



**North East NSW
Forestry Hub**



REVIEW OF THE REGULATORY FRAMEWORKS FOR PRIVATE FORESTRY IN NSW

Prepared for the North East NSW Forestry Hub

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March 2026**

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Foreword

This report was commissioned by the North East NSW Forestry Hub with the objective of identifying opportunities for reform of the New South Wales regulatory frameworks for private forestry that will:

- Improve the industry's timber sustainability credentials
- Remove regulatory barriers to investment
- Engender investment confidence of forestry and wood processing
- Discourage exploitative forest practices
- Support forest practices that enhance forest productivity and timber yield without compromising environmental values.

The author of the report has drawn upon published research and reports as well as the opinions of industry operatives for plantations and native forestry. The report contains an overview of the historical context that has preceded the current regulatory frameworks, and a summary of the frameworks that apply to the regulation of plantations and native forestry within other states and territories of Australia.

The regulatory frameworks in NSW have been analysed against the components of a 'forest practices system'. The report makes detailed reference to Tasmania's system, which has evolved and operated successfully for over 40 years and is widely regarded as the most comprehensive and integrated model in Australia.

Acknowledgement

This report was commissioned by the North East NSW Forestry Hub with funding from the Commonwealth of Australia represented by the Department of Agriculture, Fisheries and Forestry, Agriculture House, 70 Northbourne Avenue, Canberra ACT 2601, ABN 34 190 894 983.

Declaration of author

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He does not believe that he has any conflict of interest in undertaking the present review for the North East NSW Forestry Hub.

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Abbreviations

BC Act	Biodiversity Conservation Act
Cth	Commonwealth
CAR Reserve	Comprehensive, Adequate and Representative Reserve (System)
DPI	Department of Primary Industries
ESFM	Ecologically Sustainable Forest Management
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999 (Cth)
EPA	Environment Protection Authority
EP&A Act	Environmental Planning and Assessment Act 1979
FMP	Forest Management Plan
FP Act	Forest Practices Act 1985 (Tas)
FPAC	Forest Practices Advisory Council
FPA	Forest Practices Authority (Tasmania)
FPO	Forest practices officer
FPP	Forest practices plan
LEP	Local Environmental Plan
LGA	Local Government Area
LLS	Local Land Services
LLS Act	Local Land Services Act 2013
MER	Monitoring, Evaluation and Reporting
NFPS	National Forest Policy Statement 1992
NRC	Natural Resources Commission
NSW EDO	New South Wales Environmental Defenders Office
NE NSW	North East New South Wales
PR Code	Plantations and Reafforestation (Code) Regulations 2001
PR Act	Plantations and Reafforestation Act 1999
PRU	Plantations Regulation Unit
PFT	Private Forests Tasmania
PNF	Private native forestry
PNF Code	Private Native Forestry Codes of Practice
PNF Plan	Private Native Forestry Plan
PTR	Private Timber Reserve
PEA Act	Protection of the Environment Administration Act 1991
POEO Act	Protection of the Environment Operations Act 1997
RFA	Regional Forest Agreement
SEPP	State Environmental Planning Policies

Summary and Recommendations

1 Executive Summary

Regulatory frameworks in other jurisdictions

The legislative and institutional frameworks for the regulation of forestry vary widely by tenure and forest type across the States and Territories of Australia. In Victoria all forests on public land are regulated by a state agency and all forests on private land are regulated by local government; in Queensland and Western Australia native forests are regulated by a state agency and plantations are regulated by local government. Tasmania is the only jurisdiction that has one regulatory system administered by a single state agency across all tenures and forest types.

A common theme across most jurisdictions is that local government authorities generally do not have sufficient capacity or skills to regulate forestry, leading to inconsistencies and inefficiencies.

Private Native Forests in NSW

New South Wales has 19.9 million hectares of native forest, of which 7.6 million ha (38%) are privately owned. Much of the private native forest resource is in the North-East NSW region, which has 65% forest cover, half of which (3.4 million ha) is privately owned.

Private native forests are used for many purposes, including grazing, timber production, hunting and recreation. They produce high-quality hardwoods and other timber products, which can offset declining production from public forests and reduce the importation of timber from overseas, especially from sources that have poor standards of environmental sustainability. They provide opportunities for landowners to diversify and enhance the income streams from their land, and they help to boost regional employment. Private native forests make a significant contribution to the conservation of biodiversity and to the sequestration of carbon.

