor may elect to use the process in section 21 if a State specific guideline prescribed in Part 3 of Schedule 2 applies to the raw log, or the area in which the raw log was harvested (subsection 12(1)). As no State specific guidelines have yet been prescribed the process in regulation 21 is not currently available to processors. However, in future should a processor elect to use this optional process and, in doing so, identify no risk or a low risk that the raw log was illegally logged, then the requirements under section 22 do not apply. In circumstances where section 22 does not apply, risk mitigation (section 23) also does not apply.
47. Subsection 21(2) sets out the procedure that the processor must follow if they elect to use a State specific guideline for processing a raw log.
- Under paragraph 21(2)(a) the processor must assess the information obtained under subsection 19(1) by the use of the guideline. In practice, a processor should read and understand the relevant guideline and ascertain whether the information they have obtained is the information set out in the guideline. In some circumstances, a processor may be able to use the guideline to assure themselves of the legality of product raw log by matching up the information they have gathered with the information set out in the guideline. In other circumstances, the use of the guideline may enable a processor to identify information that they have not been able to obtain that may indicate a risk that the raw log was illegally logged.
  - Paragraph 21(2)(b) requires the processor to identify and assess the risk that the raw log was illegally logged, by the use of the guideline and consideration of all the information gathered in accordance with section 19.
  - Paragraph 21(2)(c) requires that the processor, in that assessment, consider any other relevant information that indicates whether the raw log was illegally logged where: this information is known to the processor; or this is information that the processor reasonably ought to know. For example, may be aware of a recent police investigation into an alleged theft of timber from private property in the place where the raw log was harvested, and in harvest of the product. In this instance and processor should consider the findings of the investigation in their assessment of the legality of the product. The intention is that a processor may not use a state specific guideline to assure themselves of the legality of a product if there is information known to them that would otherwise call into question the legality of that product.

- Paragraph 21(2)(d) requires the processor to make a written record of the process undertaken to fulfil the requirements listed under section 12. Information stored or recorded on a computer is a written record for these purposes.

48. Subsection 21(3) prescribes a civil penalty for a processor who elects to use the procedures listed under subsection 21(2) and fails to comply with the requirements in that subsection.

*22 Due diligence requirements—assessing and identifying risk (alternative to sections 20 and 21)*

49. Under subsection 22(1), section 22 is applicable only to processors who:

- Do not elect to use the processes set out in subsection 20(2) or 21(2) (including for example where this was simply because none of the timber legality frameworks listed in Part 1 of Schedule 2 apply); or
- Do elect to use the processes set out in subsection 20(2) or 21(2); but in doing so identified a risk that the raw log was illegally harvested, and the risk was other than no risk or low risk.

50. Subsection 22(2) sets out the risk assessment requirements that must be complied with before processing a raw log where section 22 applies.

- Under paragraph 22(2)(a) a processor must, before processing, identify and assess the risk that the raw log is illegally logged. In doing so, they must assess the information gathered in accordance with section 19 and consider the factors listed in paragraph 22(3).
- Paragraph 22(2)(b) requires the importer to make a written record of the process undertaken to fulfil the requirements listed under section 22. Information stored or recorded on a computer is a written record for these purposes.

51. Subsection 13(3) lists a number of factors that a processor must consider when identifying and assessing the risk that the raw log was illegally logged— namely:

- the prevalence of illegal harvesting in the area in which the raw log was harvested;
- the prevalence of illegal harvesting of the tree species of the tree from which the raw log is derived;
- any other information the processor knows, or ought reasonably to know, that may indicate whether the raw log was illegally logged.

52. Subsection 22(3) prescribes a civil penalty for a processor who fails to comply with the requirements listed in subsection 22(2).

*23 Due diligence requirements—risk mitigation*

53. Under subsection 23(1), section 23 is applicable only to a processor where:

- section 22 applies in relation to the raw log; and
- in complying with section 22, the processor has identified that the raw log is at risk of being illegally logged, and the risk is not a low risk.

If these circumstances do not apply then there is no requirement for the processor to undertake the risk mitigation process in subsection 22(2).

54. Under subsection 22(2) a processor, to whom the section applies, must carry out a risk mitigation process before processing a raw log. The risk mitigation process must be adequate and proportionate to the risk that the processor has identified. A processor must make a written record of the process undertaken to fulfil the requirements listed under section 22. Computers may be used for this purpose.
55. Subsection 22(3) sets out steps that a processor may include when undertaking the risk mitigation process. These include: collecting more information about the product, such as certification or third party assessments; re-assessing the risk of the raw log being illegally logged; or potentially not processing raw log (instead the processor could, for example, source an alternative product). This section is intentionally flexible as the adequate and proportionate risk mitigation process must be determined by a processor based on the specific risks they have identified.
56. Subsection 22(4) prescribes a civil penalty for a processor who fails to comply with the requirements listed in subsection 22(2).

