

Legal Framework to Logging Industry



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Forestry Legislation in NSW

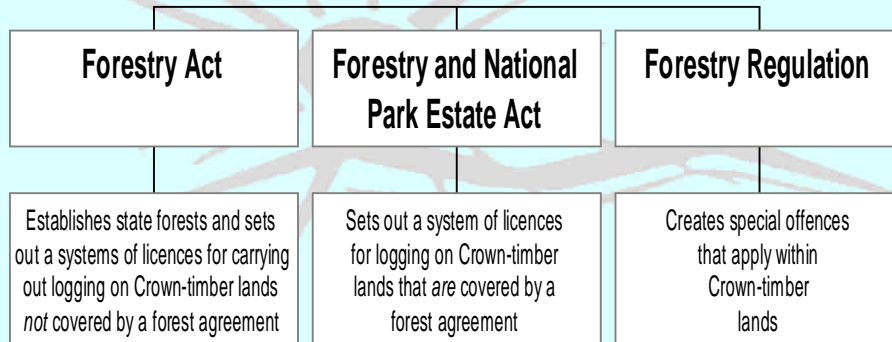
The main laws that relate to the regulation of forestry operations in NSW are:

- ***Forestry Act 1916***
- ***Forestry Regulation 1999***
- ***Forestry and National Park Estate Act 1998.***

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Logging in Crown Timber Lands

Logging Legislation in NSW



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Logging in Crown Timber Lands

- It is an offence to clear timber from Crown-timber lands without a licence, or in breach of licence conditions.
- Crown-timber lands include State forests, leased Crown land and Crown land sold to private owners for which the government retains the right to take timber.
- Logging on Crown-timber land is regulated by the Department of Primary Industries.

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Timber and Timber Product Licences

- **Permits the holder to take timber or products.**
- **Usually subject to conditions.**
- **Must pay royalties to the NSW government.**
- **4 basic conditions:**
 1. **Area to which the licence applies**
 2. **Type of timber covered**
 3. **Quantity of timber allowed to be cut**
 4. **Price of the timber.**

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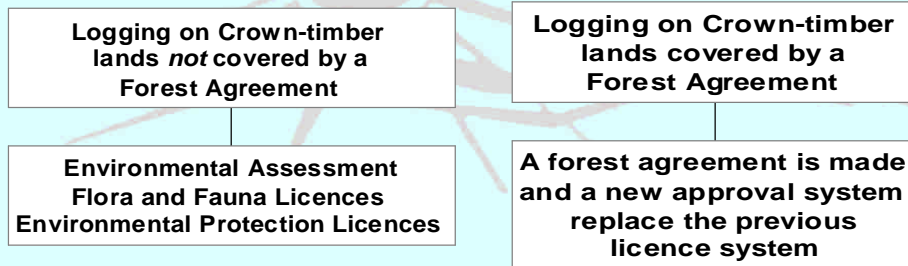
Clearing Licences

- **Permit the holder to destroy trees which have no economic value.**
- **Allow Crown-timber lands to be cleared for activities like agriculture.**
- **Unlike timber and timber product licences, clearing licences can only be issued to leaseholders and owners.**

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Forest Agreements

The licences and approvals required for logging operations, and the laws that apply, will depend on whether the area is covered by a forest agreement.



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Environmental Assessment

- Must consider the environmental impacts of the proposed activity.

Forestry activity likely to affect environment → Must prepare environmental impact statement

Forestry activity likely to affect threaten species → Must prepare species impact statement

- May also require licences to harm threatened flora and fauna, and to cause pollution.

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Logging on Crown-Timber Lands Covered by a Forest Agreement

- Approval system for logging on Crown-timber lands has been changed significantly by the introduction of the *Forestry and National Park Estate Act 1998*:
 - Sets out a process for making forest agreements
 - New approval system for forest agreements areas to replace licence previously required



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Integrated Forestry Operations Approvals

- Granted jointly by the Ministers for Natural Resources, Environment and Primary Industry for areas covered by Forest Agreements;
- Replaces forestry licensing system under *Forestry Act* for RFA areas;
- Issued subject to conditions;
- Issued for up to 20 years;
- Minister may enforce breaches in the Land & Environment Court (not 3rd parties)

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IFOAs cntd

- Part 5 of the EP&A Act (EIS and SIS) does not apply to areas covered by an IFOA;
- An Environmental Planning Instrument (LEP, REP or SEPP) cannot prohibit or restrict logging on land covered by an IFOA;
- Stop work orders under the National Parks & Wildlife Act and Threatened Species Conservation Act cannot be issued;
- Land covered by an IFOA cannot be declared as wilderness under the Wilderness Act;
- Normal third party rights to bring proceedings for harm to the environment for breach of any Act under the Protection of the Environment Operations Act 1997 do not apply

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Some good news: Watt v Forests NSW 29 August 2007

- Gerry Watt, a member of the South East Forest Alliance, brought proceedings in the Administrative Decisions Tribunal challenging Forests NSW's refusal to release information as to royalty rates for the Southern and Eden Regional Forest Agreement areas under the Freedom of Information Act;
- The basis of the refusal was 3 exemptions under the FoI Act:

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Watt v Forestry Commission cntd

CI7(1)(b): Information that has a commercial value that could expect to be diminished if the information is released;

CI 7(1)(c): information that concerns the business, professional, financial or commercial affairs of a company, where the release of the information could reasonably be expected to prejudice the future supply of the information;

CI13(b): Information the release of which would found an action for breach of confidence

- The Tribunal rejected all of Forests NSW's arguments on these bases and said:

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Watt v Forests NSW ADT Proceedings

[2007] NSW ADT 197

“In my view, the potential socio-economic impact that would flow from the release of the royalty rate is a highly relevant factor. If Forests NSW were correct in its assessment of the impact, very strong grounds would need to be found to justify the disclosure of the royalty rate. Uninformed public cannot usefully participate in that debate”

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Watt v Forests NSW cntd

“In my view, the factors favouring disclosure are sufficiently strong to justify disclosure. These factors all favour the opportunity for debate on an issue of significant public interest – the socio economic and ecological value of these publicly owned forests and whether the existing operations provide an adequate return to the community from the use of a public resource. An uninformed public cannot usefully participate in that debate”

- Judicial Member Stephen Montgomery

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Case Study: South East Forests

Jarasius v Forestry Commission of NSW (1989) 69 LGRA 156

Facts: Wendy Jarasius lived in the South-East Forests of NSW. She was concerned that the vast South-East Forestry Commission region was being logged without an environmental impact statement having been prepared.

In 1988, with the assistance of the Environmental Defender's Office, she commenced legal action.



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Case Study: South East Forests

Decision: The court held that the NSW Forestry Commission had not taken into account or even examined the impact of the proposed logging activities in the South-East Forests. Nor had they prepared and considered an environmental impact statement as required by the *Environmental Planning and Assessment Act 1979*.



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Case Study: South East Forests

Implications:

- **Court ordered the Commission to stop its logging activities until it complied with the requirements of the law.**
- **The community had sufficient opportunity to consider and comment on the environmental effects of the logging operations.**
- **Placed the practices of the Forestry Commission in the spotlight and demonstrated that regulatory authorities are not above the law.**

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