

Submission in response to

Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024

prepared by

Environmental Justice Australia

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A. Introduction and summary

1. Environmental Justice Australia (**EJA**) is a public interest environmental law practice, based in Melbourne and undertaking work across our areas of expertise throughout Australia. We provide legal advice and support to the community on public interest environmental issues, advocate for better environmental laws, and provide legal education to the community on environment matters. We act primarily for community organisations, Traditional Owners groups and NGOs on matters concerning environment and natural resources law and policy.
2. EJA welcomes the Federal Government's commitment to strengthen the *Illegal Logging Prohibition Act 2012 (the ILP Act)* to respond to the wide-reaching environmental, social and economic impacts of illegal logging. The purpose of this submission is to support the enactment of the *Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024 (the Bill)* and suggest additional amendments to further the aims of the Bill and Australia's compliance with its international obligations.
3. We understand that the Bill specifically seeks to amend the Act to:
 - (a) enable testing of timber products at the Australian border and beyond to ensure non-compliant, illegally logged timber is not imported;
 - (b) introduce a requirement for importers and processors to give notice before importing or processing regulated timber products;
 - (c) add strict liability offences, injunctions and enforceable undertakings to enforcement powers;
 - (d) enable audits to be carried out to determine compliance with the due diligence requirements; and
 - (e) extend the time frame for issuing infringement notices to 24 months and enable the Department of Agriculture, Fisheries and Forestry to publish details of contraventions on their website.

B. Recommendations

4. We support the proposed amendments in the Bill and urge the Federal Government to enact further amendments to the ILP Act that will:
 - (a) expressly prohibit the sale of timber that has been logged illegally within Australia by introducing relevant criminal offence provision(s) and civil duties; and
 - (b) improve regulation of noncompliance and enhance accountability by introducing provision(s) to enable interested parties to enforce provisions under the IPL Act.

C. Sale of illegal timber

5. The unlawful destruction and clearing of forests presents a serious and urgent threat to the Australian environment and biodiversity. The opportunity for commercial gain is the

main driver of deforestation globally, with illegal logging earning the title of the world's most profitable environmental crime.¹

6. We refer, in particular, to the following statements made during the Second Reading Speech for the Bill by the Federal Minister for Regional Development, Local Government and Territories:²

“Illegal logging can destroy forest ecosystems, reduces biodiversity, and contributes to species extinction. It deprives local communities of opportunities to improve their quality of life and undermines the rights and practices of Indigenous peoples that care for country. And it costs governments and primary industries billions of dollars every year in lost revenue.

Australia is not immune to these impacts. Trade in low-priced, illegally sourced timber undermines the prices that can be obtained for local, sustainably produced products. This has negative effects on supply chains, business decisions, industry profitability, investment, and jobs in the Australian economy.

Given the scale and reach of these environmental, social, and economic impacts, global action is necessary to effectively combat illegal logging. The Australian government is committed to playing its part and working with the international community to address illegal logging.”

7. The Federal Minister confirmed that the aim of the IPL Act is “to reduce the harmful impacts of illegal logging by restricting the importation and sale of illegally logged timber and timber products in Australia, and the processing of domestically grown raw logs that have been illegally harvested.”³
8. When the IPL Act was enacted, the Federal Government acknowledged that the measures were “an essential first step towards a longer-term goal of Australia sourcing timber products from sustainably managed forests, wherever they are in the world.”⁴ Now, we recommend that the Federal Government enacts further measures and amendments to respond to current and increasing threats to the Australian environment and market, and to ensure compliance with Australia’s obligations under international law.
9. Presently, the Act prohibits importing⁵ and processing⁶ illegally logged timber, however it does not expressly ban the sale of timber that is logged domestically in breach of Australian laws, including associated Codes of Practice.

¹ Brian Huerbsch, *The Cost of Environmental Crime: Illegal Logging* (Report, 2016) 4 <<https://respect.international/the-cost-of-environmental-crime-illegal-logging/>>; United Nations Environment Programme and RHIPTO Rapid Response–Norwegian Center for Global Analyses, *The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development And Security* (Report, 2016) 18; Commonwealth, *Second Reading Speech for the Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024*, House of Representatives, 27 March 2024 (The Hon. Kristy Louise McBain).

² Commonwealth, *Second Reading Speech for the Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024*, House of Representatives, 27 March 2024 (The Hon. Kristy Louise McBain).

³ Ibid.

⁴ Commonwealth, *Second Reading Speech for the Illegal Logging Prohibition Bill 2011*, House of Representatives, 6 September 2023 (The Hon. Dr Mike Kelly).

⁵ *Illegal Logging Prohibition Act 2012* (Cth), Part 2.

⁶ *Illegal Logging Prohibition Act 2012* (Cth), Part 3.

