

Timber Marketing Regulation 2010

Regulatory Impact Statement



**Industry &
Investment**

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Timber Marketing Regulation 2010 Regulatory Impact Statement

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Additional copies of this document are available online at www.industry.nsw.gov.au or by telephoning 02 9407 4271.

Information sources

In the preparation of this regulatory impact statement information was sourced from officers of Industry and Investment NSW.

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Executive Summary

The objective of the *Timber Marketing Act 1977* (the Act) is to ensure that the quality of timber sold in the marketplace is fit for purpose. The *Timber Marketing Regulation 2005* (the 2005 Regulation) assists in meeting the objectives of the Act by giving effect to some of its provisions. The Regulation prescribes the tests and results for lyctid susceptible sapwood, and for assessing the moisture content of timber. It also prescribes procedures and standards for preservative treatment of timber, and official forms and notices ensuring that minimum timber quality requirements are met.

Since the legislation came into effect, the incidence of lyctid affected timber, incorrect moisture content and poor preservative treatments has dropped. Developments in the building industry have seen the increasing use of non-lyctus susceptible plantation softwoods as the primary building timber. Most lyctus-susceptible timber is used in framing and decorative situations. Wood treatment developments and the use of Australian Standards have all increased the reliability of timber in building applications.

The 2005 Regulation is being reviewed pursuant to the requirements of the *Subordinate Legislation Act 1989* as it is due for repeal on 1 September 2010. The Government is proposing to make a new Regulation, the *Timber Marketing Regulation 2010* (the proposed Regulation). The proposed Regulation repeals and remakes, with a number of changes, the existing Regulation.

The changes proposed to the Regulation include providing for the individual branding of reconstituted timber such as particleboard, strand board and products using veneer laminations. It is also proposed that changes to fees for timber treatment plants will be made by the Forestry Commission rather than through regulation amendment. References to Australian Standards will also be updated.

The costs and benefits of the proposed Regulation have been assessed and compared with the option of remaking the existing Regulation without amendment, allowing the existing Regulation to lapse; and non-Regulatory means to achieve the objectives of the Act and Regulation. The proposed Regulation is considered the most effective means of achieving the objectives of the Act, and provides the highest net benefit to the community. It is therefore recommended that the proposed Regulation be made.

Submissions are sought on the proposed Regulation and regulatory impact statement. Submissions will be reviewed and considered and, if appropriate, the proposed Regulation will be amended. If remade, it is proposed that the Regulation will come into effect by 1 September 2010.

Exhibition of RIS and process for submissions

The exhibition of the proposed Regulation and the regulatory impact statement (RIS) provides interested stakeholders, including industry and members of the wider community, with an opportunity for direct input into the regulatory development process.

Public notice of the exhibition of the Regulation and RIS will appear in the *NSW Government Gazette* and in the following media:

- *The Sydney Morning Herald*
- *The Land*
- *The Daily Telegraph*

In accordance with Government requirements, the proposed Regulation and RIS will be available for comment for a period of four weeks.

The regulatory impact statement is accessible at:

<http://www.dpi.nsw.gov.au/aboutus/about/legislation-acts/review>

Additional copies may be obtained by telephoning (02) 9407 4271.

How to make a submission

Interested parties are invited to submit written comments on the proposed Regulation and the RIS to Industry and Investment NSW in any of the following ways:

Post: Mr Lal Wimalaratne
Legal Officer
Industry and Investment NSW
Locked Bag 23
Pennant Hills NSW 2120

Facsimile: (02) 9873 1048

Email: lalw@sf.nsw.gov.au

The closing date for submissions is 27 July 2010 at 5.00pm.

What happens to submissions

Industry and Investment NSW will review all submissions received by the closing date and, based on this review, the draft Regulation may be amended as necessary.

The Minister will be advised of all submissions and actions arising from them.

A copy of all submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the Regulation.

1.0 Introduction

1.1 Requirements under the *Subordinate Legislation Act 1989*

Under the *Subordinate Legislation Act 1989*, a regulatory impact statement (RIS) must be prepared as part of the review of most regulations under the staged repeal program.

When a regulation is to be reviewed under the staged repeal program, the responsible agency must review the draft regulation and consider its social and economic impacts, and whether the regulation is necessary. The purpose of this review is to ensure that the regulation provides a net benefit to the community, and that any regulatory burden imposed on industry is justified.

Under the *Subordinate Legislation Act 1989*, the RIS must include:

- A statement of the objectives sought to be achieved and the reasons for them.
- The alternative options by which those objectives can be achieved (whether wholly or substantially).
- An assessment of the costs and benefits of the proposed statutory rule, including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment of the costs and benefits of each alternative option to the making of the statutory rule (including the option of not proceeding with any action), including the costs and benefits relating to resource allocation, administration and compliance.
- An assessment as to which of the alternative options involves the greatest net benefit or the least net cost to the community.
- A statement of the consultation program to be undertaken.

