

21 July 2010

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Attention: Legal Officer



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Dear Sir/Madam

Timber Marketing Regulation 2010 and Regulatory Impact Statement

The Australian Plantation Products and Paper Industry Council (A3P) is the peak national body representing the Australian plantation timber industry, including Forests NSW as a grower member. A list of all A3P members and statistics on their operations is available from the A3P website: www.a3p.asn.au.

A3P provides these comments on the Timber Marketing Regulation (“new regulation”) on behalf of the manufacturers of plantation timber and wood based building products. Many of these manufacturers either conduct their operations or sell their products in New South Wales.

These companies are, in one way or another, required to comply or ensure their products comply with various types of Commonwealth and State legislation and regulation, meet local and sometimes regional requirements, and ensure compliance with relevant timber and building industry standards and specifications. This represents, in total, a significant responsibility and a considerable human resource and financial cost for these companies.

Whilst the industry fully recognises the need for an appropriate standards and regulatory framework for the conduct of its commercial activities it does not support unnecessary restriction, limitation, complication, or duplication. It seeks, in general terms, a national, consistent approach.

Companies are regularly trading across State borders and there are often multiple parties in the supply chain so duplication and inconsistency in regulation, and in specification, creates confusion and incurs unnecessary costs which, ultimately, have to be borne by the consumer.

The standards and regulatory framework needs to be as straightforward as possible to enable efficient commerce and open, competitive trade. To achieve this goal we believe performance based standards and regulations are generally desirable as this provides for a level playing field but does not stifle innovation as can be the case with prescriptive standards and regulations.

In our view this approach sits more comfortably under the Commonwealth Trade Practices Act 1974 and similar State based legislation.

We acknowledge that, in some cases, prescription in standards and regulations is desirable, or unavoidable, to provide the necessary guidance for compliance but, at the same time, we believe this prescription should explain and/or define what the standard requires as opposed to implementing additional provisions, as is the case with the Timber Marketing Regulation (old and new).

Consistent with the above, our specific comments on the proposed new regulation are as follows:

Part 2 Lyctid susceptible sapwood

We do not see the need for maintaining these requirements, primarily on the basis that there are other existing mechanisms via Australian standards and, ultimately, the Trade Practices Act and similar State based consumer legislation for addressing this matter.

Lyctus borer is only one of the many factors that should be taken into account in designing and specifying timber products. Susceptibility to termite and fungal attack are two other examples. Also, there has been a major change in timber supply into the housing market in that framing timbers are now predominantly non-lyctus susceptible softwood species. In addition, industry has developed further innovations such as H2 and H2F treated framing timber for protection against termites and attack by other pests.

With a background of continuing innovation in the industry we believe the current standards and regulatory framework, excluding the proposed new regulation, is adequate to provide industry guidance and consumer protection in this area.

Part 3 Moisture content of timber

We do not see the need for maintaining these requirements under the proposed new regulation, primarily on the basis that there are other existing mechanisms via Australian standards and, ultimately, the Trade Practices Act and similar State based consumer legislation for addressing this matter.

Product moisture content and the testing of moisture content is addressed in relevant Australian Standards most of which are called up, directly or indirectly (primary or secondary references), in the Building Code of Australia. Outside of this structure these standards still remain relevant where specified in building specifications or in timber ordering processes through the supply chain. Non-compliance with these standards will generally be the basis of any consumer complaint or claim and so it is unnecessary to have overlapping or over-riding State based requirements.

We believe, in due course, prescriptive moisture content provisions in standards (such as "moisture content shall be between 10 and 15 %") may be replaced with performance provisions related to the physical stability of products (dimensions, bow, spring and twist). A3P is supportive of this more contemporary approach as it is more directly linked to the suitability of a product in terms of meeting end-use performance expectations.

As with lyctid susceptible sapwood, there has been a major structural change in timber supply into the housing market in that framing timber is now predominantly kiln-dried softwood species.

We believe the current standards and regulatory framework, excluding the proposed new regulation, is adequate to provide industry guidance and consumer protection in this area.

Part 4 Preservative treatment of timber

We are aware of various issues pertaining to treated timber and the treated timber industry and whereby there is at least anecdotal evidence that some additional measures are required to ensure the timber treatment industry understands its obligations and treated timber products comply with relevant standards and are fit-for-purpose.

It is possible that some players in this sector of the industry are not performing, either intentionally or in ignorance of the requirements, in a manner that delivers compliant or fit for purpose products to consumers. It would appear that the risk of non-performance is more related to the smaller scale suppliers of these products and this is, perhaps, a symptom of both under skilling and lack of management understanding of the potentially severe consequences of infringing consumer legislation regarding product misrepresentation and fit-for-purpose obligations.

It would appear there are some players in this sector of the industry who are supplying products into the market that are not suitably treated for the intended application. This is damaging the reputation of the remaining majority who are understandably annoyed by those who can "price cut" by not supplying correctly treated products and thus obtain an unfair commercial advantage.

The above is associated with H3 and H4 treatment (CCA and alternatives) of sawn timber products for outdoor weather exposed and in-ground product applications. Landscaping timbers are a key example. We are not aware of any such issues arising in relation to the much larger volume of H2 and H2F treated softwood framing timbers for indoor (weather protected) applications.

The existence of the NSW Timber Marketing Act (TMA) and Queensland Timber Utilisation and Marketing Act (TUMA) do not seem to have reduced this problem to any significant degree in comparison to the other States over the years.

Our preferred position on this, consistent with the general view expressed earlier in this submission, is that a self-regulated treatment industry operating under existing consumer legislation and complying with recognised national treatment standards, specifically AS1604, is the most robust pathway to long term success.

SUMMARY

Much has changed in industry since the introduction of the NSW TMA and the associated Timber Marketing Regulation. Clearly the Regulation originally set out to address practical areas of concern which were all related to the availability and nature of the products of the day and the nature of the industry supplying those products.

We are now in an era where there is a heightened awareness of the need for risk management in producing timber (or any other) building products. There has been significant rationalisation into a smaller number of larger companies supplying the bulk of the market. These companies generally have the sophistication and skills necessary to understand the importance of compliance and the risk of non-compliance.

There are significant quality assurance (product certification) programs in place such as A3P's Plantation Timber Certification System (operated by NATA Certification Systems International), the EWPAA's PAA Certification program for engineered wood products and the GLTAA's program for glue laminated timber. It is acknowledged that there is a weakness in the industry with respect to the lack of any recognised quality assurance program for treated timber but we do not see that the proposed new Regulation can address this national industry issue.

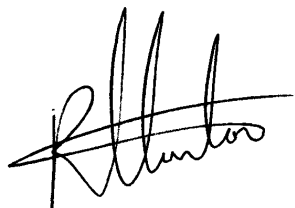
We submit that the original basis for the State Based TMA and associated Regulation is no longer valid. Further, we understand that, following a recent review, a decision has been taken by the Queensland Government to repeal the TUMA. This means that NSW is now the only State of Australia with this type of additional consumer protection.

With respect to treated timber the repealing of this Regulation, together with the changes in Queensland, could in fact provide the necessary catalyst for treatment industry self-regulation. This would be a more effective national solution.

The plantation timber industry welcomes the opportunity to provide this comment.

If you have any questions in relation to the matters raised above please contact Peter Juniper, Manager Solid Wood (on 03 9289 1419 or peter.juniper@a3p.asn.au) in the first instance, or myself (on 02 6273 8111 or richard.stanton@a3p.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Stanton', with a stylized flourish at the end.

Richard Stanton
Chief Executive Officer