



# Forestry

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Sydney:	02 9262 6989
Northern Rivers:	1800 626 239
Rest of NSW:	1800 626 239

## Overview

### Legislative framework

In NSW, forestry is regulated by a number of different laws:

- [Regional Forest Agreements Act 2002 \(Cth\)](#)
- [Forestry Act 2012 \(NSW\)](#)
- [Forestry Regulation 2012 \(NSW\)](#)
- [Plantations and Reafforestation Act 1999 \(NSW\)](#)
- [Plantations and Reafforestation \(Code\) Regulation 2001 \(NSW\)](#)
- [Native Vegetation Act 2005 \(NSW\)](#)
- [Native Vegetation Regulation 2013 \(NSW\).](#)

This fact sheet covers:

- forestry operations on Crown land; and
- forestry operations on private land.

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<sup>1</sup> See: [http://www.edonsw.org.au/legal\\_advice](http://www.edonsw.org.au/legal_advice)

## Forestry on Crown land

Forestry operations on Crown land (land owned by the Crown and managed by the NSW Government) are predominately regulated under the *Forestry Act 2012* (NSW) and the *Forestry Regulation 2012* (NSW). The Forestry Act provides for both forestry and non-forestry activities within State forests, timber reserves or flora reserves.

The *Regional Forest Agreements Act 2002* (Cth) is also relevant to forestry operations on Crown land, as it sets out the process for Regional Forest Agreements between the State and Federal governments.

### Responsible Ministers

The NSW Minister for Primary Industries is responsible for the *Forestry Act 2012* (NSW). The NSW Minister for the Environment is also responsible for making forest agreements and integrated forestry operations approvals with the Minister for Primary Industries, and has an approval role where forest agreements are in place. The Federal Minister for Agriculture is responsible for the *Regional Forest Agreements Act 2002* (Cth).

### The Forestry Corporation of New South Wales

The Forestry Act creates the [Forestry Corporation of NSW](#) as a State-owned corporation.<sup>2</sup>

The Forestry Corporation is responsible for forestry in State Forests and on land that is owned by the Corporation. The Corporation is the owner of the trees in any plantation that is part of a State forest.

The principal objectives of the Corporation include:<sup>3</sup>

- to be a successful business;
- to have regard to the interests of the community in which it operates;
- to contribute to regional development and decentralisation; and
- to conduct its operations in compliance with the principles of [ecologically sustainable development](#).<sup>4</sup>

The Corporation's functions include:<sup>5</sup>

- to carry out or authorise the carrying out of forestry operations in accordance with good forestry practice on Crown timber land or land owned by the Corporation;
- to take or authorise the taking of forest materials from State forests or land owned by the Corporation;
- to sell, supply, or process timber, forest products, or forest materials taken or harvested;
- to establish and maintain plantations;

<sup>2</sup> *Forestry Act 2012* (NSW), s. 5.

<sup>3</sup> *Forestry Act 2012* (NSW), s. 10.

<sup>4</sup> See: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+96+2012+cd+0+N>

<sup>5</sup> *Forestry Act 2012* (NSW), s. 11.

- to control and manage forestry areas;
- to carry out measures on Crown timber land for the protection from fire of timber and forest products on land;
- to grant forestry rights; and
- to acquire, hold, sell or otherwise deal with or trade in carbon sequestration rights (including for the benefit of other persons).

The Forestry Corporation is made up of a board of directors<sup>6</sup> and a chief executive officer who is appointed by the board.<sup>7</sup>

## State forests and Crown timber land

State forests are primarily reserved for timber production. Crown timber land includes land within a State Forest or flora reserve, Crown land (with some exceptions),<sup>8</sup> or land that is affected by a profit à prendre. A profit à prendre is a right to enter another person's land and take away part of the soil or the natural produce of that soil e.g. timber.<sup>9</sup>

### Dedication and revocation of State forests

If Crown land is suitable for forestry and it is in the public interest, the Minister for Primary Industries can classify the land as State forest. The Governor then makes a declaration that the land is State forest by publishing a notice in the [NSW Government Gazette](#).<sup>10</sup> The Governor can make a declaration even if the Minister has not classified the land.<sup>11</sup>

The Governor can place a depth restriction on the State forest.<sup>12</sup> This may allow mining and other activities to occur beneath the State forest. See our [Mining](#) and [Coal Seam Gas](#) Fact Sheets for more information.

The Minister for Primary Industries is required to regularly review dedicated State forests to determine whether that status should continue.<sup>13</sup>

Once land is dedicated as a State forest, this status can usually only be revoked or altered by a resolution passed by both Houses of Parliament.<sup>14</sup> If this occurs, the land reverts to Crown land. However, the Minister can revoke the status of an area of State forest less than 20 hectares in area if the Minister thinks that the land should be made available for a public or an authorised work,<sup>15</sup> or for a 'public purpose'.<sup>16</sup>

### Flora reserves

<sup>6</sup> *Forestry Act 2012* (NSW), s. 6.

<sup>7</sup> *Forestry Act 2012* (NSW), s. 7.

<sup>8</sup> *Forestry Act 2012* (NSW), s. 3.

<sup>9</sup> *Forestry Act 2012* (NSW), s. 3.

<sup>10</sup> *Forestry Act 2012* (NSW), s. 14; See: <http://www.nsw.gov.au/gazette>.

<sup>11</sup> *Forestry Act 2012* (NSW), s. 13.

<sup>12</sup> *Forestry Act 2012* (NSW), s. 14.

<sup>13</sup> *Forestry Act 2012* (NSW), s. 17.

<sup>14</sup> *Forestry Act 2012* (NSW), s. 15.

<sup>15</sup> Under the *Public Works Act 1912* (NSW).

<sup>16</sup> 'Public purpose' within the meaning of an Act. *Forestry Act 2012* (NSW), s. 32.

The Governor and the Minister for Primary Industries can jointly set aside land within a State forest as a flora reserve for the preservation of native flora.<sup>17</sup> Once land is dedicated as a flora reserve, this status can only be revoked or altered by a resolution passed by both Houses of Parliament.<sup>18</sup>

The Forestry Corporation is required to prepare a working plan for each flora reserve.<sup>19</sup> The working plan is a detailed written scheme of the operations to be carried out on the flora reserve.<sup>20</sup> Its objective must be the preservation of native flora.<sup>21</sup> The plan can authorise local councils, local committees, public bodies, or organisations to carry out management activities in the flora reserve.<sup>22</sup>

The Minister for Primary Industries is responsible for assessing and approving the working plan, and can give approval for the plan to be amended at any time.<sup>23</sup> All operations on the flora reserve must be in accordance with the working plan.

### Special management zones

If an area within a State forest is of special conservation value, the Minister for Primary Industries can declare the area to be a special management zone by publishing a notice in the [NSW Government Gazette](#).<sup>24</sup> Flora reserves cannot be declared to be a special management zone.<sup>25</sup> The Minister is required to take any public submissions on the proposal into account before making a decision.<sup>26</sup>

The Minister can prohibit certain kinds of forestry operations in special management zones,<sup>27</sup> or can require that any forestry operations within the zone comply with certain conditions.<sup>28</sup> General purpose logging is prohibited in special management zones.<sup>29</sup> It is the Forestry Corporation's responsibility to ensure that prohibitions are complied with.<sup>30</sup>

Once land is dedicated as a special management zone, its status can be revoked by a declaration of the Governor in the [NSW Government Gazette](#).<sup>31</sup> If this occurs, the land can be dedicated as a flora reserve.<sup>32</sup>

### Acquisition of land for forest purposes

The Minister for Primary Industries has the power to acquire land for the purpose of a State forest, for providing access to a State forest, or for any purpose necessary

<sup>17</sup> *Forestry Act 2012* (NSW), s. 16.

