



Uniting Church in Australia
SYNOD OF VICTORIA AND TASMANIA



Submission: Inquiry into the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024*

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Summary of Recommendations

1. The provisions currently included in the Bill should be passed.
2. Section 18B of the Bill should be amended to require that import notices must include, at minimum, information on the species and country of harvest of imported timber.
3. The definition of ‘illegally logged’ in section 7 of the current ILPA should be amended to cover corruption-related offences related to illegal logging operations, specifically laws in force for the protection of plants or related to bribery, money-laundering, tax evasion or fraud.

Introduction: Australia and the transnational trade in illegal timber

Illegal logging is the world’s most profitable natural resource crime and one of the most profitable transnational crimes behind counterfeiting and drug trafficking. INTERPOL estimates that the trade in illegally logged timber is valued at between US\$51-152 billion (AU\$77-228 billion) annually.¹ Illegal timber logging causes deforestation and forest degradation and associated habitat loss and species extinction. The trafficking of illegal timber facilitates organized crime, perpetuates corruption, and leaves behind violence and destruction in forest countries and communities.

To address these threats, jurisdictions such as Australia, the US and the European Union have implemented demand side laws prohibiting the import of timber and wood products from trees that have been illegally logged overseas. These demand side laws are an essential measure to curb the trade in illicit timber by taking away key markets for illegally

¹ INTERPOL (2021) *Forestry Crime Fact Sheet*, available at: <https://www.interpol.int/Crimes/Environmental-crime/Forestry-crime>

logged wood. In doing so, they drive positive change in the forest sectors of producer countries, while protecting domestic industries from competition from cheap, illegally sourced wood.

A recent report by the Environmental Investigation Agency – US and the Center for International Environmental Law highlighted that Australia imports timber directly from a number of high-risk producer countries in the Asia Pacific, Latin America and Eastern Europe, and is at risk of importing illegal timber indirectly through processing hubs such as China and Vietnam. In particular, China is Australia's largest supplier of imported wood products – with imports doubling from \$274 million to \$518 million between 2014 to 2019. China is also the world's largest importer of illegal and high-risk timber.² The *Illegal Logging Prohibition Act 2012* (ILPA) is therefore critical to ensure that Australia's timber imports are not fuelling illegality in producer countries.

Australia's ILPA sits alongside demand-side laws in other key import jurisdictions, including the US Lacey Act and the European Union Deforestation Regulation (EUDR). The EUDR replaces the European Union Timber Regulation and now targets imports of a range of deforestation-linked commodities, such as palm oil, cattle and soy, as well as imports of timber. As the EU is a major market for timber products, the EUDR is expected to drive significant changes in producer countries' regulation of deforestation and illegal logging. Australia having a robust regime to prevent imports of illegally-logged timber will complement and strengthen this, as well as ensure that Australia does not become a dumping ground for illegally logged timber that cannot be exported to the EU.

Challenges in enforcing ILPA

ILPA's effectiveness as a tool to curb illegal logging rests on its enforcement. While there is limited information on the use and effectiveness of ILPA, information available suggests enforcement has been a challenge to date. For example, DNA testing results reported by the Government in December 2020 found that 40% of species labels on imported timber sold at retail outlets were inaccurate.³ While not all inaccurately labelled timber will have been illegally sourced, this raises concerns about due diligence undertaken by importers and whether enough is being done to prevent the import of illegal timber.

There appear to have been limited enforcement actions so far: the first infringement notice under the Act was in 2018, and in March 2023, the Department of Agriculture, Fisheries and Forestry announced fines for 14 furniture importers for failing to meet due diligence requirements.⁴

The 2022 Regulatory Impact Statement for the amendments to ILPA and ILPR also highlights the difficulties the Department has had in enforcing compliance with the law. For example, the Department has limited ability to gather information on the origin of timber imports before they enter the Australian market, and there are built-in delays in receiving information after import, making enforcement inefficient and challenging.⁵ New technologies,

² EIA and CIEL (2023) *A Calculated Risk: Australia's Exposure to Illegal Logging*, available at: https://www.ciel.org/wp-content/uploads/2023/07/CIEL_EIA_US_Australian_Timber-trade_report_July-2023.pdf