Current constraints

There are several key factors that currently constrain the capacity of private native forests to deliver enhanced outcomes. Many of the forests are in a degraded condition due to high grading, inadequate regeneration, a lack of thinning, and wildfires. Many private forest owners do not have the necessary knowledge, expertise or governmental support to manage their forests sustainably for multiple values. The regulatory framework for native forestry is seen by many landowners as inconsistent and difficult to navigate. Repeated reviews and regulatory changes have compounded uncertainty and contributed to a lack of confidence about investing in long term forest management and industry development. Many private forest owners are apprehensive about the potential impact of nature conservation values on their property. They want flexibility to continue current uses, including grazing, whilst exploring other opportunities for diversification, including timber sales, carbon markets and biodiversity conservation. Most are reluctant to make long term commitments to a single use of their forests, to the exclusion of other uses.

Forestry by its nature should be a long-term enterprise. However, much of the current forest management is driven by short-term, opportunistic harvesting, which often reflects uncertainty about the future of regulatory constraints. This situation does not create a favourable environment for investment in long term sustainable forest management and industry development.

Opportunities to improve the regulatory framework for sustainable forest management and development

Engagement of private forest owners

There has been little engagement of private forest owners in the design and delivery of the regulatory framework. The current system is more akin to a ‘command and control’ style of regulation, rather than a contemporary collaborative approach between government and its most affected stakeholder group. The private forest owners are the managers of their forests, not the government, and no regulatory regime can deliver good outcomes without the support and active participation of both parties.

The private native forest sector is characterised by thousands of small-medium scale landowners. There is no private or governmental body that specifically represents the interests of private forest owners. This leaves them without a collective voice and without appropriate standing to constructively engage with government on the development of their sector, including the regulatory framework. Mechanisms are therefore needed to actively foster the engagement of private forest owners through a forest owner association and through representation on a relevant governmental stakeholder or advisory body. The recent changes to the Environment Protection and Biodiversity Conservation Act (Cth) (EPBC Act) present an immediate challenge, as well as an opportunity, for ensuring that PNF owners are involved in discussions about the future regulatory framework.

Rights and contribution of private forest owners to sustainable forest management

The National Forest Policy Statement 1992, Regional Forest Agreements and State legislation all recognise that private native forestry (PNF) is different to public native forestry and that different mechanisms must apply. A key principle is that PNF should contribute to ecologically sustainable forest management (ESFM) but that any conservation mechanisms can only be voluntary and cannot be used as a basis for preventing timber harvesting. Despite this, mandatory constraints and exclusions for conservation purposes now amount to 26% of the total area of private native forest on the NSW north coast. This level of *de facto* mandatory reservation will inevitably increase due to continuing regulatory creep.

A fair and reasonable ‘duty of care’ threshold should be set to define the ‘mandatory’ contribution that individual private forest owners should make towards the conservation of values for public benefit, with voluntary and/or compensable mechanisms to be used to achieve contributions beyond the threshold.

A stable, secure and fair regulatory framework

The regulatory framework for PNF has been subject to repeated reviews and regulatory changes, and there is growing concern about potential future changes arising from the changes to the EPBC Act. There is also concern that the regulation of PNF may move towards the regulatory regime currently applied to public native forests, a regime that is regarded by many observers as highly prescriptive, legalistic and adversarial in nature. Such a move would deter private forest owners from investing in the long-term management of their forests for timber production, with consequential impacts on the viability of the processing sector.

NSW has a multi-agency approach to the regulation of PNF involving three state agencies and, in some instances, local government. The weakness of this approach is that no single agency provides overall coordination and leadership for continuing improvement across all components of the regulatory framework. This is evident in the disconnect between the separate functions and approaches of Local Land Services (LLS) and the Environment Protection Authority (EPA). The LLS is widely respected for its advisory and approval processes. In contrast, there is a general view that the EPA lacks appropriate expertise in forestry and is too focussed on coercive enforcement, rather than seeking to work collaboratively with the LLS and private forest owners to improve compliance standards through mechanisms such as training, education and improved management processes. There is a common perception that the EPA works to discourage PNF rather than to foster and encourage a viable and sustainable sector.

The regulation of PNF could be improved by combining the statutory functions of LLS and the EPA into a single, integrated regulatory authority that has a clear legislative requirement to work in a collaborative manner with private forest owners to promote sustainable forest management.

