

# Timber Legality Risk Assessment Australia

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## B. Overview of legality risks

**Timber Risk Score:** 98 / 100 in 2017

This report contains an evaluation of the risk of illegality in Australia for five categories and 21 sub-categories of law. We found:

- **Specified risk for 3 sub-categories.**
- **Low risk for 18 sub-categories.**

The Timber Risk Score for Australia is 98 out of 100. The key legality risks identified in this report relate specifically to sandalwood produced in Western Australia, and concern legal rights to harvest, taxes and fees, and trade and transport.

For **Legal Rights to Harvest**, there is a risk that harvesting of sandalwood is conducted without a licence (Sub-category 1.4)

For **Taxes and Fees**, there is a risk that royalties are not paid for the harvest of sandalwood due to the prevalence of illegal harvest of sandalwood (1.5).

For **Trade and Transport**, there is a risk that material is illegally exported due to the prevalence of illegal harvest of sandalwood (1.19).

### Timber source types and risks

There are 8 timber source types found in Australia. Knowing the “source type” that timber originates from is useful because different source types can be subject to different applicable legislation and have attributes that affect the risk of non-compliance with the legislation. We have analysed the risks for all source types and found the risks differ between them.

<b>Natural (native) forest on leasehold land</b>	Natural forest on pastoral or Indigenous leasehold land, managed privately or by government (or quasi-Government) management agencies, often using contractor harvesting companies.
<b>Natural (native) “multiple use” forest</b>	Natural forest designated for “multiple use” on state land, managed by State and Territory Government agencies (which may be vested in commercial entities).
<b>Natural (native) forest in nature conservation reserves</b>	Natural forest in nature conservation reserves (including national parks), managed by State and Territory Government agencies.
<b>Natural (native) forestry on Other Crown land</b>	Natural forest on other crown land, managed by State and Territory Government agencies.

<b>Natural (native) forest on private land</b>	Natural forest on private land, including Indigenous land, and managed by private entities.
<b>Natural (native) sandalwood</b>	Natural (native) sandalwood on public (Crown) land, managed by State and Territory Government agencies (Forest Products Commission) through contracts, and on private land (including Indigenous).
<b>Industrial plantation on public leasehold land</b>	Industrial plantations of exotic and native species on public and leasehold land, managed by State and Territory Government agencies (management may be vested in commercial entities that may own forest resource but not land)
<b>Industrial plantation on private land</b>	Industrial plantations of exotic and native species on private land, managed by probate entities.

This matrix summarises the findings of the timber legality risk assessment set out in this report.

Legal Category	Sub-Category	Risk conclusion	
		Sandalwood	All other source types
Legal rights to harvest	1.1 Land tenure and management rights	Low	Low
	1.2 Concession licenses	Low	Low
	1.3 Management and harvesting planning	Low	Low
	1.4 Harvesting permits	Specified	Low
Taxes and fees	1.5 Payment of royalties and harvesting fees	Specified	Low
	1.6 Value added taxes and other sales taxes	Low	Low
	1.7 Income and profit taxes	Low	Low
Timber harvesting activities	1.8 Timber harvesting regulations	Low	Low
	1.9 Protected sites and species	Low	Low
	1.10 Environmental requirements	Low	Low
	1.11 Health and safety	Low	Low
	1.12 Legal employment	Low	Low
Third parties' rights	1.13 Customary rights	Low	Low
	1.14 Free prior and informed consent	Low	Low
	1.15 Indigenous/traditional peoples' rights	Low	Low
Trade and transport	1.16 Classification of species, quantities, qualities	Low	Low
	1.17 Trade and transport	Low	Low
	1.18 Offshore trading and transfer pricing	Low	Low
	1.19 Custom regulations	Specified	Low
	1.20 CITES	Low	Low
	1.21 Legislation requiring due diligence/due care procedures	Low	Low



## C. Overview of the forest sector in Australia

Various instruments and policies are in place to achieve 'harmonised' and consistent principles of forest use across Australia's jurisdictions (eight State/ Territory and the Commonwealth). These include the National Forest Policy Statement; an objective of which was to establish a consistent framework for forest use, including forest practice codes for each jurisdiction. Others are:

- Plantations for Australia: the 2020 Vision: to enhance regional wealth creation and international competitiveness through a sustainable increase in Australia's plantations;
- National Indigenous Forestry Strategy: developed with Indigenous communities and forest industry to encourage long-term Indigenous participation in forestry;
- Environment Protection and Biodiversity Conservation Act 1999 (Cth): the Commonwealth must assess and approve any actions likely to have a significant impact on matters of national environmental significance;
- Native Title Act 1993 (Cth): provides a mechanism, for claimants and non-claimants, to determine whether native title exists and what rights comprise any native title;
- Illegal Logging Prohibition Act 2012 (Cth): makes it an offence to import illegally logged timber into Australia and to process timber that has been illegally harvested in Australia.

Of Australia's total area of about 769 million hectares, forests are estimated to cover about 125 million hectares or 16 per cent of the total area. Native forests make up about 123 million hectares of this, including about 21 million hectares in nature conservation reserves and 39 million hectares of forests protected for biodiversity conservation on public and private land. In the context of States and Territories: Queensland has 41 per cent of Australia's forests (51 million hectares); New South Wales 18 per cent or 23 million hectares; Western Australia 15 per cent (19 million hectares) and the Northern Territory 12 percent or about 15 million hectares.

Native forests are dominated by species of Eucalyptus (74 per cent of the total area), Acacia (8 per cent) and Melaleuca (5 per cent), with a small amount of rainforest (3 per cent). In terms of tenure, multiple-use public forest makes up about 8 per cent of the 123 million hectares of native forest area; nature conservation reserves, 18 per cent; other Crown land, 7 per cent; private land (including Indigenous land), 27 per cent; leasehold forest, 40 per cent; and unresolved tenure: 1 per cent. About a third (33 per cent) of Australia's native forest is publicly managed. About 67 per cent of native forest in Australia is privately managed in private and leasehold tenures.

About half of Australia's 2 million hectares of industrial plantations comprise exotic softwood species (mostly Radiata Pine); with the remainder made up largely of native hardwood species (Eucalyptus species). In 2013–14, Victoria had the largest total area of plantations (433,100 hectares), with WA having 391,500 hectares and NSW about 390 000 hectares. WA supports the largest area of hardwood plantation and NSW the largest area of softwood plantation. In 2013–14, 83 per cent of Australia's total harvested wood (25 million m<sup>3</sup>) was derived from plantations. Forests owned or managed by Indigenous peoples make up about one third (41 million hectares or 33 per cent by area).

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Native forests potentially supplying commercial wood production cover about 37 million hectares, consisting of public native forests (7.5 million hectares), and leasehold and private native forests (29 million hectares). Tenure-wise, the main source of Australia's native timber and wood-based products is multiple-use public forest in NSW, Queensland, Tasmania, Victoria and WA.

Forest operations including harvesting are managed at State and Territory level; with varying arrangements and legislation depending on jurisdiction.

## D. Legality Risk Assessment

### LEGAL RIGHTS TO HARVEST

#### 1.1. Land tenure and management rights

*Legislation covering land tenure rights, including customary rights as well as management rights that includes the use of legal methods to obtain tenure rights and management rights. It also covers legal business registration and tax registration, including relevant legal required licenses. Risk may be encountered where land rights have not been issued according to prevailing regulations and where corruption has been involved in the process of issuing land tenure and management rights. The intent of this indicator is to ensure that any land tenure and management rights have been issued according to the legislation.*

##### 1.1.1. Applicable laws and regulations

Property-related legislation, and/or title-related legislation, for all States and Territories, includes the following:

- Lands Acquisition Act 1989 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/laa1989192/](http://www.austlii.edu.au/au/legis/cth/consol_act/laa1989192/)
- Northern Territory (Commonwealth Lands) Act 1980 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/num\\_act/ntla1980439/](http://www.austlii.edu.au/au/legis/cth/num_act/ntla1980439/)
- Land Titles Act 1925 (ACT). Available at:  
[http://www.austlii.edu.au/au/legis/act/consol\\_act/ltla1925127/](http://www.austlii.edu.au/au/legis/act/consol_act/ltla1925127/)

##### New South Wales (NSW):

- Real Property Act 1900 (NSW). Available at:  
[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/rpa1900178/](http://www5.austlii.edu.au/au/legis/nsw/consol_act/rpa1900178/)
- Conveyancing Act 1919 (NSW). Available at:  
[http://www5.austlii.edu.au/au/legis/nsw/consol\\_act/ca1919141/](http://www5.austlii.edu.au/au/legis/nsw/consol_act/ca1919141/)

##### Northern Territory (NT):

- Law of Property Act 2014 (NT). Available at:  
[http://www5.austlii.edu.au/au/legis/nt/consol\\_act/lopa198/](http://www5.austlii.edu.au/au/legis/nt/consol_act/lopa198/)
- Land Title Act 2015 (NT). Available at:  
[http://www.austlii.edu.au/au/legis/nt/consol\\_act/ltla109/](http://www.austlii.edu.au/au/legis/nt/consol_act/ltla109/)
- Validation (Native Title) Act 1999 (NT). Available at:  
[http://www5.austlii.edu.au/au/legis/nt/consol\\_act/vta244/](http://www5.austlii.edu.au/au/legis/nt/consol_act/vta244/)

##### Queensland (Qld):

- Property Law Act 1974 (Qld). Available at:  
[http://www5.austlii.edu.au/au/legis/qld/consol\\_act/pla1974179/](http://www5.austlii.edu.au/au/legis/qld/consol_act/pla1974179/)
- Land Title Act 1994 (Qld). Available at:  
[http://www.austlii.edu.au/au/legis/qld/consol\\_act/ltla1994109/](http://www.austlii.edu.au/au/legis/qld/consol_act/ltla1994109/)

### **South Australia (SA):**

Law of Property Act 1936 (SA). Available at:

[http://www5.austlii.edu.au/au/legis/sa/consol\\_act/lopa1936198/](http://www5.austlii.edu.au/au/legis/sa/consol_act/lopa1936198/)

Real Property (Registration of Titles) Act 1945 (SA). Available at:

[http://www5.austlii.edu.au/au/legis/sa/consol\\_act/rpota1945419/](http://www5.austlii.edu.au/au/legis/sa/consol_act/rpota1945419/)

### **Tasmania (TAS):**

Conveyancing and Law of Property Act 1884 (Tas). Available at:

[http://www5.austlii.edu.au/au/legis/tas/consol\\_act/calopa1884334/](http://www5.austlii.edu.au/au/legis/tas/consol_act/calopa1884334/)

Land Titles Act 1980 (Tas). Available at:

[http://www5.austlii.edu.au/au/legis/tas/consol\\_act/ltta1980127/](http://www5.austlii.edu.au/au/legis/tas/consol_act/ltta1980127/)

### **Victoria (Vic):**

- Land Act 1958 (Vic). Available at:  
[http://www5.austlii.edu.au/au/legis/vic/consol\\_act/la195848/](http://www5.austlii.edu.au/au/legis/vic/consol_act/la195848/)
- Transfer of Land Act 1958 (Vic). Available at:  
[http://www5.austlii.edu.au/au/legis/vic/consol\\_act/tola1958160/](http://www5.austlii.edu.au/au/legis/vic/consol_act/tola1958160/)
- Land Titles Validation Act (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/ltva1994224/](http://www.austlii.edu.au/au/legis/vic/consol_act/ltva1994224/)
- Sustainable Forests (Timber) Act 2004. Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/sfa2004289/](http://www.austlii.edu.au/au/legis/vic/consol_act/sfa2004289/)

### **Western Australia (WA):**

- Property Law Act 1969 (WA). Available at:  
[http://www5.austlii.edu.au/au/legis/wa/consol\\_act/pla1969179/](http://www5.austlii.edu.au/au/legis/wa/consol_act/pla1969179/)
- Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 .Available at:  
[http://www.austlii.edu.au/au/legis/wa/consol\\_act/tantopaa1995488/](http://www.austlii.edu.au/au/legis/wa/consol_act/tantopaa1995488/)

### **Native Title-related:**

- Native Title Act 1993 (amended 1989) (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/)

\* Other native title-related legislation at State and Territory level (refer 1.13 Customary rights)

#### **1.1.2. Legal authority**

- State and Territory Government departments with responsibility for land titles management
- State and Territory Government departments with responsibility for controlling access to forest resources, e.g. through lease arrangements with other Government (or quasi-Government) agencies or private companies or individuals

#### **1.1.3. Legally required documents or records**

- Documentation proving ownership (title) for privately owned (freehold) land, i.e. property certificate arising from a property title search

- Proof of leasehold arrangements for leased forest, including pastoral or Native Title leases or legislation at State level through which access to timber resources is granted (e.g. Sustainable Forests (Timber) Act 2004 (Vic)) (Refer also 1.2 Concession licences, 1.3 Management and harvesting planning, 1.4 Harvesting permits, and 1.5 Payment of royalties and harvesting fees)

#### 1.1.4. Sources of information

##### *Government sources*

- 1) Agriculture.gov.au. (2013). *Australia's State of the Forest Report*. [online]. Australian Government – Department of Agriculture and Water Resources. Available at: <http://www.agriculture.gov.au/abares/forestsaustralia/sofr/sofr-2013> [Accessed 19 September 2016]
- 2) Dtpli.vic.gov.au. (N.Y.). *Victoria's Register of Property and Land Titles*. [online]. Victoria State Government – Department of Environment, Land, Water and Planning. Available at: <http://www.dtpli.vic.gov.au/property-and-land-titles/land-titles> [Accessed 19 September 2016]

#### 1.1.5. Risk determination

##### *Overview of Legal Requirements*

Of Australia's industrial plantations, approximately 24 per cent by area are owned by Government (i.e. the trees are in public ownership [2011 data]). About 76 per cent by area of industrial plantations are in private ownership, with institutional investor ownership at about 30 per cent in 2011. (Note that with industrial plantations, ownership of the trees can be different to ownership of the land; and management arrangements are often complex.) About 82 million hectares or 67 per cent of Australia's native forests are privately managed on privately owned and leasehold lands, including Indigenous owned and managed lands, or Indigenous managed lands.

Land ownership in Australia is regulated at State/ Territory-level, with each jurisdiction having a central register on which land and land ownership information (title) is managed. Land titles – as well as land ownership information – can also include details of mortgages, covenants, caveats and easements. In Victoria, for instance, land titles are held in the online register, managed by the Register of Titles using (as in all other States and Territories) the Torrens system. This system was introduced in Australia to reduce the extent of fraud relating to property ownership as well as the need to rely on historical documents to prove property rights. States and Territories have developed electronic property documentation that is publicly available through online databases. On purchase of property, the title deed is passed from the original owner to the new owner by the process of conveyancing.

Some cases of fraud in property dealings have been reported in the Australian media in the past few years, although the illegal activity is reportedly associated with privately owned property rather than privately owned forest or timber resources.

Regarding Native Title and Aboriginal land rights: following the Australian High Court decision relating to Aboriginal land rights (*Mabo and Others v Queensland, No. 2, 1992*), and commencement in January 1994 of the Native Title Act 1993 (Cth), all States and Territories developed and ratified a native title or Aboriginal land rights act or similar. This formalised the

access by Australia's Indigenous peoples to traditional land and waters to which they have maintained a recognised relationship or 'connection'. Lands either owned and managed, or managed, by Indigenous peoples make up a large proportion of Australia's privately managed native forests (see above).

### *Description of Risk*

Australia has developed and maintains strong systems in relation to land and resource tenure and property ownership; and coupled with a recognised low level of corruption (a Corruption Perceptions Index 2014 of 80), the risk of illegally obtained access to forest resources is considered low.

### *Risk Conclusion*

Based on the above, the risk conclusion for this criterion is considered to be Low.

#### **1.1.6. Risk designation and specification**

Low risk

#### **1.1.7. Control measures and verifiers**

N/A

### **1.2. Concession licenses**

*Legislation regulating procedures for the 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. The intent of this indicator is to avoid risk related to situations where organizations are obtaining concession licenses via illegal means such as bribery, or where organizations or entities that are not eligible to hold such rights do so via illegal means. Risk in this indicator relates to situations where due process has not been followed and the concession rights can therefore be considered to be illegally issued. The level of corruption in the country or sub-national region is considered to play an important role and corruption indicators (e.g., Corruption Perception Index, CPI) should therefore be considered when evaluating risks.*

#### **1.2.1. Applicable laws and regulations**

- Native Title Act 1993 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/)

Applicable laws and regulations vary with State/ Territory jurisdiction, e.g. for Victoria.

- Lands Act 1958 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/la195848/](http://www.austlii.edu.au/au/legis/vic/consol_act/la195848/)
- Conservation, Forests and Lands Act 1987 (Vic). Available at:  
[http://www5.austlii.edu.au/au/legis/vic/consol\\_act/cfala1987320/](http://www5.austlii.edu.au/au/legis/vic/consol_act/cfala1987320/)
- Forests Act 1958 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/fa1958116/](http://www.austlii.edu.au/au/legis/vic/consol_act/fa1958116/)
- Forests (Licences and Permits) Regulations 2009 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_reg/fapr2009396/](http://www.austlii.edu.au/au/legis/vic/consol_reg/fapr2009396/)

- Planning and Environment Act 1987 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/paea1987254/](http://www.austlii.edu.au/au/legis/vic/consol_act/paea1987254/)

#### 1.2.2. Legal authority

- Legal authority (at State/ Territory level) varies with jurisdiction, e.g. Victorian Department of Environment, Land, Water and Planning (DELWP)

#### 1.2.3. Legally required documents or records

- **For public or Crown land:** leases, licences, authorities to harvest
- **For leasehold plantations:** e.g. 99 year plantation licence for State-owned plantations in Queensland

#### 1.2.4. Sources of information

##### *Government sources*

- 1) Agriculture.gov.au. (2013). *Australia's State of the Forests Report 2013 (SOFR 2013)* - Indicator 7, Legislation. [online]. Australian Government – Department of Agriculture and Water Resources, p. 350. Available at:  
<http://www.agriculture.gov.au/abares/forestsaustralia/sofr/sofr-2013> [Accessed 19 September 2016]
- 2) Depi.vic.gov.au. (2012). *Crown Land Leasing Guidelines - Leasing Legislation*. Melbourne: The Victorian Government – Department of Sustainability and Environment. Available at:  
[http://www.depi.vic.gov.au/\\_data/assets/pdf\\_file/0019/261703/6977-DSE-Crown-Land-Leasing-Guidelines\\_2012.pdf](http://www.depi.vic.gov.au/_data/assets/pdf_file/0019/261703/6977-DSE-Crown-Land-Leasing-Guidelines_2012.pdf)
- 3) Depi.vic.gov.au. (2010). *Leasing Policy for Crown Land in Victoria 2010*. Melbourne: The Victorian Government – Department of Sustainability and Environment. Available at:  
[http://www.depi.vic.gov.au/\\_data/assets/pdf\\_file/0013/261400/Crown-land-leasing-policy-Oct-2010.pdf](http://www.depi.vic.gov.au/_data/assets/pdf_file/0013/261400/Crown-land-leasing-policy-Oct-2010.pdf)
- 4) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

#### 1.2.5. Risk determination

##### *Overview of Legal Requirements*

Responsibility for land management in Australia, including forest management, lies mainly at State and Territory level; with the Australian Government having particular powers and responsibilities at the national level. Much of Australia's privately owned native forest and plantation forest is owned and/or managed by large organizations, with the public forest estate often managed and/or harvested by quasi-Government organizations such as Forestry Tasmania and the Forestry Corporation in New South Wales. All States and Territories have appropriate legislation allowing forest concession licences (or equivalent) to be issued, with the following example provided for the State of Victoria.