<sup>18</sup> *Forestry Act 2012* (NSW), s. 16(4).

<sup>19</sup> *Forestry Act 2012* (NSW), s. 25.

<sup>20</sup> *Forestry Act 2012* (NSW), s. 25.

<sup>21</sup> *Forestry Act 2012* (NSW), s. 25.

<sup>22</sup> *Forestry Act 2012* (NSW), ss. 25(6), 25(7).

<sup>23</sup> *Forestry Act 2012* (NSW), s. 25.

<sup>24</sup> *Forestry Act 2012* (NSW), s. 18(1); <http://www.nsw.gov.au/gazette>.

<sup>25</sup> *Forestry Act 2012* (NSW), s. 18(1).

<sup>26</sup> *Forestry Act 2012* (NSW), s. 18(3).

<sup>27</sup> *Forestry Act 2012* (NSW), s. 19(1)(a).

<sup>28</sup> *Forestry Act 2012* (NSW), s. 19(1)(b).

<sup>29</sup> *Forestry Act 2012* (NSW), s. 19(2).

<sup>30</sup> *Forestry Act 2012* (NSW), s. 19(3).

<sup>31</sup> *Forestry Act 2012* (NSW), s. 20; <http://www.nsw.gov.au/gazette>.

<sup>32</sup> *Forestry Act 2012* (NSW), s. 20.

for the management or control of a State forest.<sup>33</sup> The land then becomes Crown land. This can be done by a private agreement or by compulsory acquisition.<sup>34</sup>

The Minister has the power to acquire land dedicated as State forest to give effect to a land exchange agreement.<sup>35</sup> This can also be done through compulsory acquisition.<sup>36</sup> The Minister must not enter into a land exchange agreement unless the Forestry Corporation has been consulted.<sup>37</sup> Where the land subject to the agreement is greater than 20 hectares in area, the agreement must be passed by both Houses of Parliament.<sup>38</sup>

### **Sale of certain land**

The Minister for Primary Industries has the power to sell any land that has been acquired to provide access to a State forest or for any purpose necessary for the management or control of a State forest, as long as that land has not been dedicated as State forest and it is no longer required for its intended purpose.<sup>39</sup>

### **Management Plans**

The Forestry Corporation is responsible for the preparation and adoption of plans for the management for State forests.<sup>40</sup>

Before a management plan can be adopted, the Forestry Corporation must publish a notice on its website inviting public submissions on the draft plan.<sup>41</sup> The minimum exhibition period is 30 days,<sup>42</sup> and the Corporation is required to consider any submission received before adopting the plan.<sup>43</sup>

The Forestry Corporation cannot adopt a management plan for a State forest that is located in an area subject to an integrated forestry operations approval (discussed below)<sup>44</sup> unless the management plan is consistent with the terms of that approval.<sup>45</sup>

Management plans are required to be reviewed if any amendment is made to an integrated forestry operations approval that applies to the area covered by the plan to ensure consistency,<sup>46</sup> and the Forestry Corporation can review plans at any time.<sup>47</sup>

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<sup>33</sup> *Forestry Act 2012* (NSW), s. 26.

<sup>34</sup> *Forestry Act 2012* (NSW), s. 26. See also, *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

<sup>35</sup> *Forestry Act 2012* (NSW), s. 27.

<sup>36</sup> *Forestry Act 2012* (NSW), s. 27. See also, *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

<sup>37</sup> *Forestry Act 2012* (NSW), s. 31.

<sup>38</sup> *Forestry Act 2012* (NSW), s. 31.

<sup>39</sup> *Forestry Act 2012* (NSW), s. 29.

<sup>40</sup> *Forestry Act 2012* (NSW), s. 21.

<sup>41</sup> *Forestry Act 2012* (NSW), s. 23.

<sup>42</sup> *Forestry Act 2012* (NSW), s. 23.

<sup>43</sup> *Forestry Act 2012* (NSW), s. 23.

<sup>44</sup> *Forestry Act 2012* (NSW), s. 22(1); see 5.2.3.3 below.

<sup>45</sup> *Forestry Act 2012* (NSW), s. 22(2).

<sup>46</sup> *Forestry Act 2012* (NSW), s. 24.

<sup>47</sup> *Forestry Act 2012* (NSW), s. 24.

The Forestry Corporation has produced [Ecologically Sustainable Forest Management Plans](#) (ESFM Plans) that outline the management strategies for State forests.<sup>48</sup>

## Forestry Management

### Regional forest agreements

[Regional Forest Agreements](#) (RFAs) are agreements made between a State or Territory government and the Federal Government under the *Regional Forest Agreements Act 2002* (Cth) for specific [regions](#)<sup>49</sup> of the country.<sup>50</sup> RFAs set out 20-year plans identifying which forests should be reserved for conservation purposes and which are available for logging. This approach is guided by the [National Forest Policy Statement](#).

There are currently three RFAs in NSW:

- [North East](#),
- [Southern](#), and
- [Eden](#).

There is no absolute legal right for the public to comment on RFAs before they are made. However, it is likely that some public consultation will take place. The process and extent of this consultation will depend on the specific RFA.<sup>51</sup>

The Minister for Agriculture must publish a notice in the [Australian Government Gazette](#)<sup>52</sup> after a RFA has been made.<sup>53</sup> The Minister must also publish a notice when a RFA ceases to be in force.<sup>54</sup>

The implementation of RFAs is generally undertaken by State and Territory governments. In NSW, the RFAs are implemented through forest agreements and integrated forestry operations approvals.

### NSW forest agreements

Forest agreements are agreements made between the NSW Minister for the Environment and the NSW Minister for Primary Industries<sup>55</sup> for specific regions of the State. Forest agreements contain provisions relating to ecologically sustainable forest management, sustainable timber supply, community consultation, and native title and Aboriginal land claims.

<sup>48</sup> Made under the *Forestry and National Parks Estate Act 1998* (NSW); *Forestry Act 2012* (NSW), and available at [www.forest.nsw.gov.au](http://www.forest.nsw.gov.au) or at NSW Forests Offices.

<sup>49</sup> See: <http://www.agriculture.gov.au/forestry/policies/rfa/regions/map>

<sup>50</sup> See: <http://www.agriculture.gov.au/forestry/policies/rfa>

<sup>51</sup> See: <http://www.daff.gov.au/forestry/policies/rfa/about/process/introduction#5e>

<sup>52</sup> See: <http://australia.gov.au/publications/australian-government-gazettes>.

<sup>53</sup> *Regional Forest Agreements Act 2002* (Cth), s. 9.

<sup>54</sup> *Regional Forest Agreements Act 2002* (Cth), s. 9.