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The 'dual consent' process, under which some private forestry operations require the consent of local government under the Environment Planning and Assessment Act (EP&A Act) as well as approval under the Local Lands Services Act, is widely criticised by the private forestry sector. The involvement of local government is seen as an unnecessary duplication, leading to inconsistencies and additional costs. Most local government councils do not have sufficient expertise or capacity to regulate forestry operations. Furthermore, a sustainable forestry sector needs to operate at a broader regional scale that takes account of the nature and distribution of the forests, and socio-economic factors such as the location of the workforce and the infrastructure for forest management, including the harvesting, processing and transportation of forest products. The removal of the consent provisions under the EP&A Act would be justified, providing that alternative opportunities are provided to address matters of concern to local government through devices such as the PNF codes and PNF Plan process.

Under the current regulatory framework an approved PNF Plan provides a right to carry out forestry operations for a period of up to 15 years. In a forestry context, this represents a short-term operational timeline, and it does not provide sufficient security to invest in long-term forest management. In Tasmania, forest owners may secure an enduring right to harvest their forest (in accordance with the prevailing Forest Practices Code) by having their land registered on title as a private timber reserve (PTR).

Enhancing the capacity of the private sector

There is insufficient capacity within both government and the private sector to adequately support the sustainable management of private native forests.

In NSW, as in most jurisdictions across Australia, most private forest owners are only involved in forestry operations on an intermittent basis. It is therefore unrealistic to expect that these owners will have sufficient knowledge to meet regulatory requirements without some expert advice. Currently some support is provided by LLS, which has excellent on-line information but lacks sufficient capacity for on-ground advice. Many forest owners get information on timber harvesting from sawmillers, harvesting contractors and neighbours, which invariably translates into short term forestry operations rather than long term forest management. Less than 10% of landowners seek advice from professional forestry consultants.

Tasmania's system of forest practices officers could have applicability in NSW. Under that system, suitably qualified practitioners within the forestry sector are trained and accredited to provide advice on forest practices and to prepare and certify operational plans under the delegation of, and with the oversight of, the Forest Practices Authority (FPA). These officers also monitor all operations and submit compliance reports, and they have the power to issue corrective action notices with respect to any non-compliances. This system enhances the capacity of the private sector to achieve high standards of self-management and accountability.

Providing a mechanism to support long term planning and investment decisions

The private native forests provide a substantial contribution to the State's timber supply, biodiversity conservation and carbon balance but there is no mechanism to support on-going strategic planning for the management of these and other forest-related values at both a landscape and individual property scale.

The North-East NSW Forestry Hub has made an important contribution to the knowledge base for the forestry and wood products sector in the north east region of NSW, and it has identified barriers and opportunities for future development. Funding for the national forestry hubs is not secured beyond 2026-27.

Support for strategic planning of the private native forest sector should be provided by a dedicated private forestry advisory unit within government in collaboration with the key stakeholders and relevant government agencies.

Improving the productivity of the forests

A history of high grading and short-term exploitative logging means that some forests will simply need time to recover and develop the attributes that are important for high value timber production and for biodiversity. It is acknowledged that some private native forest owners will want to continue to use their forests for short term income. However, better education and advisory services could encourage more owners to undertake

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longer term investments to enhance the condition, productivity and value of their forest for a diversity of uses, including timber sales, carbon markets and biodiversity conservation.

The previous silvicultural guidelines were a very valuable and useful educative tool. They should be updated and promoted to encourage improved regimes, including the thinning of overstocked stands and the scheduling of longer harvest cycles. The implementation of improved silviculture should be achieved through non-mandatory mechanisms such as education, incentives and demonstration of the benefits. Opportunities to incentivise improved silviculture could include forest industry mechanisms for the payment of higher royalties for timber harvested under preferred silvicultural regimes. The PNF sector should also lobby for the Australian Carbon Credit Units scheme to be expanded to allow recognition of carbon gains through the improved silvicultural management of native forests, noting that recent research has highlighted the potential for regrowth to sequester more carbon in the long run when managed under a selection harvesting regime than when set aside strictly for conservation.

Improved reporting on compliance and enforcement

The reports of the EPA are focussed on outcomes of investigations and enforcement actions. There is no reporting on overall compliance standards, or any recognition of good performance. This provides a biased picture of performance and contributes to negative perceptions and misinformation about the sustainability of PNF. It also highlights a disconnect in the regulatory framework: the key objective of a monitoring program is not solely to find non-compliances but to assess performance across all regulatory requirements. The information from monitoring should be used to recognise good performance, as well as identifying areas where improvements should be made through actions such training, education and changes to administrative or technical processes

More balanced and transparent reporting of compliance standards and actions would improve confidence in the regulatory framework for both the PNF sector and the public.