In Victoria, the Minister for Environment and Climate Change is responsible for administering the legislation governing the management of Victoria's Crown or public land (about a third of Victoria's area) including granting of leases under the Forests Act 1958, Crown Lands (Reserves) Act 1987 and the Lands Act 1958. Under section 51(2) of the Forests Act, the Minister may lease reserved forest for a term of more than 21 years but not more than 65 years, provided that certain conditions are met. As with other Crown land leases in the State, the Leasing Policy for Crown Land in Victoria specifies that, for the Minister to assess any proposal to grant a lease under this section, a business case must be prepared. A lease under section 51 is granted by the Minister "... subject to the covenants, terms and conditions that are determined by the Minister and the payment of royalties as determined by the Minister".

Under the Lands Act 1958, section 134(1A), the Minister may enter into an Agreement to Lease, which is a contractual agreement under which a Crown land manager, under set pre-conditions (e.g. obtaining all planning approvals or carrying out works) undertakes to grant a lease to a proposed tenant. If agreement pre-conditions are not met within the time frame, the Crown land manager is not under an obligation to enter into the lease and the agreement is at an end.

Other legislation that may impact on the granting of a lease in Victoria includes, inter alia:

- Planning and Environment Act 1987, under which Crown land managers and tenants must comply with relevant local planning schemes and obtain any required permits associated with the use of leased premises.
- Commonwealth Native Title Act 1993 (NTA), under which Traditional Owners (TOs) have rights and interests to their land derived from traditional laws and customs. The NTA establishes a mechanism for determining claims for rights and interests by TOs (e.g. access for traditional purposes such as ceremonies, gathering food, sacred sites). Proposed developments such as a lease of Crown land is defined as a 'future act' and must be assessed under the future act regime to determine what procedural rights apply. As part of the lease preparation process, DELWP arranges for a native title assessment to be carried out with the results communicated to all parties.

### *Description of Risk*

Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Scores from past years were 81 (2013) and 85 (2012).) Given the above, and the high level of scrutiny in Australia of forestry policy and operational matters, the level of risk associated with this indicator is considered to be low.

There is no available information which indicates a risk for this criterion.

### *Risk Conclusion*

Based on the above, the risk in relation to this criterion is considered to be Low.

### **1.2.6. Risk designation and specification**

Low risk

### **1.2.7. Control measures and verifiers**

N/A



### 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 as approval of these by competent authorities. Cases where required management planning documents are not in place or are not approved by competent authorities should be considered. Low quality of the management plan resulting in illegal activities may be a risk factor for this indicator as well.*

#### 1.3.1. Applicable laws and regulations

- Forestry Act 2012 (NSW). Available at:  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/fa2012139/](http://www.austlii.edu.au/au/legis/nsw/consol_act/fa2012139/)
- Land Act 1994 (Qld). Available at:  
[http://www5.austlii.edu.au/au/legis/qld/consol\\_act/la199448/](http://www5.austlii.edu.au/au/legis/qld/consol_act/la199448/)
- Forestry Act 1959 (Qld). Available at:  
[http://www.austlii.edu.au/au/legis/qld/consol\\_act/fa1959139/](http://www.austlii.edu.au/au/legis/qld/consol_act/fa1959139/)
- Forestry Regulation 2015 (Qld). Available at:  
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#### 1.3.2. Legal authority

- State or Territory Government agencies with overarching responsibility for management of natural resources including forestry activities such as harvesting
- Also involved and expected to comply with management and planning requirements are State/ Territory quasi-Government forestry management and harvesting agencies acting on behalf of the public
- Private timber companies operating on freehold or leasehold land
- Local Government agencies involved in planning activities and road management

### 1.3.3. Legally required documents or records

- Forest management plans, planning documents or equivalent, as described for each State/ Territory entity below

### 1.3.4. Sources of information

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### 1.3.5. Risk determination

#### *Overview of Legal Requirements*

The States and Territories in Australia have different pre-harvest requirements depending on the agency, tenure (public or private, freehold or leasehold, native forest or plantation) and enabling legislation. Examples of pre-harvest/ management requirements are as follows:

#### **New South Wales (NSW):**

In parts of NSW where Regional Forest Agreements are in place, timber harvesting operations are regulated by the terms of an IFOA or Integrated Forestry Operations Approval. This is granted under the Forestry Act 2012 and establishes strong, clear and consistent environmental regulation of native forest operations. The IFOA provides a set of rules encompassing the roles of the Office of Environment and Heritage and the Department of Primary Industries in monitoring and regulating sustainable harvesting operations. The Forest Practices Code Part 1 – Timber Harvesting in Forestry Corporation Plantations (2005) regulates harvesting operations throughout Forestry Corporation softwood and hardwood plantations in the State. It also provides information on best practice plantation management. The provisions of the Code are binding on all parties involved in the organisation, management and practice of obtaining timber products from Forestry Corporation plantations.

#### **South Australia (SA):**

Under the Forestry Property Act 2000, commercial forestry development is facilitated through Forest Property Agreements (for either vegetation or carbon rights); and a Commercial Forest Plantation Licence. The latter is not mandatory and must be in conformance with State and local Government planning requirements; and serves to authorise operations with respect to a commercial forest plantation. A Forest Property (Vegetation) Agreement transfers ownership of forest vegetation from the owner of the land to another person, and may describe specific actions in relation to establishment, management and harvesting of trees.

#### **Tasmania (TA):**

The forest practices system is administered by the Forest Practices Authority (FPA) under the Forest Practices Act 1985. Most forest activities (by both Forestry Tasmania (FT) and private plantation/ Private Timber Reserve (PTR) owners) require a Forest Practices Plan (FPP) prepared by a Forest Practices Officer in accordance with the Forest Practices Code. Some exemptions are described in the Forest Practices Regulations 2007. For private land that is not registered as a PTR, local Government planning laws may apply and a Development Permit may be needed to comply. FT is the Government enterprise responsible under State legislation for sustainable management of about 800,000 hectares of public production forest in the

Permanent Timber Production Zone; and undertaking forest operations for the production and sale of forest products from these forests.

#### **Victoria (Vic):**

The Department of Environment, Land, Water and Planning (DELWP) and VicForests are responsible for managing native forest timber on public land. DELWP is the 'environmental regulator' for commercial timber assets in Victoria's state forests; including regulation of harvesting operations by VicForests as well as operators given access to timber resources through forest produce licences. DELWP's roles include zoning for appropriate land use such as timber harvesting; and ensuring that commercial timber harvesting activities conform to the regulatory framework including legislation, regulations and guidelines. The areas available for harvest by VicForests are identified in an Allocation Order (with publicly available map) created under the Sustainable Forests (Timber) Act 2004 (Vic). From the Allocation Order, VicForests prepares Timber Release Plans to identify planned harvesting operations. These occur in coupes with each coupe given a unique number. For smaller volumes of timber, forest produce licences can be issued under the Forests Act 1958. Coupes that may be harvested are recorded in a Wood Utilisation Plan (WUP) – a three-year schedule of areas to be harvested. The WUP has associated maps and is available on the DELWP website.

For harvesting plantation timber on private land in Victoria, including leasehold or licenced land: the Victorian Planning Provisions (VPP) apply statewide, having been developed under the Planning and Environment Act 1987 (Vic). The VPP is used to construct local planning schemes which set out policies and requirements for the use, development and protection of land.

#### *Description of Risk*

State-level jurisdictions in Australia – through a combination of legislation, guidelines and codes – provide a strong framework for forest planning, management, inventory, harvesting, monitoring and auditing. In most cases the frameworks are mandatory and in all cases are bolstered by the requirement to comply with Commonwealth, State and local Government legislative and other provisions.

In 2012, CSIRO Sustainable Agriculture scientists – under the requirements of the Export Control (Unprocessed Wood) Regulations 1986 (Cth) – released a detailed critique of each of the plantation forest codes in use at that time. While some reservations were expressed about the codes then in use in Queensland (and to a lesser extent, Northern Territory), the former state in mid 2015 released a new Code (see above). For the remainder of the States and Territories the feedback was either very positive or largely so: the Codes were considered effective in meeting the Forest Practices Related to Wood Production in Plantations: National Principles.

There is no available information that indicates a risk for this criterion.

#### *Risk Conclusion*

The proposed risk category for this criterion is Low.

#### **1.3.6. Risk designation and specification**

Low risk

#### **1.3.7. Control measures and verifiers**

N/A

## 1.4. Harvesting permits

*Legislation regulating the issuing of harvesting permits, licenses or other legal document required for specific harvesting operations. It includes the use of legal methods to obtain the permit. Corruption is a well-known issue in connection with the issuing of harvesting permits. Risk relates to situations where required harvesting is carried out without valid permits or where these are obtained via illegal means such as bribery. In some areas, bribery may be commonly used to obtain harvesting permits for areas and species that cannot be harvested legally (e.g., protected areas, areas that do not fulfil requirements of minimum age or diameter, tree species that cannot be harvested, etc.). In cases where harvesting permits classify species and qualities to estimate fees, corruption and bribery can be used to classify products that will result in a lower fee. The level of corruption in a country or sub-national region is considered to play an important role and corruption indicators should therefore be considered when evaluating risks. In cases of illegal logging, harvesting permits from sites other than the actual harvesting site may be provided as a false proof of legality with the harvested material.*

### 1.4.1. Applicable laws and regulations

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#### 1.4.2. Legal authority

- This varies with jurisdiction; but is generally the State or Territory agency responsible for oversight of forestry activity; working with local Government. The Legal Authority varies depending on the tenure of the land from which harvesting is occurring.

#### 1.4.3. Legally required documents or records

Legally required documents relating to harvesting permits take various forms depending on the State or Territory jurisdiction (see descriptions below):

- Sales permit, (load) docket, tax invoices, commercial supply agreement (Queensland)
- Integrated Forestry Operations Approval (IFOA) on public land (EPA)
- Private Native Forestry Property Vegetation Plan (PNF PVP) on private land (Forestry Corporation) (NSW)
- Commercial Forest Plantation Licence; Approval/ exemption from Native Vegetation Council (NVC) (SA)
- Allocation Order; Timber Release Plan; Wood Utilisation Plan (Vic); Forest Practices Plan (Tas)
- Sandalwood licence; Commercial Purposes (Sandalwood) Licence; Commercial Producer's Licence; Timber Harvest Authorization; Clearing permit; (WA)

#### 1.4.4. Sources of information

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#### 1.4.5. Risk determination

##### *Overview of Legal Requirements*

Legislation regulating the release of harvesting permits, licences etc. takes various forms depending on the State or Territory jurisdiction; with some examples following:

##### **South Australia (SA):**

Privately owned plantation owners may have the right to harvest under a Commercial Forest Plantation Licence issued under the Forest Property Act 2000. For harvest of native vegetation, either clearance/ harvest approval must be obtained from the Native Vegetation Council (NVC) under the Native Vegetation Act 1991; or an exemption obtained under a regrowth regulation. (In the latter process, marking or tagging is something used.) For the NVC option, the harvester obtains approval documentation from the NVC.

For harvesting plantation timber on private land in Victoria, including leasehold or licenced land: the Victorian Planning Provisions (VPP) apply statewide, having been developed under the Planning and Environment Act 1987 (Vic). The VPP is used to construct local planning schemes, which set out policies and requirements for the use, development and protection of land.

##### **Tasmania (TA):**

Authorised Forest Practices Officers (FPOs) prepare the Forest Practices Plans (FPPs) and supervise their implementation. They submit certificates to the Forest Practices Authority (FPA) with details of compliance of forest practices against the FPP at the end of each stage of the operation. Relevant legislation includes the Forest Practices Act 1985 and Forest Practices Regulations 2007.

##### **Western Australia (WA):**

Harvest of sandalwood (*Santalum spicatum*)



The harvest of sandalwood is conducted under the Sandalwood Act (1929) and the Wildlife Conservation Act (1950) (WCA). The Biodiversity Conservation Act (2016) repeals those Acts, but until The Biodiversity Conservation Regulations (currently being worked on) are in place, the provisions of the Biodiversity Conservation Act does not replace the previously existing legislation.

The Sandalwood Act states that to harvest wild or native stands of *S. spicatum* from either Crown land or private property, a person must hold a licence under the Sandalwood Act. Under the WCA, anyone wishing to sell flora native to WA (e.g. Sandalwood seed or wood, including from planted *S. spicatum*) must have a commercial licence. The WCA also stipulates that a Commercial Producers/ Nurseryman's licence from the WA Department of Environment and Conservation (DEC) is required to sell material harvested from private property; while a Commercial Purposes Licence is required to sell material from Crown land tenures. Two DEC licences may therefore be required from DEC: one under the Sandalwood Act to harvest the wood, and one under the WCA to sell.

Under the Biodiversity Conservation Act a person must not take sandalwood on Crown or private land unless the person (a) is engaged in clearing that is allowed under the Environmental Protection Act 1986 section 51C (permit must be held unless not required, and environmentally sensitive areas cannot be cleared); or (b) otherwise has lawful authority to take it. Lawful authority for harvest is gained through a licence granted under the Act or a licence that was in force prior to the commencement of the Act.

Licensing for the harvest of sandalwood is managed by the Western Australia Department of Biodiversity, Conservation and Attractions (DBCA) under the Biodiversity Conservation Act 2016. The Western Australia Forest Products Commission (FPC) is responsible for the commercial harvesting, regeneration, marketing and sale of wild sandalwood from Crown land under a contract system through a licence issued by DBCA, while DBCA directly regulates and licenses sandalwood harvest from freehold/private land.

Harvesting is limited by the Order In Council Sandalwood (Limitation of Removal of Sandalwood) Order 2015 (WA), on advice from the Minister for the Environment and approved by the Governor in Executive Council. The Order took effect on 1 July 2016 and set the annual quota at 2,500 tonnes – 1,250 tonnes of green wood and 1,250 tonnes of dead wood – until 31 December 2026. It requires submission of an application to DBCA including the proposed harvest volume. Once the application is received, DBCA officer carries out an inspection to confirm the resource and other details of the application. Following the Minister for the Environment's approval of private property quotas, licences are issued.

These requirements do not apply to planted trees in tree farms or plantations on private property.

Licences are also required for supplying, dealing, processing, and exporting sandalwood. A Commercial Producers/ Nurseryman's licence from the WA Department of Environment and Conservation (DEC) is required to sell material harvested from private property; while a Commercial Purposes Licence is required to sell material from Crown land tenures. Two DEC licences may therefore be required from DEC: one under the Sandalwood Act to harvest the wood, and one under the WCA to sell.

Tree farm-grown material is not restricted in the same manner as wild Sandalwood and a licence under the WCA therefore only need be applied for to sell wood or nuts that are going to

be harvested, with no quota restrictions to the volume of tree farm-grown material that can be harvested.

### *Description of Risk*

While the systems differ, for all resources except wild or rangeland (non-plantation) Sandalwood in Western Australia, the systems provide a more-or-less robust system for controlling access to timber resources in native forest and/or plantations. There is no available information that indicates a risk for this criterion.

However, for harvest of native Sandalwood in Western Australia (*Santalum spicatum*), there is a known issue with illegal harvesting and export. Some estimates (pers. comms.) suggest that up to one third of the total export volume of about 1600 tonnes is illegally harvested. As a proportion of the total volume of timber exported from WA (approx. 1.5 million tonnes), this constitutes a small amount; however, as a proportion of this highly valued species, it is substantial.

The Western Australian Government – namely the Forest Products Commission with the Department of Biodiversity, Conservation and Attractions – is currently working to address the risk associated with harvest and transport of wild or native Australian Sandalwood, *Santalum spicatum*, including the following actions:

- Several inquiries into the Sandalwood Industry (with the latest report dated May 2014) which made various recommendations towards improving the legality associated with the Sandalwood industry;
- Passing of the Biodiversity Conservation Act 2016, which repealed the outdated Sandalwood Act (1929) and the Wildlife Conservation Act (1950), and improved WA's ability to protect native species and biodiversity assets. An important feature of the new Act is the increase in penalties for illegal harvesting of wild Sandalwood (i.e. more proportionate to the value of the timber and a more effective deterrent); with the maximum penalties for illegally harvesting wild Sandalwood rising from \$200 to \$200,000 for individuals and to \$1 million for corporations. The Biodiversity Conservation Regulations (to fully implement the Act) are being prepared.
- Review of the Sandalwood Order 1996 to reduce harvesting of sandalwood to an annual quota of 2,500 tonnes 1,250 tonnes of green wood and 1,250 tonnes of dead wood, from 1 July 2016 to 31 December 2026;
- Cooperation with the Commonwealth Department of Agriculture, who have regulatory responsibility under the Illegal Logging Prohibition Act 2012 (Commonwealth), to implement a Chain of Custody system which will assist to demonstrate legality and compliance with relevant legislation. The legality verification framework will be designed to ensure that all legal wood will be traceable, giving confidence to buyers as to the source.
- Review of the structure of the WA Sandalwood industry, with a competitive tender process to select entities for processing and marketing of wild Western Australian Sandalwood as well as the direct purchase of oil producing wood.
- Provided additional funding to Department of Biodiversity, Conservation and Attractions to improve its enforcement capability. Increased funding is also derived from the proceeds of successful prosecutions.

- Implementation of a Sandalwood regeneration program, the objective of which is to establish at least 10 tonnes of Sandalwood seed (about 3.5 million seeds) annually, with the program fully funded by proceeds from the harvest of wild WA Sandalwood;

#### *Risk Conclusion*

The risk category for this indicator, for wild or native Western Australian Sandalwood, is considered Specified; and for all other species in the whole country the risk is considered Low.