³ Assistant Minister Jonathon Duniam, 'DNA timber tests to find those who go against the grain', Media Release, 8 December 2020. <https://duniam.com.au/dna-timber-tests-to-find-those-who-go-against-the-grain/>

⁴ Department of Agriculture and Water Resources, E-update 27: December 2018, 'Importer issued with the first illegal logging infringement notice' <https://webarchive.nla.gov.au/awa/20220816042037/https://www.agriculture.gov.au/agriculture-land/forestry/policies/illegal-logging/get-updates>; Ian Ackerman, 'Importers Fined for Illegally Harvested Timber', *Daily Cargo News*, 6 March 2023 <https://www.thedcn.com.au/region/australia/importers-fined-for-illegally-harvested-timber/>

⁵ Department of Agriculture, Fisheries and Forestry (2022) *Sunset Review of the Illegal Logging Prohibition Regulation 2012, Regulation Impact Statement*, available at:

such as timber DNA testing, are not currently included in the Act, missing an opportunity to use these technologies to aid enforcement. There is a clear need for stronger information gathering, investigation and enforcement powers to ensure ILPA is a meaningful curb on illegal logging.

We commend the new range of powers and penalties that the Bill will introduce to drive compliance. It is our experience that allowing law enforcement agencies more tools to sanction those who break the law increases their ability to use sanctions and ensure the sanctions are proportionate to the violation that has occurred. Braithwaite argued that the 'trick' to successful regulation is to impose the fitting sanction as needed without undermining a regulator's capacity to persuade.⁶ The greater the range of sanctions available to a regulator or law enforcement agency, the greater their ability to impose the right level of sanction. As Becker has argued, the desired outcome is to allow a regulator a penalty structure that optimally deters socially undesirable behaviour.⁷

Overly severe penalties can risk alienating the offender from the system and the law enforcement authority, which can negatively affect their compliance behaviour.⁸ All penalties risk stigmatising those being penalised and pushing them further away from voluntarily complying, particularly if the people involved in being penalised feel they have been treated unfairly.⁹ Conversely, penalties that are too soft do not work as effective general or specific deterrence.¹⁰

Support for new import notice requirement

The Bill introduces a new Part 3A, which will require all importers to provide a notice to the Department at the time of importing the wood. This new requirement is a significant improvement on ILPA's current regime and is essential for a robust and enforceable due diligence regime.

Currently, importers are required to collect information before bringing timber into Australia. Section 10 of the *Illegal Logging Prohibition Regulation 2012* (ILPR) lists the information to be collected by importers, which includes information on the timber species, the country where the product was manufactured, and the country, region and 'forest harvesting unit' that the timber comes from. Importers are required to 'obtain as much of the information about the product mentioned in subsection (2) as it is reasonably practicable for the importer to obtain'.¹¹ However, importers are not required to provide this to the Department unless requested to do so. There is thus a risk that importers are not collecting the required information, or that importers are opting not to collect information on the location of harvest when difficult to obtain.

Information on the timber species and the location at which it was harvested is essential for detecting illegal logging. As discussed above, Australia imports significant volumes of wood products from China, the world's largest importer of high-risk timber. EIA has found in its investigations that Chinese importers sell imported logs and sawn wood to thousands of

<https://www.agriculture.gov.au/sites/default/files/documents/ris-Illegal-logging-sunseting-review.pdf>, see pages 7-9.

⁶ John Braithwaite (1985), *To Punish or Persuade: Enforcement of Coal Mine Safety*, State University of New York Press, 117.

⁷ Cindy Alexander and Mark Cohen (2011), 'Causes of Corporate Crime. An Economic Perspective', in Anthony Barkow and Rachel Barkow (eds.), *Prosecutors in Boardrooms*, New York University Press, 21.

⁸ Chris Leech (2018), 'Detect and deter or catch and release: Are financial penalties an effective way to penalise deliberate tax evaders?', Tax and Transfer Policy Institute, Australian National University, Working Paper 6/2018, 40-41.

⁹ *Ibid.*, 43.

¹⁰ *Ibid.*, 41.

