

Submission to the CIE Draft Regulatory Impact Statement on “Illegal Logging”



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The Window and Door Industry Council (WADIC)

WADIC is an industry association largely comprised of small and medium sized manufacturers of joinery and timber windows and doors. We currently have approximately 125 members.

The Illegal Logging Options and the Draft RIS - Impacts on WADIC members

WADIC supports the general Draft RIS assessment that broad societal and economic costs of the regulations/pseudo regulations out-weigh any benefits. WADIC also supports the Government doing all that it can to reduce illegal logging by capacity building and the development of ‘full and effective’ bilateral and multilateral agreements with key trading partners in the Asia Pacific.

All/any the proposed Draft RIS Options could have significant adverse impact on our members. The Australian Building Standards⁸ requires hardwood with suitable density and thermal insulation properties to be used in windows and doors in bush-fire prone areas. Additionally the Australian Building Standards requires sills on timber windows and some door frame applications, soft-woods have unsuitable wear properties for use on window sills, and if used to replace hardwoods, service life drops significantly. Given this and other needs to use high density hardwood, the restricted supply of suitable species from Australian native hardwood forests forces most of our members to import tropical hardwood raw material.

In the absence of any information from Government or consultants regarding impact on our sector, WADIC is extremely concerned that the consequences of any of the proposed Options will be the restriction of suitable hardwood raw material supply for our members. In some cases, businesses may not be able to source enough suitable raw material to enable them to keep operating, or will have to reduce business size, and subsequently numbers of employees and apprentices. Additionally, with such supply problems will come price increases, which may make businesses unviable.

Regulatory compliance and “paperwork” costs will also be significant, no matter which option is followed. These costs may include costs/time to carry out Due Diligence and Risk Assessments, mandatory financial contributions to any Code of Conduct process, and new insurance costs that may be required to cover extra regulatory liabilities.

Of all the alternatives presented in the Draft RIS, the mandatory quasi-regulatory option with a Code of Conduct may be the least problematic and likely to have the least adverse impact on WADIC members.

However, our serious concern is that even the impact of this option on members is still very likely to be significant, due to its effect on raw material supply and price. We are also particularly concerned that if the Government sets up preferential buying policy to favour Code of Conduct Signatories or those able to readily access certified or verifiable resource (such as processors holding Australian wood supply agreements), that this will discriminate against businesses unable to access such supply, or unable to afford Chain of Custody Certification. It would also discriminate against small businesses unable to bear the likely costs of being Code of Conduct signatories. Note also that there are other down-sides to Quasi-regulation that the Government needs to take steps to avoid if they choose to take this option⁷.

For the purposes of fair competition, it is essential that any quasi-regulation, regulation or Code of Conduct is *simultaneously* applied equivalently to all competing raw materials and finished products. This should include all timber, wood and wood fibre based products including imported products such as furniture, flat-packed kitchens and fit-outs, doors, windows, flooring and panels.

Government regulatory requirements for a RIS

The CIE Draft RIS appears to be more of a scoping document than a Regulatory Impact Statement, because it doesn't appear to conform to several important RIS requirements as set out by Government¹. For instance the Government says that “No regulatory proposal can go to Cabinet or other decision maker that has not complied with the Government's best practice regulation requirements.....”¹(p.18). One of the most important components of these best practice requirements is “For proposals that might have a significant impact on business and individuals or the economy (whether in compliance costs or other impacts), a [Regulation Impact Statement](#) (RIS) is required.”⁴.

And also, it is a Government requirement that a RIS sets out “an assessment of the impact (costs, benefits and, where relevant, levels of risk) on consumers, business, government and the community of each option”². Also, “For proposals that are likely to have a significant impact on business and individuals or the economy (whether in the form of compliance costs or other impacts), a more detailed analysis must be undertaken and documented in a Regulation Impact Statement (RIS). If the impacts include medium or significant business compliance costs, the RIS should include a full (quantitative) assessment of these costs using the BCC or an approved equivalent.”¹ (p.35)

However, the RIS only sets out broad societal and economic impacts, but does not include any quantitative or even qualitative assessments on stakeholder businesses, the joinery/door/window sector nor on the down-stream wood-processing sector as a whole. Specific omissions include:

•The Impact on Small businesses

RIS REQUIREMENTS - “Small businesses are often disproportionately affected, lacking the resources to dedicate to such activities.”¹(p.22), and “It is to ensure that effects of proposed new and amended legislation and regulations on small business are made explicit and given adequate consideration”¹ (p.26.) And, “If regulation is an option, you need to consider – Compliance costs; Other impacts on business and individuals or the economy”⁶. Plus “Where a RIS is required, impacts on small business should be separately identified”¹ (p.40)

Further RIS REQUIREMENTS - “.....small businesses are less likely to have specialist staff.....with detailed knowledge of regulation.....it is important that decision makers are aware of all impacts imposed on small business.....The RIS should provide a complete and accurate picture of the impacts on these businesses.....The RIS should consider: the degree of impact on individual small businesses; the number of small businesses affected; the overall impact on small business; and whether this impact is in proportion to the impacts on other businesses or groups. Particular attention should be paid to the compliance cost impact on small business. In addition to considering the particular ability (or inability) of these businesses to absorb such costs, the RIS should consider how widely the burden will fall.....In cases where the effect is potentially significant, individual businesses or industry representative bodies may need to be approached”¹(p.95)

The Draft RIS barely covered any of these matters. Also note that to date, several associations (comprised of potentially impacted companies) do not appear to have been included in (invited to) the consultative process, including Shop-fitters (ASOFIA – <http://www.asofia.com.au/>), cabinet makers (<http://www.cmavic.com.au/>, <http://www.cmawa.com.au/>) and Kitchen manufacturers (HIA Kitchens and Bathrooms – <http://hia.com.au/hia/channel/Kitchens%20and%20Bathrooms/region/National.aspx>), panel distributors (Plywood Traders Association) and polishers.

•Ongoing confusion and the Failure of Effective broad consultation

There is also still extensive confusion and ignorance about the entire process, definitions, and possible regulations and mechanisms and their scope. For instance, many stakeholders confuse the Code of Conduct with Chain of Custody, and some organizations, companies and individuals confuse “legality” with “sustainability”. Stakeholders are also confused about the point of application of any regulation, believing that it will only apply at point of entry to country, not realizing that every business dealing in wood and wood products is likely to be liable. These problems could be at least partially corrected if the Government actively invited all stakeholder associations to an explanatory workshop, and advertised such workshops in trade journals, and made such industry information sessions open to individual companies.

•The need to consider impacts on individuals and families

Much of our sector is comprised of family businesses. The Government’s RIS requirements set out the need to assess impacts on families and individuals thus, *“However, impacts on individuals may be captured by considering groupings such as consumers, families or local communities.”*¹(p.103) The RIS has not considered such impacts.

•Business compliance costs

RIS REQUIREMENTS - *“Where there are medium or significant business compliance costs they should be quantified in the RIS using the Business Cost Calculator or an approved equivalent.”*²

The RIS did not include any such business cost calculations or results of these calculations, or estimates of compliance costs to individual sectors. Such estimates are essential in assessing whether *“compliance costs fall disproportionately on particular groups of businesses”*, a requirement in the preparation of RIS’s¹(p.103)

•The Cumulative Impacts of Regulations

RIS REQUIREMENTS - *“.....The cumulative impact of government regulation (Australian Government, state/territory and local) on business and individuals imposes significant direct costs, and diverts management from core business activities.”*(P.22) and *“The RIS should examine the cumulative regulatory burden”*¹(p.103).

The cumulative impacts combined with other Government regulations has not been considered in the RIS, despite the wood processing and manufacturing sector being particularly affected by such issues. For instance, the impact of restricting hardwood imports, on top of the decrease in the availability of durable native hardwoods (partly due to State and Federal legislation mandating the conversion of commercial native forest to full reserve status) has not been considered. Nor has the likely impact of rising energy costs due to any CPRS³. Yet the combined impact of reduced raw material availability, rising raw material costs and rising energy prices could be significant.

•Has consultation been commensurate with impact?