Plantations in NSW

There are about 350,000 ha of plantation in NSW, with 36% on private land. The major plantation sector is in the south west region of NSW, with smaller scale plantations in the north east of the state.

A single, streamlined system applies to the regulation of plantations across public and private land. The system is administered by a single agency, through the Plantations Regulation Unit (PRU) within the Department of Primary Industries and Regional Development. The PRU shows a strong commitment to operate in a manner that builds trust and respect with the plantation industry and the community. As a result, the regulatory framework has a high level of support within the plantation sector.

The PRU has a very sound and contemporary attitude to enforcement, based on a ‘graduated compliance approach’. It publishes reports on the outcomes of individual compliance investigations. However, the monitoring methodology and the results of the overall monitoring program are not published. There is also no publicly available report on the number and type of compliance actions undertaken by the PRU. More comprehensive and transparent reporting of compliance standards and actions would strengthen public confidence in the regulatory framework.

In contrast to PNF, the plantation sector is dominated by large plantation companies that have high levels of in-house professional expertise and capacity. This provides opportunities to further improve the regulatory framework by fostering and recognising higher levels of self-regulation and accountability within the plantation sector, for example through the accreditation of industry persons to authorise plantations and plantation plans, and to submit regular compliance reports.

The consent of local government for plantation operations is not required under the legislation, and there are no legal requirements for plantation owners to consult or notify local councils or neighbours of planned operations. This is very different to other jurisdictions within Australia where requirements are in place to address concerns from local communities on issues such as the conversion and loss of agricultural land; use of herbicides and pesticides; fire management; increased traffic on roads and bridges and potential impacts on water supplies, landscape amenity and recreational values. Some plantation companies have processes in

place, under their internal management systems and/or certification systems, to engage with local government and communities. It would be desirable for the plantation sector to develop a self-regulatory standard such as a 'good neighbour' protocol to document the processes for addressing any concerns of local government and/or local communities in a cooperative, non-litigious manner.

2 Key findings

2.1 Comparison with other jurisdictions

Each state and territory of Australia has a unique approach to the regulation of forestry across different tenures and forest types. The legislative and institutional frameworks are highly variable –

- NSW has up to four separate regulatory systems:
 - public native forests are regulated under the *Forestry Act 2012*
 - all private native forests are regulated under the *Local Land Services Act 2013*
 - some private forests are also subject to the *Environment Planning and Assessment 1979*
 - plantations across both tenures are regulated under the *Plantations and Reafforestation Act 1999*.
- Tasmania has one regulatory system across all tenures and forest types, administered by a single state agency (Forest Practices Authority).
- Victoria has two systems: public forests are regulated by a state agency; and private forests are regulated by local government.
- Queensland has three systems; public native forests are regulated by a state agency; private native forests are regulated under different legislation by another state agency; and plantations across both tenures are subject to local government regulations.
- In South Australia vegetation clearance and the establishment of new plantations are regulated by local government.
- In Western Australia native forestry is regulated by a state agency and the establishment of new plantations is regulated by local government.
- A common theme across most jurisdictions is that local government authorities generally do not have sufficient capacity or skills to regulate forestry, leading to inconsistencies and inefficiencies.

The following sections highlight key features of the NSW regulatory frameworks for private native forestry (PNF) and plantations, with reference to relevant provisions of Tasmania's forest practices system (denoted by the caption TAS).

2.2 Private native forestry

Legislative and policy framework

1. The current regulatory framework for PNF is substantially different to the framework that is applied to public native forests, which is regarded by many observers as highly prescriptive, legalistic and adversarial in nature.
2. The rationale for separate regulatory frameworks for private and public forests is enshrined in the National Forest Policy Statement 1992, Regional Forest Agreements, and in State legislation and policies. TAS 1
3. The regulatory framework for PNF has been subject to repeated reviews and regulatory changes. This has contributed to uncertainty and a lack of confidence about investing in long term forest management and industry development. Many private forest owners regard the regulatory framework as inconsistent and overly prescriptive, and as a barrier, rather than as an aid, to the use of their land for timber production. TAS 2