#### **1.4.6. Risk designation and specification**

- Native/ wild WA Sandalwood: Specified Risk
- Other species: Low Risk

#### **1.4.7. Control measures and verifiers**

Harvest of native or wild Western Australian Sandalwood:

- Obtain copies of harvest permits and other documentation associated with wild sandalwood (e.g. Sandalwood licence, Commercial Producer's Licence, Commercial Purposes Licence - depending on tenure of harvest area) and confirm their validity with authorities.
- Independent field inspection to confirm that:
  - a) Harvesting takes place within limits given in the harvesting or extraction permit; and
  - b) Information regarding area, species, volumes and other details given in the harvesting permit is correct and within limits prescribed in the legislation (e.g. Order In Council Sandalwood (Limitation of Removal of Sandalwood) Order 2015 (WA))

## TAXES AND FEES

### 1.5 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. It 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 of officials in charge of controlling the classification.*

#### 1.5.1. Applicable laws and regulations

- Forests Act 1958 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/fa1958116/](http://www.austlii.edu.au/au/legis/vic/consol_act/fa1958116/)
- Forests (Licences and Permits) Regulations 2009 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_reg/fapr2009396/](http://www.austlii.edu.au/au/legis/vic/consol_reg/fapr2009396/)
- Sustainable Forests (Timber) Act 2004 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/sfa2004289/](http://www.austlii.edu.au/au/legis/vic/consol_act/sfa2004289/)
- Sandalwood Act 1929 (WA). Available at:  
[http://www5.austlii.edu.au/au/legis/wa/consol\\_act/sa1929119/Biodiversity](http://www5.austlii.edu.au/au/legis/wa/consol_act/sa1929119/Biodiversity)
- Conservation Act 2016 (WA). Available at:  
[https://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_13811\\_homepage.html](https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_13811_homepage.html)

#### 1.5.2. Legal authority

- State/ Territory Treasury Departments (e.g. for Victoria, Department of Treasury and Finance)

#### 1.5.3. Legally required documents or records

- Documentation as evidence of payment of royalties/ stumpage fees to State/ Territory Government Treasury Department
- Log inspection/ audit reports

#### 1.5.4. Sources of information

##### *Government sources*

- 1) Taxreview.treasury.gov.au. (N.Y.). Final Report of the Australia's Future Tax System Review. [online]. Australia's future tax system. Available at:  
<http://taxreview.treasury.gov.au/> [Accessed 19 September 2016]
- 2) Taxreview.treasury.gov.au. (N.Y.). Architecture of Australia's Tax and Transfer System – State Taxes. [online]. Available at:  
[http://taxreview.treasury.gov.au/content/Paper.aspx?doc=html/publications/papers/report/section\\_2-05.htm](http://taxreview.treasury.gov.au/content/Paper.aspx?doc=html/publications/papers/report/section_2-05.htm) [Accessed 19 September 2016]

- 3) VicForests.com.au. (2012). Instruction: Code of Procedure for Sawlog Buyers (2012). VicForests. Available at: <http://www.vicforests.com.au/static/uploads/files/vicforests-instructions-code-of-procedure-for-sawlog-buyers-v1-1-wfavvtiushft.pdf>
- 4) VicForests.com.au. (2012). Instruction: Code of Procedure for Sawlog Buyers (2012). VicForests. Available at: <http://www.vicforests.com.au/static/uploads/files/vicforests-instructions-code-of-procedure-log-buyer-log-specifications-v2-4-wfrj.pdf>
- 5) Fpc.wa.gov.au. (N.Y.). Illegal Sandalwood Harvesting (WA). [online]. Forest Products Commission – Western Australia. Available at: <http://www.fpc.wa.gov.au/sandalwood/illegal-harvesting>
- 6) Fpc.wa.gov.au. (N.Y.). *New sandalwood contracts open for tender*. [online]. Forest Products Commission – Western Australia. Available at: <http://www.fpc.wa.gov.au/new-sandalwood-contracts-open-tender>
- 7) Tenders WA. (N.Y.). *View Contract Details - RFT2/2016 provision of Sandalwood Harvesting Services*. [online]. Tenders WA. Available at: <https://www.tenders.wa.gov.au/watenders/contract/view.do?CSRFNONCE=443FADB4FFF57DBB087AFA59D3799D9F&tenderId=35079>

#### *Non-Government sources*

- 1) Transparency.org. (2014). Corruption Perceptions Index 2014: Results. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

### **1.5.5. Risk determination**

#### *Overview of Legal Requirements*

In Australia, a variety of resource royalties and payment arrangements are used by the States and Territories to price the use of natural resources. The arrangements relating to charges for non-mineral natural assets include a forestry royalty for trees accessed from public land (State forests). Forest royalties are also known as stumpage fees.

Royalties are collected by State and Territory Treasury Departments from the quasi-Government forestry agencies (such as VicForests, ForestrySA, Forestry Tasmania etc.) under forestry and related legislation, as payment following harvest of timber on public land. For example, in Victoria, under the Forests Act 1958, forest produce is recognised as being the property of the Crown; with forest produce only passing from the Crown to another party in accordance with the Act. In Western Australia, sandalwood is harvested on Crown land through contracts with the Western Australian Forest Products Commission. The contracts are granted through public tender and set the stumpage price.

The Secretary of the relevant Government Department is recognised as having exclusive control and management of the "... *granting issuing and enforcing of all leases licences permits or authorities under this Act...*" and – subject to the Sustainable Forests (Timber) Act 2004 – "...*the collection and recovery of all rents fees royalties charges and revenue under this Act whether in respect of leases licences permits or authorities granted before or after the commencement of this Act...*".

Across Australian State and Territory jurisdictions, well-annotated procedures exist for verification of species, qualities and quantities of saw logs and other forest produce. VicForests,

for instance, has a series of instruction manuals providing guidance on log specifications. Many companies are now using sophisticated measurement technologies for forest harvester heads that not only cut to measure (i.e. provide log dimensions as ordered by the purchaser), but allow the day's harvest data (volume cut) to be emailed from the harvest coupe to the production planner. Log inspections are an important and systematic component of internal and external forest auditing, both at the harvesting site and in the mill yard.

### *Description of Risk*

Corruption associated with stumpage and payment of royalties is not considered a major issue in Australia. The country has a very good Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Scores from past years were 81 (2013) and 85 (2012).) In addition, Australia has scored consistently highly against the World Bank's Worldwide Governance Indicators, in general scoring above the 80th percentile rank for the past five years for all six indicators.

In many plantation situations in Australia, commercial species are either *Pinus radiata*, or species of Eucalyptus (e.g. *E. nitens* [Shining Gum] or *E. globulus* [Blue Gum]); and in a smaller number of situations, plantations may consist of Acacia or other species. Australia's commercially harvested species are of fairly low diversity and this reduces the risk of voluntary or involuntary errors in determining stumpage arrangements. Illegally-harvested sandalwood in Western Australia (See sub-category 1.4) is harvested outside the tender/contract process, and therefore royalties are not paid.

### *Risk Conclusion*

Considering the above, the risk associated with this indicator is considered Low, except for sandalwood harvested in Western Australia.

### **1.5.6. Risk designation and specification**

- Native WA Sandalwood (*Santalum spicatum*): Specified Risk
- Other situations: Low Risk

### **1.5.7. Control measures and verifiers**

- Harvest of native or wild Western Australian Sandalwood: refer Control Measures and Verifiers for 1.4 Harvesting permits.

## **1.6. Value added taxes and other sales taxes**

*Legislation covering different types of sales taxes, which apply to the material being sold, including selling material as growing forest (standing stock sales). Risk relates to situations where products are sold without legal sales documents or far below market price resulting in illegal avoidance of taxes.*

### **1.6.1. Applicable laws and regulations**

- Income Tax Assessment Act (ITAA) 1997 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/)
- Tax Laws Amendment (2007 Measures No. 3) Act 2007 (Cth). Available at: <https://www.legislation.gov.au/Details/C2007A00079/Download>

### 1.6.2. Legal authority

- Australian Taxation Office

### 1.6.3. Legally required documents or records

- Company tax returns to Australian Taxation Office (annual/ quarterly)
- Evidence of payment of Goods and Services Tax (GST) on normal goods and services purchased or consumed

### 1.6.4. Sources of information

#### *Government sources*

- 1) Agriculture.gov.au. (N.Y.). *Taxation incentives to establish forests*. [online]. Australian Government – Department of Agriculture and Water Resources. Available at: <http://www.agriculture.gov.au/forestry/australias-forests/plantation-farm-forestry/taxation> [Accessed 19 September 2016]
- 2) Border.gov.au. (N.Y.). *Import by post or mail*. [online]. Australian Government – Department of Immigration and Border Protection. Available at: <https://www.border.gov.au/Busi/Impo/Impo> [Accessed 19 September 2016]

#### *Non-Government sources*

- 1) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

### 1.6.5. Risk determination

#### *Overview of Legal Requirements*

As with other commercial entities, forestry companies in Australia pay income tax following the requirements of the Income Tax Assessment Act (ITAA) 1997; and as of 1 July 2000 were required to pay value added tax of 10 percent on most goods and services purchased or consumed.

Revised taxation arrangements for investments in forestry MISs came into effect on 1 July 2007. One of the objectives of the Tax Laws Amendment (2007 Measures No. 3) Act 2007 was to encourage the expansion of commercial plantation forestry in Australia through the establishment and management of new plantations for harvest. The arrangements encourage further expansion of the plantation estate and support investment in long-rotation plantations by allowing trading of MIS investments. This is achieved by permitting investors to deduct amounts paid under a forestry scheme in the year of payment, if certain conditions are met.

Companies in Australia pass the GST charges on to their customers, and themselves pay GST on their business purchases. Companies file a return showing the amount they collected in sales taxes; and receive a credit for the amount paid on their own business purchases.

#### *Description of Risk*

As described in 1.5 Payment of royalties and harvesting fees, and 1.18 Offshore trading and transfer pricing, the Australian taxation system is robust. Australia has substantially



implemented the internationally agreed tax standard developed by the Organisation for Economic Cooperation and Development (OECD) and supported by the UN and G20. Recent Australian Taxation Office initiatives have seen a strong focus on illegal activity including offshore trading and transfer pricing, resulting in many prosecutions and recovery of large amounts of previously lost Government revenue.

Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Transparency International; Scores from past years were 81 (2013) and 85 (2012).)

### *Risk Conclusion*

Given the above, the risk determination for this criterion is considered to be Low.

### **1.6.6. Risk designation and specification**

Low risk

### **1.6.7. Control measures and verifiers**

N/A

## **1.7. Income and profit taxes**

*Legislation covering income and profit taxes related to the profit derived from sale of forest products and harvesting activities. This category is also related to income from the sale of timber and does not include other taxes generally applicable for companies or related to salary payments.*

### **1.7.1. Applicable laws and regulations**

- Income Act Assessment Act 1936 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1936240/](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1936240/)
- Taxation Administration Act 1953 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/taa1953269/](http://www.austlii.edu.au/au/legis/cth/consol_act/taa1953269/)
- Income Tax (Transitional Provisions) Act 1997 (Cth). Available at: [http://www5.austlii.edu.au/au/legis/cth/consol\\_act/itpa1997402/](http://www5.austlii.edu.au/au/legis/cth/consol_act/itpa1997402/)
- Inspector-General of Taxation Act 2003 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/iota2003301/](http://www.austlii.edu.au/au/legis/cth/consol_act/iota2003301/)

### **1.7.2. Legal authority**

- Australian Taxation Office
- Department of Agriculture and Water Resources (regarding tax treatment for plantations and farm forestry; refer 1.6 Value added taxes and other sales taxes)

### **1.7.3. Legally required documents or records**

- Company tax returns to Australian Taxation Office (annual/ quarterly)
- Records of assessable income and deductions

### **1.7.4. Sources of information**



### *Government sources*

- 1) Agriculture.gov.au. (N.Y.). *Tax Treatment of Plantations and Farm Forestry*. [online]. Australian Government – Department of Agriculture and Water Resources. Available at: <http://www.agriculture.gov.au/forestry/policies/rfa/publications/deferred/wood-paper/tax> [Accessed 19 September 2016]
- 2) Ato.gov.au. (N.Y.). *Income and deductions for business*. [online]. Australian Government – Australian Taxation Office. Available at: <https://www.ato.gov.au/Business/Income-and-deductions-for-business/> [Accessed 19 September 2016].
- 3) Ato.gov.au. (N.Y.). *Capital gains*. [online]. Australian Government – Australian Taxation Office. Available at: <https://www.ato.gov.au/business/income-and-deductions-for-business/capital-gains/> [Accessed 19 September]
- 4) Ato.gov.au. (N.Y.). *Addressing non-compliance*. [online]. Australian Government – Australian Taxation Office. Available at: <https://www.ato.gov.au/About-ATO/Access,-accountability-and-reporting/Informing-the-community/Our-effectiveness/Addressing-non-compliance/> [Accessed 19 September]
- 5) Ato.gov.au. (N.Y.). *Our scrutineers*. [online]. Australian Government – Australian Taxation Office. Available at: <https://www.ato.gov.au/About-ATO/Access,-accountability-and-reporting/Our-scrutineers/> [Accessed 19 September]

### *Non-Government sources*

- 1) Aic.gov.au. (1993). *Thinking about Tax Avoidance*. Canberra: Australian Institute of Criminology. Available at: [http://aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi043.pdf](http://aic.gov.au/media_library/publications/tandi_pdf/tandi043.pdf)
- 2) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

### **1.7.5. Risk determination**

#### *Overview of Legal Requirements*

As with other commercial entities and individuals in Australia, income derived from earnings is 'assessable income' subject to tax and must be declared for taxation purposes. Deductions can be claimed for some costs incurred in running a business; however there are exceptions. The ATO's rules for business income and deductions vary depending on business structure, whether the business holds or sells trading stock, and the nature of the business' income and expenses.

If businesses dispose of a business asset (e.g. business premises, rights or licences) – by way of sale, gift or transfer – a capital gain or loss may be made; and any net capital gain must be declared in the income tax statement.

#### *Description of Risk*

Australia has substantially implemented the internationally agreed tax standard developed by the Organisation for Economic Cooperation and Development (OECD) and supported by the UN and G20; and has a robust taxation system. Nonetheless, tax avoidance and tax evasion are

recognised issues which even 30 years ago were costing Australian revenue an estimated \$3 billion annually.

Recent Australian Taxation Office initiatives have seen a strong focus on illegal activity including offshore trading and transfer pricing, resulting in many prosecutions and recovery of large amounts of previously lost Government revenue. For example, Project Eclipse identified income and assets hidden offshore, amounting to tens of millions of dollars in suspected tax avoidance (refer 1.18 Offshore trading and transfer pricing).

As well as such initiatives, the ATO works cooperatively with 'scrutineers' including the Auditor-General, Commonwealth Ombudsman, Inspector-General of Taxation, Australian Information Commissioner, Freedom of Information Commissioner and Privacy Commissioner throughout their reviews, audits and investigations focusing on issues such as taxation compliance.

There is no available evidence to suggest that tax fraud or evasion is associated specifically with Australia's timber industry companies. (In 2013, following the collapse of Australia's plantation Managed Investment Schemes (MIS), allegations of rorting, fraud and mismanagement were made against MIS companies; however the allegations relate to issues other than tax evasion. Investors were attracted to the MIS in part because of attractive taxation arrangements put in place by the Commonwealth Government.)

Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Transparency International; Scores from past years were 81 (2013) and 85 (2012).)

#### *Risk Conclusion*

Given the above, the conclusion in relation to this indicator is Low Risk.

#### **1.7.6. Risk designation and specification**

Low risk

#### **1.7.7. Control measures and verifiers**

N/A

## TIMBER HARVESTING ACTIVITIES

### 1.8. 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 and seasonal limitations etc. Typically this includes regulations on the size of felling areas, minimum age and/or diameter for felling activities and elements that shall be preserved during felling etc. Establishment of skidding or hauling trails, road construction, drainage systems and 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.*

#### 1.8.1. Applicable laws and regulations

- Environmental Protection Act 1997 (ACT). Available at: [http://www.austlii.edu.au/au/legis/act/consol\\_act/epa1997284/](http://www.austlii.edu.au/au/legis/act/consol_act/epa1997284/)
- Conservation, Forests and Lands Act 1987 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/cfala1987320/](http://www.austlii.edu.au/au/legis/vic/consol_act/cfala1987320/)
- Sustainable Forest (Timber) Act 2004 (Vic). Available at: [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/sfa2004289/](http://www5.austlii.edu.au/au/legis/vic/consol_act/sfa2004289/)
- Planning Act 2009 (NT). Available at: [http://www.austlii.edu.au/au/legis/nt/consol\\_act/pa100/](http://www.austlii.edu.au/au/legis/nt/consol_act/pa100/)
- Soil Conservation and Land Utilisation Act 1980 (NT). Available at: [http://www.austlii.edu.au/au/legis/nt/consol\\_act/scalua396/](http://www.austlii.edu.au/au/legis/nt/consol_act/scalua396/)
- Flora and Fauna Guarantee Act 1988 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_reg/fafgr2011314/](http://www.austlii.edu.au/au/legis/vic/consol_reg/fafgr2011314/)
- Road Management Act 2004 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/rma2004138/](http://www.austlii.edu.au/au/legis/vic/consol_act/rma2004138/)
- Roads Act 1993 (NSW). Available at: [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/ra199373/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ra199373/)
- Road Traffic Act 1961 (SA). Available at: [http://www.austlii.edu.au/au/legis/sa/consol\\_act/rta1961111/](http://www.austlii.edu.au/au/legis/sa/consol_act/rta1961111/)
- Export Control (Unprocessed Wood) Regulations 1986 (Cth). Available at: <https://www.legislation.gov.au/Details/F2004C00229>

#### 1.8.2. Legal authority

- Various depending on State/ Territory (State or Territory agency overseeing harvesting operations)

#### 1.8.3. Legally required documents or records

Outcomes of operational audits carried out by forestry companies or external agencies, e.g. certifying bodies, local Government Code audits (in particular, environmental audits)

**Codes of forest practice (or equivalent) are as follows:**

**ACT:**

Code of Forest Practice

**New South Wales:**

Private Native Forest Code of Practice (various dates; region specific), Forest Practices Code – Part 1 Timber Harvesting in Forest NSW Plantations 2005

**Northern Territory:**

Northern Territory Codes of Practice for Forestry Plantations 2004

**Queensland:**

Timber Plantation Operations Code of Practice for Queensland 2015

**South Australia:**

The Guidelines for Plantation Forestry in South Australia 2009

**Tasmania:**

Forest Practices Code 2000

**Victoria:**

The Code of Practice for Timber Production 2014 (and related Management Standards and Procedures)

**Western Australia:**

Code of Practice for Timber Plantations in Western Australia 2014,

Contractors' Timber Harvesting Manual

Other relevant legislation, regulations, management plans etc. (refer Overview of Legal Requirements)

**1.8.4. Sources of Information***Government sources*

- 1) Epa.nsw.gov.au. (N.Y.). *Private Native Forestry Code of Practice*. [online]. The NSW Environment Protection Authority. Available at: <http://www.epa.nsw.gov.au/pnf/CodeofPractice.htm> [Accessed 19 September 2016]
- 2) planningplantations.com.au. (N.Y.). *Northern Territory Codes of Practice for Forestry Plantations*. Planning Plantations. Available at: <http://www.planningplantations.com.au/assets/pdfs/management/regulation/nt/KeepDraftNTCodesofPracticeforForestryPlantations.pdf>
- 3) landresources.nt.gov.au. (N.Y.). *Land clearing guidelines and management plans*. [online]. Northern Territory Government – Department of Land Resource Management. Available at: <https://landresources.nt.gov.au/rangelands/guidelines-and-management-plans/land-clearing-guidelines-and-management-plans> [Accessed 19 September 2016]
- 4) qld.gov.au. (N.Y.). *Self-assessable vegetation clearing codes*. [online]. Queensland Government. Available at: <https://www.qld.gov.au/environment/land/vegetation/codes/> [Accessed 19 September 2016]