This RIS sets out the analysis of the impact of the proposed Regulation. The preparation of the RIS involved identifying and assessing the relevant costs and benefits of each proposed part of the regulation other than those parts that deal with matters of a machinery nature.

1.2 Better Regulation Principles

In accordance with the Better Regulation Office's *Guide to Better Regulation*, this RIS also addresses the seven better regulation principles. These are:

- Principle 1: The need for government action should be established;
- Principle 2: The objective of government action should be clear;
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
- Principle 4: Government action should be effective and proportional;
- Principle 5: Consultation with business and the community should inform regulatory development;
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered;
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

2.0 Outline of the regulatory proposal

2.1 Title of proposed statutory rule and authority

The proposed Regulation is the *Timber Marketing Regulation 2010* under the *Timber Marketing Act 1977*.

2.2 Name of proponent and responsible Minister

The Minister for Mineral and Forest Resources is the Minister responsible for making the *Timber Marketing Regulation 2010*.

2.3 Legislative background

The objective of the *Timber Marketing Act 1977* (the Act) is to ensure that NSW marketed timbers are appropriate for purpose, and will not fail. As much of the timber is used for such purposes as construction, furniture and landscaping, it is important for the protection of consumers that it can fulfil its function satisfactorily.

The Act seeks to meet its objectives through providing controls for the sale and use of certain timbers to ensure against lyctid infestation, and setting out requirements for correct moisture content and preservative treatment. As well, it provides for timber quality and ensuring that imported timber meets standards consistent with the requirements for domestic producers.

Lyctus are powder post beetles that attack the sapwood of some hardwood timber species such as spotted gum. The lyctus burrow through the sapwood reducing the structural integrity of the timber. The borers are prevalent in NSW and can infest lyctid susceptible sapwood whether the timber is produced locally or overseas. Lyctid attack usually occurs within the first two years of service. Prior to the legislation it was not uncommon for structural members to collapse as the borers turned the sapwood to dust.

In lyctus susceptible hardwood, the sapwood needs to contain sufficient starch and a pore size large enough for the adult beetle to lay her eggs. The regulation describes a test for the presence of starch and susceptible wood can be protected from attack by treating with chemical preservatives. As a consequence of the legislation the sapwood of timber can be used in construction without the threat of lyctus infestation and decay.

Ensuring the correct moisture content in timber is also important to ensure that it does not expand and contract excessively, which can result in imperfections and warping. When timber loses moisture it shrinks at right angles to the grain. Timber in many applications performs better if it is seasoned to an appropriate moisture content.

Timber is considered seasoned when the moisture content is between 10 percent and 15 percent or, where there is an appropriate Australian Standard for that product, to the moisture contents detailed in that standard. The legislation provides that appropriate drying of the timber takes place to ensure that timber sold in NSW is to an appropriate standard.

Branding of timber ensures a greater chain of custody trail from the mill to the retailer. The 2005 Regulation requires that treated timber be branded (with a few exceptions). It requires that the brand be registered. The Forestry Commission maintains the register of approved brands which include a unique number that identifies the location of the plant treating the timber. The brand contains a number that identifies the chemical or group of

chemicals used to treat the timber. The brand also contains a hazard level that indicates in what conditions the treated timber is suitable, for example, H1 (for indoor use, protection against attack by lyctid borers), H5 (for in ground use such as poles or posts where they are subject to attack by insects or decay).

The Forestry Commission carries out random inspections for compliance with the legislation where timber is being used or sold. Samples of treated timber are often taken to carry out checks to see if the treatment complies with the attached brand. The brand is used to identify the producer and to determine what situations the timber is to be used for.

The Act therefore includes controls on the sale and use of lyctid susceptible and treated timber, prescribes compliance with Australian Standards in relation to the sale of timber. It also provides for inspections and enforcement of the Act's requirements.

2.4 Need for Government action

Domestic and imported timber may be susceptible to damage from lyctid infestation or excessive moisture content. Some timber is treated to make it suitable for applications for which it would otherwise not be appropriate for. If poor quality timber or poorly treated timber is used in construction, this could pose a risk to human safety, or could give rise to substantial costs to repair structural damage caused by failure of timber products. There is a need to ensure both imported and domestic timber meets the appropriate quality standards for its purpose.

The timber industry is fragmented, and includes domestic producers as well as importers who may have little knowledge of the technical aspects of timber quality. It is not considered that industry self-regulation or the actions of the marketplace would be effective in ensuring that timber of an acceptable standard is manufactured and sold.

Government action is necessary to redress the market failure associated with a fragmented industry not being prepared, or able, to incur the costs associated with ensuring that timber is of an acceptable quality standard for its purposes.

The legislation helps to ensure market confidence in timber produced or sold in NSW. With the exception of Queensland, other states do not have legislation of this type and anecdotal evidence indicates that timber from NSW is seen to be of a higher quality than some other States, due in some measure to the requirements of the legislation.