2. Key findings

4. Private native forestry is currently regulated at a state-level under the Local Services Act (LLS Act), and some areas also require the consent of local government under the Environment Planning and Assessment Act (EP&A Act). This 'dual consent' process is widely criticised as an unnecessary duplication, leading to inconsistencies and additional costs.
5. Recent changes to the Commonwealth's EPBC Act, have raised serious concerns about future regulatory requirements for PNF. It is essential that private forest owners are engaged in the process of legislative reform, including the contribution of private forests to the conservation of biodiversity under the proposed National Environmental Standards.
6. PNF was regulated as a form of vegetation clearing until 2013. Since then, the clearing of native forest for conversion to other land use has been regulated under separate legislation and it does not form part of this report. TAS 1

Contribution of PNF to Ecologically Sustainable Forest Management

7. The NSW Regional Forest Agreements, renewed in 2018, reaffirm the principle that PNF is expected to contribute to ecologically sustainable forest management, but that any conservation mechanisms can only be voluntary and cannot be used as a basis for preventing timber harvesting.
8. Despite the above principle of voluntary conservation mechanisms, regulatory constraints and exclusions for conservation purposes now amount to 26% of the total area of private native forest on the NSW north coast. This level of *de facto* mandatory reservation will inevitably increase due to continuing regulatory creep. A fair and reasonable 'duty of care' threshold should be set to define the 'mandatory' contribution that individual private forest owners should make towards the conservation of values for public benefit, with voluntary and/or compensable mechanisms to be used to achieve contributions beyond the threshold. In Tasmania about 14% of forest area is set aside under the mandatory duty of care provisions of the Forest Practices Code, averaging about 9% for soil, slope and stream/riparian restrictions and an additional 5% for biodiversity, cultural and visual values. TAS 3
9. A progressive increase in constraints and *de facto* reservation of private forests, particularly for high profile species such as koalas, highlights the need for voluntary conservation mechanisms that are more attractive to private forest owners, noting that many of them support measures to conserve natural and cultural values, but they are reluctant to accept overly restrictive and long-term conservation agreements.

Institutional Framework

10. The institutional responsibilities for PNF are shared by four bodies: the LLS, EPA, local government authorities and the Natural Resources Commission (NRC).
11. LLS has both advisory and regulatory functions for PNF, principally through the issue of the private native forestry codes of practice, and the approval process for Private Native Forest Plans. It does not directly undertake compliance monitoring or enforcement activities; these are undertaken by the EPA.
12. LLS is highly respected by landowners for its training courses and advice, but it is perceived as lacking sufficient resources to provide on-ground advice to private forest owners, especially on issues such as long-term forest management, and the utilisation and marketing of forest products.
13. The EPA states that its regulatory approach is based on education, collaboration, monitoring and enforcement. However, it is widely seen as concentrating exclusively on enforcement. Environmental groups and local government support this approach and would like to see the EPA better resourced to strengthen its monitoring and enforcement capabilities. The views of forest owners and the timber industry are mixed. Some report that they have good relations with the EPA, but most are highly critical of its approach, believing that it is too focussed on punitive measures rather than on improving performance standards through education and collaboration. One common criticism is that whilst the EPA has expertise in environmental topics such as roads and drainage, it lacks sufficient expertise in forestry, including silviculture and the management of forests for multiple values, including the conservation of forest biodiversity.

14. The NRC is generally perceived as an independent, evidence-based advisory body. However, the timber industry has argued that the NRC's Forest Monitoring Steering Committee is unbalanced and unrepresentative, lacking appropriate expertise in forest management and silviculture.
15. The role of local government is varied and inconsistent. Local councils generally do not have the requisite expertise or capacity to prescribe appropriate and practical conditions on forestry operations. In some cases, they have imposed conditions on PNF that are outside of the requirements that apply through the state-wide process under the LLS Act. There is a strong case for removing the (duplicated) consent process for PNF by local government, as is the case for plantations under the Plantations and Reafforestation Act 1999. However, in doing so, it would be important to ensure that appropriate consultative mechanisms are in place during the PNF Plan process to address any local concerns. (see point 18 below) TAS 4
16. The multi-agency approach to the regulation of PNF is seen as desirable by those who favour a separation of advisory and enforcement functions. Under the current framework the LLS has both advisory and regulatory functions (providing advice, issuing the PNF codes, and approving Private Native Forest Plans); the EPA's functions are largely related to compliance monitoring and enforcement; and the NRC's functions include reviewing the prescriptions applied through the PNF codes. This arrangement requires close collaboration between the agencies to ensure that all components of a contemporary regulatory framework are adequately addressed in an integrated, effective and efficient manner. The usual weakness of a multi-agency approach is that the individual functions are often not well integrated, and no single agency has overall oversight of the regulatory framework. This often leads to gaps, duplications, delays, inconsistencies, and a lack of accountability, resulting in inefficiencies and increased regulatory costs for both government and private forest owners. This is evident in NSW in areas such as the 'dual consent' process, the insufficiency of education and advisory services for private forest owners, and a lack of collaboration and information sharing between the EPA and LLS, particularly with respect to compliance monitoring (see point 32 below). Experience from Tasmania shows that a single agency with overall responsibility can deliver a highly integrated program. TAS 5