- 5) business.qld.gov.au. (N.Y.). *Responsible management of Queensland's native forests*. [online]. Queensland Government (Business and industry portal). Available at: <https://www.business.qld.gov.au/industry/forests-and-wood/native-forests> [Accessed 19 September 2016]
- 6) pir.sa.gov.au. (2009). *Guidelines for Plantation Forestry in South Australia 2009*. Word document. The Government of South Australia - Primary Industries and Regions SA (PIRSA). Available at: [http://pir.sa.gov.au/\\_data/assets/word\\_doc/0005/234275/Guidelines\\_for\\_Plantation\\_Forestry\\_in\\_south\\_australia\\_2009.doc](http://pir.sa.gov.au/_data/assets/word_doc/0005/234275/Guidelines_for_Plantation_Forestry_in_south_australia_2009.doc)
- 7) depvi.vic.gov.au. (2014). *Code of Practice for Timber Production 2014*. State Government – Department of Environment and Primary Industries. [http://www.depi.vic.gov.au/\\_data/assets/pdf\\_file/0020/280127/Code-of-Practice-for-Timber-Production-2014.pdf](http://www.depi.vic.gov.au/_data/assets/pdf_file/0020/280127/Code-of-Practice-for-Timber-Production-2014.pdf)
- 8) fpa.tas.gov.au. (N.Y.). *Forest Practices Code 2015*. The Forest Practices Authority of Tasmania. Available at: [http://www.fpa.tas.gov.au/\\_data/assets/pdf\\_file/0012/110280/Forest\\_Practices\\_Code\\_2015\\_with\\_interpretation\\_of\\_section\\_C4.2.pdf](http://www.fpa.tas.gov.au/_data/assets/pdf_file/0012/110280/Forest_Practices_Code_2015_with_interpretation_of_section_C4.2.pdf)

#### *Non-Government sources*

- 1) forestrycorporation.com.au. (2005). *Timber Harvesting – In Forests NSW Plantations (Forest Practices Code – Part 1)*. Penant Hills NSW: Forests NSW. Available at: [http://www.forestrycorporation.com.au/\\_data/assets/pdf\\_file/0010/457174/FNSW-ForestPracticesCode-2005.pdf](http://www.forestrycorporation.com.au/_data/assets/pdf_file/0010/457174/FNSW-ForestPracticesCode-2005.pdf)
- 2) timberqueensland.com.au. (N.Y.). *Plantation Development – Timber plantation operations code of practice*. [online]. Timber Queensland. Available at: <http://www.timberqueensland.com.au/Growing/Plantation-operations-code-of-practice.aspx> [Accessed 19 September 2016]
- 3) forestindustries.com.au. (N.Y.). General information gathering. [online]. Forest Industries Federations in Western Australia (FIFWA). Available at: <http://forestindustries.com.au/>
- 4) dpaw.wa.gov.au. (1999). *Manual of Management Guidelines for Timber Harvesting in Western Australia*. Government of Western Australia – Department of Parks and Wildlife. Available at: [https://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/preparing\\_FMP\\_2014-23/timberharvman99.pdf](https://www.dpaw.wa.gov.au/images/documents/conservation-management/forests/FMP/preparing_FMP_2014-23/timberharvman99.pdf)
- 5) agriculture.gov.au. (2013). *Australia's State of the Forests Report 2013*. [online]. Australian Government – Department of Agriculture and Water Resources. Available at: <http://www.agriculture.gov.au/abares/forestsaustralia/sofr/sofr-2013>

#### **1.8.5. Risk determination**

##### *Overview of Legal Requirements*

Relevant legal requirements relating to harvesting activities vary with factors such as tenure of the land, management authorities etc.; but are generally achieved through mandatory or (less often) voluntary codes of forest practice developed by State and Territory jurisdictions under the intent of the National Forest Policy Statement. Requirements for operational activities, including harvesting and haulage, are generally described in the code(s) for each State or

Territory jurisdiction or associated documentation developed by the relevant State or Territory agency or an industry body (e.g. health and safety guidelines for timber haulage operators). For some jurisdictions, e.g. ACT, detailed requirements are included in Authorisations made under the Environmental Protection Act 1997 (ACT).

As described elsewhere, the various codes of forest practice for Australian jurisdictions vary in their approach and as to whether they are statutory (mandatory). Victoria's Code of Practice for Timber Production (2014), for example, is a major regulatory instrument applying to commercial production in public and private plantations and forests. It is statutory under the Conservation, Forests and Lands Act 1987, with compliance of forest management activities with the Code required under the Sustainable Forest (Timber) Act 2004 and the relevant Victorian planning provisions.

For some states and territories, for instance where the Code may be weaker or is not mandatory, other legislation may bolster requirements that are elsewhere incorporated in the relevant Code. For soil management requirements in the Northern Territory, for instance, the Planning Act 2009, Soil Conservation and Land Utilisation Act 1980 and Land Clearing Guidelines (2010) prescribe methods to reduce and mitigate soil erosion following soil disturbance.

In some jurisdictions, specific environmental requirements may be encapsulated in management plans or documents other than Codes; for example in Western Australia the Forest Management Plan 2014–2023 provides a framework for the management of a range of forest uses, and protection of various environmental forest values, e.g. soil and water.

For all States and Territories, there is other legislation relevant to the requirements of this criterion; for example the Flora and Fauna Guarantee Act 1988 in Victoria – the objective of which is to provide a legal and administrative structure for the conservation and management of the State's flora and fauna and potentially threatening processes. Road construction and maintenance (including in the forestry context) is prescribed through legislation such as the Road Management Act 2004 (Vic), Roads Act 1993 (NSW), and Road Traffic Act 1961 (SA).

In 2012, CSIRO Sustainable Agriculture scientists – under the requirements of the Export Control (Unprocessed Wood) Regulations 1986 (Cth) – released a detailed critique of each of the plantation forest codes in use at that time; and in general found that they met the requirements of the Forest Practices Related to Wood Production in Plantations: National Principles (refer 1.3 Management and harvest planning).

### *Description of Risk*

In situations where specific requirements are not articulated in codes of forest practice, and/or where codes are not statutory, States and Territories have legislation that provides required outcomes and strengthens environmental and social outcomes in relation to timber harvesting activities.

### *Risk Conclusion*

Given the above, the risk in relation to this criterion is considered Low.

### **1.8.6. Risk designation and specification**

Low risk

### 1.8.7. Control measures and verifiers

N/A

## 1.9. Protected sites and species

*International, national, and sub national treaties, laws, and regulations related to protected areas allowable forest uses and activities, and/or, rare, threatened, or endangered species, including their habitats and potential habitats. Risk relates to illegal harvesting within protected sites, as well as illegal harvest of protected species. Note that protected areas may include protected cultural sites, including sites with historical monuments.*

### 1.9.1. Applicable laws and regulations

- Environment Protection and Biodiversity Conservation Act 1999 (Cth) – No. 91, 1999. (EPBC Act): an Act relating to the protection of the environment and the conservation of biodiversity, and for related purposes. Available at: <https://www.legislation.gov.au/Details/C2015C00422>

### 1.9.2. Legal authority

- Commonwealth Department of Foreign Affairs and Trade
- Commonwealth Department of the Environment
- State/ Territory Departments of Environment or equivalent

### 1.9.3. Legally required documents or records

- Management plans for RTE species, habitats and protected areas (including maps) in Australia
- Legislation, regulations, management plans etc. demonstrating that treaties, conventions etc. to which Australia is a signatory have been enacted
- Records of populations studies and recovery plans for RTE species in Australia
- Monitoring records relating to Australian RTE species and habitats, and protected areas

### 1.9.4. Sources of Information

#### *Government sources*

- 1) Environment.gov.au. (N.Y.). *Australia's International role in conserving biodiversity*. [online]. Australian Government – Department of the Environment and Energy. Available at: <https://www.environment.gov.au/biodiversity/international-activities> [Accessed 19 September 2016]
- 2) Environment.gov.au. (N.Y.). *About the Australian Wetlands Database*. [online]. Australian Government – Department of the Environment and Energy. Available at: <http://www.environment.gov.au/water/wetlands/australian-wetlands-database> [Accessed 19 September 2016]
- 3) Environment.gov.au. (N.Y.). *Implementing the National Framework and Guidance for describing the ecological character of Australian Ramsar Wetlands*. [online]. Australian Government – Department of the Environment and Energy. Available at:



<https://www.environment.gov.au/water/wetlands/ramsar/implementing-national-framework> [Accessed 19 September 2016]

#### *Non-Government sources*

- 1) Edowa.org.au. (N.Y.). *Factsheets – a basic guide to environmental law in Western Australia*. [online]. Environmental Defender's Office Western Australia (The WA EDO). Available at: <http://www.edowa.org.au/discover/factsheets/> [Accessed 19 September 2016]

#### **1.9.5. Risk determination**

##### *Overview of Legal Requirements*

Australia has ratified a large number of international, national and regional treaties and conventions relating to protected areas, and RTE species and habitats, including the following:

- Convention on Biological Diversity
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)
- Establishment Agreement for the Centre for International Forestry Research (CIFOR)
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- Convention on the Conservation of Migratory Species of Wild Animals
- World Heritage Convention
- International Tropical Timber Agreement
- Convention on Biological Diversity
- Agreement between the Government of Australia and the Government of the People's Republic of China for the Protection of Migratory Birds and their Environment (CAMBA)
- Agreement between the Government of Australia and the Government of Japan for the Protection of Migratory Birds in Danger of Extinction and their Environment (JAMBA)
- Agreement between the Government of Australia and the Government of the Republic of Korea on the Protection of Migratory Birds (ROKAMBA)

Despite its lack of powers to make laws focusing on biodiversity, the Commonwealth does have powers that may be used for the purposes of biodiversity protection – including the external affairs power – which allows the Commonwealth to implement Australia's obligations under international treaties and conventions. The Commonwealth has used these powers to enact the Environment Protection and Biodiversity Conservation Act 1999, which is the principal legislative means by which the Commonwealth is involved in biodiversity conservation.

States and Territories have in place legislation, regulations, relevant documentation and management plans that put into effect the high-level intent of the treaties and conventions. For example, Australia was one of the first countries to become a Contracting Party to the 1971 Ramsar Convention. As a result, Australia has been meeting the Convention's Contracting Party commitments including reporting at three-yearly international meetings; preparing National Guidelines for Ramsar Wetlands (to facilitate improved management of Ramsar sites and maintenance of ecological character, in line with both the Ramsar Convention and the EPBC Act 1999); and preparing Ramsar information sheets, ecological character descriptions, and



management plans. Australia's commitments under the Ramsar Convention are coordinated by the Australian Government Department of the Environment. At State and Territory level, Government environment agencies are involved in preparing documentation including the ecological character descriptions and management plans. Protected area management – including management of national parks – is generally a State/ Territory responsibility in Australia.

### *Description of Risk*

Australia's approach to RTE species, habitat and protected area management is comprehensive, providing a strong legal framework that is administered at both Commonwealth and State/ Territory levels. As well as using land tenure and security to achieve protection for significant conservation assets, other methods such as permits, enforcement, assessment and monitoring are used to ensure that, for the most part, appropriate outcomes are achieved.

There is no available information that indicates a risk for this criterion.

### *Risk Conclusion*

Based on the above, the proposed risk category against this criterion is Low.

### **1.9.6. Risk designation and specification**

Low risk

### **1.9.7. Control measures and verifiers**

N/A

## **1.10. Environmental requirements**

*National and sub-national laws and regulations related to the identification and/or protection of environmental values including but not limited to those relating to or affected by 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 site, seasonal limitation of harvesting time, environmental requirements for forest machineries, use of pesticides and other chemicals, biodiversity conservation, air quality, protection and restoration of water quality, operation of recreational equipment, development of non-forestry infrastructure, mineral exploration and extraction, etc... Risk relates to systematic and/or large-scale non-compliance with legally required environmental protection measures that are evident to an extent that threatens the forest resources or other environmental values.*

### **1.10.1. Applicable laws and regulations**

- State and Territory legislation under which forestry codes of practice and guidelines are made; e.g. in Victoria, the Code of Practice for Timber Production 2014 is a prescribed legislative instrument made and enforced under relevant law listed in the Conservation, Forests and Lands Act 1987 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/cfala1987320/](http://www.austlii.edu.au/au/legis/vic/consol_act/cfala1987320/)
- State legislation for rare, threatened and endangered species (RTEs) and habitats; and control of potentially threatening processes, e.g. Flora and Fauna Guarantee Act 1988 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/fafga1988205/](http://www.austlii.edu.au/au/legis/vic/consol_act/fafga1988205/)

- Statutory local Government requirements under the Victorian Planning Provisions, e.g. in relation to retention of native vegetation/large old trees.

#### **1.10.2. Legal authority**

- State and Territory forestry agencies, e.g. VicForests
- Relevant local Government agencies

#### **1.10.3. Legally required documents or records**

- Local Government audit/ compliance outcomes as a result of mandatory local Government auditing processes
- Codes of practice for each State and Territory (refer 1.8 Timber harvesting regulations)

#### **1.10.4. Sources of information**

##### *Non-Government sources*

- 1) Forestrysa.com.au. (N.Y.). *Annual Reports*. [online]. ForestrySA – The South Australian Forestry Corporation. Available at: <https://www.forestrysa.com.au/Publications/ItemId/109> [Accessed 19 September 2016]
- 2) Gtplantations.org. (N.Y.). *Environment Publications*. [online]. Green Triangle Regional Plantation Committee Inc. Koala policy and guidelines. Available at: <http://www.gtplantations.org/environment/environment-publications/#content> [Accessed 19 September 2016]

#### **1.10.5. Risk determination**

##### *Overview of Legal Requirements*

As with 1.8 Timber harvesting regulations, the requirements described within this above are achieved in Australia through a combination of:

- The implementation of codes of forest practice (most of which are mandatory; one or two are voluntary); augmented by
- Documentation provided by private companies, State/ Territory Government agencies, or industry bodies such as unions or professional associations (for example Workforce Victoria/ Department of Innovation, Industry & Regional Development's Victorian Forestry Contractors Information Booklet; or Forest Management Plans produced by ForestrySA);
- The requirements of local Government through the relevant planning provisions; and
- Other legislation relevant to environmental values such as riparian vegetation, breeding sites, air and water quality; social values such as recreation; and other activities such as mining, infrastructure etc.

##### *Description of Risk*

As with 1.8 Timber harvesting regulations, the combination of codes for forest practice (including timber harvesting), legislation, planning provisions (local Government requirements), and documentation provided by forest companies, Government agencies or

professional associations, forms a robust system through which appropriate outcomes are generally achieved to meet the requirements of this criterion.

There have been recent instances of native Australian fauna being negatively impacted by forestry activity; with a notable example being Koalas in the Green Triangle region of South Australia/ Victoria being injured and killed due to harvesting activity. (Koalas in these jurisdictions, while recognised as being iconic, do not have rare, threatened or endangered (RTE) status.) Following media and community attention in mid-2013, forestry companies are now working collaboratively with one another and with the Victorian Department of Environment, Land, Water and Planning (DELWP) and other organisations such as wildlife shelters to ensure an ongoing solution to the issue. Koala management policy and guidelines have been released by the Green Triangle Regional Plantation Committee Inc., and the use of these by forestry companies in the region appear to be keeping deaths and injuries to a minimum.

Other concerns regarding biodiversity conservation, in particular with RTE species or High Conservation Value Forests (HCVF), are addressed against Controlled Wood Category 3.

### *Risk Conclusion*

Based on the above, the proposed risk category against this criterion is Low.

### **1.10.6. Risk designation and specification**

Low risk

### **1.10.7. Control measures and verifiers**

N/A

## **1.11. Health and safety**

*Legally required personnel protection equipment for persons involved in harvesting activities, use of safe felling and transport practice, establishment of protection zones around harvesting sites, and safety requirements to machinery used. Legally required safety requirements in relation to chemical usage. The health and safety requirements that shall be considered relate to operations in the forest (not office work, or other activities less related to actual forest operations). Risk relates to situations/areas where health and safety regulations are consistently violated to such a degree that puts the health and safety of forest workers at significant risk throughout forest operations.*

### **1.11.1. Applicable laws and regulations**

- Work Health and Safety Act 2011 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/num\\_act/whasa2011218/](http://www.austlii.edu.au/au/legis/cth/num_act/whasa2011218/)
- Work Health and Safety Regulations 2011 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_reg/whasr2011327/](http://www.austlii.edu.au/au/legis/cth/consol_reg/whasr2011327/)
- Work Health and Safety Act 2011 (Qld). Available at:  
[http://www.austlii.edu.au/au/legis/qld/consol\\_act/whasa2011218/](http://www.austlii.edu.au/au/legis/qld/consol_act/whasa2011218/)
- Work Health and Safety Regulation 2011 (Qld). Available at:  
[http://www.austlii.edu.au/au/legis/qld/consol\\_reg/whasr2011309/](http://www.austlii.edu.au/au/legis/qld/consol_reg/whasr2011309/)

- Work Health and Safety Act 2011 (NSW). Available at: [http://www.austlii.edu.au/au/legis/act/consol\\_act/whasa2011218/](http://www.austlii.edu.au/au/legis/act/consol_act/whasa2011218/)
- Work Health and Safety Regulation 2011 (NSW). Available at: [http://www.austlii.edu.au/au/legis/nsw/consol\\_reg/whasr2011309/](http://www.austlii.edu.au/au/legis/nsw/consol_reg/whasr2011309/)
- Work Health and Safety (National Uniform Legislation) Act 2011 (NT). Available at: [http://www.austlii.edu.au/au/legis/nt/num\\_act/whasula201139o2011543/](http://www.austlii.edu.au/au/legis/nt/num_act/whasula201139o2011543/)
- Work Health and Safety (National Uniform Legislation) Regulations (NT). Available at: [http://www.austlii.edu.au/au/legis/nt/consol\\_reg/whasulr606/](http://www.austlii.edu.au/au/legis/nt/consol_reg/whasulr606/)
- Work Health and Safety Act 2012 (SA). Available at: [http://www.austlii.edu.au/au/legis/sa/consol\\_act/whasa2012218/](http://www.austlii.edu.au/au/legis/sa/consol_act/whasa2012218/)
- Work Health and Safety Regulations 2012 (SA). Available at: [http://www.austlii.edu.au/au/legis/sa/consol\\_reg/whasr2012327/](http://www.austlii.edu.au/au/legis/sa/consol_reg/whasr2012327/)
- Work Health and Safety Act 2012 (Tas). No. 1 of 2012. Available at: [http://www.austlii.edu.au/au/legis/tas/num\\_act/whasa20121o2012264/](http://www.austlii.edu.au/au/legis/tas/num_act/whasa20121o2012264/)
- Work Health and Safety Regulations 2012 (Tas). S.R. 2012, NO. 122. Available at: [http://www.austlii.edu.au/au/legis/tas/num\\_reg/whasr20122012n122389/](http://www.austlii.edu.au/au/legis/tas/num_reg/whasr20122012n122389/)
- Occupational Health and Safety Act 2004 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/ohasa2004273/](http://www.austlii.edu.au/au/legis/vic/consol_act/ohasa2004273/)
- Occupational Health and Safety Regulations 2007 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_reg/ohasr2007382/](http://www.austlii.edu.au/au/legis/vic/consol_reg/ohasr2007382/)
- Occupational Safety and Health Act 1984 (WA). Available at: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/osaha1984273/](http://www.austlii.edu.au/au/legis/wa/consol_act/osaha1984273/)
- Occupational Safety and Health Regulations 1996 (WA). Available at: [https://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_1853\\_homepage.html](https://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1853_homepage.html)

#### **1.11.2. Legal authority**

- Safe Work Australia (primary responsibility to lead the development of policy to improve work health and safety and workers' compensation arrangements across Australia)
- State/ Territory 'regulators', e.g. in Victoria, for instance, one of the regulators is WorkSafe Victoria; in the Northern Territory the equivalent agency is NT WorkSafe.