<sup>55</sup> *Forestry Act 2012* (NSW), s. 69A.



There are currently four forest agreements covering eastern NSW.<sup>56</sup>

- [Upper north east region](#)
- [Lower north east region](#)
- [Eden regions](#)
- [Southern region](#)

A forest agreement can only be made after a regional forest assessment has been undertaken by or on behalf of the [Natural Resources Commission of NSW](#).<sup>57</sup> The regional forest assessment looks at the environment and heritage values of the region, which includes Indigenous heritage, economic and social values, ecologically sustainable forest management, and timber resources in the region.<sup>58</sup>

All proposed forest agreements must go on public exhibition, and the Ministers must consider any submissions from the public before making the agreement.<sup>59</sup> A notice must be published in a Statewide and a regional newspaper inviting public comment on the proposed agreement for a minimum period of 28 days.<sup>60</sup> However, public consultation is not required for forest agreements made in the Eden, Lower North East, and Upper North East regions unless the agreement replaces an earlier agreement.<sup>61</sup> These regions are also subject to RFAs, discussed above.

The Ministers are required to jointly review the forest agreement every five years to assess whether the provisions of the agreement have been implemented, and whether forestry operations approvals are achieving their aims.<sup>62</sup> The public must be given an opportunity to participate in the review.<sup>63</sup>

The Minister for the Environment is required to prepare an annual report on each forest agreement to be tabled in each House of Parliament annually.<sup>64</sup> The report must examine whether forest management in the region is ecologically sustainable and in compliance with any integrated forestry operations approval for the region.<sup>65</sup>

Forest agreements can be amended or terminated jointly by the Ministers, and the Ministers must consider any submissions from the public before amending or terminating an agreement.<sup>66</sup> A notice must be published in a Statewide and a regional newspaper, inviting public comment on the proposed amendment or revocation for a minimum period of 28 days.<sup>67</sup>

## Integrated forestry operations approvals

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<sup>56</sup> See: <http://www.forestrycorporation.com.au/management/sustainable-forest-management/regulation>

<sup>57</sup> *Forestry Act 2012* (NSW), s. 69A(1), s. 69B(1); See: <http://www.nrc.nsw.gov.au/>.

<sup>58</sup> *Forestry Act 2012* (NSW), s. 69B(2).

<sup>59</sup> *Forestry Act 2012* (NSW), s. 69D.

<sup>60</sup> *Forestry Act 2012* (NSW), s. 69D.

<sup>61</sup> *Forestry Act 2012* (NSW), s. 69D.

<sup>62</sup> *Forestry Act 2012* (NSW), ss. 69G, 69H.

<sup>63</sup> *Forestry Act 2012* (NSW), s. 69G(4).

<sup>64</sup> *Forestry Act 2012* (NSW), s. 69H.

<sup>65</sup> *Forestry Act 2012* (NSW), s. 69H(1).

<sup>66</sup> *Forestry Act 2012* (NSW), ss. 69E-69F.

<sup>67</sup> *Forestry Act 2012* (NSW), s. 69D.

Integrated forestry operations approvals (IFOAs) authorise forestry operations in State forests or other Crown timber lands.<sup>68</sup> An IFOA is a single forestry approval that includes the terms of other environmental approvals such as:<sup>69</sup>

- A pollution licence;<sup>70</sup>
- A licence to harm or kill threatened species (or their habitat);<sup>71</sup> and/or
- A licence to harm or kill a threatened species of fish or its habitat.<sup>72</sup>

An IFOA can be issued jointly by the Minister for Primary Industries and the Minister for the Environment. In granting an IFOA, the Ministers are not required to undertake a separate environmental assessment, but are able instead to rely on the relevant regional forest assessment undertaken when the forest agreement was being made (see above).<sup>73</sup>

The government agency that is responsible for the enforcement of any of the licences incorporated into the IFOA must notify the Ministers who granted the approval of any breach of the licence.<sup>74</sup> For example, the EPA is responsible for all pollution licences and must inform the Ministers if there has been a breach of the pollution provisions of the IFOA.

The principal effect of an IFOA is to exempt the forestry operation it covers from the provisions of the EP&A Act. In particular, once an IFOA is in place, it has the following effect:

- No planning approval is required for the forestry activities;<sup>75</sup>
- A Local Environmental Plan cannot prohibit or restrict forestry operations that are subject to an IFOA;<sup>76</sup>
- Forestry operations cannot be declared to be State significant infrastructure;<sup>77</sup> and
- Stop work orders and interim protection orders to protect threatened species and protected native flora and fauna cannot be issued to stop forestry operations.<sup>78</sup>

Similarly, the local council cannot issue any orders that have the effect of interfering or preventing the carrying out of forestry operations under an IFOA.<sup>79</sup>

Importantly, the public cannot commence court action to restrain a breach of the IFOA.<sup>80</sup> Only a NSW Minister, the EPA, or, in some cases, a government agency or

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<sup>68</sup> *Forestry Act 2012* (NSW), s. 69K(1).

<sup>69</sup> *Forestry Act 2012* (NSW), s. 69T(1).

<sup>70</sup> Issued under the *Protection of the Environment (Operations) Act 1997* (NSW)

<sup>71</sup> Under the *Threatened Species Conservation Act 1995* (NSW)

<sup>72</sup> Under the *Fisheries Management Act 1994* (NSW)

<sup>73</sup> *Forestry Act 2012* (NSW), s. 69U(3).

<sup>74</sup> *Forestry Act 2012* (NSW), s. 69V(2).

<sup>75</sup> *Forestry Act 2012* (NSW), s. 69W(1).

<sup>76</sup> *Forestry Act 2012* (NSW), s. 69W(2).

<sup>77</sup> *Forestry Act 2012* (NSW), s. 69W(2A).

<sup>78</sup> *Forestry Act 2012* (NSW), s. 69X.

<sup>79</sup> *Forestry Act 2012* (NSW), s. 69Y.

<sup>80</sup> *Forestry Act 2012* (NSW), s. 69ZA.



official who is responsible for the Forestry Act may bring proceedings to enforce breaches of an IFOA.<sup>81</sup>

## **Other environmental approvals**

### ***Commonwealth Government approval***

Under the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) (EPBC Act), activities which are likely to have a significant impact on a [matter of national environmental significance](#)<sup>82</sup> must be referred to the Federal Environment Minister for assessment and approval. Matters of national environmental significance include things such as nationally listed threatened species and listed migratory species.

Logging operations which may affect a matter of national environmental significance would ordinarily have to be referred to the Federal Environment Minister for approval. However, most forestry operations in NSW are carried out on lands subject to Regional Forest Agreements and are, therefore, exempt from the provisions of the EPBC Act.<sup>83</sup>

See our [EPBC Act Fact Sheet](#) for more information on the EPBC Act and matters of national environmental significance.

### ***Environment protection licences***

Forestry operations may require an environment protection licence (licence to pollute) because of the possibility of polluting rivers and streams (for example, if silt from eroded areas washes into streams).

The following aspects of forestry operations require a pollution licence from the EPA if they are taking place in a State forest or on Crown timber land:<sup>84</sup>

- construction of access roads, except for timber plantations and land west of the Great Dividing Range; and
- cutting and removing timber where at least 20% of the compartment has a slope greater than 18 degrees above or below the horizontal and at least 30 timber stems (at least 40 centimetres in diameter at breast height) are removed from each hectare of the compartment when averaged over the net harvestable area of the compartment, unless the logging is taking place in a timber plantations or on land west of the Great Dividing Range.