10. “Illegally logged” timber is defined in s 7 of the IPL Act to mean timber that is “harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested”.
11. The introduction of provisions that ban the sale of illegally logged timber would deliver clarity and consistency across Australian States and Territories, in circumstances where there are notable gaps in the current framework that otherwise deals with the sale of timber that has been logged domestically in breach of Australian laws, particularly laws enacted by Federal and State/Territory Governments to protect threatened species and their habitat and other environmental values.
12. For example, the Victorian Supreme and Federal Courts have repeatedly found that Victoria’s State logging agency, VicForests, had failed to comply with its legal obligations to survey for and protect threatened flora and fauna while conducting logging operations.⁷ Notwithstanding these findings, all the timber unlawfully harvested by VicForests continued to be sold by VicForests, without penalty or repercussion.
13. Currently, the sale of illegally logged domestic timber is inadequately managed via a patchwork of provisions in the Australian Consumer Law (**ACL**), proceeds of crime criminal offences and various State and Territory laws which prohibit the removal of timber from public land, including from within National Parks and reserves⁸.
14. Existing provisions do not offer a complete solution. For example, Victoria has legislated to bind the Crown in its various manifestations under the ACL so far as the Crown "carries on a business", either directly or by an authority of the jurisdiction concerned.⁹ Whilst it is may be that State-owned logging agencies that have an express commercial purpose would be found to be carrying on a business, other government entities or Departments may be excluded from the application of the ACL on this basis.
15. For example, Forest Fire Management Victoria (**FFMV**) sits within the Victorian Department of Energy, the Environment and Climate Action and performs functions on behalf of the State to manage bushfires and bushfire risk in Victoria’s parks, forests and other public land.¹⁰ FFMV does not have a commercial purpose, however it has previously made public statements indicating its intention to sell logs that had been removed in the course of bushfire mitigation works, including within National Parks, for commercial use and timber products.¹¹

⁷ *Friends of Leadbeater’s Possum Inc v VicForests (No 4)* [2020] FCA 704; *Environment East Gippsland Inc v VicForests (No 4)* [2022] VSC 668; *Warburton Environment v VicForests (No 5)* [2022] VSC 633.

⁸ See, for example, *National Parks Act 1975* (Vic) s 44A; *National Parks Regulations 2013* (Vic), r 48; *Forests Act 1958* (Vic), s 96AA.

⁹ *Australian Consumer Law and Fair Trading Act 2012* (Vic), s 16. See also *Murphy v Victoria (No 2)*[2014] VSC 404 [

¹⁰ FFMV, ‘Forest Fire Management Victoria’ (Web Page) <<https://www.ffm.vic.gov.au/who-we-are/forest-fire-management-victoria>>.

¹¹ Miki Perkins, “Entirely inappropriate’: Alarm over Dandenongs National Park tree removal’, *Sydney Morning Herald* (online, 24 December 2022) <<https://www.smh.com.au/environment/conservation/entirely-inappropriate-alarm-over-dandenongs-national-park-tree-removal-20221215-p5c6i1.html>>; Forest Fire Management Victoria, *Managing fire risk – timber that fell during 2021 storms* (Web Page) <<https://www.ffm.vic.gov.au/managing-fire-risk-timber-that-fell-during-2021-storms>>.

16. This week, a Victorian community group commenced proceedings against FFMV alleging noncompliance with the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.¹²
17. If any of FFMV's operations were found to be noncompliant with State or Federal laws, there would be no clear legal mechanism that would prohibit the sale of the affected timber and thus no guarantee that Australian and international markets would be protected from becoming infected by timber sourced in breach of environmental legislation.
18. This gap in the legal framework creates a risk to business consumers within the supply chain, many of whom have obligations under internal environmental sustainability policies and external certification schemes. Further, it undermines public confidence in the domestic market, in circumstances where consumers are "now, more than ever, making purchasing decisions on environmental grounds".¹³
19. There have been recent examples of buying behaviour having been influenced by the environmental impact of timber harvesting operations undertaken in Victoria by VicForests. For example, in 2020 following a ruling of the Victorian Supreme Court relating to VicForests' timber harvesting activities, a decision was made by Bunnings to end its contract with VicForests.¹⁴ Specifically, Bunnings' Director of Marketing and Merchandise, Clive Duncan said of the decision that "we believe customers and team members have the right to expect that timber is sourced from well managed forestry operations"¹⁵ This decision was consistent with Bunnings' Timber Policy and commitment to sustainable timber procurement.¹⁶
20. The inclusion of an express provision or Part in the IPL Act would close the gap in the current framework. This is particularly important given that State-owned logging agencies and government entities effectively operate as legal monopolies in relation to the harvest and sale of timber from public land and, as noted above, may be exempt from the operation of provisions that would otherwise apply.¹⁷

¹² Michael Dahlstrom, 'Urgent legal action filed after rare animal discovered dead in Aussie national park', *Yahoo! News* (online, 28 May 2024) <<https://au.news.yahoo.com/urgent-legal-action-filed-after-rare-animal-discovered-dead-in-aussie-national-park-033330893.html?guccounter=1>>.

¹³ ACCC, 'ACCC 'Greenwashing' Internet Sweep Unearths Widespread Concerning Claims' (Media Release, 2 March 2023) <<https://www.accc.gov.au/media-release/accc-greenwashing-internet-sweep-unearths-widespread-concerning-claims>>.