2.5 Objective of Government action

The objective of Government action is to ensure that timber produced or sold in NSW is of an appropriate quality and can be used for the purpose for which it was produced. Timber quality is of particular importance when it is used in structural or decorative situations.

2.6 The 2005 Regulation

The 2005 Regulation assists the Act to meet its objectives by prescribing how the requirements of the Act will be put into effect. The Regulation therefore:

Part 1: Sets out the name and commencement of the Regulation and definitions used in the Regulation.

Part 2: Prescribes the requirements for the treatment and sale of lyctid susceptible sapwood.

Part 3: Prescribes the requirements relating to the moisture content of timber and Standards for timber used in the manufacture and sale of prescribed articles (the standards are listed in Schedule 2)

Part 4: Prescribes the requirements for branding of certain timber and the forms and fees for application, renewal, variation and transfer of approval of preservative treatment and registration of a brand.

Part 5: Sets out the manner of dealing with applications for approval or consent; and prescribes various forms for approvals and certificates under the Act.

2.7 The proposed Regulation

It is proposed that the 2005 Regulation is remade with minor amendments. These include:

- (a) providing for the branding of reconstituted timber such as particleboard, strand board and products using veneer laminations of less than 15 millimetres thickness. Reconstituted wood is now used in many structural applications, for example, bracing of house frames. The requirement for branding when treated reflects the important structural nature of these products in buildings. The failure of particleboard, strand board and products using veneer laminations as a result of improper treatment could cause serious injury and damage.
- (b) providing for the Forestry Commission to set fees for the approval and registration of brands that are applied to treated timber, rather than changing the fees through amendment to the Regulation.
- (c) increasing fees for registrations or renewals of brands from \$75 or \$150 to \$300, and thereafter annually in line with the Consumer Price Index. The fee has not changed since 1993 and is no longer commensurate with administration costs.
- (d) changing the address where certain records are kept for inspection, to the Forestry Commission head office at West Pennant Hills.
- (e) changing the reference to Australian Standards in the 2005 Regulation to specify that any additions and amendments to relevant Australian Standards automatically form part of the Standard prescribed under the Regulation.

3.0 Options

3.1 Options to achieve the objectives of the Act

Three options have been considered against a base case as a means to achieving the objectives of the Act. These are:

- Base Case: Maintain the status quo: remake the 2005 Regulation without amendment;
- Option 1: No Regulation: allow the 2005 Regulation to lapse;
- Option 2: Make the proposed Regulation; and
- Option 3: Non-Regulatory approaches to meeting the objectives of the regulation.

3.2 Base case: Maintain the status quo – remake the 2005 Regulation without amendment

The 'base case' to be used in this analysis is a rollover of the 2005 Regulation, with the regulatory situation remaining as it is under the 2005 Regulation. All other options will be examined and compared against this base case.

Remaking the 2005 Regulation without amendment would mean that references to Australian Standards would be obsolete, as many have changed since the Regulation was last reviewed.

Currently, fees which accompany an application for approval or renewal of an approval for a preservative treatment and registration of a brand are not commensurate with the costs to Government of administering these processes. This has resulted in a discrepancy which, if allowed to continue, could further hamper the efforts of Government to provide appropriate administration and enforcement of the Act and Regulation.

It is not considered that this option would provide the best regulatory framework for the timber resource in NSW or provide optimum benefits to stakeholders or the community.

3.3 Option 1: No Regulation: Allow the 2005 Regulation to lapse

The first alternative scenario is that of allowing the 2005 Regulation to lapse. Allowing the Regulation to lapse would mean that many aspects of the Act are not given effect and the intention of the Act is therefore not fulfilled. Without a Regulation, it would not be possible to effectively manage aspects of the quality of timber for industry and the community.

There is a need for some form of quality control or quality assurance during the production stage, otherwise the timber could fail to perform effectively, possibly risking human life or damaging property.

3.4 Option 2: Make the proposed Regulation

The second scenario is the making of the proposed Regulation which repeals and remakes, with amendments, the 2005 Regulation. This is the preferred option.

There is a need for some form of quality control and quality assurance for timber and timber products, and the proposed Regulation fulfils the objectives of the Act in this regard.

Option 2 ensures the community expectation is met that Government action makes sure that timber sold in NSW is of an acceptable standard.

The incremental changes in the proposed Regulation will bring it into line with current Australian Standards and provide for appropriate fees. These changes will ensure that the Regulation continues to give effect to the objectives of the Act.

The proposed Regulation is the most appropriate regulatory framework for management of the timber resource and provides the greatest net benefit to the community of any of the alternative options.

3.5 Option 3: Non-regulatory approaches to meeting the objectives of the regulation.

The third scenario to be explored is industry self-regulation through a quality assurance program.