It is an offence to cause water pollution without a pollution licence.<sup>85</sup>

### **Licences for taking timber, forest products, and forest materials**

The Forestry Corporation can issue a number of licences to authorise the taking of timber, forest products and forest materials from Crown timber land. These include:<sup>86</sup>

<sup>81</sup> *Forestry Act 2012* (NSW), s. 69ZA.

<sup>82</sup> See: <http://www.environment.gov.au/epbc/what-is-protected>

<sup>83</sup> *Environment Protection and Biodiversity Conservation Act 1999* (Cth), s. 38(1).

<sup>84</sup> *Protection of the Environment (Operations) Act 1997* (NSW), Sch. 1, cl. 24 (Logging operations).

<sup>85</sup> *Protection of the Environment (Operations) Act 1997* (NSW), s. 120.

- Timber licences;
- Forest products licences;
- Forest materials licences;
- Clearing licences; and
- Small quantity authorisations.

Timber includes trees of any age or description, alive or dead. Forest products are the products of trees and other vegetation that have an economic value. Forest materials are things like rocks, stones, clay, soil, shells, sand, or gravel.<sup>87</sup>

Holders of timber, forest products, or forest materials licences must pay a resource acquisition fee to the Forestry Corporation for their take under the licence.<sup>88</sup> If the land is privately held, the Corporation is required to pass some of this on to the landholder.<sup>89</sup>

### ***Restrictions on licences***

Timber, forest products, or forest materials licences must not be issued over a flora reserve unless the conditions of the licence are consistent with the working plan for the flora reserve. The Minister must give approval before a licence can be issued in these circumstances.<sup>90</sup>

Clearing licences must not be issued:<sup>91</sup>

- over a State forest unless there is a forest lease (or another lease from the Crown);
- over land vested in, owned, leased, or held by the Nature Conservation Trust, or land that is under a [Nature Conservation Trust Agreement](#);
- over State protected land;<sup>92</sup>
- for the purpose of clearing any native vegetation under the *Native Vegetation Act 2003* (NSW);
- for the purpose of ringbarking or killing trees which have economic value; or
- over flora reserves or over Crown timber land which is not within a State forest or timber reserve that is covered by a lease under the *Western Lands Act 1901* (NSW).

If Crown timber land is held under a Crown tenure, purchase tenure, or forest lease, a clearing licence can only be issued to the holder, owner, or lessee respectively.<sup>93</sup>

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<sup>86</sup> *Forestry Act 2012* (NSW), s. 39.

<sup>87</sup> *Forestry Act 2012* (NSW), s. 3.

<sup>88</sup> *Forestry Act 2012* (NSW), s. 49.

<sup>89</sup> *Forestry Act 2012* (NSW), ss. 53-54.

<sup>90</sup> *Forestry Act 2012* (NSW), s. 44.

<sup>91</sup> *Forestry Act 2012* (NSW), s. 44.

<sup>92</sup> Under the *Native Vegetation Act 2003* (NSW) State protected land is classified as:

- Land sloped at over 18 degrees;
- Riparian Land
- Sensitive Land

State Protected Land is marked on maps held by the EPA and Local Land Services. It is regulated under continuing provisions of the *Native Vegetation Conservation Act 1997* (NSW), which was replaced by the *Native Vegetation Act .2005* (NSW).

<sup>93</sup> *Forestry Act 2012* (NSW), ss. 44(4)-44(6).

Licences and small quantity authorisations can be suspended or revoked by the Forestry Corporation if it believes that the licence-holder has not complied with conditions of the authority.<sup>94</sup>

### ***Timber licences***

A timber licence authorises the holder to take timber from Crown timber land. Generally, the term of a timber licence must not exceed five years. However, the Minister for Primary Industries can approve licences for a period of up to 20 years.<sup>95</sup>

### ***Forest products licences***

A forest product licence authorises the holder to take forest products on Crown timber land. The term of a forest products licence must not exceed five years.<sup>96</sup>

### ***Forest materials licences***

A forest materials licence authorises the holder to take forest materials from a State forest. Generally, the term of a timber licence must not exceed five years. However, the Minister for Primary Industries can approve licences for a period of up to 20 years.<sup>97</sup>

### ***Clearing licences***

A clearing licence authorises the holder to kill trees by ringbarking or specify other permitted methods of killing trees. There is no maximum period for a clearing licence. Clearing licences apply to future landholders of the land to which the clearing licence applies.<sup>98</sup>

### ***Small quantity authorisations***

A small quantity authorisation can be issued for taking timber, forest products, or forest materials that have a value of less than \$1,000 from State forests or Crown land.<sup>99</sup> This does not include flora reserves.<sup>100</sup> The Forestry Corporation can include conditions in the authorisation.

## **Control of forestry areas**

### **Land Managers for non-forestry activities**

The Forestry Corporation is the land manager of forestry areas.<sup>101</sup> However, the Minister for Primary Industries can appoint a government agency or other body for the purpose of facilitating *non-forestry* use of the area.

<sup>94</sup> *Forestry Act 2012* (NSW), s. 46.

<sup>95</sup> *Forestry Act 2012* (NSW), s. 40.

<sup>96</sup> *Forestry Act 2012* (NSW), s. 41.

<sup>97</sup> *Forestry Act 2012* (NSW), s. 42.

<sup>98</sup> *Forestry Act 2012* (NSW), s. 43.

<sup>99</sup> *Forestry Act 2012* (NSW), s. 45.

<sup>100</sup> *Forestry Act 2012* (NSW), s. 45.

<sup>101</sup> *Forestry Act 2012* (NSW), s. 57.

Where land manager for non-forestry activities has been appointed, their functions do not include the carrying out of forestry operations.<sup>102</sup> Rather, the land manager's functions can include the facilitation of public access to the forestry area, the promotion of recreational use of the area, and the conservation of fauna living in the area.<sup>103</sup> Management must be consistent with the existing uses of the land; for example, where there is a flora reserve, management practices must be consistent with the working plan and promote the preservation of native flora.<sup>104</sup>

The land manager can issue forest permits that allow the holder to carry out recreational, sporting or commercial activities<sup>105</sup> and can charge a fee for the permit.<sup>106</sup> These permits are for non-forestry uses, and cannot be issued by a land manager for the purpose of forestry operations.<sup>107</sup>

The land manager is also entitled to grant forest leases over State forest.<sup>108</sup> Forest leases may be granted for any purpose so long as it is not inconsistent with the carrying out of forestry operations in the forestry area concerned.<sup>109</sup>

Land managers can suspend or revoke forest permits or leases if the holder fails to comply with the terms or conditions, or if the permit or lease is not being used for the purpose for which it was granted.<sup>110</sup>

### Review of decisions

If a land manager refuses to issue or renew a forest permit or lease, or decides to suspend or cancel a permit or lease, the decision can be reviewed by the Administrative Decisions Tribunal.<sup>111</sup>

You can also apply to the Administrative Decisions Tribunal for a review of other administrative decisions, including a decision by a Department not to grant access to information.

