

## Extract from NSW EDO Fact Sheet - Forestry (updated January 2015)

[www.edonsw.org.au/forestry\\_clearing\\_vegetation\\_trees](http://www.edonsw.org.au/forestry_clearing_vegetation_trees)

### 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