#### **1.11.3. Legally required documents or records**

- Evidence of payment of Safe Work/ Work Cover insurance premiums by employers
- Evidence of PPE/ health and safety requirements in contracts between forestry companies and harvesting and other forestry contractors
- Evidence of compliance through lack of prosecution outcomes and enforceable undertakings

#### **1.11.4. Sources of information**

*Government sources*

- 1) Australia.gov.au. (N.Y.). *Workplace health and safety*. [online]. Australian Government. Available at: <http://www.australia.gov.au/information-and-services/health/workplace-health-and-safety> [Accessed 19 September]
- 2) Safeworkaustralia.gov.au. (N.Y.). *Role of the regulator in compliance and enforcement – Legislative Fact Sheet Series*. Safe Work Australia. Available at: <http://www.safeworkaustralia.gov.au/sites/swa/about/publications/pages/role-regulator-factsheet> [Accessed 19 September 2016].
- 3) Worksafe.vic.gov.au. (N.Y.). *What actions can inspectors take?* (Safety and Prevention). [online]. Work Safe Victoria. Available at: <http://www.worksafe.vic.gov.au/safety-and-prevention/workplace-inspections/what-actions-can-inspectors-take> [Accessed 19 September 2016]
- 4) Worksafe.vic.gov.au. (N.Y.). *Prosecution Result Summaries & Enforceable Undertakings* (Laws and Regulations). [online]. Work Safe Victoria. Available at: <http://www.worksafe.vic.gov.au/laws-and-regulations/enforcement/prosecution-result-summaries-and-enforceable-undertakings> [Accessed 19 September 2016]
- 5) Agriculture.vic.gov.au. (N.Y.). *Maintaining Public Safety – Timber Harvesting Safety Zones*. [online]. Agriculture Victoria. Available at: <http://agriculture.vic.gov.au/agriculture/forestry/maintaining-public-safety>

#### 1.11.5. Risk determination

##### *Overview of Legal Requirements*

Safe Work Australia was established by the Safe Work Australia Act 2008 – the desired outcome being nationally harmonised workplace safety laws providing a consistent standard of health and safety protection for workers irrespective of their workplace or employment. To facilitate this outcome, Safe Work Australia developed a model Work Health and Safety Act that could be adopted by each State and Territory and the Commonwealth. To date the model laws have been adopted by all States and Territories except Victoria and Western Australia, although the latter is currently consulting regarding options to implement elements of the model. Nonetheless, all jurisdictions have work/ occupational health and safety legislation and regulations that, inter alia, promote appropriate standards for occupational/ work health and safety, and allow for the establishment of appropriate ‘regulators’. It is the responsibility of the Commonwealth, States and Territories to regulate and enforce work health and safety in their respective jurisdictions.

Within this regulatory system, workplace health and safety is afforded a high priority and consistent approach across all jurisdictions. In addition to this legislative framework, employers must take responsibility for health and safety within workplaces; with the State or Territory regulator’s inspectors having legislated powers to enter workplaces to assess compliance with health and safety laws. Inspectors’ powers including requiring employers to rectify identified health and safety issues and issuing improvement and prohibition notices. Serious penalties can be imposed in the event of breaches of relevant legislation. It is a legal requirement that most employers register for Safe Work/ Work Cover insurance to cover the costs of benefits if workers are injured or become ill as a result of their work.

In forestry operations, for example harvesting, State forestry agencies and forestry companies undertake regular inspections and audits of a set, comprehensive suite of health and safety

indicators; with the outcomes often being used in contractors' yearly performance appraisals. Adverse outcomes can lead to contractors being dismissed or being demoted in the employing company's hierarchy. Written guidelines specific to particular jurisdictions have been developed in some states, e.g. Safety & Health Code for Native Forest/Hardwood Logging and Plantation Logging in Western Australia.

Many forestry companies contribute to online health and safety statistics that are aggregated across the industry; and those companies that are certified are required to provide publicly available work health and safety statistics. Safe Work Australia and other regulators release reports regarding injuries and fatalities within various industries, e.g. agriculture, forestry and fishing.

Elements such as personal protective equipment (PPE), use of safe felling and transport practices, use of protection zones around harvesting sites, safety requirements associated with machinery (e.g. roll over protection, in-built fire extinguishers) and chemical use and storage, are standard health and safety requirements in Australian forestry operations.

#### *Description of Risk*

There is a robust and reasonably harmonious legislative approach across Commonwealth, State and Territory jurisdictions in Australia. As a general rule, health and safety is taken very seriously, with rigorous follow-up and penalties associated with breaches of occupational health and safety legislation and requirements.

#### *Risk Conclusion*

Given the above, the risk determination for this criterion is considered to be Low.

#### **1.11.6. Risk designation and specification**

Low risk

#### **1.11.7. Control measures and verifiers**

N/A

### **1.12. Legal employment**

*Legal requirements for employment of personnel involved in harvesting activities including requirement for contracts and working permits, requirements for obligatory insurances, requirements for competence certificates and other training requirements, and payment of social and income taxes withhold by employer. Furthermore, the points cover observance of minimum working age and minimum age for personnel involved in hazardous work, legislation against forced and compulsory labour, and discrimination and freedom of association. Risk relates to situations/areas where systematic or large scale noncompliance with labour and/or employment laws. The objective is to identify where serious violations of the legal rights of workers take place, such as forced, underage or illegal labour.*

#### **1.12.1. Applicable laws and regulations**

- Forestry (Fair Contract Codes) Act 2001 (Tas). Available at: [http://www.austlii.edu.au/au/legis/tas/consol\\_act/fcca2001296/](http://www.austlii.edu.au/au/legis/tas/consol_act/fcca2001296/)
- Wood Processing (WESBEAM) Agreement Act 2002 (WE). Available at: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/wpaa2002329/](http://www.austlii.edu.au/au/legis/wa/consol_act/wpaa2002329/)

- Owner Drivers and Forestry Contractors Act 2005 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/odafca2005448/](http://www.austlii.edu.au/au/legis/vic/consol_act/odafca2005448/)
- Refer also legislation listed against 1.11 Health and safety

#### 1.12.2. Legal authority

- The Commonwealth Department of Employment is responsible for national policies and programmes designed to help Australians find and keep employment and work in safe, fair and productive workplaces. The Department also manages Australia's engagement with the International Labour Organization (ILO), a specialised agency of the United Nations, on international labour issues. Australia is also a member of the ILO Governing Body. Legal employment is a State/ Territory responsibility.

#### 1.12.3. Legally required documents or records

- Evidence of payment of Safe Work/ Work Cover insurance premiums by employers
- State-specific requirements, e.g. Timber Workers' Registration within Western Australia, Proof of income tax withheld by employer

#### 1.12.4. Sources of information

##### *Government sources*

- 1) employment.gov.au. (N.Y.). *General information gathering*. [online]. Australian Government – Department of Employment. Available at: <https://employment.gov.au/> [Accessed 19 September 2016]
- 2) employment.gov.au. (N.Y.). *International Labour Issues*. [online]. Australian Government – Department of Employment. Available at: <https://employment.gov.au/international-labour-issues> [Accessed 19 September 2016]
- 3) humanrights.gov.au. (N.Y.). *Children's Rights*. [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/our-work/childrens-rights> [Accessed 19 September 2016]
- 4) humanrights.gov.au. (N.Y.). *Indigenous International Rights*. [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/indigenous-international-rights> [Accessed 19 September 2016]
- 5) humanrights.gov.au. (N.Y.). *Native Title*. [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/native-title> [Accessed 19 September 2016]
- 6) fpc.wa.gov.au. (N.Y.). Timber workers registration (WA). [online]. Forest Products Commission - Western Australia. Available at: <http://www.fpc.wa.gov.au/sale-and-supply/contractors-and-suppliers/timber-workers-registration> [Accessed 19 September 2016]
- 7) stategrowth.tas.gov.au. (N.Y.). Forestry Fair Contract Codes (TA). [online]. Tasmanian Government – Department of State growth. Available at: <http://www.stategrowth.tas.gov.au/forestry/code> [Accessed 19 September 2016]



### *Non-Government sources*

- 1) ilo.org. (N.Y.). *ILO Declaration on Fundamental Principles and Rights at Work*. [online]. International Labour Organisation (UN Agency). Available at: <http://www.ilo.org/declaration/lang--en/index.htm> [Accessed 19 September 2016]
- 2) ilo.org. (N.Y.). *Ratifications for Australia (Information System on International Labour Standards)*. [online]. International Labour Organisation (UN Agency). Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102544](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102544) [Accessed 19 September]
- 3) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

Refer also Sources of information (including Codes of forest practice) in 1.4 Harvesting permits and 1.8 Timber harvesting regulations

### **1.12.5. Risk determination**

#### *Overview of Legal Requirements*

Australia is a signatory to the International Labour Organization's Declaration on Fundamental Principles and Rights at Work; and has ratified almost all of the major international human rights instruments, including, in 2008, expressing commitment to formally support the Declaration on the Rights of Indigenous Peoples. The Australian Government has also ratified international instruments including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

Australia has ratified seven of the eight fundamental ILO Conventions, namely C029 Forced Labour Convention 1930 (No. 29), C087 Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), C098 Right to Organise and Collective Bargaining Convention 1949 (No. 98), C100 Equal Remuneration Convention 1951 (No. 100), C105 Abolition of Forced Labour Convention 1957 (No. 105), C111 Discrimination (Employment and Occupation) Convention 1958 (No. 111), C182 Worst Forms of Child Labour Convention 1999 (No. 182).

Also relevant is Australia's ratification of the priority Governance Conventions C081 (Labour Inspection Convention 1947 No. 81, C122 Employment Policy Convention 1964 (No. 122), and C144 Tripartite Consultation (International Labour Standards) Convention 1976 (No. 144). Various other ratified Technical Conventions relate to conditions of work.

While labour and working conditions are State and Territory jurisdictions, legislation, regulations and requirements reflect Australia's international commitments as described above. The various State and Territory health and safety acts incorporate various employment-related health and safety requirements and duties (e.g. minimum age); with regulations specifying more detailed workplace requirements, e.g. working at heights, accreditation and licencing requirements, personal protective equipment (PPE), first aid and emergency plans.

Administrative requirements (e.g. insurance, training, PPE) are often described in contracts between forestry companies and forestry contractors; with these requirements usually

regularly audited by the companies. (It is a legal requirement for most employers to register for Safe Work/ Work Cover insurance to cover the costs of benefits if workers are injured or become ill as a result of their work.) All Australian States and Territories have some form of forestry operations code or guidance, which also incorporates role- and organisation-specific information including information relating to harvesting and haulage. In Tasmania, the Forestry (Fair Contract Codes) Act 2001 provides for the approval of codes developed by the forestry industry to improve the fairness of contracts for services within that industry etc.

State documents may also have specific requirements relating to certification. Within Western Australia, for example (under the requirements of the Forest Products Commission), workers in specific roles within the timber industry are required to possess a valid Timber Workers' Registration (TWR). The FPC is responsible for managing and issuing the TWRs. In Victoria, under the Owner Drivers and Forestry Contractors Act

2005, certain rates and cost schedules must be used for certain activities (e.g. harvesting native forest), and the legislation stipulates that certain contractual engagements must be in writing, specifying the minimum number of hours of work or income level that the contractor will receive.

#### *Description of Risk*

Taking into account Australia's ratification of a large suite of international conventions and instruments relating to workplace health and safety and workers' rights, and the reflection of these principles and requirements in State/ Territory legislation providing strong regulation of transport and trade arrangements across all jurisdictions, the risk against this criterion is generally considered low.

In addition, Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Transparency International; Scores from past years were 81 (2013) and 85 (2012).)

#### *Risk Conclusion*

The risk category for this criterion is considered to be Low Risk.

#### **1.12.6. Risk designation and specification**

Low risk

#### **1.12.7. Control measures and verifiers**

N/A

## THIRD PARTIES' RIGHTS

### 1.13 Customary rights

*Legislation covering customary rights relevant to forest harvesting activities including requirements covering sharing of benefits and indigenous rights.*

#### 1.13.1. Applicable laws and regulations

- Native Title Act 1993 (Cth). Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/)
- Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (amended 1998): To provide a mechanism, for claimants and non-claimants, to determine whether native title exists and what the rights are that comprise that native title. A determination under the Act will establish whether the holders have exclusive possession and, if not, the native title rights and interests that are of importance. Available at:  
[http://www.austlii.edu.au/au/legis/cth/consol\\_act/alrta1976444/](http://www.austlii.edu.au/au/legis/cth/consol_act/alrta1976444/)
- Native Title Act 1994 (ACT). Available at:  
[http://www.austlii.edu.au/au/legis/act/consol\\_act/nta1994147/](http://www.austlii.edu.au/au/legis/act/consol_act/nta1994147/)
- Native Title (New South Wales) Act 1994 (NSW). Available at:  
[http://www.austlii.edu.au/au/legis/nsw/consol\\_act/ntswa1994319/](http://www.austlii.edu.au/au/legis/nsw/consol_act/ntswa1994319/)
- Aboriginal Lands Act (NT). Available at:  
[http://www.austlii.edu.au/au/legis/nt/consol\\_act/ala126/](http://www.austlii.edu.au/au/legis/nt/consol_act/ala126/)
- Native Title (Queensland) Act 1993 (Qld). Available at:  
[http://www.austlii.edu.au/au/legis/qld/consol\\_act/nta1993249/](http://www.austlii.edu.au/au/legis/qld/consol_act/nta1993249/)
- Native Title (South Australia) Act 1994 (SA). Available at:  
[http://www.austlii.edu.au/au/legis/sa/consol\\_act/ntaa1994318/](http://www.austlii.edu.au/au/legis/sa/consol_act/ntaa1994318/)
- Native Title (Tasmania) Act 1994. Available at:  
[http://www.austlii.edu.au/au/legis/tas/consol\\_act/nta1994217/](http://www.austlii.edu.au/au/legis/tas/consol_act/nta1994217/)
- Aboriginal Lands Act 1995 (Tas). Available at:  
[http://www.austlii.edu.au/au/legis/tas/consol\\_act/ala1995144/](http://www.austlii.edu.au/au/legis/tas/consol_act/ala1995144/)
- Mineral Resources Development Act 1995 (Tas). Available at:  
[http://www.austlii.edu.au/au/legis/tas/consol\\_act/mrda1995320/](http://www.austlii.edu.au/au/legis/tas/consol_act/mrda1995320/)
- Traditional Owner Settlement Act 2010 (Vic). Available at:  
[http://www.austlii.edu.au/au/legis/vic/consol\\_act/tosa2010326/](http://www.austlii.edu.au/au/legis/vic/consol_act/tosa2010326/)
- Native Title (State Provisions) Act 1999 (WA). Available at:  
[http://www5.austlii.edu.au/au/legis/wa/consol\\_act/ntpa1999353/](http://www5.austlii.edu.au/au/legis/wa/consol_act/ntpa1999353/)

#### 1.13.2. Legal authority

- Australian Attorney-General's Department
- Department of Agriculture and Water Resources
- Australian Heritage Commission

### 1.13.3. Legally required documents or records

- Management plans and other formally agreed documents that represent negotiated agreements to access forest resources, including Indigenous Land Use Agreements and related documentation
- Permits and licences describing access to lands and forest resources

### 1.13.4. Sources of information

#### *Government sources*

- 1) Agriculture.gov.au. (2005). *The National Indigenous Forestry Strategy*. [online]. Australian Government – Department of Agriculture and Water Resources. Available at: <http://www.agriculture.gov.au/forestry/policies/nifs> [Accessed 20 September 2016]
- 2) Justice.vic.gov.au. (N.Y.). *Traditional Owner Settlement Act*. [online]. Victoria State Government – Department for Justice and Regulation. Available at: <http://www.justice.vic.gov.au/home/your+rights/native+title/traditional+owner+settlement+act> [Accessed 20 September 2016]
- 3) Ag.gov.au. (N.Y.). *Native Title* (information of Legal system). [online]. Australian Attorney-General's Department, Native Title Information. Available at: <https://www.ag.gov.au/LegalSystem/NativeTitle/Pages/default.aspx> [Accessed 20 September 2016]
- 4) Environment.gov.au. (2002). *Ask First: A guide to respecting Indigenous heritage places and values*. Canberra: Australian Heritage Commission. Available at: <https://www.environment.gov.au/system/files/resources/4aff65c-00dd-4001-878b-a28d8831293a/files/ask-first.pdf>
- 5) Data.daff.gov.au. (N.Y.). *National Indigenous Forestry Strategy – National Indigenous Forest Mapping Website*. Allow users to produce forest-related maps based on Australian Indigenous areas. [online]. Australian Government - Department of Agriculture. Available at: <http://data.daff.gov.au/nifs/> [Accessed 20 September 2016]
- 6) Nntt.gov.au. (N.Y.). *About Indigenous Land Use Agreements (ILUAs)*. [online]. National Native Title Tribunal. Available at: <http://www.nntt.gov.au/ILUAs/Pages/default.aspx> [Accessed 20 September 2016]

#### *Non-Government sources*

- 1) Neate, G. (2000). *Alternative State and Territory Schemes: A National Overview*. Paper presented to the "Native Title in the New Millennium" Representative Bodies Legal Conference Melbourne 16-19 April 2000. Available at: <http://www.nntt.gov.au/Information%20Publications/Speeches%20Alternative%20State%20and%20Territory%20Schemes%20-%20a%20national%20overview%20April%202000.pdf>

### 1.13.5. Risk determination

#### *Overview of Legal Requirements*

In 1992, the High Court of Australia delivered its decision in *Mabo and Others v Queensland* (No. 2), also known as the Mabo decision. The finding recognised that the Meriam people of

Torres Strait held native title over part of their traditional lands, and that Australia's common law recognises rights and interests to lands and waters held by Indigenous people under their traditional laws and customs (i.e. native title existed already; it is not granted by the Crown).

Prior to the Mabo decision, the Commonwealth Government had enacted the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth). Under this Act, areas of land were granted – either directly or following a land claim process – to be held for the benefit of Indigenous Australians as traditional owners of that land.