#### **Case study: Review of decision to deny access to information<sup>112</sup>**

The Nature Conservation Council of NSW (NCC) sought access to a range of documents from Forests NSW under the *Government Information (Public Access) Act 2009* (NSW). The documents sought included the contracts between Forests NSW and sawmill companies for the supply of timber. The Department of Trade and Investment agreed to release the contracts, but with certain information removed, including the resource allocation and/or description, the resource price and terms of the agreements.

<sup>102</sup> *Forestry Act 2012* (NSW), s. 58.

<sup>103</sup> *Forestry Act 2012* (NSW), s. 59.

<sup>104</sup> *Forestry Act 2012* (NSW), s. 59.

<sup>105</sup> *Forestry Act 2012* (NSW), s. 60.

<sup>106</sup> *Forestry Act 2012* (NSW), s. 60.

<sup>107</sup> *Forestry Act 2012* (NSW), s. 60.

<sup>108</sup> *Forestry Act 2012* (NSW), s. 62(1).

<sup>109</sup> *Forestry Act 2012* (NSW), s. 62(2).

<sup>110</sup> *Forestry Act 2012* (NSW), s. 36(1).

<sup>111</sup> *Forestry Act 2012* (NSW), s. 89(1).

<sup>112</sup> *Nature Conservation Council of NSW v Department of Trade & Investment, Regional Infrastructure & Services and Anor* [2012] NSWADT 195.

The reasons given for refusing access to this information related to the commercial nature of the information. The NCC appealed to the Administrative Decisions Tribunal against this decision.

The NSW Administrative Decisions Tribunal determined that the public interest in favour of releasing the details of the contracts outweighed any commercial interests in keeping them secret.

While the Tribunal accepted that there might be some risk of the commercial interests of the sawmills being affected, it observed that “there is considerable doubt in regard to the extent of those risks”. Rather, the Tribunal accepted that there were strong public interest considerations in favour of release including:

- a) a clear public interest in an agency that is dealing with public assets being accountable for the manner in which it contracts to sell those assets;
- b) to further public policy development around the management of the publicly owned hardwood forest estate in NSW; and
- c) to encourage community engagement with Government about sustainability.

The Tribunal ordered the release of the contracts within 30 days.

EDO NSW acted for NCC in this matter. The decision recognises the community’s right to access detailed information about the NSW Government’s management of State forests and plantations.

### **Forestry areas offences**

It is an offence to use land within a forestry area without authorisation.<sup>113</sup> It is unlawful to remove or damage any timber or forest products on Crown timber land without authorisation.<sup>114</sup> It is unlawful to remove or damage any forest materials in a State forest or flora reserve without a licence or authorisation.<sup>115</sup>

There are certain exceptions where a person will not be found to have committed an offence even if they do remove or damage forest materials on Crown timber land or State forest or flora reserve.<sup>116</sup> These include where an authorisation has been given under the Forestry Act or some other Act such as the *Mining Act 1992* (NSW). Forestry operations carried out by or on behalf of the Forestry Corporation do not require authorisation, and land managers and authorised officers may also be exempt.<sup>117</sup>

### **Notices**

The Forestry Corporation can display notices prohibiting people, vehicles, or machinery from entering a forestry area.<sup>118</sup> The notice can be in place for any period

<sup>113</sup> *Forestry Act 2012* (NSW), s. 67.

<sup>114</sup> *Forestry Act 2012* (NSW), s. 38.

<sup>115</sup> *Forestry Act 2012* (NSW), s. 38.

<sup>116</sup> *Forestry Act 2012* (NSW), s. 38.

<sup>117</sup> *Forestry Act 2012* (NSW), s. 38.

<sup>118</sup> *Forestry Regulation 2012* (NSW), cl. 6(1).

of time, and can be indefinite.<sup>119</sup> The Forestry Corporation can also install enclosures, gates, and ramps to enforce the prohibition.<sup>120</sup> It is an offence to enter the forest area or take a vehicle or machinery into the area without written permission from the Forestry Corporation.<sup>121</sup>

### ***Firearms***

It is an offence to shoot a firearm in or into a forestry area, or have a firearm, net, trap, poison, explosive or other hunting device in a forestry area without authorisation.<sup>122</sup> It is unlawful to kill or capture any animal, excluding fish, in a forestry area without authorisation.<sup>123</sup> A game hunting licence amounts to authorisation.<sup>124</sup> If you can prove that you have lawful authority to carry out these actions, you will not be found guilty of an offence.<sup>125</sup>

### ***Dangerous activities***

It is an offence to engage in activities that risk the safety of yourself or others, or damage the environment in a forestry area.<sup>126</sup> This includes things like abseiling, rock climbing, and hang gliding.<sup>127</sup>

### ***Fires***

It is an offence to light a fire in a forestry area unless authorised to do so by a permit or an authorised officer.<sup>128</sup> There are other circumstances under which a fire can be lit, including if the fire is for cooking purposes or boiling water, or destroying waste from timber processing.<sup>129</sup> If you do light a fire in a forestry area, you should extinguish it. This includes cigarettes. If you do not, you may be found guilty of an offence.<sup>130</sup>

### ***Damaging forests and reserves***

It is an offence to damage, interfere with, or destroy vegetation, roads or drainage structures in a forestry area.<sup>131</sup> It is an offence to interfere with forest materials unless they are part of a road, build a fence or other obstruction, or interfere with water flow in a watercourse.<sup>132</sup> It is an offence to damage, deface, interfere with, destroy, or remove a standard, sign, notice, barrier, or device that has been installed by the Forestry Corporation, or to damage, deface, or destroy a building, enclosure, dam, or other structure or equipment belonging to the Forestry Corporation or a lessee or licensee of the Corporation.<sup>133</sup> If you have written permission from the

<sup>119</sup> *Forestry Regulation 2012* (NSW), cl. 6(2).

<sup>120</sup> *Forestry Regulation 2012* (NSW), cl. 6(3).

<sup>121</sup> *Forestry Regulation 2012* (NSW), cl. 6(4).

<sup>122</sup> *Forestry Act 2012* (NSW), s. 68.

<sup>123</sup> *Forestry Act 2012* (NSW), s. 68.

<sup>124</sup> *Forestry Act 2012* (NSW), s. 68.

<sup>125</sup> *Forestry Act 2012* (NSW), s. 68.

<sup>126</sup> *Forestry Regulation 2012* (NSW), cl. 8(1).

<sup>127</sup> *Forestry Regulation 2012* (NSW), cl. 8(2).

<sup>128</sup> *Forestry Regulation 2012* (NSW), cl. 11.

<sup>129</sup> *Forestry Regulation 2012* (NSW), cls. 10, 11(2)-11(8).

<sup>130</sup> *Forestry Regulation 2012* (NSW), cl. 12.

<sup>131</sup> *Forestry Regulation 2012* (NSW), cl. 8(3).

<sup>132</sup> *Forestry Regulation 2012* (NSW), cl. 8(2).

<sup>133</sup> *Forestry Regulation 2012* (NSW), cl. 8(2).