#### *24 Due diligence requirements—provision of information to Secretary*

57. Section 24 allows for the Secretary to request information from a processor about their due diligence system and their compliance with this system in relation to the processing of a raw log.
58. If the Secretary, or delegate, chooses to request information from a processor, subsection 24(2) that the request must be in writing, and allow the processor a minimum of 28 days (from the date of the request) to provide the information to comply with the request.
59. Subsection 24(4) prescribes a civil penalty for a processor that fails to comply with the request in the specified timeframe as further described in subsection 24(3).

#### *25 Due diligence requirements—records*

60. The table in subsection 25(1) lists the period of time that a processor must keep certain information and records.
61. Subsection 25(2) prescribes a civil penalty for a processor that fails to retain certain information and records for the period of time listed in subsection 25(1).

**Item 8** amends Division 4.1 to renumber as Division 4.

**Item 9** amends Section 4.1.1 to renumber as section 26.

**Item 10** inserts the following Schedules at the end of the Regulation.

## Schedule 1—Regulated timber products

### *1 Regulated timber products*

Schedule 1 lists the regulated timber products referred to in section 5 of the Regulation (i.e. those to which the due diligence requirements apply). The descriptions of the regulated timber products are consistent with items in Schedule 3 of the *Customs Tariff Act 1995* (which is based on the international Harmonized Commodity Description and Coding System).

The 'regulated timber products' prescribed in Schedule 1 are not intended to include products that are not, are not made from or do not include, timber: e.g. bamboo, rattan, osier, vegetable parchment, and metal or plastic parts.

The Notes clarifies that Item 45 and 46 only apply to products that are made from, or include, timber.

## Schedule 2—Timber legality frameworks and country specific legal guidelines

### *Part 1—Timber legality frameworks*

Timber legality frameworks are listed for the purpose of satisfying the optional requirements in section 11 and section 20 of the Regulation. An importer or processor can use these existing systems when undertaking due diligence. Explanations of section 11 and 20 provide for the circumstances for using these frameworks and the potential interaction with 'risk assessment' (sections 13 and 22) and 'risk mitigation' (sections 14 and 23) provisions of the Regulation.

The underlying intention behind these provisions is that, in conjunction with the information gathered under sections 10 and 19, importers and processors can use the timber legality frameworks listed to provide an acceptable level of assurance that timber harvested in accordance with the frameworks to verify the legal compliance and legal origins of the timber.

This assurance would also apply to in-country schemes endorsed or licensed under the timber legality frameworks, such as the Australian Forestry Standard.

### *Part 2—Country specific guidelines*

Country specific guidelines will be developed by the relevant Australian Government department in consultation with trading partner governments. The guidelines will likely list a range of relevant information about legal timber from a country of harvest which may be used by importers to satisfy the optional requirements in section 12 of the Regulation.

The country specific guidelines will be listed for individual countries and will be consistent with the meaning of 'illegally logged' in the *Illegal Logging Prohibition Act 2012*, that is, 'in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.

Each guideline will likely include information on legislation about timber harvesting in the country of origin, lists the relevant government authorities and provides their contact details. The guideline may also list relevant documents issued by the government authorities that an importer must obtain to satisfy section 12 of the Regulation.

*Part 3—State specific guidelines*

State specific guidelines will be developed by the relevant Australian Government department in consultation with Australian State and Territory Governments. The guidelines list a range of relevant information about legal timber from a state (or territory) of harvest which may be used by processors to satisfy the optional requirements in section 21 of the Regulation.

The state specific guidelines will be consistent with the meaning of illegally logged in the *Illegal Logging Prohibition Act 2012*, that is, ‘in relation to timber, means harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested.’

Each guideline will likely include information on legislation about timber harvesting in the state (or territory) of origin, lists the relevant state (or territory) government authorities and provides their contact details. The guideline may also list relevant documents issued by the government authorities that a processor must obtain to satisfy section 21 of the Regulation.

## **Statement of Compatibility with Human Rights**

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

### **Illegal Logging Prohibition Amendment Regulation 2013 (No. 1)**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The Regulation gives effect to due diligence requirements for persons who import prescribed timber products and persons who process domestic raw logs into another form that are allowed for under sections 14 and 17, respectively, of the *Illegal Logging Prohibition Act 2012* (the Act). The Regulation gives effect to subsection 9(3) by prescribing a list of regulated timber products that the due diligence requirements apply in a Schedule to the Regulation.

The Regulation also prescribes the manner and form a declaration to Customs must take regarding a person's compliance with the due diligence requirements, when importing a regulated timber product as allowed for under section 13 of the Act.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Joseph William Ludwig  
Minister for Agriculture, Fisheries and Forestry**