Following the Mabo No. 2 decision, the Commonwealth Government enacted the Native Title Act 1993, which commenced on 1 January 1994. The Act has a number of functions, including creating processes through which native title can be recognised and protected. Subsequently, all States and Territories developed statutes designed to complement the Commonwealth Act, including a definition of native title that has been incorporated by reference or adopted in basically the same terms. The Commonwealth legislation essentially operates across all Australian State and Territory jurisdictions,

More recently, State and Territory legislation has been modified to make specific provisions, incorporate key terms and definitions, and link the State and Territory laws to the Native Title Act (e.g. Clause 179, Leases and licences in respect of Aboriginal land in the Tasmanian Mineral Resources Development Act 1995). Some legislation refers to native title holders as 'owners' of the land or refers to compensation; and special project agreement Acts have been developed referring specifically to native title, albeit in the context of mining rather than access to forestry resources.

In 2005, the Commonwealth released the National Indigenous Forestry Strategy, a key objective of which is to encourage participation by Indigenous Australians in the forestry industry. Initiatives with industry focus on various forest-based activities including plantation establishment and management, timber processing, 'bush tucker', cultural and ecotourism ventures, traditional medicines etc. The formalized development of Indigenous Land Use Agreements and related documentation has enhanced the potential value of forests for Indigenous groups, with a total of 2.4 million hectares of forested land (mostly in NT, SA and WA) managed by Australian Indigenous people as at 2011.

As well as the Native Title process, the Regional Forest Agreement process has led to recognition of Indigenous Australians as rightful owners and managers of some areas of land including natural forest. There are also opportunities to secure lands through acquisition programs such as Indigenous Land Corporations.

The 2015 Social Justice and Native Title Report, released by the Aboriginal and Torres Strait Islander Social Justice Commissioner, states that Aboriginal and Torres Strait Islander peoples now own or have an interest in nearly a third of the Australian land mass. Feary *et al.* (2010) put the level of Aboriginal ownership at 20% of Australia's land area, with 14% of the country's forests owned by Indigenous communities. These figures suggest that the relevant legislation is proving successful in terms of Indigenous peoples obtaining rights to land resources.

However – despite this positive outcome with respect to recognition of land rights – enormous challenges are subsequently being recognised by Indigenous communities in relation to their ability to benefit from the form of land tenure recognised through the Native Title process. For example, Indigenous communities often experience difficulties with retention of their underlying customary title while making the resource useable in the modern economic context.

Land rates and taxes may be imposed immediately following the process of conversion to native title.

### *Description of Risk*

While much of the focus of customary rights in Australia relates to mining activities, formalised Indigenous involvement in forestry has and is occurring to an increasing extent – although the level to which this occurs varies among States. Relevant legislation and various mechanisms exist and continue to evolve, such that customary rights relevant to forestry harvesting activities are recognised.

Feary *et al.* (2010) note that all forests on Crown (public) land are potentially subject to Native Title claims; with managers of wood production facilities and protected forests advised to negotiate with Traditional Owners to address the uncertainties relating to Native Title rights and interests. In most instances, participants in such negotiations are opting for agreements and settlements outside the protracted Native Title Tribunal hearings (e.g. through Indigenous Land Use Agreements or joint management arrangements).

### *Risk Conclusion*

As described above, Australian Native Title and customary rights legislation is achieving significant levels of Indigenous ownership and interest in land and water resources. While the path to benefiting from such ownership is not necessarily straightforward, the requirement for legislation covering customary rights relevant to forest harvesting activities is met and is leading to appropriate outcomes. The risk category associated with this requirement is therefore considered Low.

#### **1.13.6. Risk designation and specification**

Low risk

#### **1.13.7. Control measures and verifiers**

N/A

### **1.14. 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.*

#### **1.14.1. Applicable laws and regulations**

- Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth): CATSI Act is the set of laws that establishes the Registrar of Aboriginal and Torres Strait Islander Corporations, now called the Registrar of Indigenous Corporations, and allows Aboriginal and Torres Strait Islander groups to form corporations. Available at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/catsia2006510/](http://www.austlii.edu.au/au/legis/cth/num_act/catsia2006510/)
- Racial Discrimination Act 1975 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/rda1975202/](http://www.austlii.edu.au/au/legis/cth/num_act/rda1975202/)
- Native Title Act 1993 (Cth). Available at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/num_act/nta1993147/)

#### 1.14.2. Legal authority

- Australian Human Rights Commission
- Australian Attorney-General's Department
- Department of Agriculture and Water Resources

#### 1.14.3. Legally required documents or records

- Formal documents demonstrating the transfer of forest management/ customary rights to forestry organizations, e.g. Indigenous Land Use Agreements.

#### 1.14.4. Sources of information

##### *Government sources*

- Humanrights.gov.au. (N.Y.). Native Title (Information). [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/native-title> [Accessed 20 September 2016]
- Ag.gov.au. (N.Y.). Native Title (information). [online]. Australian Government – Attorney-General's Department. Available at: <https://www.ag.gov.au/LegalSystem/NativeTitle/Pages/default.aspx> [Accessed 20 September 2016]
- Humanrights.gov.au. (2008). *UN Declaration on The Rights of indigenous Peoples*. [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/publications/un-declaration-rights-indigenous-peoples-1> [Accessed 20 September 2016]
- Humanrights.gov.au. (N.Y.). *Australia and the Universal Declaration on Human Rights*. [online]. Australian Human Rights Commission. Available at: <https://www.humanrights.gov.au/publications/australia-and-universal-declaration-human-rights>
- Oric.gov.au. (N.Y.). *About the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI Act)*. [online]. Australian Government - Office of the Registrar of Indigenous Corporations. Available at: <http://www.oric.gov.au/catsi-act/about-catsi-act> [Accessed 20 September]
- Environment.gov.au. (2002). *Ask First: A guide to respecting Indigenous heritage places and values*. Canberra: Australian Heritage Commission. Available at: <https://www.environment.gov.au/system/files/resources/4afff65c-00dd-4001-878b-a28d8831293a/files/ask-first.pdf>

##### *Non-Government sources*

- Altman, J. (2014). The More Things Change...: Informed Consent and Human Rights for Indigenous Australians. *Journal of Indigenous Policy*, vol. 15, pp. 115 -118. Available at: <http://www.austlii.edu.au/au/journals/JIIndigP/2014/29.html>
- Ohchr.org. (1996). *International Bill of Human Rights* (Fact Sheet No. 2, Rev. 1). Geneva: United Nations. Available at: <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>



- Australian Conservation Foundation, Policy Statement No. 75 – Free, Prior and Informed Consent.
- Ohchr.org. (2005). *Legal Commentary on the Concept of Free, Prior and informed consent*. Commission on Human Rights, Sub-Commissions on the Promotion and Protection of human Rights, Working Group on Indigenous Populations. Available at: <http://www.ohchr.org/Documents/Issues/IPeoples/WG/E-CN4-Sub2-AC4-2005-WP1.doc> [Accessed 20 September 2016]
- Iwgia.org. (N.Y.). The Un Declaration on the Rights of Indigenous Peoples (information). [online]. International Work Group for Indigenous Peoples. Available at: <http://www.iwgia.org/human-rights/international-human-rights-instruments/undeclaration-on-the-rights-of-indigenous-peoples> [Accessed 20 September 2016]

#### 1.14.5. Risk determination

##### *Overview of Legal Requirements*

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols, which were adopted at the UN General Assembly in 1948. Australia has ratified almost all of the major international human rights instruments, including, more recently (2008), committing to formally support the Declaration on the Rights of Indigenous Peoples. As well as ratifying the above listed UN instruments, the Australian Government has also ratified the International Convention on the Elimination of All Forms of Racial Discrimination. Article 1 of each of the International Covenants on Human Rights as well as the UN DRIPS, requires meaningful consultation with – and in many cases the free, prior and informed consent (FPIC) of – Indigenous peoples during the formulation and implementation of laws and policies affecting them.

However, the UN DRIPS is not legally binding and – while it can inform on a range of rights that Indigenous peoples should expect – as an instrument is cannot impose legal obligations on governments and its provisions are therefore not enforceable under Australian law. To enable FPIC to become operational under Australian law, the provisions of the UN Declaration relating to FPIC would have to be incorporated into domestic law; for example, into the Racial Discrimination Act 1975 (Cth); Native Title Act 1993 (Cth); legislation relating to heritage, environment and water, Aboriginal Land Rights legislation, and the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) etc. Currently, the FPIC principles of the UN Declaration inform policy guidelines of some government agencies and organisations but, if breached, there is no penalty.

An example of FPIC principles being incorporated in Australian law is the requirement – for the past 30 years in five Australian States or Territories (namely NT, NSW, Qld, Tasmania and the Commonwealth) – for FPIC to be incorporated in connection with mining (but not forestry) through statutory Indigenous-controlled Land Councils. A voluntary approach developed by the Australian Heritage Commission in 2002, Ask First: A Guide to Respecting Indigenous Heritage Places and Values, promotes a form of engagement that aligns with the principles of FPIC.

##### *Description of Risk*

While the principles of free, prior and informed consent have been incorporated into some Australian legislation, this effort has been patchy; with the focus on FPIC as it relates to the mining industry rather than forestry.

In the Northern Territory, the Intervention and Northern Territory National Emergency Response of 2007 (in the opinion of the Australian Human Rights Commission) led to a failure “to implement the Principles of the Declaration on the Rights of Indigenous Peoples, in particular through its failure to facilitate the exercise of the right to free, prior and informed consent”.

#### *Risk Conclusion*

Given the above, this indicator is considered not applicable.

#### **1.14.6. Risk**

N/A

#### **1.14.7. Control measures and verifiers**

N/A

### **1.15. Indigenous/traditional peoples’ rights**

*Legislation that regulates the rights of indigenous/traditional 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.*

#### **1.15.1. Applicable laws and regulations**

- Refer 1.13 Customary rights; and details of Australian Native Title legislation
- Environment Protection and Biodiversity Conservation Act 1999 (Cth). Available at: <https://www.legislation.gov.au/Details/C2015C00422>

#### **1.15.2. Legal authority**

- Australian Human Rights Commission
- Department of Agriculture and Water Resources
- Australian Attorney-General’s Department

#### **1.15.3. Legally required documents or records**

- Management plans and other formally agreed documents that represent negotiated agreements to access forest resources, including Indigenous Land Use Agreements and related documentation
- Permits and licences describing access to lands and forest resources

#### **1.15.4. Sources of information**

##### *Government sources*

- Agriculture.gov.au. (N.Y.). Australia’s State of the Forests Reports (year 2008 & 2013). [online]. Australian Government – Department of Agriculture and Water resources.

Available at: <http://www.agriculture.gov.au/abares/forestsaustralia/sofr> [Accessed 20 September]

- Refer also 1.13 Customary rights

#### **1.15.5. Risk determination**

##### *Overview of Legal Requirements*

The Australian Indigenous 'estate' can be categorised by land tenure and management based on the degree of Indigenous ownership, management and other rights over the land. Across Australia, there is variable management control and influence by Indigenous people over forests – depending on the type of land management, and whether the land is Indigenous owned and managed, Indigenous managed, Indigenous co-managed or covered by alternative special rights. About 4.4 million hectares of forest are on Indigenous-owned lands with 'conservation' as the legislated management intent; and tenure classifications of private, leasehold or other Crown land. All State and Territory jurisdictions maintain registers of legally protected Indigenous heritage sites (including forest sites), and also provide protection for some heritage sites that are not yet included in the registers.

Many Indigenous Australians rely to varying degrees on the use of non-wood forest products (NWFPs) for customary purposes (e.g. food, medicine and livelihood) and commercial purposes (e.g. art and craft); as well as wood products, e.g. to make carvings and wooden sculptures. Non-wood Indigenous products include bark paintings, weavings, pigments and dyes, and subsistence products, such as those used for food and ceremonial purposes. The sustainable use of NWFPs is very important to Indigenous communities in remote regions of Australia; with such products often making up a significant proportion of local economies.

Removal and use of NWFPs are regulated by State and Territory governments, including through the issue of permits and licences. Commonwealth legislation, such as the Environment Protection and Biodiversity Conservation Act 1999, is also used to regulate the removal of certain NWFPs.

##### *Description of Risk*

Through Australia's Native Title Act 1993 (Cth) and complementary legislation at State and Territory level – and more recently through modified resource-related legislation and other documentation (e.g. Indigenous Land Use Agreements) – Indigenous Australians have formal, recognised rights to forest lands and resources. While levels of access and ownership vary with jurisdiction, Indigenous people have management control and influence over substantial areas of Australia's forest estate.

##### *Risk Conclusion*

The risk associated with this criterion is considered to be Low.

#### **1.15.6. Risk designation and specification**

Low risk

#### **1.15.7. Control measures and verifiers**

N/A

## TRADE AND TRANSPORT

### 1.16. Classification of species, quantities, qualities

*Legislation regulating how harvested material is classified in terms of species, volumes and qualities in connection with trade and transport. Incorrect classification of harvested material is a well-known method to reduce/avoid payment of legality prescribed taxes and fees. Risk relates to material traded under illegal false statements of species, quantities or qualities. This could cover cases where this type of false classification is done to avoid payment of royalties or taxes or where trade bans on product types or species are implemented locally, nationally or internationally. This is mainly an issue in countries with high levels of corruption (CPI<50).*

#### 1.16.1. Applicable laws and regulations

- Illegal Logging Prohibition Act 2012 (Cth), No. 166, 2012. Available at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/ilpa2012260/](http://www.austlii.edu.au/au/legis/cth/num_act/ilpa2012260/)
- Sustainable Forests (Timber) Act 2004 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/sfa2004289/](http://www.austlii.edu.au/au/legis/vic/consol_act/sfa2004289/)
- Conservation, Forests and Lands Act 1987 (via). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/cfala1987320/](http://www.austlii.edu.au/au/legis/vic/consol_act/cfala1987320/)
- Forestry Act 1959 (Qld). Available at: [http://www.austlii.edu.au/au/legis/qld/consol\\_act/fa1959139/](http://www.austlii.edu.au/au/legis/qld/consol_act/fa1959139/)
- Codes of Practice for States and Territories and related documentation (e.g., for Victoria, Management Standards and Procedures for timber harvesting operations in Victoria's State forests); see 1.8 Timber harvesting regulations

#### 1.16.2. Legal authority

- This varies with jurisdiction; classification of species, quantities and qualities is a State/Territory agency responsibility.

#### 1.16.3. Legally required documents or records

- Sales contracts and sales permits
- Documents associated with transport, e.g. log dockets
- Audit reports (from Government agencies and local Government bodies)
- Receipts representing payment of stumpage fees

#### 1.16.4. Sources of information

##### *Government sources*

- 1) VicForests.com.au. (2012). *VicForests Instruction: Code of Procedure for Sawlog Buyers*. Version 1.1. VicForests. Available at: <http://www.vicforests.com.au/static/uploads/files/vicforests-instructions-code-of-procedure-for-sawlog-buyers-v1-1-wfavvtiushft.pdf>

- 2) VicForests.com.au. (2013). *VicForests Instructions: Code of Procedure for Sawlog Buyers – Log Specifications*. Version 2.4. VicForests. Available at: <http://www.vicforests.com.au/static/uploads/files/vicforests-instructions-code-of-procedure-log-buyer-log-specifications-v2-4-wfrj.pdf>

#### *Non-Government sources*

- 1) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

### **1.16.5. Risk determination**

#### *Overview of Legal Requirements*

Australian States and Territories have responsibility for harvesting and measuring of timber; including confirmation of volumes and qualities in the context of trade and transport. For example, in Queensland, the State owns the native forest timber on public land and authorises its harvesting under the Forestry Act 1959. The Department of Agriculture and Fisheries administers the Act and is the main provider of native timber sourced from State land. Native forest timber from State land sold or provided to a processor must be authorised under the Act in the form of a sales permit that specifies the location, species, quantity and conditions under which the timber can be harvested. Details of the species, quality and quantity of log timber must be recorded on a docket before transport occurs. The State charges the processor royalties and issues an invoice containing the above details. In addition, the State monitors and audits compliance against the sales permit and the Code. (A commercial supply agreement and tax invoice may provide details of species, quantities, harvesting location etc.)

For native forest harvesting on freehold land, activity must comply with Managing a Native Forest Practice – A self-assessable vegetation clearing code; with notification required using the Vegetation management notification form for self-assessable vegetation clearing codes.

For private plantations on State land, HQPlantations Pty Ltd (under a 99-year lease from the State) provides a load docket with the date, species, quality and quantity of timber removed at harvest before being transported to the processor. The latter is charged for the value of logs removed under the commercial supply agreement and issues a tax invoice that includes the above details plus the location. Audits and monitoring by HQP and external agencies check that compliance occurs between the commercial supply agreements and the species, quality and quantity of logs harvested from the specified location.

#### *Description of Risk*

In most plantation situations in Australia, commercial species are either *Pinus radiata*, or species of *Eucalyptus* (e.g. *E. nitens* [Shining Gum] or *E. globulus* [Blue Gum]); and in a smaller number of situations, plantations may consist of *Acacia* species. Australia's commercially harvested species are of fairly low diversity – particularly in plantation settings – and this reduces the risk of voluntary or involuntary errors in determining stumpage arrangements.

Audits and inspections are carried out by quasi-Government agencies or local Government bodies, with these activities also ensuring a low risk of errors in relation to species and wood quantities and qualities.

Corruption associated with this requirement is considered unlikely in Australia; and in addition Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking.

### *Risk Conclusion*

The risk associated with this criterion is considered to be Low.

### **1.16.6. Risk designation and specification**

Low risk

### **1.16.7. Control measures and verifiers**

N/A

## **1.17. Trade and transport**

*All required trading permits shall exist as well as legally required transport document which accompany transport of wood from forest operation. Risk relates to the issuing of documents permitting the removal of timber from the harvesting site (e.g., legally required removal passes, waybills, timber tags, etc.). In countries with high levels of corruption, these documents are often falsified or obtained by using bribery. In cases of illegal logging, transport documents from sites other than the actual harvesting site are often provided as a fake proof of legality with the harvested material.*

### **1.17.1. Applicable laws and regulations**

#### **Trading permits and contracts:**

Some jurisdictions have in place legislative agreements describing commercial arrangements between State or Territory agencies and suppliers, e.g. in Western Australia:

- Wood Processing (Wesbeam) Agreement Act 2002 (WA) (an Act to ratify, and authorise the implementation of, an agreement between WA and Wesbeam Pty Ltd and Wesbeam Holdings Limited relating to the supply, harvesting and processing of plantation timber for the manufacture of timber products. Available at: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/wpaa2000325/](http://www.austlii.edu.au/au/legis/wa/consol_act/wpaa2000325/)
- and Wood Processing (Wesfi) Agreement Act 2000 (WA) (an Act to ratify, and authorise the implementation of, an agreement between the State and WESFI Limited relating to the continued supply of plantation softwood for the manufacture of wood based panel products). Available at: [http://www.austlii.edu.au/au/legis/wa/consol\\_act/wpaa2000325/](http://www.austlii.edu.au/au/legis/wa/consol_act/wpaa2000325/)

Otherwise, forestry-related trade arrangements are usually contained in commercial contracts between the timber owner or manager and the harvesting and/or haulage contractor.