RIS REQUIREMENT - *“The nature and extent of consultation should be commensurate with the potential magnitude of the problem and the impact of proposed regulatory and non-regulatory solutions.”*¹(p.25)

Currently, the impact of the “regulations” on much of the imported-timber using, down-stream wood-processing sector is unknown. In order to meet their own stated requirement here (of ensuring that the “nature and extent of consultation” is commensurate with the impact) the Government urgently and formally needs to assess the extent of the impacts on business stakeholders, via a well researched and funded study, that considers impacts on down-stream wood-processing and specifically on the window/door/joinery sub-sector.

•Lack of Degree of Detail and Depth of Analysis

RIS REQUIREMENT - *“.....a RIS should contain a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impacts of the proposal.”*²

As indicated previously and using the Government’s Impact Threshold checklist⁶, the impacts on our members, and the problems that these impacts may give rise to, are likely to be very significant, yet this is not reflected by any detail or depth of analysis in the RIS.

•Lack of Assessment of Restriction of Competition

The restriction of wood supply that may result from the regulations can be regarded as a restriction on competition and is likely to increase prices. This has not been assessed in the RIS, despite it being a requirement¹(page 49).

•The Cost of a Code of Conduct

The cost of being a signatory to a Code of Conduct has not been assessed in the RIS or any of the Code of Conduct documents. The cost of the ongoing administering the Code of Conduct, and audits, is not assessed either. Yet these could be major cost components, particularly given some of the responsibilities raised in the Code of Conduct, such as Promotion and the need to prepare reports.

We suggest that the Code of Conduct Administration Body should receive at least 50% ongoing Government funding. The administration and operation of other Codes of Conduct receive Government funding, such as:

- Horticulture Code of Conduct – Mediation process paid for by Federal Government
- Packaging – “Finances for the functioning of the Covenant (and generous project funding to fulfil the targets of the Covenant) are provided 50/50 Government and industry.”
- Grocery Industry – The Government provides a fully paid Secretariat and ombudsman

If the Government does not intend to provide a significant amount of the required funding, they (the Government) need to assess the cost impact (on businesses) of having to fund the Code of Conduct.

Note that: All the proposed Draft RIS Options come under the Government’s RIS requirements:

“The term ‘regulation’ includes proposals given effect by both primary and subordinate legislation, as well as by quasi-regulation. ‘Quasi-regulation’ refers to a wide range of rules or arrangements where governments influence businesses and individuals to comply, but which do not form part of explicit government regulation.”¹(P.35)

WADIC Recommendations

As detailed above, the full set of impacts have not been considered, as required by the Government’s RIS requirements. In the Government’s words, *“Only the option that generates the greatest net benefit for the community, taking into account **all** the impacts, should be adopted.”²* It is clear that until *all* the impacts have been assessed as part of a RIS, it is hard to see how the Government can adopt any Option whilst complying with their own Regulatory requirements.

Because of the likely significant impact on our sector, and the lack of compliance with Governmental RIS requirements, it is crucial that the Government commences a **Socio-economic Impact Assessment** as part of the final RIS as soon as possible. The assessment needs to include:

- An assessment of the economic impact on the joinery/window/door sector and individual businesses, due to likely decreases in resource availability and price impacts, and due to regulatory compliance costs.
- This should be done as part of a similar assessment of the impacts on other sub-sectors
- An assessment of economic impact on employment/jobs/earnings for employees and stakeholder families, owners and operators in our sub-sector.
- The consideration of psychological, social and financial impacts
- Consideration by the Government of ameliorating actions where adverse impacts are likely to occur.
- All other requirements of a RIS

Note that, according to Government requirements for a RIS, compliance costs must be quantified, especially for small businesses. RIS Consultation needs to be done in accordance with best practice RIS requirements (“Best Practice Regulation Handbook”, Australian Government, August 2007, <http://www.finance.gov.au/obpr/docs/handbook.pdf#page=71>, pages 59 to 69). Note in particular *“Timeframes for consultation should be realistic to allow stakeholders sufficient time to provide a considered response. Holiday periods and the end of the financial year should be avoided, particularly where stakeholders are small businesses.”¹(p.61)*