Under quality assurance standards, industry would be encouraged to adhere to timber production and treatment requirements for lyctid susceptible timber, the moisture content in timber and timber preservatives. Quality assurance programs can work well for man-made products such as aluminium or steel where it is reasonable to assume that if a random percentage complies with the required standard, the whole production batch should comply. This is not the case with natural products such as timber because of its natural variations. For example, the effectiveness of timber preservative treatment of a batch of timber may vary from piece to piece because of variations such as resin content, moisture content or the presence of sapwood.

A quality assurance model would be likely to include an audit role in the market place and on building sites, as well as having a complaint response mechanism for retailers and consumers. Without some form of legislative imperative, this work would be mainly advisory.

Consideration was also given to other forms of industry self regulation. Timber sales arise from a diverse industry with a diverse range of products. A single industry organisation representing the majority of the industry does not exist, and given that the industry is fragmented it currently does not have the capacity to self-regulate. Further, large quantities of timber are imported into the country, often by organisations with little or no timber industry experience. It is not considered feasible that these organisations would comply with conditions that were not mandatory.

The community expects that government will take the necessary action to provide quality assurance during timber production, and thus prevent risks to human life or building structures. Non-regulatory means of administering the timber resource in NSW are not considered appropriate as a means of meeting the objects of the Act or the expectations of the community.

4. Cost-benefit analysis

4.1 Methodology

The methodology used for analysing the options and the impact of the proposed Regulation is based on the procedure set out in Schedule 1 and Schedule 2 of the *Subordinate Legislation Act 1989* as well as the following guidelines:

- New South Wales Treasury, *NSW Government Guidelines for economic appraisal* (July 2007);
- Better Regulation Office, *Guide to Better Regulation* (November 2009)
- Better Regulation Office, *Measuring the Cost of Regulation* (June 2008); and
- Department of Environment and Conservation, *Reference Manual for Cost Benefit Analysis* (2005).

This RIS assesses the impacts of the 2005 Regulation against the alternative options of allowing the 2005 Regulation to lapse, making the proposed Regulation and taking a non-Regulatory approach. Impacts include direct and indirect costs and benefits, and may include intangible costs and benefits, such as a lack of confidence in timber as a structural product. Details and analysis of the identifiable costs are included in Section 4.3.

Where the impacts of an option cannot be assessed in monetary terms, qualitative evaluation has been made.

4.2 Machinery clauses

The proposed Regulation will remake unchanged provisions which are considered to be of a machinery nature, including:

- Clause 1 – Name of the Regulation
- Clause 2 – Commencement
- Clause 3 - Definitions
- Clause 19 – Requirements relating to approved forms under the Act.
- Clause 20 – Form to be used under the Act.
- Clause 21 – Form of notice for use under the Act.
- Clause 23 – Savings provision.

It is not considered necessary to discuss these provisions in detail, but comment on the provisions may nevertheless be included in submissions and will be duly considered.

4.3 Identification of costs and benefits of each option

4.3.1 Base Case: maintain the status quo – remake the 2005 Regulation without amendment

In keeping with recommendations from the Department of Environment and Conservation Reference Manual for Cost Benefit Analysis (2005), the base case has been specified as the maintenance of the "status quo" or a continuation of current services provided under the 2005 Regulation (p7). The benefits and costs of the alternative options are then derived through their relative comparison with this base case.

The net benefit of all the respective costs and benefits attributable to the base case has been given a value of \$0 for the purposes of allowing a relative comparison with the other options. This is not to say the base case does not provide a net benefit to the community, but rather that these values provide a benchmark from which to compare the other options.

Thus, if the net benefits of the other options achieve a value greater than \$0, they represent an improvement on the 2005 Regulation. If the net benefit is less than \$0, this represents a less desirable outcome than the 2005 Regulation.

It should be noted that the implied benefits and costs attributable to the base case (remake the 2005 Regulation without amendment) are reflected as the inverse of those described below for allowing the Regulation to lapse (Option 1).

4.3.2 Costs and benefits of Option 1: Allow the 2005 Regulation to lapse

Option 1 - Costs

Costs for businesses

- Industry may be forced to pay potential compensation or replacement costs where timber has failed due to inadequate manufacture, treatment or labelling. For the purpose of this analysis, these costs have been attributed to the consumers of timber products to avoid double counting, but in reality consumers would most likely pursue cost recovery from timber retailers through legal channels.
- Without references to current Australian Standards, businesses may find that the wood products they produce do not conform to international standards for moisture content, which could lead to decreased sales of timber products.

Costs for Government

- The intent of the Act, to manage important aspects of timber quality and suitability for purpose, could not be implemented.
- Government would no longer receive income in the way of fees and charges payable by timber businesses. This is estimated to be \$20,000 per annum.
- The risk of injury or death from inappropriate production of timber or inappropriate use of timber in structural situations could increase. This could increase costs to Government through compensation payouts, lengthy court cases, and medical costs.
- Timber is also used extensively by Government as a building material in infrastructure. Government could be subject to timber replacement or legal costs if the timber did not meet expectations or expected service life.