¹¹ *Illegal Logging Prohibition Regulation 2012*, s 10.

mills, veneer plants and other manufacturers, often without proper origin documentation. Once the timber is further processed and mixed with timber from different species and origins, traceability in the supply chain is broken and the origin of the timber is lost. A 2019 investigation from Chinese media outlet Sixth Tone showed that major Chinese plywood manufacturers were not aware of the origins of the wood used for their veneer.¹²

The Bill's new Part 3A will require all importers to provide a notice to the Department at the time of importing the wood. While it is not yet specified what these new notices will have to include (this will be set out in the rules), the Explanatory Memorandum states that this is likely to be similar to the information they are currently required to collect (including species and location of harvest).

Having to provide this information to the Department is likely to increase the number of importers collecting the required data and encourage better due diligence. Importers should be collecting information on origin of harvest already, in order to assure themselves that the timber they are importing is not illegally logged (and thus meet existing due diligence requirements). However, the need to present the information to the Department is likely to increase compliance with the requirement.

Under the Bill, giving a false notice is an offence, as is failing to submit a notice. This provides a strong incentive for importers to undertake adequate due diligence.

While the content of the import notice is not specified in the Bill, it is important that this notice makes it mandatory to provide information on at least the species (scientific name) and country of harvest of the timber. Knowing the species and country of harvest of imported timber is necessary for carrying out due diligence - without this information, importers cannot confidently assert that their timber has been legally logged. We recommend that Section 18B of the Bill be amended to require this information in import notices.

Support for stronger information gathering, search and seizure and wood identification testing powers

The new Part 3B proposed in the Bill includes some additional information gathering powers that should also aid enforcement and encourage importers to put in place and use robust due diligence processes.

In addition, the Bill inserts additional provisions into Part 4 of the current Act to expand government officers' power to seize timber samples and analyse and test them. This will facilitate investigators using timber testing methods such as mass spectrometry, stable isotopes or DNA testing, which are increasingly being used in investigations overseas. There are other amendments to close loopholes that have hindered prosecutions, such as extending the time period between harvest and prosecution.

We are supportive of passing these amendments, to ensure that ILPA is a more effective tool to curb illegal logging overseas.

¹² Sixth Tone (2019) 'How illegally harvested timber is "greenwashed" in China', <https://www.sixthtone.com/news/1003369/how-illegally-harvested-timber-is-greenwashed-in-china>

Recommended additional amendment to the definition of ‘illegal logging’

While the Bill in its present form represents an important and positive change to strengthen Australia’s illegal logging regime, expanding the definition of ‘illegally logged’ in ILPA would further strengthen the Act and bring it into line with other legislation overseas.

The current definition in ILPA of *illegally logged*, “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.” The Bill does not include any amendments to this definition.

It is possible that the definition may be interpreted narrowly as only being applicable to timber and wood products whose sourcing was in contravention of harvest-related laws (such as laws governing the locations, methods or process of timber harvesting). Such a narrow interpretation may exclude cases where the sourcing of the timber involved corruption and related legal offences, such as bribery, money laundering, tax evasion or fraud.

Corruption and illegal logging are inextricably linked. A 2016 review of INTERPOL’s databases found that the most common corruption offences associated with forestry crime were, in order of most to least typical, bribery, fraud, abuse of office, extortion, cronyism, and nepotism.¹³ INTERPOL also reported that corruption was identified as occurring 50 percent of the time at the point of harvest, 27 percent of the time where the timber is processed, and 23 percent of the time related to road transport.¹⁴ Furthermore, law enforcement has identified bribery in obtaining timber concessions, for passage through checkpoints, and for export of illegal timber.¹⁵

Corruption in forestry operations has been found to be common in the Asia Pacific region. For example, the UN Office on Drugs and Crime reported in 2019 that “corrupted licences given to plantation firms in Indonesia are among the main underlying causes of Indonesia’s deforestation.”¹⁶ They indicated that “examples of common corruption schemes included falsified origin of logs being cut in protected forests, invalid Environmental Impact Assessments, or falsified numbers of logs or size of the area authorised for plantations.”¹⁷

Between 2004 and 2019, 88 public officials in Indonesia were convicted for corruption at provincial level, including 52 regents and vice-regents, 23 mayors and vice-mayors, and 13 governors. Most of the cases involved bribes in relation to licensing approval and procurement.¹⁸ Between 2004 and 2016, the Indonesian anti-corruption commission Komisi Pemberantasan Korupsi (KPK) has carried out six prosecutions for forestry-related corruption involving 30 defendants.¹⁹ However, between 2016 and 2020 there was only one prosecution for corruption in the forestry case.²⁰ All of these cases resulted in guilty verdicts.²¹ The cases involved mainly the charges of abuse of power, bribery, gratuities and, in one case, obstruction of justice related to a bribery offence.²²

¹³ INTERPOL (2016), *Uncovering the Risk of Corruption in the Forestry Sector*, p. 1.