NOTES

1. "Best Practice Regulation Handbook", Australian Government, August 2007, <http://www.finance.gov.au/obpr/docs/handbook.pdf#page=71>
2. Australian Government RIS, <http://www.finance.gov.au/obpr/ris/gov-ris.html>
3. For some indication of the impact on manufacturing due to higher energy costs under a CPRS, refer to the Australian Chamber of Commerce and Industry commissioned Report, "Securing SMEs in Australia's Low Carbon Future: The Cost of the Carbon Pollution Reduction Scheme for Australia's Small and Medium Sized Businesses", [http://www.acci.asn.au/text_files/submissions/2009/Securing%20SMEs%20in%20Australia%27s%20CPRS%20\(%20FINAL%20Report\).pdf](http://www.acci.asn.au/text_files/submissions/2009/Securing%20SMEs%20in%20Australia%27s%20CPRS%20(%20FINAL%20Report).pdf)
4. Australian Government, Department of Finance and Deregulation, Office of Best Practice Regulation, "When do I need to use the Business Cost Calculator?", <http://www.finance.gov.au/obpr/bcc/index.html>
5. Slide 13, <http://www.finance.gov.au/obpr/docs/BPR.ppt> or [http://www.finance.gov.au/obpr/docs/BPR.ppt#413,13,Analyse the problem](http://www.finance.gov.au/obpr/docs/BPR.ppt#413,13,Analyse%20the%20problem)
6. **Box 3.3 'Other impacts' Checklist** –"Best Practice Regulation Handbook", Australian Government, August 2007, <http://www.finance.gov.au/obpr/docs/handbook.pdf#page=71>, page 41

| As part of a regulatory impact assessment, a practical approach for considering the impacts potentially flowing from regulatory proposals is through a set of threshold questions. The following checklist will help assess whether a proposal has a potential impact on business and individuals or the economy. Will the proposal: | WADIC Response |
|---|-----------------------------------|
| Potentially affect the number and range of businesses in an industry? | Yes |
| - For example: - change the ability of businesses to provide a good or service; | Yes |
| - change the requirement for a licence, permit or authorisation process as a condition of operation | Yes (Code of Conduct requirement) |
| - affect the ability of some types of firms to participate in public procurement; | Yes |
| - significantly alter costs of entry to, or exit from, an industry; or | |
| - change geographic barriers for businesses. | |
| - Restrict businesses from accessing essential raw materials (addition) | Yes |
| - Significantly increase the price of these raw materials (addition) | Yes |
| Potentially change the ability of businesses to compete? | Yes |
| - For example: - control or substantially influence the price at which a good or service is sold; | Yes |
| - alter the ability of businesses to advertise or market their products; | Yes |
| - set significantly different standards for product/service quality; | Yes |
| - significantly alter the competitiveness of some industry sectors. | Yes |
| - Provide unfair competitive advantage - selectively advantage larger business over smaller (because compliance costs are higher (as a percentage of total business costs) for smaller businesses compared to larger | Yes |
| Potentially alter the incentives for business to compete? | |
| - For example: - create a self-regulatory or co-regulatory regime; | |
| - impact on the mobility of customers between businesses; | |
| - require/encourage the publishing of data on company outputs/price, sales/cost; or | |
| - exempt an activity from general competition law. | |
| Potentially impact on consumers? | Yes |
| - For example: - alter the choices available to consumers; | Yes |
| - affect the quality of consumer products or services; | Yes |
| - create or remove restrictions on access to a product; | Yes |

| | |
|---|------------|
| - promote or restrict information dissemination to consumers; or | |
| - add to or reduce the complexity of consumer products or services. | Yes |
| Potentially have any other impacts on business and individuals or the economy? | Yes |
| - For example: - mandate payments from one party to another (excluding taxes); | |
| - have environmental or social impacts (including distribution of resources); | Yes |
| - create or amend government cost recovery arrangements; | |
| - impact on Australia's international capital flows or trade; | |
| - impact on mobility of labour; | |
| - impact on resource allocation, saving or investment | Yes |
| - transfer risk between business, individuals and government; or | Yes |
| - impose any other financial costs. | Yes |

7. "Best Practice Regulation Handbook", Australian Government, August 2007, <http://www.finance.gov.au/obpr/docs/handbook.pdf#page=71>, page 123.

