

Australian Industry Timber Due Diligence System

AITDD-05

Guidance on Evaluating Legal Conformance at a Forest Harvest Unit Level

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About this document

This document has been developed by Timber Development Association (NSW) Ltd on behalf of Forest and Wood Products Australia Limited. It is based on currently available information from the text of the Australian *Illegal Logging Prohibition Act 2012 (Cth)*, the *Illegal Logging Prohibition Regulation Amendment 2013 (Cth)* and the accompanying Explanatory Statement as well as consultation and information documents issued by the Commonwealth Department of Agriculture.

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Evaluating legal conformance at a forest level

IMPORTANT NOTE: This document and the information it contains should only be used in cases where timber has been assessed as not a low risk at the forest harvesting unit (FHU) level and a FHU audit is chosen as a risk mitigating measure.

The definition of illegal logged in the *Illegal Logging Prohibition Act 2012* 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.” The *Illegal Logging Prohibition Amendment Regulation 2013* asks for any evidence that the product has not been illegally logged, which, without limiting the evidence, may include evidence about:

1. whether the harvesting of the species of tree from which the timber in the product is derived is prohibited in the place where the timber has been harvested; and
2. if the harvesting of the timber in the place is authorised by legislation (including regulations)—whether the requirements of the legislation have been met for the harvesting of the timber; and
3. if payment is required for the right to harvest the timber—whether that payment has been made; and
4. if a person has legal rights of use and tenure in relation to the place in which the timber is harvested—whether the harvest of the timber is inconsistent with the law establishing or protecting those rights.

Documenting specific legislation covering each of these areas for each country where timber is harvested is beyond the scope of this document. The following table (Table 1) refines each of these four areas into sub-categories, describes each sub-category and lists a number of practical verifiers that would provide evidence that the legislation is being complied with. In some cases some verifiers may not be applicable, if for example there is no corresponding legal requirement in the country of harvest.

NOTE 1: As a general rule, a country and sub-national region can be considered low risk for of illegal logging if instances of legal non-compliance are:

- a) temporary lapses;
- b) unusual/non-systematic; or
- c) limited in temporal and spatial impact.

Conversely, it cannot be considered as low risk if non-compliances:

- a) continue over a long period of time;
- b) affect a wide area and/or causes significant damage;
- c) indicate the absence or break down of enforcement of the legal system;
- d) are not corrected or adequately responded when identified; or
- e) have a significant negative impact on the production of forest products and other services, the forest ecosystem and directly or indirectly, any people.

NOTE 2: Some companies may wish to take their due diligence beyond laws covering harvesting to cover trade and customs legislation as covered in the European Union Timber Regulation. The

European Timber Trade Federation Due Diligence System and NEPCon LegalSource™ Standard can provide verifiers for these areas.

NOTE 3: A broad spectrum of laws and regulations typically apply to legal harvesting and trade in a country. Lists of laws and regulations applying to legal harvesting and trade of timber and wood products in many of the world's countries are available at a couple of sources.

For example preliminary lists are now available for 76 countries at the Global Forest Registry at www.globalforestregistry.org.

Many of the PEFC endorsed forest management standards also have in their appendix a list of laws and regulations (see Importers: Industry Information Sheet - PEFC Endorsed Forest Management and Chain of Custody Standards for links to these).

NOTE 4: While the sources noted previously will be very useful they may or may not be complete. Forest laws and regulations also change constantly and local expertise in the country of harvest may need to be engaged for up to date information.

Table 1: Scope of legislation and verifiers for legality

1 & 2. Species Prohibition & Timber Harvesting Legislation		
1.1 Land tenure and management rights	Legislation covering land tenure rights including customary rights as well as management rights including use of legal methods to obtain tenure rights and management rights. The point also covers legal business registration and tax registration including relevant legal required licenses.	<p>Verifiers:</p> <ul style="list-style-type: none"> • Land registry confirms ownership and validity of property deed • Tax authorities confirm valid tax registration • Business register confirms valid business license to operate within the jurisdiction • In areas with land ownership conflicts, consultation with neighbours, local communities and others confirms the land tenure rights are clear • Stakeholder consultation confirms that registration of FME has been granted following legally prescribed processes • Stakeholder consultation confirms that legal status of the operation or rights for conducting the established activities are not subject to a court or other legally established order to cease operations • Management contract or other agreement with the owner indicate clear management rights • Valid business registration documents exist • The issuance of legal rights and registration have been subject to public disclosure prior to commencement of any activities within FHUs • Inspection of harvesting site confirms that harvesting takes place within property limits (including felling, transport and log landings).
1.2 Concession license	Legislation regulating procedures for issuing of forest concession licenses including use of legal methods to obtain concession license. Especially bribery, corruption and nepotism are well-known issues in connection with concession licenses.	<p>Verifiers:</p> <ul style="list-style-type: none"> • Established legal procedures for obtaining concession licenses were followed • Valid concession license agreements exist • In countries with perceived high levels of corruption (CPI <5) the process of obtaining concession followed an open and transparent process based on clear criteria • Stakeholder consultation confirms that legal procedures for obtaining concession licenses have been followed.
1.3 Management and harvesting planning	Any legal requirements for management planning, including conducting forest inventories, having a forest management plan and related planning and monitoring, as well of approval of these by competent authorities.	<p>Verifiers:</p> <ul style="list-style-type: none"> • Approved Forest Management Plan exist for the Forest Harvesting Unit where the harvesting is taking place • Forest management plans contain all legally required information and procedures • Annual operating or harvesting plans are in place and approved by legally competent authorities • Annual operating or harvesting plans contain information and procedures, according to all legal requirements • The contents of the operating and harvesting plans are consistent with approved forest management plans • Plans for carrying out harvesting operations are subject to public disclosure and objections prior to commencement • Harvesting restrictions are identified in management plan and maps • Harvesting inventories have been conducted according to legal requirements • Field verification indicates that the contents of the harvesting plans are adhered to in the field. • Stakeholder consultation indicates that the Forest Management Plan has been approved according to legally prescribed process. • The contents of the management plan are technically sound