¹⁴ *Ibid.*, 2.

¹⁵ *Ibid.*, 9.

¹⁶ UNODC, (2019), *UNODC and KPK pilot a Corruption Risk Assessment in the Forestry Sector in South-Sumatra Province, Indonesia*, <https://www.unodc.org/roseap/en/what-we-do/anti-corruption/topics/32-unodc-and-kpk-pilot-a-corruption-risk-assessment-in-the-forestry-sector-in-south-sumatra-province--indonesia.html>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Sofie Schutte and Laode Syarif (2020), *Tackling forestry corruption in Indonesia*, U4 Anti-Corruption Resource Centre, 2.

²⁰ *Ibid.*

²¹ *Ibid.*, 9.

²² *Ibid.*, 17.

Analysis by the U4 Anti-Corruption Resource Centre found corruption is still significant in the logging sector in Indonesia. Unfortunately, even when it is identified, enforcement and recovery of assets does not always happen.²³ Even where cases have been brought, not all the individuals identified as being involved in the corruption have ended up being prosecuted.²⁴ Those involved in the corruption from the private sector side are less likely to be prosecuted than their co-offenders who are government officials or elected representatives.²⁵ The companies that benefited from the corrupt arrangements were not fined and never lost their illegally obtained logging licences.²⁶

Analysis by the U4 Anti-Corruption Resource Centre of an illegal logging network in Indonesia in which serious corruption was involved found a sense of impunity helped to feed the corruption and illegal logging the network was involved in.²⁷ Having timber and wood product importers having to look for signs of possible corruption in their supply chains would help erode the sense of impunity that some perpetrators may feel.

In the Pacific, the Bank of Papua New Guinea has stated “there are strong indicators of large scale corruption and illegal logging in the forestry sector in PNG”.²⁸ Many of the legal breaches in that jurisdiction arise during the licencing and permitting process rather than the harvesting process. Research undertaken by Jubilee Australia and by Papua New Guinean NGO Act Now has documented multiple cases in which logging permits and licences were granted without meeting key legal requirements, such as the need to obtain the necessary consent of landowners or without meeting key licence conditions – such as the existence of a viable agriculture project to justify land clearing.²⁹

In another example, an investigation by Global Witness published in May 2021 raised concerns that a planned rubber plantation on Manus Island may be a front for an illegal logging operation by a Malaysian owned company.³⁰ The PNG National Forestry Board allegedly unlawfully issued a forest clearance permit by overruling the opposition from the provincial committee. Further, the legally required land demarcation process to verify land ownership did not appear to have occurred. Global Witness raised the concern of corruption being involved, as the company in question, Maxland (PNG) Ltd, allegedly gifted houses to several community leaders in the area, including at least one elected ward councillor. As of October 2019, Maxland was reported to have exported almost 19 thousand cubic meters of timber, worth over K6 million (\$2.3 million).

A number of timber import laws include legal violations in the country of harvest that are much broader than harvest-related legal violations under ILPA, and capture corruption offences. For example, the EUDR prohibits sale or export of wood products (and other selected commodities) unless they have been produced in accordance with the relevant legislation of the country of production. ‘Relevant legislation of the country of production’ is

²³ Ibid., 4-5.

²⁴ Ibid., 9.

²⁵ Ibid., 21-22.

²⁶ Ibid., 33.

²⁷ Jacqui Baker (2020), *Corrupt networks in the Indonesian forestry sector. Politics and pulp in Pelalawan, Riau*, U4 Anti-Corruption Resource Centre, 27-28.