"It is important to note that some of the potential problems associated with quasi-regulation sometimes are created by the way governments formulate or implement quasi-regulations, and therefore can be avoided. Such problems that can be avoided could include:

- *governments are often inconsistent in their choice of regulatory forms and there is often a lack of government justification and impact analysis for quasi-regulation;*
- *quasi-regulation gives much discretion to regulators and, because of its convenience and lack of scrutiny, is sometimes used as 'backdoor regulation';*
- *what starts out as self-regulation can gain the imprimatur of government agencies and subsequently be lifted into legislation, which is depicted by some as 'regulatory creep';*
- *quasi-regulation may be pitched at best practice standards rather than minimum effective regulation, imposing an unnecessarily high compliance burden on business;*
- *small business often lacks the resources and expertise to operate successfully under performance-based regulation and may fear greater litigation from such arrangements, preferring the certainty offered by prescriptive regulation;*
- *confusion exists about the status and enforceability of many quasi-regulatory arrangements (quasi-regulation is often less accessible than Acts of Parliament and some businesses may not comply with quasi-regulation because they judge that full compliance is impossible or impractical); and*
- *quasi-regulation can result in a shifting of costs to industry because of the substantial resources involved in developing and administering industry-based schemes.*

When reviewing, reforming and implementing quasi-regulations, governments should be aware of these potential problems, and take steps to avoid them."

8. AS2047 1999 Referenced in the Building Code of Australia for Windows
AS3959 2009 Referenced "Planning for Bush Fire Protection 2006"

APPENDIX

Answers to CIE "Questions for consideration" (page 76 CIE RIS)

The economic analysis of the costs and benefits to industry and consumers of the restriction and disclosure measures under the RIS raises a number of questions for stakeholders to assist in arriving at a most effective and efficient policy option. (Answers are in red)

- Are the estimates of costs and benefits reasonable? If not, which ones are of concern and what evidence is there that they may be under or over-estimated? **Costs and impacts on individual sectors (as required by Government RIS requirements) have not been done.**
- Could the intangible benefits be high enough to alter the benefit to cost ratio estimates given such low levels of reductions in illegal logging? **The intangible impacts/costs may actually make the real cost higher, reducing the overall benefit-cost ratio.**
- Apart from the costs and benefits referenced in this document relating to the work of Seneca Creek (2004), Turner (2007), World Bank (2006) and OECD (2006), are there any larger estimates of the costs of illegal logging? **Unknown**
- On average, 10 per cent of Australia's imports appear to come from suspicious sources. Some people suggest they could be smaller. The implication is that the size of the problem at issue may be commensurately smaller, so the gain from restricting illegal logging would be less than estimated. Are the estimates we use of illegal logging reasonable? **Unknown**
- Are the estimates of compliance costs reasonable and does the full range of sensitivity tests conducted cover the plausible range of cost? **Unknown**

- What percentage price premiums are being experienced in the market place to buy certified product? **10% to 50%**. Do these premiums adequately reflect the extra costs of compliance? **Yes**

Note that relating certification costs to log costs is inappropriate for downstream secondary processors, because at this stage costs are more likely to be affected by such factors as the number of product lines/suppliers, the complexity of raw material inputs and the ability/cost to track products through the manufacturing process and back to the originally supplied raw material/component input. The value of, recovery from, or percentage value of the original log is irrelevant (and lost or unknown) by the furniture, door or window manufacturing stage.

Apart from price and problems due to certification costs (above), the greatest problem with certified product is lack of availability of suitable certified species in the right dimensions and grade.

- Are you paying any price premiums for wood products of legally verifiable origin? **Unknown**
- Given Australia's very small share of world trade and small influence over illegal logging through trade restrictions suggest there are alternative policy options that might provide Australia with a more effective way to influence or combat illegal logging in foreign countries? **Reduce the demand for hardwood imports into Australia by making wood from more domestic sustainable/certified native hardwood forests available on the open market**