Forestry Corporation to do any of these things, or if it is authorised by a licence or other authority, you will not be found guilty of an offence.<sup>134</sup>

### ***Camping***

Land managers of forestry areas can display a notice prohibiting camping in a forestry area.<sup>135</sup> Alternatively, the land manager can impose conditions or directions on camping in forestry areas, including the number of people allowed and the location of the camp.<sup>136</sup> It is an offence to contravene a notice or direction about camping.<sup>137</sup>

### ***Approaching or interfering with forestry operations***

It is an offence to come within 100 metres of or interfere with timber harvesting or hauling equipment in a forestry area unless authorised to do so by an authorised person. This includes obstructing, defacing, climbing, or attaching something to the equipment. Authorised people include employees of the Forestry Corporation, police officers, and Office of Environment and Heritage staff.<sup>138</sup>

### ***Authorised officers***

Authorised officers have a number of powers to help them to determine whether the Forestry Act has been breached and to obtain information relevant to the administration of the Forestry Act. These powers include:<sup>139</sup>

- the power to enter premises for authorised purposes;
- the power to detain and search vehicles or vessels; and
- the power to seize something that the officer has reasonable grounds to believe is connected to an offence under the Forestry Act.

The Minister for Primary Industries appoints authorised officers. People who can be appointed include employees of the Forestry Corporation,<sup>140</sup> members of any Division of the government,<sup>141</sup> or staff members of a land manager other than the Forestry Corporation.<sup>142</sup> Police officers can also exercise the functions of an authorised officer.<sup>143</sup>

The Minister for Primary Industries has the power to limit the functions that an authorised officer can exercise and the area in which such functions can be carried out.<sup>144</sup>

Authorised officers have the power to request a person who breaches the Forestry Act or Regulations, or who causes inconvenience to others to leave a forestry

<sup>134</sup> *Forestry Regulation 2012* (NSW), cl. 8(4).

<sup>135</sup> *Forestry Regulation 2012* (NSW), cl. 21.

<sup>136</sup> *Forestry Regulation 2012* (NSW), cl. 21.

<sup>137</sup> *Forestry Regulation 2012* (NSW), cl. 21.

<sup>138</sup> *Forestry Regulation 2012* (NSW), cl. 47.

<sup>139</sup> *Forestry Act 2012* (NSW), Part 6, Division 2.

<sup>140</sup> *Forestry Act 2012* (NSW), s. 70(1)(a).

<sup>141</sup> *Forestry Act 2012* (NSW), s. 70(1)(b).

<sup>142</sup> *Forestry Act 2012* (NSW), s. 70(1)(c).

<sup>143</sup> *Forestry Act 2012* (NSW), s. 71.

<sup>144</sup> *Forestry Act 2012* (NSW), s. 70(2).



area.<sup>145</sup> An authorised officer can also request a person to leave a forestry area in certain circumstances, such as when forestry operations are in progress or a bushfire is burning that could be dangerous.<sup>146</sup> The Forestry Corporation can put up enclosures, gates, or ramps to prevent or restrict entry into these forestry areas.<sup>147</sup> If a person does not comply with such a request he or she can be charged, but only if the authorised officer discloses that they are an authorised officer at the time of the request, and informs the person that failure to comply with their request is an offence.<sup>148</sup>

### **Penalties and criminal proceedings**

Many offences under the Forestry Act can be dealt with by way of penalty notice.<sup>149</sup> Criminal proceedings for offences are dealt with by the Local Court,<sup>150</sup> and must commence within two years of the date of the alleged offence,<sup>151</sup> or two years after the date evidence of the alleged offence first came to the attention of an authorised officer.<sup>152</sup>

Penalties for the various offences vary. Some offences attract a penalty of up to \$5,500 or 6 months imprisonment, or both. The Court can also order a person who has been convicted of an offence to pay the Forestry Corporation or a land manager compensation for loss or damage to land or property, or costs and expenses incurred by the Forestry Corporation or a land manager in their attempts to prevent or mitigate damage.<sup>153</sup>

### **Forests and Mining**

The land within State forests and flora reserves are 'exempted areas' in relation to mining under the *Mining Act 1992* (NSW) or coal seam gas activities under the *Petroleum (Onshore) Act 1991* (NSW).<sup>154</sup> This means that they are exempt from mining and coal seam gas activities. However, the Minister for Resources and Energy can issue an exempted areas consent for the purpose of authorising mining activities in these areas.<sup>155</sup> For more information about mining, see our [Mining Fact Sheet](#). For more information about CSG, see our [Coal Seam Gas Fact Sheet](#).

### **BioBanking agreements**

Under the Biodiversity Banking and Offsets Scheme, landholders can be granted biodiversity credits in return for agreeing to protect threatened vegetation and threatened species on their private land. The credits can then be sold to, and retired by, developers who wish to harm biodiversity elsewhere as a way of offsetting the impacts of that development on threatened species.

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<sup>145</sup> *Forestry Regulation 2012* (NSW), cl. 4.

<sup>146</sup> *Forestry Regulation 2012* (NSW), cl. 4.

<sup>147</sup> *Forestry Regulation 2012* (NSW), cl. 4.

<sup>148</sup> *Forestry Regulation 2012* (NSW), cl. 4.

<sup>149</sup> *Forestry Regulation 2012* (NSW), cl. 56; Schedule 1.

<sup>150</sup> *Forestry Act 2012* (NSW), s. 84(1).

<sup>151</sup> *Forestry Act 2012* (NSW), s. 84(2).

<sup>152</sup> *Forestry Act 2012* (NSW), s. 84(3).

<sup>153</sup> *Forestry Act 2012* (NSW), s. 85(1).

<sup>154</sup> *Forestry Act 2012* (NSW), s. 35(1).

<sup>155</sup> *Mining Act 1992* (NSW); *Petroleum (Onshore) Act 1991* (NSW)

Crown timber lands can be the subject of a biobanking agreement, but only with the consent of the Minister for Primary Industries.<sup>156</sup>

For more information on BioBanking agreements, see our [Conservation on Private Land](#) Fact Sheet.

## Forestry on Private Land

Forestry operations that take place on private land (private native forestry) are regulated under:

- [Native Vegetation Act 2005 \(NSW\)](#), and
- [Native Vegetation Regulation 2013 \(NSW\)](#).

The development of plantations on private land (plantation forestry), it is regulated under

- [Plantations and Reafforestation Act 1999 \(NSW\)](#), and
- [Plantations and Reafforestation \(Code\) Regulation 2001 \(NSW\)](#) (Plantations Code).

The Minister for Environment is responsible for the *Native Vegetation Act 2005* (NSW). The Minister for Primary Industries is responsible for the *Plantations and Reafforestation Act 1999* (NSW).

### Private Native Forestry

[Private native forestry](#) (PNF) is the harvesting of timber in forests on private property.<sup>157</sup> All PNF activities require approval which can be obtained by entering a private native forestry Property Vegetation Plan (PNF PVP).<sup>158</sup>

A PNF PVP is an agreement made between the landholder and the Environment Protection Authority (EPA). The PNF PVP allows the landholder to lawfully carry out the clearing which is identified in the plan.

A PNF PVP consists of a map of the property showing the area subject to the PVP and marking the areas that cannot be logged (such as old growth forest, rainforest, steep areas and riparian exclusion zones). It is accompanied by a declaration that the PNF operations will be carried out in accordance with the PNF Code of Practice.