Costs for consumers

- Consumers rightly expect that timber will be manufactured to an appropriate standard for its designated use. If the timber does not conform to this standard it may fail, with serious consequences for the consumer. Consumer confidence in timber as a reliable and relatively inexpensive building material may therefore be lost as a consequence of not having a regulation.
- Consumer costs would also rise if timber failed to do the task for which it was designed, for example, if the preservative treatment was not effective and the timber was subject to decay. Failure of structural members in a house requires its complete reconstruction, at a cost of between \$200,000 and \$400,000. An estimated 30,000 houses (Housing Industry Association 2008) are built in NSW each year in which the structural performance of the timber is critical. For the purpose of this analysis it is conservatively assumed that three houses each year will be subject to structural failure under this scenario, at a total cost to consumers of \$900,000.

Costs for community & the environment

- Allowing the 2005 Regulation to lapse may lead to increased prevalence of lyctid borer as there would be no requirements for the treatment and use of lyctid susceptible sapwood. *Spotted Gum*, commonly grown in NSW and Queensland, is extremely susceptible to lyctid attack. It also has a wide sapwood band. If the timber is used structurally, and the sapwood is consumed by borers, these structures may collapse. Structural collapse is a significant risk to human safety and assets, and leads to significant cost (such a cost has been incorporated into costs for consumers).
- Timber is an environmentally beneficial product because it is a net carbon store for many years after it is harvested. As a building product, it is much more environmentally friendly than interchangeable products such as steel or cement which are resource intensive to produce, and which also produce significant amounts of carbon dioxide during production. Trees sequester carbon as they grow and this carbon is largely stored in the timber product. Without a regulation ensuring the reliability of timber products, consumers may choose to use carbon intensive products, which may result in an increase in environmental costs.

Option 1: Benefits

Benefits for businesses

- There would be a decreased cost for timber businesses as they would not be required to pay fees prescribed under the regulation. These fees are currently between \$75 and \$150 (\$75 for alterations and \$150 for registration of a brand for three years) and are not considered excessive. Government receives approximately \$20,000 from licence fees per annum under the 2005 Regulation.
- Potentially, without a regulation, businesses could choose whether they wish to apply treatments to particular timber lines and this could result in lower manufacturing costs. It is considered, however, that this may be a false economy if the timber repeatedly fails during usage. Timber failure could impact on business profits if consumers move to using other materials or other timber suppliers with a more reliable product.
- Businesses would not have to report or apply for changes to registered brands saving between \$50 and \$75 per year. This figure is considered to be sufficiently insignificant so as to not warrant its inclusion in the analysis.
- Businesses would not have to brand their timber although it is considered that most business would continue to mark their products in some way. The cost saving of this is negligible.
- There would be no need to apply for approval from the Forestry Commission before selling treated timber in NSW which means less Government red tape for businesses.

Benefits for Government

- Government would have fewer timber administration and inspection responsibilities. The administrative workload to administer the provisions of the 2005 Regulation during 2008/09 was estimated to be \$145,000, based on the salaries of officers performing these roles. (This value also includes enforcement actions conducted under the Act, but it has not been possible to estimate the relative proportions).
- The costs to remake the Regulation would not be incurred and there would be a concurrent reduction in red tape. However, the cost of making a regulation is considered part of the core business of Government.

Benefits for consumers

- Allowing the 2005 Regulation to lapse may potentially result in slightly cheaper prices for some timber products.

Benefits for community & the environment

- There are no identified benefits for the community or the environment through allowing the 2005 Regulation to lapse.

Summary

The costs and benefits associated with repeal of the *Timber Regulation 2005* are summarised in Table 1 below.

Table 1 – Summary of costs and benefits of No Regulation

Costs	Annual \$
Costs to Government	
Increased difficulty in managing the Timber Resource	
Loss of revenue from Fees and Charges payable by Timber Businesses	\$20,000
Potential compensation or medical/legal costs (re: mismanagement)	
Potential timber replacement cost in government infrastructure	
Costs for Businesses	
Potential compensation or replacement costs for faulty timber	
Non conformance with international standards (loss of sales)	
Costs for Consumers	
Loss in consumer confidence	
Potential timber replacement cost in private infrastructure (for faulty timber)	\$900,000
Costs for Community & the Environment	
Increased prevalence of lyctid borer (potential loss of life or infrastructure)	
Potential loss of carbon sequestration	
Potential increased use of environmentally unsustainable alternatives to timber products	
	<u>\$920,000</u>
Benefits	
Benefits for Government	
Reduced cost of administrative and compliance responsibilities	\$145,000
Avoided cost of remaking new Regulation (core government business)	\$0
Benefits for Businesses	
Avoided cost of Fees and Charges payable by Timber Businesses	\$20,000
Potential lower short term manufacture costs	
Savings on costs of Registered Branding	
Red-tape reduction	
Benefits for Consumers	
Potential reduction in timber price	
Benefits for Community & the Environment	
Nil	\$0
	<u>\$165,000</u>
Net Benefit of No (General) Regulation	<u><u>-\$755,000</u></u>

The table above shows that total quantified costs exceed total quantified benefits of the No Regulation scenario relative to the base case. This option thus provides an annual net benefit of -\$755,000 (or net cost of \$755,000).