#### **Transport related (various jurisdictions):**

- Owner Drivers and Forestry Contractors Act 2005 (Vic; an Act to regulate the relationship between persons who contract to transport goods in a vehicle, or harvest forest products using motorised equipment, supplied by them and persons who hire them; including information requirements, codes of practice, etc.). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/odafca2005448/](http://www.austlii.edu.au/au/legis/vic/consol_act/odafca2005448/)

- Heavy Vehicle National Law Act 2012 (Qld; an Act providing for the adoption of the Heavy Vehicle National Law; see Overview of Legal Requirements below). Available at: [http://www.austlii.edu.au/au/legis/qld/consol\\_act/hvnla2012245/](http://www.austlii.edu.au/au/legis/qld/consol_act/hvnla2012245/)
- Heavy Vehicle (Vehicle Standards) National Regulation 2013, No. 76 (Qld). Available at: <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2013/13SL076.pdf>
- Heavy Vehicle (Mass, Dimension and Loading) National Regulation 2013, No. 77 (Qld). Available at: <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2013/13SL077.pdf>
- Heavy Vehicle (Fatigue Management) National Regulation 2013, No. 78 (Qld). Available at: <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2013/13SL078.pdf>
- Heavy Vehicle (General) National Regulation 2013 (Qld), No. 79. Available at: <http://www.legislation.qld.gov.au/LEGISLTN/SLS/2013/13SL079.pdf>
- Road Safety Act 1986 (Vic). Available at: [http://www.austlii.edu.au/au/legis/vic/consol\\_act/rsa1986125/](http://www.austlii.edu.au/au/legis/vic/consol_act/rsa1986125/)

#### 1.17.2. Legal authority

- **For forest trading arrangements:** State and Territory forest management agencies, e.g. VicForests, NSW Forestry Corporation, WA Forest Products Commission; and private forestry companies working within State or Territory jurisdiction.
- **For transport:** The transport of logs is Australia largely governed by road safety legislation. The legal authority varies with jurisdiction and requirement; see Legally required documents or records for examples.

#### 1.17.3. Legally required documents or records

Depending on tenure of land (public or private ownership) and State/ Territory jurisdiction:

- Log delivery note (D-note), delivery or log docket identifying the coupe of origin (which can be cross-referenced to a Timber Release Plan or Wood Utilisation Plan or similar).
- Plantation delivery docket with a copy of the Timber Harvest Plan (THP) or permit from local Government; or private native forest delivery docket and copy of the THP or permit (as above; cross-referencing should be possible between harvest coupe and THP or permit).

Other examples:

- Protected plant harvesting licence (for harvesting of restricted plants in Queensland);
- Commercial Purposes Licence (for timber taken as salvage in Western Australia);
- For Sandalwood sourced from private land in Western Australia: Sandalwood Transport Authority Notice (STAN), S1 puller's licence, and Commercial Producer's Licence issued under the Wildlife Conservation Act 1950.

#### 1.17.4. Sources of information

*Government sources*

- 1) agriculture.gov.au. (N.Y.). *State specific guidelines (Illegal Logging Prohibition Act 2012, Cth)*. [online]. Australian Government – Department of Agriculture and Water Resources.



Available at: <http://www.agriculture.gov.au/forestry/policies/illegal-logging/information-resources#state-specific-guidelines> [Accessed 20 September]

- 2) <http://www.vicforests.com.au/files/mjwyjvczdd/RFP-2015.1-Attachment-C2-Victorian-Forestry-Contractors-Information-Booklet.pdf>
- 3) australia.gov.au. (N.Y.). *Road and road transport authorities* (Specific information for each state/ territory). [online]. Australian Government. Available at: <http://www.australia.gov.au/information-and-services/transport-and-regional/roads-and-road-transport/authorities> [Accessed 20 September]
- 4) infrastructure.gov.au. (N.Y.). *Heavy Vehicle Regulation*. [online]. Australian Government. Department of Infrastructure and Regional Development. Available at: [https://infrastructure.gov.au/roads/vehicle\\_regulation/ris/index.aspx](https://infrastructure.gov.au/roads/vehicle_regulation/ris/index.aspx) [Accessed 20 September 2016]
- 5) infrastructure.gov.au. (N.Y.). *Transport*. [online]. Australian Government. Department of Infrastructure and Regional Development. Available at: <https://infrastructure.gov.au/transport/> [Accessed 20 September 2016]
- 6) infrastructure.gov.au. (N.Y.). *National Transport Commission*. [online]. Australian Government. Department of Infrastructure and Regional Development. Available at: <https://infrastructure.gov.au/transport/australia/ntc/index.aspx>
- 7) nhvr.gov.au. (N.Y.). *Penalties and infringements* (Law and Policies on Heavy Vehicles). [online]. National Heavy Vehicle Regulator (NHVR). Available at: <https://www.nhvr.gov.au/law-policies/penalties-and-infringements> [Accessed 20 September 2016]

#### 1.17.5. Risk determination

##### *Overview of Legal Requirements*

Following a 2009 decision by the Council of Australian Governments (COAG), the Heavy Vehicle National Law came into force in Queensland, New South Wales, Victoria, Tasmania, South Australia and the ACT on 10 February 2014. Covering all heavy vehicles over 4.5 tonnes, the law includes vehicle standards, mass dimensions and loadings, heavy vehicle accreditation and on-road enforcement. The jurisdictions named above subsequently put in place subordinate legislation.

Most forestry companies, on receipt of an overweight load of timber from the harvest site or coupe, will penalise the driver and/or haulage company and – after a certain number of instances – will ban the driver from hauling for the company for a period of time. In addition, State agencies undertake audits and inspections of timber companies including at weighbridges into sawmills and production facilities.

Specific information relating to harvest and haulage in forestry operations is often provided in State or Territory-level guides, e.g. Victorian Forestry Contractors

Information Booklet produced by the Victorian Forestry Industry Council; WorkSafe Industry Standard (2007): Safety in Forestry Operations, Harvesting and Haulage.

##### *Description of Risk*

With the management of transport occurring at all three levels of Government (Commonwealth, State/ Territory and local Government), there is strong control over Australian transport arrangements including legal haulage in forest operations. Given also the numerous penalties that can be imposed by the National Heavy Vehicle Regulator (infringement offences, court-imposed penalties and demerit points); and penalties imposed by forestry companies, there is generally strong control over Australia's forestry-related transport arrangements.

#### *Risk Conclusion*

The risk category is determined as Low Risk.

#### **1.17.6. Risk designation and specification**

Low risk

#### **1.17.7. Control measures and verifiers**

N/A

### **1.18. Offshore trading and transfer pricing**

*Legislation regulating offshore trading. Offshore trading with related companies placed in tax havens combined with artificial transfer prices is a well-known way to avoid payment of legally prescribed taxes and fees to the country of harvest and considered as an important generator of funds that can be used for payment of bribery and black money to the forest operation and personnel involved in the harvesting operation. Many countries have established legislation covering transfer pricing and offshore trading. It should be noted that only transfer pricing and offshore trading as far as it is legally prohibited in the country, can be included here. Risk relates to situations when products are sold out of the country for prices that are significantly lower than market value and then sold to the next link in the supply chain for market prices, which is often a clear indicator of tax laundry. Commonly, the products are not physically transferred to the trading company.*

#### **1.18.1. Applicable laws and regulations**

- Income Tax Assessment Act (ITAA) 1997 (Cth): Subdivisions 815-B, 815-C and 815-D. Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/itaa1997240/](http://www.austlii.edu.au/au/legis/cth/consol_act/itaa1997240/)
- Taxation Administration Act (TAA) 1953 (Cth): Subdivision 284-E of Schedule 1. Available at: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/taa1953269/](http://www.austlii.edu.au/au/legis/cth/consol_act/taa1953269/)
- Transfer pricing (International tax for residency) – Australian Government, Australian Taxation Office. Available at: <https://www.ato.gov.au/business/international-tax-for-business/transfer-pricing/> [Accessed 20 September 2016]
- Simplifying transfer pricing record keeping (International Tax for Business) – Australian Government, Australian Taxation Office. Available at: <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/Simplifying-transfer-pricing-record-keeping/> [Accessed 20 September 2016]

#### **1.18.2. Legal authority**

- Australian Taxation Office (<https://www.ato.gov.au/About-ATO/About-us/Who-we-are/>)

### 1.18.3. Legally required documents or records

- Requirements in Subdivision 284-E of Schedule 1 of the Taxation Administration Act 1953: establishment of a 'reasonably arguable position' or RAP

### 1.18.4. Sources of information

#### *Government sources*

- 1) ato.gov.au. (2014). *Project Wickenby* (The fight against tax crime). [online]. Australian Government – Australian Taxation Office. Last updated 10. September 2014. Available at: <https://www.ato.gov.au/General/The-fight-against-tax-crime/In-detail/Tax-crime/Project-Wickenby/>
- 2) ato.gov.au. (2015). *Project Eclipse – exposing offshore tax avoidance structures* (The fight against tax crime). [online]. Australian Government – Australian Taxation Office. Last updated 3. August 2015. Available at: <https://www.ato.gov.au/General/The-fight-against-tax-crime/News-and-results/Project-Eclipse---exposing-offshore-tax-avoidance-structures/>
- 3) ato.gov.au (2016). Country-by-Country reporting and transfer pricing documentation.
- 4) [online]. Australian Taxation Office. Available at <https://www.ato.gov.au/Business/International-tax-for-business/In-detail/Transfer-pricing/country-by-country-reporting-and-transfer-pricing-documentation/> (Accessed 23 September 2016).

#### *Non-Government sources*

- 1) ecovis.com. (2009). *Overview of the OECD's Work on Countering International Tax Evasion* (A background Information Brief). OECD – Centre for Tax Policy and Administration. Available at: [https://www.ecovis.com/fileadmin/user\\_upload/international/news/global/oecd-releases-overview.pdf](https://www.ecovis.com/fileadmin/user_upload/international/news/global/oecd-releases-overview.pdf)
- 2) oecd.org. (N.Y.). *Tax: OECD updates OECD Model Tax Convention to extend information requests to groups*. [online]. Organization for Economic Co-operation and Development (OECD). Available at: <http://www.oecd.org/ctp/taxoecdupdatesoecdmodeltaxconventiontoextendinformationrequeststogroups.htm> [Accessed 20 September 2016]
- 3) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

### 1.18.5. Risk determination

#### *Overview of Legal Requirements*

Australia has substantially implemented the internationally agreed tax standard developed by the Organisation for Economic Cooperation and Development (OECD) which – through acceptance of Article 26 – provides for exchange of information on request, where the information is 'foreseeably relevant' for the administration of the taxes of the requesting party, regardless of bank secrecy and a domestic tax interest. Australia is also signatory to seven Tax Information Exchange Agreements (TIEAs).

The Australian Taxation Office (ATO) established Project Wickenby in 2006 to prevent Australians from promoting or participating in 'abuse arrangements' involving tax havens and 'secrecy jurisdictions'. Through the Project Wickenby task force, the ATO took a cooperative, multi-agency approach, working with Australian Federal Police, the Australian Crime Commission, the Australian Securities & Investments Commission and Commonwealth Director of Public Prosecutions, with support from the Australian Transaction Reports and Analysis Centre and the Attorney-General's Department. The key objectives of the task force are to reduce international tax evasion in the Australian tax system; detect, deter and counter international tax evasion and money laundering; and reform related administrative practice, policy and legislation.

While Project Wickenby formally ended on 30 June 2015, the Serious Financial Crime Taskforce was established on 1 July 2015. The role of this Taskforce is to build on the outcomes of Project Wickenby, allowing agencies to continue to focus on serious international tax evasion as well as other criminal activities. Project Wickenby was the largest tax evasion investigation in Australia's history, resulting in the raising of \$2.29 billion in tax liabilities and recoup of \$985.67 million in outstanding revenue.

Regarding transfer pricing: Australia has had in place, since the early 1980s, detailed transfer pricing rules; with the ATO focusing on international related party transactions for the past two decades. Australian tax law requires that parties to international transactions – where the parties are related – must charge 'arm's length prices' for supplies and acquisitions of good and services.

The Australian Taxation Office (ATO) recently released – in the context of modernised transfer pricing rules for Australia – final guidance material relating to transfer price documentation expectations. Businesses with international dealings may have their transfer pricing reviewed or audited by the ATO, with the possibility of pricing adjustments and penalties. The more significant and broader the scope of a business's international dealings with related parties, the more likely the ATO is to review those dealings. Businesses with significant levels of dealings, and low tax performance compared to industry standards, are at the greatest risk of review.

Another project with a similar focus, Project Eclipse, was also designed to expose offshore tax avoidance structures. Established in 2013, the project involved collaboration among Australian agencies and counterparts in the United Kingdom and United States to share data relating to complex offshore structures in jurisdictions including the Cayman Islands, Cook Islands and Singapore. Through Project Eclipse, many instances were identified of income and assets hidden offshore, and tens of millions of dollars in suspected tax avoidance through the use of 'shell companies'.

### *Description of Risk*

Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Transparency International; Scores from past years were 81 (2013) and 85 (2012).)

Australia has accepted the OECD's internationally agreed tax standard which includes information sharing, transparency and global collaboration in relation to tax matters. The recent coordinated focus on offshore trading and tax havens by the Australian Taxation Office and partner agencies (both in Australia and overseas) led to prosecutions and recovery of unpaid tax and 'laundered' money. The robust, recently finalised requirements relating to

transfer pricing send a strong, consistent message regarding the expectations of the Australian Government in relation to this aspect of international business.

### *Risk Conclusion*

The risk relating to offshore trading and transfer pricing is considered Low.

### **1.18.6. Risk designation and specification**

Low risk

### **1.18.7. Control measures and verifiers**

N/A

## **1.19. Custom regulations**

*Custom legislation covering areas such as export/import licenses, product classification (codes, quantities, qualities and species).*

### **1.19.1. Applicable laws and regulations**

- Customs Act 1901 (Cth). Available at:  
<https://www.legislation.gov.au/Series/C1901A00006/Amendments>
- Customs Regulation 2015 (Cth). This regulation replaces relevant provisions of the Customs Regulations 1926 which relate to Australia's international obligations. Available at:  
<https://www.legislation.gov.au/Details/F2015L00373>
- Customs (International Obligations) Regulation 2015 (Cth). Available at:  
<https://www.comlaw.gov.au/Details/F2015L00373>
- Illegal Logging Prohibition Act 2012 (Cth). Available at:  
<https://www.legislation.gov.au/Details/C2012A00166>
- Illegal Logging Prohibition Regulations 2013 (Cth), No. 1. Available at:  
<https://www.legislation.gov.au/Details/F2013L00883>
- Customs (Prohibited Exports) Regulations 1958 (Cth). Available at:  
<https://www.legislation.gov.au/Details/F2012C00524>
- Quarantine Act 1908 (Cth). Available at:  
<https://www.legislation.gov.au/Details/C2008C00607>
- Export Control Act 1982 (Cth). Available at:  
<https://www.legislation.gov.au/Details/C2012C00259>
- Export Control (Unprocessed Wood) Regulations (Cth). Available at:  
<https://www.legislation.gov.au/Details/F2004C00229>
- Export Control (Hardwood Wood Chips) Regulations 1996 (Cth). Available at:  
<https://www.legislation.gov.au/Details/F2004C00646>
- Export Control (Regional Forest Agreements) Regulations (Cth). Available at:  
<https://www.legislation.gov.au/Series/F1997B02604>

- Export Control (Plants and Plant Products) Order 2011 (Cth). Available at: <https://www.legislation.gov.au/Details/F2011L02005>

#### 1.19.2. Legal authority

- Commonwealth Department of Agriculture and Water Resources
- Commonwealth Department of Immigration and Border Protection

#### 1.19.3. Legally required documents or records

- Request for Permit or Notice of Intention with all supporting documentation, which may include import permits, empty container declaration, treatment certificates, transfer certificates, area freedom certificates (State, production area or crop/orchard area), re-inspection documents, and any other requirements for the export of timber/ wooden items.

#### 1.19.4. Sources of information

##### *Government sources*

- 1) border.gov.au. (N.Y.). *Volume 12 - Export Control*. Australian Government - Australian Customs and Border Protection Service. Available at: <http://www.border.gov.au/Exportingggoods/Documents/111026volume12version5.2.pdf>
- 2) legislation.gov.au. (2014). *List of CITES Species for the Purposes of the Act* (made under section 303CA of the Environment Protection and Biodiversity Conservation Act 1999). Australian Government – Department of the Environment. Available at: <https://www.legislation.gov.au/Details/F2014C01277/>
- 3) agriculture.gov.au. (2013). *Exporting plants and plant products: A step-by-step guide for Australian exporters* (Biosecurity). Australian Government – Department of Agriculture. Available at: [http://www.agriculture.gov.au/Style%20Library/Images/DAFF/\\_data/assets/pdffile/0005/2271533/plant-export-guide.pdf](http://www.agriculture.gov.au/Style%20Library/Images/DAFF/_data/assets/pdffile/0005/2271533/plant-export-guide.pdf)

##### *Non-Government sources*

- 1) Transparency.org. (2014). Corruption Perceptions Index 2014: Results. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

#### 1.19.5. Risk determination

##### *Overview of Legal Requirements*

The Commonwealth Department of Agriculture and Water Resources (DAWR) regulates all products exported from Australia on behalf of all States and Territories. (Refer: <http://www.agriculture.gov.au/export/plants-plant-products>)

The Department also administers the Quarantine Act 1908, Export Control Act 1982, and various other Acts, the objective of which is to protect Australia's animal, plant and human health status and to maintain market access for Australian food and other agricultural exports.

For timber and timber products, there may also be a requirement to ensure that the wood is low risk of having been illegally logged. DAWR is also responsible for ensuring importers and



processors of regulated timber products are complying with the Illegal Logging Prohibition Act 2012 and the Illegal Logging Prohibition Regulation 2013 (refer: <http://www.agriculture.gov.au/forestry/policies/illegal-logging> and <http://www.agriculture.gov.au/forestry/policies/illegal-logging/compliance>).

For certain wood products, there may be a requirement for State-based information to be supplied with export material (refer Australian Customs and Border Protection Service, Volume 12, Export Control: <http://www.border.gov.au/Exportinggoods/Documents/111026volume12version5.2.pdf>).

The Commonwealth Export Control Act (1982) refers to 'prescribed goods', with 'unprocessed wood' listed as a 'prescribed good' under this Act. The Act does not refer to processed wood and there is therefore no requirement for an export licence for processed wood. To issue a licence to export unprocessed WA Sandalwood, the Commonwealth Department of Agriculture and Water Resources (DAWR) must sight copies of Department of Biodiversity, Conservation and Attractions' Forest Produce (Sandalwood) Licence and the Commercial Producer's/ Nurseryman's Licence (private land) or Commercial Purposes Licence (Crown land).

### *Description of Risk*

Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) and is ranked eleventh worldwide in CPI ranking. (Transparency International; Scores from past years were 81 (2013) and 85 (2012).)