²⁸ Bank of Papua New Guinea (2017) *Money Laundering and Financing of Terrorism National Risk Assessment*, available at: <https://pngportal.org/directory/money-laundering-and-financing-of-terrorism-national-risk-assessment>

²⁹ See: Act Now! (2024) *Where’s the Beef: the Wasu Cattle Farm*, <https://actnowpng.org/sites/default/files/publications/Where%27s%20the%20Beef%20-%20Wasu%20Cattle%20Farm%20FCA.pdf>; Act Now! (2023) *A New Land Grab: the Mengen Integrated Agriculture Project*, <https://actnowpng.org/sites/default/files/publications/A%20New%20Forest%20Grab%20-%20The%20Mengen%20Integrated%20Agriculture%20Project.pdf>; Act Now! and Jubilee Australia (2023) *Ten Years Without a Crop: the Wammy Rural Development Project*, <https://www.jubileeaustralia.org/resources/publications/ten-years-without-crop>

³⁰ Ed Davey (2021), *Bending the Truth*, Global Witness.

defined and includes tax, anti-corruption, trade and customs regulations as well as land use rights, environmental protection and Indigenous peoples' right to Free Prior and Informed Consent.³¹

As corrupt acts are intricately linked with illegal logging they should be included in Australia's legal framework, as has been done in other countries. The relevant provision could be modified as follows:

"illegally logged, in relation to timber, means authorized for harvest, harvested, processed, and/or transported in contravention of laws in force for the protection of plants or related to bribery, money laundering, tax evasion, or fraud in the place (whether or not in Australia) where the timber was harvested."
(Italics denote proposed additional text)

This amendment would ensure that ILPA covers corruption occurring pre and post-harvest.

Detection of corruption in the sourcing of imported timber and wood products is a matter of importers taking reasonable steps to identify the presence or risk of corruption in the products they are sourcing. For example, an importer could be expected to seek information of the beneficial ownership of companies supplying the timber or wood products, especially where the countries in question have a publicly accessible beneficial ownership register. The presence of a government official as a beneficial owner of a company supplying timber may be a red flag for the possibility for corruption in the supply chain. The risk would be significant if the government official in question is involved in authorising the logging operation or enforcing tax and royalty collection from the operation. There exist a number of commercial tools that list government officials and their associates, Politically Exposed Persons, used by entities required to do due diligence for anti-money laundering laws, which could also be employed to comply with a definition of illegal logging that includes corruption under ILPA.

Summary of Recommendations

4. The provisions currently included in the Bill should be passed.
5. Section 18B of the Bill should be amended to require that import notices must include, at minimum, information on the species and country of harvest of imported timber.
6. The definition of 'illegally logged' in section 7 of the current ILPA should be amended to cover corruption-related offences related to illegal logging operations, specifically laws in force for the protection of plants or related to bribery, money-laundering, tax evasion or fraud.

³¹ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, Art 2 and Art 3.

Organisations making this submission

Since 1989, the **Center for International Environmental Law (CIEL)** has used the power of law to protect the environment, promote human rights, and ensure a just and sustainable society. CIEL seeks a world where the law reflects the interconnection between humans and the environment, respects the limits of the planet, protects the dignity and equality of each person, and encourages all of earth's inhabitants to live in balance with each other.

The Synod of Victoria and Tasmania is part of the Uniting Church in Australia, the country's third largest Christian denomination. The Uniting Church in Australia was formed in 1977, when three congregations – the Methodist Church of Australasia, the Presbyterian Church of Australia and the Congregational Union of Australia – came together. We are one of six Synods, comprising over 500 congregations and more than 60,000 members. We also have 12 schools. We worship every week in more than 40 languages. Nationally, the Uniting Church has formal partnerships with 32 churches in Asia and the Pacific and have also been instrumental in pioneering interfaith relationships, including other Christian denominations

Jubilee Australia Research Centre conducts research-based advocacy, in partnership with other organisations and communities across Australia and the Asia-Pacific, to defend the rights of people and the planet over profit, and hold corporations and governments accountable. For over 20 years, we have worked towards a fairer future where a healthy planet, empowered communities and just economies go hand in hand.

The **Environmental Investigation Agency (EIA)** has 35 years of experience investigating and exposing environmental crime and campaigning to protect endangered species. Focusing on field evidence and legal frameworks in deforestation and forest degradation hot spots around the globe, EIA works to reform forest governance and shut down networks that trade in illicit wood products and agricultural commodities driving deforestation. On the demand side, EIA works to transform the global timber market by helping to develop and implement new laws against international trade of illegally sourced timber in major consumer countries.