4.3.3 Costs and benefits of Option 2: Make the proposed Regulation

Option 2: Costs

Costs for businesses

- As it is proposed to increase application fees for approvals from \$150 to \$300, timber businesses would be required to pay more. The fee is payable every three years,

resulting in an increase in costs to businesses of \$50 annually. There has been no increase in the fee since 1993. In 2008/09 approximately \$20,000 was obtained from licence fees under the Act and Regulation. This is likely to increase to \$44,000 under option 2 (an increase of \$24,000), thus more accurately reflecting the actual costs involved in administering the regulations.

Costs for Government

- Government will incur costs associated with making the proposed Regulation making a Regulation is considered core business for Government.

Costs for consumers

- If timber businesses are required to pay higher fees, it is likely that the cost will be passed on to consumers. To avoid double counting in the analysis, these costs have been attributed solely to timber businesses.

Costs for community & the environment

- It is considered that that there would be no additional costs for the community and the environment by remaking the proposed Regulation.

Option 2: Benefits

Benefits for businesses

- The proposed Regulation sets out the requirements for testing and selling lyctid susceptible sapwood, the standards for the moisture content in timber, and the branding of preservative treated timber. Prescribing these requirements provides certainty for the industry and ensures that certain standards are maintained for these important aspects of timber production. This will improve the marketability of these products.
- By providing in the proposed Regulation for reference to current standards, wood products produced in NSW will conform to international standards for moisture content in timber. This will allow NSW produced timber to be sold overseas and benefit local businesses.

Benefits for Government

- The proposed Regulation provides certainty as to the conditions that must be enforced. A timber inspector can advise a seller that if he sells a timber product that does not comply with the Act, he may be liable for prosecution. The seller, when offered this advice, usually contacts the supplier and asks him to rectify the problem. The Regulation allows the breach to be rectified without lengthy legal processes.
- The proposed Regulation provides for Government to recover some administration and enforcement costs. In 2008/09 approximately \$20,000 was obtained from licence fees. This is likely to increase to \$44,000 under option 3, thus recovering more of the actual costs involved in administering the regulations.
- The Regulation and the enforcement of its provisions allow Government to have a better understanding of the incidence of lyctid affected timber and the range of problems consumers experience as a result of poor timber manufacture. This allows Government to have informed consultation with industry when standards are reviewed, and assists in maintaining timber as a sustainable building product.

Benefits for consumers

- Should the Regulation be remade with the proposed amendments, consumers will continue to rely on timber products as a cheap but effective building material which conforms to international standards.
- Consumer confidence in timber is not undermined so timber pricing remains stable.

Benefits for community & the environment

- Timber is an environmentally beneficial product because it is a net carbon store for many years after it is harvested. As a building product, it is much more environmentally friendly than alternative products such as steel or cement which are resource intensive to produce, and which also produce significant amounts of carbon dioxide during production. Trees sequester carbon as they grow and this carbon is largely stored in the timber product. It is beneficial for the environment if consumers continue to use timber products in preference to other products. Treating timber appropriately will also extend the life of these timber products.

Summary

The costs and benefits associated with remaking the 2005 Regulation with amendments are summarised in Table 2 below.

Table 2 – Summary of costs and benefits of the proposed Regulation

Costs	Annual \$
Costs to Government	
Cost of remaking new Regulation (core government business)	\$0
Costs for Businesses	
Fees and Charges payable by Timber Businesses increased by	\$24,000
Costs for Consumers	
Potential increase in cost of timber	
Costs for Community & the Environment	
Nil	\$0
	\$24,000
Benefits	
Benefits for Government	
Clearer guidance with regard to compliance enforcement	
Increase in recovery of government administration costs (from \$20,000 to \$44,000)	\$24,000
Increase understanding of industry issues and thus improved policy formulation	
Benefits for Businesses	
Certainty in compliance with industry standards (potential increased sales)	
Increased timber marketability (potential increased sales)	
Timber meeting international standards (potential increased sales)	
Benefits for Consumers	
Increased consumer confidence (potential increased sales)	
Benefits for Community & the Environment	
Potential for increased life of timber in infrastructure	
	\$24,000
Net Benefit of Remake Regulation with Proposed Amendments	
	\$0

Table 2 shows that total quantifiable costs of this option would be \$24,000 relative to the base case, comprising only an increase in fees and charges payable by timber businesses. Due to the nature of the proposed amendments to the Regulation (mostly streamlining and administrative efficiencies) the total identified benefits are expected to be significant though mostly unquantifiable. Increased marketability and compliance with industry standards will no doubt lead to significant benefits to the timber industry through market access and increased sales.