Given the level of control effected through streamlined Commonwealth Customs and biosecurity mechanisms and, where relevant, additional State and Territory requirements, the risk relating to Australian Customs legislation – for most species harvested in Australia – is considered Low. For wild Sandalwood harvested in Western Australia, however, the issue of illegal harvesting is considered significant: and the risk is therefore considered Specified.

In Western Australia, there is a known issue with illegal harvesting and export of native Sandalwood (*Santalum spicatum*) from wild or rangeland systems (See sub-category 1.4). The harvested wood and its oil are exported to overseas markets and would therefore be circumventing export laws.

### *Risk Conclusion*

For most species harvested in Australia, the risk category is determined as Low Risk.

For wild/ native Western Australian Sandalwood, the risk category is determined as Specified.

### **1.19.6. Risk designation and specification**

- For WA Sandalwood (native harvest): Specified Risk
- For other jurisdictions and products: Low Risk

### **1.19.7. Control measures and verifiers**

Harvest of native or wild Western Australian Sandalwood:

- All required export permits and related documentation shall be in place.
- All processors of regulated timber products must comply with the requirements of the Illegal Logging Prohibition Act 2012 and related regulations, i.e. all processing of



Sandalwood within Australia shall be carried out legally and with legally harvested material. (Refer also Control Measures and Verifiers for 1.4 Harvesting permits.)

## 1.20. CITES

*CITES permits (the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as the Washington Convention). Note that the indicator relates to legislation existing for the area under assessment (and not e.g., the area from which CITES species are imported).*

### 1.20.1. Applicable laws and regulations

- Environment Protection and Biodiversity Conservation Act 1999 (Cth). Available at: <https://www.legislation.gov.au/Details/C2015C00422>
- List of CITES Species for the Purposes of the Act (29/11/2001). Available at: <https://www.legislation.gov.au/Details/F2014C01277>
- Customs and Other Legislation Amendment (Australian Border Force) Act 2015 (Cth). Available at: <https://www.legislation.gov.au/Details/C2015A00041>
- Amendment to List of CITES Species (03/02/2015). Instrument amends the List of CITES species for the Purposes of the Act (29/11/2001) to include a further four species in CITES Appendix III, and amends the notations of two existing CITES species; see also Explanatory Statement Available at: <https://www.legislation.gov.au/Details/F2015L00123>
- Control Act 1982 (Cth). Available at: <https://www.legislation.gov.au/Details/C2012C00259>
- Export Legislation Amendment Act 2014 Act, No. 37. Available at: <https://www.legislation.gov.au/Details/C2014A00037>
- List of Specimens Taken to be Suitable for Live Import (29/11/2011), made under section 303EB of the Environment Protection and Biodiversity Conservation Act 1999 (Cth). Available at: <https://www.legislation.gov.au/Series/F2006B01053>

### 1.20.2. Legal authority

- The legal authority is the Commonwealth Department of the Environment ('the Department'), specifically the Australian CITES Management Authority (responsible for administering the CITES licensing system and authorising permits) and the Scientific Authority (advising CITES of trade patterns and species' status) on behalf of the Commonwealth Government. The Department is also responsible for enforcement. (Refer: <https://www.environment.gov.au/biodiversity/wildlife-trade/cites>)
- Other Commonwealth agencies that are involved include Australian Customs and Border Protection Service, and Department of Agriculture and Water Resources.
- State and Territory jurisdictions are responsible for management of native flora and fauna including wildlife.

### 1.20.3. Legally required documents or records

Import and export permits are mandatory for Appendix I species. Export permits are required for Appendix II species (import permits are required if so designated under national law); and export permits or certificates are mandatory for Appendix III taxa.

## **Import:**

### **For pre-CITES specimens on Appendix I:**

- An appropriately issued pre-CITES certificate is required from the country of export
- Recommended: provision to the Department of a copy of the overseas pre-CITES certificate

### **For Appendix I specimens:**

An import permit issued by the Management Authority of the State of import is required. This may be issued only if the specimen is not to be used for primarily commercial purposes and if the import will be for purposes that are not detrimental to the survival of the species

### **Appendix II specimens:**

May be imported into Australia as long as permission is obtained to export these specimens from the CITES authority in the exporting country. In most cases, specimens will also require an Australia CITES import permit.

Non-live Appendix II CITES specimens may be imported into Australia as long as permission has been obtained to export the specimens from the CITES authority in the exporting country. In most cases specimens will also require an Australian CITES import permit. (Some exceptions exist for imports of non-live personal and household effects; see <https://www.environment.gov.au/biodiversity/wildlife-trade/travellers-shoppers/personal-effects>)

Single Use Permits are available for most transactions. They are valid for a single specified consignment, for a period of six months in the case of CITES specimens. Multiple Consignment Authorities (or Multiple Use Permits) authorise an unlimited number of consignments of a particular range of specimens, for a period of up to six months in the case of CITES specimens. Holders of Multiple Consignment Authorities are issued with uniquely numbered Specimen Export or Specimen Import Records. For each individual consignment, the permit holder must complete a Specimen Record describing the consignment. A photocopy of the Multiple Consignment Authority and an original Specimen Record should accompany the shipment. Refer: <https://www.environment.gov.au/biodiversity/wildlife-trade/permits#types>.

With the introduction of the Illegal Logging Prohibition Act and Regulation 2012, businesses are required to assess and manage the risk that the timber or timber products they are importing for processing have been illegally logged – known as carrying out due diligence. This requirement affects businesses importing certain timber or timber products (as defined in the regulation) into Australia and processors of domestically grown raw logs.

### **Export or re-export:**

Given there are no Australian woody forestry taxa (including Sandalwood, *Santalum spicatum* or *S. lanceolatum*) on the CITES list, there should be no risk that CITES species will be exported from Australia. Similarly, obtaining a certificate of origin – which certifies that a CITES Appendix III specimen was acquired in Australia and is therefore exempt from normal permitting requirements – is not relevant in the Australian forestry context.

Permits may be required from other government agencies such as the Department of Agriculture and Water Resources (Biosecurity).

### **1.20.4. Sources of information**

### Government sources

- 1) environment.gov.au. (N.Y.). *How to bring CITES plants and animals into and out of Australia*. [online]. Australian Government – Department of the Environment and Energy. Available at: <https://www.environment.gov.au/biodiversity/wildlife-trade/cites/how-to-export-import> [Accessed 20 September 2016]
- 2) environment.gov.au. (N.Y.). *Pre-CITES certificates*. [online]. Australian Government – Department of the Environment and Energy. Available at: <https://www.environment.gov.au/biodiversity/wildlife-trade/permits/pre-cites-certificates> [Accessed 20 September 2016]
- 3) Environment.gov.au. (N.Y.). *List of exempt from regulation*. [online]. Australian Government – Department of the Environment and Energy. Available at: <https://www.environment.gov.au/biodiversity/wildlife-trade/natives/list-exempt-native-specimens>
- 4) Aic.gov.au. (N.Y.). *Illegal trade in fauna and flora and harms to biodiversity*. [online]. Australian Government - Australian Institute of Criminology. Available at: <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp109/07.html> [Accessed 20 September 2016]

### Non-Government sources

- 1) cites.org. (N.Y.) *How CITES works*. [online]. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Available at: <https://www.cites.org/eng/disc/how.php> [Accessed 20 September 2016]
- 2) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]

#### 1.20.5. Risk determination

Given there are no Australian woody forestry taxa (including Sandalwood, *Santalum spicatum* or *S. lanceolatum*) on the CITES list, there should be no risk that CITES species will be exported from Australia; and this Indicator is therefore considered not applicable.

#### 1.20.6. Risk designation and specification

N/A

#### 1.20.7. Control measures and verifiers

N/A

### 1.21. Legislation requiring due diligence/due care procedures

*Legislation covering due diligence/due care procedures, including e.g. due diligence/due care systems, declaration obligations, and /or the keeping of trade related documents, legislation establishing procedures to prevent trade in illegally harvested timber and products derived from such timber, etc.*

#### 1.21.1. Applicable laws and regulations

- Illegal Logging Prohibition Act 2012 (Cth), No. 66. Available at: [http://www.austlii.edu.au/au/legis/cth/num\\_act/ilpa2012260/](http://www.austlii.edu.au/au/legis/cth/num_act/ilpa2012260/)
- Illegal Logging Prohibition Regulation 2012 (Cth). Available at: [http://www5.austlii.edu.au/au/legis/cth/consol\\_reg/ilpr2012351/](http://www5.austlii.edu.au/au/legis/cth/consol_reg/ilpr2012351/)

#### 1.21.2. Legal authority

- Commonwealth Department of Agriculture and Water Resources
- Commonwealth Department of Immigration and Border Protection

#### 1.21.3. Legally required documents or records

- Documentation relating to due diligence process, e.g. letters to suppliers regarding due diligence requirements, supplier questionnaires, customs broker authorisation, request for information notices, audit reports relating to Forest Harvest Units, written records of due diligence process and mitigation actions

#### 1.21.4. Sources of information

##### *Government sources*

- 1) *agriculture.gov.au*. (N.Y.). *Illegal Logging*. [online]. Australian Government – Department of Agriculture and Water Resources. Last updated 30 May 2016. Available at: <http://www.agriculture.gov.au/forestry/policies/illegal-logging>
- 2) *agriculture.gov.au*. (N.Y.). *Further information and resources* (regarding illegal logging). [online]. Australian Government – Department of Agriculture and Water Resources. Last updated 16 August 2016. Available at: <http://www.agriculture.gov.au/forestry/policies/illegal-logging/information-resources>
- 3) Bricknell, S. (2011). *Environmental Crime in Australia - AIC Reports, Research and Public Policy Series, No. 109*. Australian Government - Australian Institute of Criminology. Available at: [http://www.aic.gov.au/media\\_library/publications/rpp/109/rpp109.pdf](http://www.aic.gov.au/media_library/publications/rpp/109/rpp109.pdf)
- 4) Aic.gov.au. (2008). *The Illegal trade in timber and timber products in the Asia-Pacific region – Research and public policy series no. 89*. [online]. Timber Development Association (NSW) Ltd. Available at: <http://www.aic.gov.au/publications/current%20series/rpp/81-99/rpp89.html> [Accessed 20 September 2016]

##### *Non-Government sources*

- 1) *illegallogging.com.au*. (N.Y.). *Illegal Logging – Promoting Awareness in best practice timber harvesting*. [online]. Timber Development Association (NSW) Ltd. Available at: <http://illegallogging.com.au/> [Accessed 20 September 2016]
- 2) Transparency.org. (2014). *Corruption Perceptions Index 2014: Results*. [online]. Transparency International. Available at: <http://www.transparency.org/cpi2014/results> [Accessed 19 September 2016]
- 3) See also 1.19 Customs regulations

#### 1.21.5. Risk determination

### *Overview of Legal Requirements*

The Australian Illegal Logging Prohibition Act 2012 (Cth) was designed to support the trade of legal timber into Australia and to prevent illegally produced wood products from accessing the Australian market. The Act received Royal Assent in November 2012 and its high-level prohibitions are now in place. The Act:

- Prohibits the importation of illegally logged timber and the processing of illegally logged domestically grown raw logs (i.e. makes these activities criminal offenses in Australia);
- Requires importers of regulated timber products and processors of raw logs to conduct due diligence in order to reduce the risk that illegally logged timber is imported or processed.

In addition:

- Importers of regulated timber products must provide declarations, at the time of import, to the Customs Minister about the due diligence that they have undertaken.
- Part 4 provides for inspectors to exercise monitoring, investigation and enforcement powers for the purposes of this Act.

Under the ILPA Act 2012 and the Illegal Logging Prohibition Regulation 2012 (which came into effect in late 2014), it is a criminal offence to intentionally, knowingly or recklessly process domestically grown raw logs that have been illegally logged. Processors of domestically grown raw logs must therefore not process timber that is known to be illegally logged or for which there is a suspected risk of illegal logging. If illegal logging is verified following processing, processors potentially face serious penalties including imprisonment and heavy fines (AUD425,000 for a company or AUD85,000 for an individual).

Since its introduction, the Commonwealth Department of Agriculture and Water Resources (responsible for administering the Illegal Logging Prohibition Act 2012) has taken a 'soft' approach to implementation of the new legislation, and will not be enforcing the requirements until May 2016.

### *Description of Risk*

Given Australia's illegal logging legislation and system (as described above) makes it a criminal offense to import illegal harvested timber into Australia; and requires importers of regulated timber products and processors of raw logs to conduct due diligence; and given also that Australia has a Corruption Perceptions Index 2014 of 80 (above the threshold of 50) – the risk of illegal practice in relation to due diligence is considered low.

A recent Australian Institute of Criminology report on environmental crime in Australia states that "The extraction, processing and sale of timber in Australia is mostly conducted within legal provisions, although there are opposing and very vocal views as to this legality. While logging and timber extraction offences are not unknown, there is 'no evidence of systematic illegal logging taking place within Australia'". (An exception in the context of the statement about logging offences is the Western Australian Sandalwood industry, as described elsewhere including in 1.4 Harvesting permits and 1.19 Customs regulations.)

### *Risk Conclusion*

The risk conclusion against this criterion is Low.

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**1.21.6. Risk designation and specification**

Low Risk

**1.21.7. Control measures and verifiers**

N/A

## Annex I. Timber source types

The table **Timber Source Types in Australia** identifies the different types of sources of timber it is possible to find in the country of origin.

'Timber Source Type' is a term used to describe the different legal sources of timber in a country, in order to allow a more detailed specification of risk. The Timber Source Type is used to clarify:

- which forest types timber can be sourced from legally;
- what the legal requirements are for each source type, and
- if there are risks related to certain source types and not others.

Timber Source Type can be defined by several different characteristics. It may be based on the actual type of forest (e.g. plantation or natural), or other attributes of forests such as ownership, management regime or legal land classification. In this context Timber Source Types are defined and discerned using the following characteristics:

- Forest type** - refers to the type of forest such as plantation or natural tropical forest, or mixed temperate forest. Often the clearest differentiation is between natural forest and plantations.
- Spatial scale (Region/Area)** - relating to meaningful divisions of a nation. However, in some cases the assessment may be carried out at national level where that allows the risk assessment to establish risk at a meaningful level. E.g. a small country with uniform legislation and a uniform level of risk in all areas of the country, as national level assessment may be enough. In case there are significant differences in the legal framework or legality risks between different types of ownership (e.g. public forest, private forest, industrial forest), between different type of forest (e.g. natural forest and plantations) and/or between different geographical regions the conformance risk evaluation shall specify these differences when specifying the risk and apply the appropriate control measures.
- Legal land/forest classification** - refers to the legal classification of land. Focus is on land from where timber can be sourced, and this could entail a number of different legal categories such as e.g. permanent production forest, farm land, protected areas, etc.
- Ownership** - Ownership of land may differ in a country and could be state, private, communal etc. Ownership of land obviously have impacts on how land can be managed and controlled.
- Management regime** - Independently of the ownership of the land, the management of forest resources may differ between areas. Management may also be differentiated as private, state, communal or other relevant type.
- License type** - Licenses may be issued to different entities with a range of underlying requirements for the licensee. A license might be issued on a limited area, limited period of time and have other restrictions and obligations. Examples could be a concession license, harvest permit, community forestry permit etc.



## TIMBER SOURCE TYPES IN AUSTRALIA

Forest type	Region/Area	Legal Land Classification	Ownership	Management regime	License / Permit Type	Description of source type
Natural (native) forest	All State/ Territory jurisdictions	Leasehold forest	Public (State/ Territory)	Private management of pastoral or Indigenous leasehold	Permit or documentation as required based on ownership type, management regime and location (state specific).  Licence requirements dependent on location and ownership type.  All timber in Australia requires either permits or appropriate documentation depending on the forest type, ownership, and the management regime.	<b>Native timber</b> (Logging allowed with permit/ appropriate documentation)
				Government (or quasi-Government) management agencies, often using contractor harvesting companies		<b>No source</b> (no logging permitted; primarily conservation)
		Multiple-use public forest	Public (State/ Territory)	State and Territory Government agencies, e.g. Parks Victoria		<b>Native timber</b> (allowed with permit; primarily production, e.g. State Forest)
				State and Territory Government agencies		<b>Native timber</b> (may be allowed with permit; multiple or other values)
				State and Territory Government agencies (management may be vested in commercial entities, e.g. VicForests)		
		Nature conservation reserve including National Park	Public (State/ Territory)	State and Territory Government agencies, e.g. Parks & Wildlife Service, Tasmania		<b>No source</b> (no logging permitted; e.g. IUCN I–IV)
				State and Territory Government agencies, e.g. Forestry Tasmania		<b>Native timber</b> (with a permit/ appropriate authority e.g. some World Heritage Areas)
		Other Crown land	Public (State/ Territory)	State and Territory Government agencies, e.g. Fauna Habitat Zones managed by Forest Products Commission, WA		<b>Native timber</b> (may be allowed with appropriate documentation/ authority depending on tenure and jurisdiction)
Private land including Indigenous	Private (corporate or individual)	Private (corporate or individual)	<b>Native timber</b> (varies depending on tenure: some reserves permit native timber logging with owner's permission and/or appropriate documentation)			
Natural (native) forest - sandalwood	Western Australia	Crown land	Public (State/ Territory)	State and Territory Government agencies (Forest Products Commission)		<b>Native timber</b> (specifically wild or native Australian Sandalwood, Santalum spicatum, with appropriate documentation; harvested volumes are constrained through the Order In Council Sandalwood (Limitation of

		Private land including Indigenous	Private (corporate or individual)	Private (corporate or individual)	Removal of Sandalwood) Order 2015 (WA) <b>Native timber</b> (specifically wild or native Australian Sandalwood, Santalum spicatum, with appropriate documentation; harvested volumes are constrained through the Order In Council Sandalwood (Limitation of Removal of Sandalwood) Order 2015 (WA)
Industrial plantation forest	All State/ Territory jurisdictions	Leasehold/ licence	Public (State/ Territory)	State and Territory Government agencies (management may be vested in commercial entities that may own forest resource but not land, e.g. HQPlantations)	<b>Plantation timber</b> with appropriate authority/ documentation
		Private land including Indigenous, farmland	Private (corporate or individual)	Private (corporate or individual)	<b>Plantation timber</b> with appropriate documentation (e.g. Timber Harvest Plan submitted to local Government authority)



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## About

### Supporting Legal Timber Trade

Supporting Legal Timber Trade is a joint project run by NEPCon with the aim of supporting timber-related companies in Europe with knowledge, tools and training in the requirements of the EU Timber Regulation. Knowing your timber's origin is not only good for the forests, but good for business. The joint project is funded by the LIFE programme of the European Union and UK aid from the UK government.



NEPCon (Nature Economy and People Connected) is an international, non-profit organisation that builds commitment and capacity for mainstreaming sustainability. Together with our partners, we foster solutions for safeguarding our natural resources and protecting our climate.

NEPCon | [www.nepcon.org](http://www.nepcon.org) | [info@nepcon.org](mailto:info@nepcon.org)  
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