Engagement of the private forestry sector and other stakeholders

17. There is no specific legislative provision for the engagement of stakeholders in the governance and implementation framework other than through provisions in the LLS Act requiring public consultation on the making, amendment or repeal of PNF codes of practice. There is an active forest industry association in NSW (Timber NSW) but no forest owner association *per se*, meaning that forest owners do not have a forum to discuss forest management issues and make representations to government. This leaves them without a collective voice and appropriate standing when it comes to the development and implementation of changes to the regulatory framework. TAS 6
18. There is no provision for notification and consultation with local government and communities in the planning and conduct of PNF Plans and plantation operations. This has been raised as a concern by local government. In other jurisdictions within Australia, councils and local communities have raised concerns and sought a voice on issues such as- the conversion and loss of agricultural land; use of herbicides and pesticides; fire risk; increased traffic on roads and bridges, and potential impacts on landscape and recreational amenity. Consultative mechanisms can help to resolve many of these issues. TAS 4

Knowledge, training and education

19. Most private forest owners do not have the necessary knowledge, expertise or governmental support to manage their forests sustainably for wood production on a commercial basis. Many are reluctant to engage in PNF due to a lack of knowledge or distrust of the regulatory process, and uncertainty about the quality and value of their timber resource, and the silvicultural options for improving the health and productivity of their forests.

2. Key findings

20. The websites of LLS and the EPA contain useful information for private forest owners but there is insufficient on-ground advice. Many forest owners get information on timber harvesting from sawmillers, harvesting contractors and neighbours. This perpetuates a history of short term, exploitative harvesting, rather than long term forest management. TAS 7
21. The North-East NSW Forestry Hub has made an important contribution to the knowledge base for the forestry and wood products sector in the north east region of NSW, and it has identified barriers and opportunities for future development. Funding for the national forestry hubs is not secured beyond 2026-27.
22. Training and education courses on forest management for forest owners and forest industry personnel are sporadic. Sawmillers and contractors that work across both public and private forests benefit from the regular training courses conducted by the Forestry Corporation. TAS 8
23. Historically, insufficient resources have been allocated towards supporting educational, training and support programs for sustainable forest management practices and the conservation of private native forests. Consequently, many of the forests are now regarded to be in a degraded state, with sub-optimal economic and conservation values. The need for more educational and incentive mechanisms is as critical today as it was in 2014 when the Ministerial Independent Biodiversity Legislation Review Panel reported-

We are not aware of anywhere in the world where long-term conservation of historical, cultural or biophysical resources has been successfully achieved solely through exerting the coercive powers of government. Educational, suasive and incentive measures are invariably an important part of successful regimes – we believe that these mechanisms should be used more in NSW. Without such measures, there is a strong probability of perverse outcomes.

Regulatory costs

24. The costs of preparing a PNF Plan and Forest Management Plan (FMP) are paid by the applicant, either by the private forest owner or more usually by the contractor or sawmiller as part of the contractual arrangements to harvest the private forest owners' timber.
25. The costs of approving the plans are born by government in the form of the services provided by LLS.
26. The costs of research, compliance monitoring and enforcement are borne by government. TAS 9

Planning

27. The LLS Act provides that an application for approval of a PNF plan may be submitted by the landowner(s) or by any person on behalf of the landowner(s). In practice, most PNF plans and accompanying FMPs are prepared by persons employed by forest industry personnel or contractors. LLS assesses the plans, mainly through its desk-top checks of habitat maps and data bases etc., with limited on-ground support. The PNF plans are very basic; the FMPs are poorly named as they are not forest management plans in the traditional sense. That is, they do not contain objectives and procedures for long term forest management, including production, conservation and protection. The FMPs are more comparable to short term operational plans (such as harvesting plans) used in other jurisdictions. There is potential to improve the standard of PNF plans and FMPs, and to lessen the reliance on LLS, through the training and accreditation of suitably qualified persons within the native forestry sector. TAS 10