However, the only quantifiable benefit identified in this analysis was the increased revenue to Government of the fees and charges payable by timber businesses. For this reason the quantifiable net benefit is represented as \$0 (or not less than the net benefits already incorporated into the base case). In reality, however, the net benefits are expected to be much greater.

4.3.4 Costs and benefits of Option 3: Non-regulatory approaches to meeting the objectives of the regulation

Option 3: Costs

Costs for businesses

- Under a non-regulatory approach such as a quality assurance program, businesses might not have to pay the fees in the Regulation. However, a quality assurance program would require some sort of periodic audit to validate timber manufacturing claims. This audit would impose a cost on businesses and would probably cost more than Government fees. A typical treatment plant audit costs \$600, plus costs for sample analyses of about \$130 per sample. As substantial volumes of treated timber are imported from other States and overseas, auditing would also be need to be carried out for all organisations importing timber. In New Zealand, quality assurance costs are around \$5,000 per business. Extrapolating this figure to NSW, this would equate to a total cost to business of \$400,000 for quality assurance costs.
- Non-regulatory approaches are seen as being not as stringent as regulatory approaches and as such the industry may lose business in favour of timber from other states or overseas that have greater controls on timber manufacture.
- Without the Regulation industry may be forced to pay potential compensation or replacement costs where the timber they produce fails due to inadequate manufacture, treatment or labelling. For the purpose of this analysis, these costs have been attributed to consumers of timber products to avoid double counting, but in reality the consumers will most likely pursue cost recovery from timber retailers through legal channels.
- Without the most up to date reference to standards, businesses may find that the wood products they produce may not conform to international standards for moisture content in timber. If the moisture content does not conform to international standards then sales could be affected.

Costs for Government

- Without the Regulation, Government would no longer receive income in the way of fees and charges payable by timber businesses. This is estimated to be \$20,000 per annum.
- No other major costs are considered to arise for Government through non-regulatory approaches as this option would on the whole be funded by industry.

Costs for consumers

- Consumer costs would rise through higher timber prices if the costs of a quality assurance program were greater than the costs of a regulatory framework.
- Consumer costs would also rise if the preservative treatment of the timber purchased failed to do the task for which it was designed, and the timber was subject to decay. Failure of the structural members of a house would require complete reconstruction at a cost of between \$200,000 and \$400,000. An estimated 30,000 houses (Housing Industry Association 2008) are built in NSW each year in which the structural performance of timber is critical. For the purpose of this analysis, it is conservatively assumed that three houses each year would be subject to structural failure under this scenario, at a total cost to consumers of \$900,000.
- Failure of preservative-treated or lyctid susceptible timber is likely to be less critical but may nonetheless lead to substantial repair costs, particularly if preservative performance impacts on structural integrity (these costs have been incorporated into the figures given above).
- Without some form of quality control of the linkage between timber labelling and adherence to Australian Standards, it would take the failure of only two houses built

each year for the cost of not having a Regulation to exceed the annual cost of administration and enforcement of the Regulation.

- The cost of failure of individual structural components through inadequate adherence to the Standards depends very much on the extent to which such failure affects either structural integrity or consumer perception of serviceability or longevity. With a labour cost alone of around \$80/hour for repair work, less than one year's work for only two repair persons equates to the net administration cost of the Regulation.
- Consumer costs could be expected to increase substantially through assessment and analysis of potentially significantly higher levels of structural failure or under-performance. A self-regulation system would have to be very effective to produce an equivalent outcome.

Costs for community & the environment

- The prevalence of lyctid borer may increase due to not having requirements for treatment and use of lyctid susceptible sapwood.
- Consumers may choose other products such as steel or cement which are a carbon source rather than sequestering carbon.
- Loss of confidence in timber as a product may see less environmentally friendly products used in lieu of sustainable timber products.

Option 3: Benefits

Benefits for businesses

- Industry may benefit from less Government red tape, and would instead control all aspects of timber manufacture and marketing.
- Businesses would not have to pay the fees under the Regulation.
- Under a quality assurance program it is possible that some businesses might not treat their products to the current standard and as such would save money on timber processing. However, as mentioned above, this is considered to be a false economy if the timber fails to perform the task it was manufactured for and the business suffers as a result.
- Businesses would not have to report or apply for changes to registered brands, a cost of between \$50 and \$75 per year. This figure is considered to be sufficiently insignificant so as to not warrant its inclusion in the analysis.
- Businesses would not have to brand their timber, although it is considered that most business would continue to mark their products in some way. This is considered a modest cost saving.

Benefits for Government

- Government would not need to fund, administer or ensure compliance with the Regulation. This would save approximately \$145,000 per annum.
- The costs to remake the Regulation would not be incurred and there would be a concurrent reduction in red tape.