A PNF PVP lasts for up to 15 years. If the PNF activities are carried out in accordance with the PVP (which includes the relevant Code of Practice), they are deemed to 'maintain or improve' environmental outcomes and it is unnecessary to

<sup>156</sup> *Threatened Species Conservation Act 1995* (NSW), s. 127F(4).

<sup>157</sup> *Native Vegetation Regulation 2005* (NSW), cl. 3.

<sup>158</sup> *Native Vegetation Act 2003* (NSW), s.12 and see also *Native Vegetation Regulation 2005* (NSW), cl. 6A, 12A.

obtain any further licences or approvals such as a licence to harm an endangered species (or their habitat) or obtain development consent.<sup>159</sup>

### ***The PNF Code of Practice***

There are four [PNF Codes of Practice](#) covering Northern NSW (north of Sydney), Southern NSW (south of Sydney), River Red Gum forests (effectively south western NSW) and Cypress/Ironbark forests (effectively central western NSW).<sup>160</sup> The Codes are updated from time to time and landholders are bound by the Code that was in force at the time they entered into the PNF PVP unless they are varied to adopt the updated Code.

The Codes of Practice set out the manner in which PNF activities must occur, including regeneration requirements. They impose constraints on logging habitat trees and on logging in some environmentally significant areas such as wetlands, old growth forest and Aboriginal places.

The Codes require the preparation of a Forest Operations Plan. A Forest Operations Plan must contain details of:

- harvesting and/or other proposed forest operations;
- flora and fauna management actions;
- tree marking activities (where applicable);
- activities to promote regeneration;
- relevant silvicultural treatments that may be carried out as part of the Forest Operation Plan.

The Plans must also record the locations of any populations or endangered ecological communities<sup>161</sup> and the indicative location of existing and proposed roads and drainage features. They must also classify the forest and describe the broad forest types (including overstorey species composition, disturbance history and current condition of the forest).

Landholders are required to send an annual report to the EPA if they have carried out PNF activities in the previous year, or intend to carry them out in the forthcoming year.<sup>162</sup>

Limited details about the PNF PVP are listed in a [Public Register](#).<sup>163</sup>

### ***Enforcement***

<sup>159</sup> Under the *Threatened Species Conservation Act 1995* (NSW). See: *Native Vegetation Regulation 2005* (NSW), cl. 29B.

<sup>160</sup> See: <http://www.epa.nsw.gov.au/pnf/CodeofPractice.htm>

<sup>161</sup> As listed under the *Threatened Species Conservation Act 1995* (NSW).

<sup>162</sup> Department of Environment, Climate Change and Water, 'Private Native Forestry Code of Practice Fact Sheet No. 1'. Available at:

<http://www.environment.nsw.gov.au/resources/pnf/09706pnfoverview.pdf>.

<sup>163</sup> *Native Vegetation Regulation 2005* (NSW), cl. 12. The public register is available here: <http://www.epa.nsw.gov.au/pnf/approvedpnfpvps.htm>

Once a PNF PVP has been signed, it forms a legally binding agreement that runs with the land.<sup>164</sup> The EPA can conduct audits to ensure that the PNF operations are being carried out in accordance with the Codes of Practice.<sup>165</sup>

If you breach the Code of Practice, the EPA can issue you with a Penalty Infringement Notice or, if the breach is serious, the EPA can prosecute the offence in court.

There are serious penalties for breaching the applicable PNF Code of Practice. For example, it is an offence to log within a watercourse and the potential penalty for doing so is up to \$1,100,000.<sup>166</sup>

### **Case Study: Prosecution for breaching PNF Code of Practice**

A North Coast forestry company was convicted by the Grafton Local Court of illegally cutting down 7 mature native trees on land near Coffs Harbour.<sup>167</sup> The trees that were cut down were all located within 5 metres of the banks of a stream.

The Court was told that the trees were cleared during a PNF harvesting operation. Cutting down trees located that close to the stream was in breach of the company's PNF PVP and the PNF Code of Practice for northern NSW.

The company pleaded guilty to the offence and was fined \$5000. It was also ordered to pay \$500 in prosecutor's costs.

The Court noted that the severity of the offence was increased because the clearing was part of a commercial enterprise.

### **Plantation Forestry**

A plantation differs from natural forest in that the trees have been planted for a particular purpose. Plantations can be developed for any purpose, but commonly they are developed for:<sup>168</sup>

- timber production; or
- the protection of the environment (including for the purpose of reducing the salinity of the land or otherwise repairing or improving the land, for biodiversity conservation or for acquiring or trading in carbon sequestration rights).

The *Plantations and Reafforestation Act 1999* (NSW) aims to promote the development of plantations on cleared land. It does this by:

<sup>164</sup> *Native Vegetation Act 2003* (NSW), s. 31.

<sup>165</sup> *Native Vegetation Act 2003* (NSW), s. 35.

<sup>166</sup> *Native Vegetation Act 2003* (NSW), s. 12; (NSW) *Environmental Planning and Assessment Act 1979*, s. 126.

<sup>167</sup> *Director-General of the Department of Environment, Climate Change and Water v Clarence Resources Pty Ltd.*

<sup>168</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 5.

- exempting authorised plantations from many environmental laws (see below); and
- guaranteeing the right to harvest the timber, but only if the plantation is established and managed under the processes set out in the Act and the Plantations Code.<sup>169</sup>

All new plantations in NSW *must be* approved under the Plantations Act unless the plantation is for ‘exempt farm forestry’, or existed before the Act came into force on 14 December 2001.<sup>170</sup> Unless the plantation is exempt, it is an offence to carry out plantation operations which are not authorised.<sup>171</sup>

Exempt farm forestry is a plantation operation of less than 30 hectares on a farm which is exempt from the need for development consent under the *Native Vegetation Act 2003* (NSW) and where any harvesting does not exceed the amount permitted under the Plantations Code.<sup>172</sup>

### ***What land is covered by the Act?***

The Plantations Act applies not only to private land, but can also apply to plantations in State forests or on Crown timber lands.<sup>173</sup>

The Plantations Act does NOT apply to land:<sup>174</sup>

- within the Sydney Metropolitan Area, from Newcastle local government area in the north, to Wollongong local government area in the south and Blacktown and Liverpool local government areas in the west;
- zoned residential (but not rural-residential), village, township, industrial or business;
- within a SEPP 14 Coastal Wetland or SEPP 26 Littoral Rainforest;
- in State forests which are flora reserves or special management zones;
- declared as critical habitat for threatened species; or
- dedicated or reserved under the *National Parks and Wildlife Act 1974* (NSW).

### ***The Plantations Code***

The detailed standards for how a plantation must be established, managed and harvested are set out in the [Plantations Code](#). The Code contains detailed requirements for plantation operations, including things such as harvesting limits, buffer zones and slope limits (to reduce siltation of streams and soil erosion). All operations on an authorised plantation must comply with the Code.<sup>175</sup>

<sup>169</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 3, 8.

<sup>170</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 9.

<sup>171</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 9(3).

<sup>172</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 6, 9(2).

<sup>173</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 5(4).

<sup>174</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 7(1), Schedule 1.

<sup>175</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 31.