Codes of Practice

28. Perspectives on the PNF plans and PNF codes of practice are polarised, from those seeking to make them more prescriptive and restrictive to those who see them as unduly complex and overly prescriptive. The codes are written as a set of legal conditions, akin to regulations, rather than as practical tools for practitioners and regulators. The prescriptions for listed species take up nearly 60% of the code. These prescriptions could be more efficiently addressed in a supplementary document, making it easier to regularly update them based on new information. The codes contain broad

provisions for silviculture and other aspects of forest management that need to be supported by more detailed planning guidelines. More reliance should be placed on having comprehensive forest management plans in place. TAS 11

29. Both the LLS and the EPA provide educative and advisory guidelines for landowners to assist in the interpretation and application of the codes of practice. These are very useful documents, although there is considerable duplication of advisory notes and guidelines across the EPA and LLS and there are some gaps, such as the absence of the excellent previously published (2010) *Silvicultural Guidelines*.
30. Silvicultural provisions in the codes are sound but basic and they would be greatly improved by linkages to silvicultural guidelines that provide more details on the planning and application of appropriate silviculture, particularly on issues such as the thinning of overstocked stands to improve stand health and productivity.
31. The LLS Act requires that before a PNF code of practice is made or amended it must be released for public comment. The Minister is required to consider any submissions duly made on the proposed code but is not required to make the submissions, or the Minister's response to the submissions, publicly available. This process has been described as 'tokenistic' by some private forest owners. TAS 11

Compliance monitoring and reporting

32. The EPA is responsible for monitoring compliance under the LLS Act. Its monitoring methods and the overall results of its monitoring program are not published. The reports of the EPA are focussed on outcomes of investigations and enforcement actions. There is no reporting on overall compliance standards, or any recognition of good performance. This provides a biased picture of performance and contributes to negative perceptions and misinformation about the sustainability of PNF. It also highlights a disconnect in the regulatory framework: the key objective of a monitoring program is not solely to find non-compliances but to assess performance across all regulatory requirements. The information from monitoring should be used to recognise good performance, as well as identifying areas where improvements should be made through actions such training, education and changes to administrative or technical processes.
33. As of 30 June 2025, there were 4,202 approved PNF plans in NSW (not all of them active), with 300 new plans approved in 2024/25. Between 1 July 2025 and 30 September 2025, the EPA conducted 16 inspections of forestry operations on private land.
34. The PR Codes require landowners to notify the LLS upon the completion of harvesting operations and to report on the volume of forest products harvested and the number of hectares harvested. There is no requirement to self-report on compliance with the requirements of the PNF code and PNF Plan. Landholders are also required to monitor regeneration at two-, six- and 10-years after harvesting. However, there is no requirement for the landowner to submit reports on regeneration and, as a result, there is no collated report by the LLS or EPA on the standard of regeneration being achieved across harvested forests. TAS 12

Monitoring of the efficacy of the PNF Codes

35. The Forest Monitoring and Improvement Program, administered by the NRC, provides a framework for monitoring the extent and condition of NSW forests and for evaluating the scientific evidence behind some key management prescriptions and models.

Enforcement

36. The EPA has a range of enforcement tools available, which are comprehensively detailed in its Regulation Policy and Prosecution Guidelines.
37. The EPA's website contains statistics on the number of enforcement actions undertaken. The figures show that most non-compliances were dealt with by punitive measures (prosecutions, formal

warnings, official cautions and penalty notices), with little evidence of corrective actions being used as a key enforcement measure. TAS 13

Review and improvement

38. The LLS Act makes provision for the making or amendment of the PR Codes but there is no time frame given in the Act, or in the codes. as to how often the codes should be reviewed. TAS 15
39. The PNF Codes prescribe a program of formal monitoring and review of data and evidence under the Monitoring, Evaluation and Reporting (MER) Framework.
40. The forest research team within the Department of Primary Industries (NSW Forest Science) conducts research and provides advice on sustainable forest management for native forests and plantations. Most of the research is carried out in public forests, but many of the findings are applicable to PNF.