		and consistent in meeting legal requirements
1.4 Harvesting permits	Legislation regulating issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. The point includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with issuing of harvesting permits.	Verifiers: <ul style="list-style-type: none"> • Harvesting permits (license or similar legal document governing the harvesting of forest resources) exist. • Harvesting limits are clearly defined based on maps and quantities. • Authorities confirm the validity of harvesting permit • Stakeholder consultation confirms that harvesting permit has been issued according to the relevant laws and regulations by the legally designated competent authority. • Field inspection confirms that harvesting takes place within limits given in the harvesting permit • Field inspection confirms that information regarding area, species, volumes and other information given in the harvesting permit are correct and within limits prescribed in the legislation. • Field inspection confirms that all harvesting restrictions given in the harvesting permit are observed such as buffer zones, protected trees, placement of logging trails etc.
1.5 Timber harvesting regulations	Any legal requirements for harvesting techniques and technology including selective cutting, shelter wood regenerations, clear felling, transport of timber from felling site, seasonal limitations etc. Typically this includes regulations about the size of felling areas, minimum age and/or diameter for felling activities, elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems, bridges etc shall also be considered as well as planning and monitoring of harvesting activities. Any legally binding codes for harvesting practices shall be considered under this point.	Verifiers: <ul style="list-style-type: none"> • Harvesting are conducted within the authorized boundaries of FHU • Harvesting do not take place in areas where harvesting is legally prohibited • Tree species or selected trees found within the FHU for which felling is prohibited are listed in operational plans • Wood confiscated or seized from illegal operations is not accepted • Harvesting restrictions shall be observed in the field • Tree species or selected trees found within the FHU for which felling is prohibited are marked in the field • Harvesting is conducted within the authorized boundaries of FMU. • Harvesting does not take place in areas where harvesting is legally prohibited. • Harvesting organizations have access to and knowledge of all applicable legislation.
1.6 Protected sites and species	Covers legislation related to protected areas as well as protected, rare or endangered species, including their habitats and potential habitats.	Verifiers: <ul style="list-style-type: none"> • All legally protected areas (including species habitats) are included in the management plan or related documentation • Procedures for surveying, managing and protecting endangered or threatened species within the management unit are followed. • Nature protection regulations such as protected areas, set-aside areas, protected species and hunting regulations are observed.
1.7 Environmental requirements	Covers legislation related to environmental impact in connection with harvesting; acceptable level for soil damage; establishment of buffer zones e.g. along water courses, open areas, breeding sites; maintenance of retention trees on felling	Verifiers: <ul style="list-style-type: none"> • Environmental and/or Social Impact Assessments are in place where legally required and approved by the legally competent authority • Requirements for environmental monitoring are observed • Environmental restrictions are followed in the field, such as requirements related to soil damage, buffer zones, retention trees, seasonal restrictions etc.

	site; seasonal limitation of harvesting time; environmental requirements to forest machineries.	
3. Payments for Harvested Timber		
3.1 Payment of royalties and harvesting fees	Legislation covering payment of all legally required forest harvesting specific fees such as royalties, stumpage fees and other volume based fees. The point also includes payments of the fees based on correct classification of quantities, qualities and species. Incorrect classification of forest products is a well-known issue often combined with bribery to officials in charge of controlling the classification.	Verifiers: <ul style="list-style-type: none"> • Receipts exist for payment of harvesting related royalties, taxes, harvesting fees and other charges • Volumes, species and qualities given in sales and transport documents match the paid fees • Classification of species, volumes and qualities match the royalties and fees paid • Competent authorities confirm that operation is up to date in payment of applicable fees.
4. Other persons tenure rights		
4.1 Customary rights	Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.	Verifiers: <ul style="list-style-type: none"> • Stakeholder consultation confirms that customary rights are observed during harvesting activities.
4.2 Free Prior and Informed Consent	Legislation covering "free prior and informed consent" in connection with transfer of forest management rights and customary rights to the organisation in charge of the harvesting operation.	Verifiers: <ul style="list-style-type: none"> • Stakeholder consultation confirms that free prior and informed consent was given where third parties rights has been relinquished to a 3rd party
4.3 Indigenous peoples rights	Legislation that regulates the rights of indigenous people as far as it's related to forestry activities. Possible aspects to consider are land tenure, right to use certain forest related resources or practice traditional activities, which may involve forest lands.	Verifiers: <ul style="list-style-type: none"> • Stakeholder consultation confirms that indigenous peoples established rights are not being violated.