Benefits for consumers

- None identified.

Benefits for community & the environment

- None identified.

Summary

The costs and benefits associated with the self regulation are summarised in Table 3 below.

Table 3 - Summary of Self Regulation Costs and Benefits

Costs	Annual \$
Costs to Government	
Loss of revenue from Fees and Charges payable by Timber Businesses	\$20,000
Potential compensation or medical/legal costs (re: mismanagement)	
Potential timber replacement cost in government infrastructure	
Costs for Businesses	
Potential cost of quality assurance audit	\$400,000
Potential loss of business to higher standard timber imports	
Potential compensation or replacement costs for faulty timber	
Non conformance with international standards (loss of sales)	
Costs for Consumers	
Potential increase in timber price (due to quality assurance audit)	
Potential timber replacement cost in private infrastructure (for faulty timber)	\$900,000
Potential subsequent treatment of lyctid susceptible timber	
Costs for Community & the Environment	
Increased prevalence of lyctid borer (potential loss of life or infrastructure)	
Potential loss of carbon sequestration	
Potential increased use of environmentally unsustainable alternatives to timber products	
	\$1,320,000
Benefits	
Benefits for Government	
Reduced cost of administrative and compliance responsibilities	\$145,000
Avoided cost of remaking new Regulation (core government business)	\$0
Benefits for Businesses	
Avoided cost of Fees and Charges payable by Timber Businesses	\$20,000
Lower short term manufacture costs	
Savings on costs of Registered Branding	
Red-tape reduction	
Benefits for Consumers	
Nil	\$0
Benefits for Community & the Environment	
Nil	\$0
	\$165,000
Net Benefit of Non Regulatory Approach	-\$1,155,000

Table 3 shows that total quantified costs exceed total quantified benefits of the No Regulation scenario relative to the base case. This option thus provides an annual net benefit of -\$1,155,000 (or net cost of \$1,155,000).

5. The preferred option

A summary of the cost benefit analysis results for the *Timber Marketing Regulation 2010* Regulatory Impact Statement is provided in Table 4 below. From the table it can be seen that the preferred option is the proposed Regulation with identified amendments.

Table 4 – Findings from the cost benefit analysis

Option	Annual \$
Base case: Maintain the status quo	\$0
Option 1: No Regulation	-\$755,000
Option 2: Make the proposed Regulation	\$0 (plus unquantifiable benefits)
Option 3: Non-Regulatory approach	-\$1,155,000

Making the proposed Regulation (Option 2) is considered to be the most effective and efficient means of supporting the aims and objectives of the Act by helping to ensure that timber produced or sold in NSW is of an appropriate quality and can be used for the purpose for which it was produced. Government functions are then consistent with the expectations of the community. The proposed Regulation does not place an undue burden on the community.

Branded timber is used for virtually all structural applications in NSW and extensively in situations in which performance according to specifications is critical to structural integrity and longevity. Given the fundamental importance of the family home to the community, any threats to the value of that asset through inadequate control of materials used in construction could have very widespread consumer protection implications.

There does not appear to be a viable, cost-effective alternative to regulation under the current industry structure, and self-regulation appears to have significant risks for consumers given the fundamental importance of structural and preservative treated timber in domestic and commercial structures.

The proposed Regulation provides the best means of ensuring the appropriate quality of timber products in New South Wales, as the Regulation ensures that:

- (a) consumers are protected (from poor standards and unsafe products);
- (b) members of industry organisations are protected (from unfair competition by sub-standard products);
- (c) non-members of the industry organisations are also protected (from unfair competition by sub-standard product);
- (d) the reputation of the product is protected; and
- (e) the huge network of retailers is protected from claims against poor quality product that is purchased in good faith.

6. Consultation

6.1 Consultation program on proposed Regulation and RIS

The Regulation and RIS will be advertised in *The Sydney Morning Herald*, *The Daily Telegraph* and *The Land* newspapers as well as the *NSW Government Gazette*. The draft Regulation and RIS will also be available on the Industry and Investment NSW website at <http://www.dpi.nsw.gov.au/aboutus/about/legislation-acts/review>

A copy of the draft Regulation and RIS will also be forwarded to:

- The Timber Preservers Association of Australia;
- The NSW Forest Products Association;
- The NSW Timber Development Association;
- The Australian Plantations Products and Paper Industry Council (A3P);
- The National Association of Forest Industries (NAFI);
- Forest and Wood Products Australia; and
- Approximately 40 licensed timber treatment operators in NSW.

In addition, the general public will be able to make submissions on the proposed Regulation and RIS.

7. Evaluation and review

The proposed Regulation, once made, will be the subject of periodic review under the requirements of the *Subordinate Legislation Act 1989*, which provides for most regulations to be subject to repeal every five years. The next review will be undertaken in 2015.