¹⁴ Mike Foley, 'Bunnings Ends VicForests Timber Contract Over Logging Breaches', *The Sydney Morning Herald* (online, 1 July 2020) <<https://www.smh.com.au/environment/sustainability/bunnings-ends-vicforests-timber-contract-over-logging-breaches-20200701-p5581g.html>>; Lisa Cox, 'Bunnings Stops Selling Timber Logged by VicForests after Court Ruling' *The Guardian* (online, 1 July 2020) <<https://www.theguardian.com/environment/2020/jul/01/bunnings-stops-selling-timber-logged-vicforests-court-ruling>>.

¹⁵ Stephanie Anderson 'Bunnings, Officeworks will Dump Victorian Native Timber in Two Years Unless Sustainability Proven', *ABC News* (online, 17 September 2018) <<https://www.abc.net.au/news/2018-09-17/vic-forestry-industry-at-risk-of-collapse/10255128>>.

¹⁶ Bunnings, 'Bunnings and Timber' (Web Page) <<https://www.bunnings.com.au/about-us/sustainability/bunnings-and-timber>>.

¹⁷ For example, pursuant to section 86A of the *State-Owned Enterprises Act 1992 (Vic)* and section 51 of the *Competition and Consumer Act 2010 (Cth)*, VicForests is expressly exempt from certain provisions in that Act, namely the provisions in Part IV relating to restricted trade practices provisions, in respect of conduct engaged in before 1 July 2015.

21. The Australian Government has committed to end deforestation and forest degradation Australia by 2030.¹⁸
22. In 2021, the Federal Government signed the COP26 agreement to work collectively to halt and reverse forest loss and land degradation by 2030 while delivering sustainable development and promoting an inclusive rural transformation.¹⁹ The agreement reaffirmed signatories' "respective commitments, collective and individual, to the UN Framework Convention on Climate Change and the Paris Agreement, the Convention on Biological Diversity, the UN Convention to Combat Desertification, the Sustainable Development Goals; and other relevant initiatives."²⁰
23. In 2023, these commitments were remade at COP28.
24. Ultimately, it is appropriate that timber that is grown and logged within Australia should be subject to the same scrutiny and restrictions as timber that is imported from international sources.

D. Standing and civil enforcement

25. To further to the Bill's aim to improve the regulation of noncompliance, we recommend amendments to enable third parties to enforce offence provisions in the ILP Act.
26. We submit that a provision resembling section 475 of the EPBC Act should be introduced, which facilitates access to justice for environmental matters, improves compliance, and supports the public interest in enforcing provisions in that Act by allowing 'interested persons' to apply to the Federal Court for injunctions to prevent contraventions of the Act or Regulations.
27. In s 475 of the EPBC Act, 'interested person' is defined to include individuals and organisations:
 - (i) whose interests have been, are, or would be affected by the conduct or proposed conduct or
 - (ii) who have engaged in a series of activities for the protection or conservation of, or research into the environment, at any time in the two years prior to the conduct or the application for the injunction.

¹⁸ COP28 Global Stocktake decision available at https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf and the Glasgow Leaders' Declaration on Forests and Land Use (2 November 2021) available at <https://webarchive.nationalarchives.gov.uk/ukgwa/20230418175226/https://ukcop26.org/glasgow-leadersdeclaration-on-forests-and-land-use/>.

¹⁹ UN Climate Change Conference UK 2021, 'Glasgow Leaders' declaration on forests and land use', *The National Archives*, (webpage, 2 Nov 2021) <https://webarchive.nationalarchives.gov.uk/ukgwa/20230418175226/https://ukcop26.org/glasgow-leadersdeclaration-on-forests-and-land-use/>.

²⁰ Kate Dooley, 'COP26: global deforestation deal will fail if countries like Australia don't lift their game on land clearing', *The University of Melbourne*, (webpage, 2 Nov 2021) <https://findanexpert.unimelb.edu.au/news/33544-cop26--global-deforestation-deal-will-fail-if-countries-like-australia-don-t-lift-their-game-on-land-clearing#:~:text=At%20the%20Glasgow%20COP26%20climate,to%20end%20deforestation%20by%202030>.

28. It is appropriate to broaden the scope of persons who may bring proceedings in relation to an alleged contravention in the Act in order to enhance accountability and improve regulation of noncompliance.
29. In addition, we consider that civil penalty orders should be available to third parties enforcing contraventions of each provision that is currently a criminal offence in the Act. This approach will support enforcement, deterrence, access to justice and the public interest in improving compliance with the Act.

E. Conclusion

30. We urge the Federal Government to take this opportunity to strengthen and expand the current legislative framework governing the sale of illegally logged timber in Australia to ensure that the same standards and expectations apply domestically and can be enforced by interested persons.
31. Such amendments are necessary to protect the Australian market from illegally logged timber and timber products from both international and domestic sources, and safeguard against the unlawful destruction of Australian forests and threatened species' habitat for commercial gain.
32. We would be pleased to expand on any of the matters raised in this Submission at any further opportunities.