## Applications for authorisation

A person can apply to the Minister for Primary Industries<sup>176</sup> for an authorisation to establish a new timber plantation and, in some circumstances, authorisation can be sought for an existing plantation.<sup>177</sup> Such plantations are called ‘authorised plantations’.<sup>178</sup> A natural forest cannot become an authorised plantation.<sup>179</sup>

The Minister for Primary Industries must keep a [public register](#) of all:<sup>180</sup>

- applications for plantation authorisations; and
- authorisations granted, (including the identity of the plantation, location and conditions attached).

In practice, the register is kept by the NSW Department of Primary Industries.

## Appeals

An applicant who is dissatisfied with the Minister’s refusal to grant an authorisation, with the conditions imposed on one, or by a deemed refusal, can appeal to the Land and Environment Court within 28 days of receiving written notice of the decision.<sup>181</sup>

See our [Land and Environment Court](#) Fact Sheet for more information about appeals.

## Development consent not required

Development consent is not required for plantation operations to take place on an authorised plantation.<sup>182</sup>

## Environmental assessment of authorisations

### *Environmental impact statement*

An environmental impact statement is not required to establish a plantation, or for any clearing that takes place on an authorised plantation, because plantations are exempt from the EP&A Act (which contains the requirement for environmental assessment).<sup>183</sup>

### *Species impact statements*

Because authorised plantations are exempt from the EP&A Act, they do not require a species impact statement under that Act.<sup>184</sup>

However, the Minister for Primary Industries has discretion to require an applicant to prepare a species impact statement if the Minister thinks that there is likely to be a

<sup>176</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 12.

<sup>177</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 11, 12, 13, 17.

<sup>178</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 4 Definitions “authorised plantation”.

<sup>179</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 5(2).

<sup>180</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 23.

<sup>181</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 18, 24(1).

<sup>182</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 47(1), (2)(a).

<sup>183</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 47

<sup>184</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 47.

significant effect on threatened species.<sup>185</sup> If a species impact statement is required, then the application will also need the concurrence (agreement) of the Chief Executive of the Office of Environment and Heritage.<sup>186</sup>

Once an authorised plantation is in operation, the owner or manager of the plantation must notify the Minister for Primary Industries if they become aware that plantation operations are having, or are likely to have, an impact on any threatened species of plant, animal or fish, or on an endangered ecological community.<sup>187</sup>

After evaluating the impact on threatened species, the Minister for Primary Industries may direct that plantation operations cease or be suspended.<sup>188</sup> Where this occurs, the owner or manager may be entitled to compensation.<sup>189</sup>

### **Duration and cancellation**

A plantation authorisation remains in force indefinitely and is not affected by a change in ownership or land management.<sup>190</sup> If there is a change of owner or manager, of all or part of a plantation, the former owner must notify the Minister for Primary Industries within 28 days.<sup>191</sup>

The Minister can cancel a plantation authorisation if the plantation owner breaches the Code, the conditions of the authorisation or abandons the plantation.<sup>192</sup>

An owner or manager of a plantation whose authorisation is cancelled can appeal to the Land and Environment Court within 28 days of receiving notice of the decision.<sup>193</sup>

### **Exemptions from other environmental laws**

Authorised plantations are exempt from the provisions of many environmental laws which the timber operation would otherwise need to comply with. The purpose of these exemptions is to encourage people to establish plantations by guaranteeing their right to harvest the timber.

These exemptions include:<sup>194</sup>

- An exemption from the provisions of the *National Parks and Wildlife Act 1974* (NSW) which make it an offence to harm or pick native flora and fauna;
- An exemption from threatened species offences, for both animals and fish; and
- An exemption from the need to obtain approval under *Water Management Act 2000* (NSW).<sup>195</sup>

<sup>185</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 15

<sup>186</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 15(4).

<sup>187</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 33.

<sup>188</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 34, 35.

<sup>189</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 36, 37.

<sup>190</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 21, 17B.

<sup>191</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 17A.

<sup>192</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 22.

<sup>193</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 24(2).

<sup>194</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 48(1), 49(1).

<sup>195</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 52.



These exemptions only apply if the plantation operations are carried out in accordance with the conditions of authorisation and the Plantations Code.<sup>196</sup>

The following orders cannot be used to prevent plantation operations on an authorised plantation:<sup>197</sup>

- An interim protection order or stop-work order under the *Threatened Species Conservation Act 1995* or *National Parks and Wildlife Act 1974*;
- An interim heritage order under the *Heritage Act 1977*; or
- An order by a local council to cease operations under the *Local Government Act 1993*.

These exemptions *do not* extend to Aboriginal objects and places; these can still be protected.<sup>198</sup>

## **Enforcement**

### ***Investigations into compliance***

The Minister for Primary Industries may direct an authorised officer to investigate and report to the Minister on whether the Plantations Act and Plantations Code are being complied with.<sup>199</sup>

### ***Legal proceedings***

Only the Minister for Primary Industries may bring legal proceedings in the Land and Environment Court to enforce the Plantations Act or Plantations Code.<sup>200</sup> However, if any breach of the Act, Plantations Code or a plantation authorisation is causing harm to the environment, any member of the public may be able to bring proceedings in the Land and Environment Court to remedy that harm by relying on the open standing provisions in the *Protection of the Environment Operations Act 1997* (NSW).<sup>201</sup>

### ***Stop work and remedial orders***

The Minister for Primary Industries may issue a stop work order if the Minister believes that plantation operations are, or are about to be, carried out in contravention of the Plantations Act or Plantations Code.<sup>202</sup> Where work has been carried out unlawfully, the Minister for Primary Industries may direct an owner or manager to carry out remedial work.<sup>203</sup>

<sup>196</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 48(2), 49(2).

<sup>197</sup> *Plantations and Reafforestation Act 1999* (NSW), ss. 48(3, (4); 49(3), 50, 51, 52.

<sup>198</sup> Under the *National Parks and Wildlife Act 1974* (NSW). *Plantations and Reafforestation Act 1999* (NSW), ss. 55.

<sup>199</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 61.

<sup>200</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 57.

<sup>201</sup> *Protection of the Environment Operations Act 1997* (NSW), s. 253.

<sup>202</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 58.

<sup>203</sup> *Plantations and Reafforestation Act 1999* (NSW), s. 59.

## Glossary

### Key to terms used in this Fact Sheet

**Department** means [NSW Department of Primary Industries](#)

**Environment Minister** means the NSW Minister for the Environment

**EPA** means the [NSW Environment Protection Authority](#)

**EP&A Act** means the [Environmental Planning and Assessment Act 1979 \(NSW\)](#)

**Forestry Act** means the [Forestry Act 2012 \(NSW\)](#)

**Forestry Corporation** means the [Forestry Corporation of New South Wales](#)

**OEH** means the [NSW Office of Environment and Heritage](#)

**Planning Minister** means the NSW Minister for Planning

**Plantations Act** means the [Plantations and Reafforestation Act 1999 \(NSW\)](#)

**Plantations Code** means the [Plantations and Reafforestation \(Code\) Regulation 2001 \(NSW\)](#)

**POEO Act** means the [Protection of the Environment Operations Act 1997 \(NSW\)](#)

**SEPP** means a State Environmental Planning Policy