2.3 Plantations

Legislative and policy framework

41. The legislative framework for plantations in NSW has achieved the statutory objective under the *Plantations and Reafforestation Act 1999* (PR Act) of providing a *streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations*. The framework achieves this through the elements that-
 - a. prescribe that plantations are not subject to other legislation, in particular the EP&A Act; and
 - b. vest the regulation of plantations in single, dedicated unit, which has a commitment to education and advice, and a streamlined system of delegated approvals by authorised officers.
42. The regulatory framework is administered by the Plantations Regulation Unit (PRU) within the Department of Primary Industries and Regional Development. The framework is integrated, with the PRU covering education, advice on regulatory approvals, monitoring and compliance. The website of the PRU is comprehensive and useful, and the PRU shows strong commitment to operate in a manner that builds trust and respect with, and between, the plantation industry and the community.
43. The PR Act allows the Minister to impose constraints or suspend plantation operations where the operations may have an adverse impact on unique or special wildlife values. The Act provides for the payment of compensation where the owner or manager of the plantation has suffered a direct financial loss because of the Minister's direction. However, the processes for determining impacts and potential compensation are not well defined. The lack of process represents a significant regulatory risk for plantation managers, and a potential barrier to investment in new plantations, particularly with respect to the establishment of commercial hardwood plantations that may create favourable habitat for species such as koalas.

Engagement with local government

44. The removal of plantation regulation from any control by local councils under legislation or devices such as codes of practice is notably different from the 'dual consent' process that may apply to some PNF operations.
45. There are no requirements for plantation owners to consult or notify local councils or neighbours of planned operations (see numbered item 18 above). This is very different to other jurisdictions within Australia where plantations on private land are either directly regulated by local government (Victoria, Queensland, South Australia and Western Australia) or where formal consultation mechanisms apply (Tasmania). TAS 4

Plantations and Reafforestation Code

46. The technical content of the Plantations and Reafforestation Code (PR Code) is relatively comprehensive, although it is focussed mainly on harvesting, with little or no coverage of other plantation topics such as- dispersal of harvesting units (in time and space) to reduce impacts on catchment hydrology and landscape amenity etc; cultivation; weed and pest control; fire management; and regeneration. It is written in the form of a Regulation, i.e. in a legalistic style, designed for planners, regulators and legal counsel, rather than for plantation owners, operators and contractors. In this respect, the PR Code is a less useful educative and advisory document than the much more user-friendly documents produced by the PRU. TAS 11
47. The Act provides that before a Code is made or amended, the Minister must provide the public with an opportunity to make submissions on the draft and must prepare and make public a report on the public consultation undertaken (including information about any submissions received by the Minister).

Plans

48. There is a comprehensive process for the authorisation of plantations and the accompanying plantation plan. The authorisation is done by officers within the PRU. In contrast with the private native forestry sector, the plantation sector is dominated by large plantation companies that have high levels of internal professional expertise and capacity. On this basis, there is potential to foster and recognise high standards of self-management and accountability by these companies by delegating the power to authorise plantations and the operational plans to suitably qualified persons within the sector, with independent monitoring of the process by the PRU. TAS 10

Monitoring of compliance

49. The PRU has a risk-based approach to monitoring and compliance, in which it allocates its resources to the areas of highest risk. It aims to audit a plantation at least once during each operational phase. This means that each rotation of an authorised plantation is only likely to be audited every 8-10 years.
50. The PRU publishes reports on the outcomes of individual compliance investigations. However, the monitoring methodology and the results of the overall monitoring program are not published. TAS 12

Monitoring of efficacy

51. There appears to be no formal program for monitoring and evaluating to what extent the provisions of the PR Code achieve its objectives for the protection of natural and cultural values (for example, evaluating the effectiveness of prescribed buffer widths in reducing sedimentation of streams). TAS 14
52. Similarly, there appears to be no process for determining the extent to which plantation operations may have an adverse impact on unique or special wildlife values as defined in the PR Act, or for formally investigating and taking account of the extent to which any potentially adverse impacts may be mitigated through special management measures (see point 43 above).

Enforcement

53. The PRU is responsible for the enforcement of the PR Act and PR Code, and its approach is laid down in its *Regulatory Framework* and *Prosecution Guidelines*. The guidelines reflect a very sound and contemporary attitude to enforcement, based on a 'graduated compliance approach' (aka an enforcement pyramid), where the initial approach is to encourage voluntary compliance, followed by progressively tougher sanctions depending upon the seriousness of the non-compliance and the responsiveness of the offender.
54. Prosecutions are at the discretion of the DPI (PRU). There is no publicly available report on the number and type of compliance actions undertaken by the PRU. More transparent reporting of

compliance standards and actions would strengthen public confidence in the regulatory framework.
TAS 13

Review and Improvement

55. The DPI Forest Health and Biosecurity Forest Health team conducts forest health surveillance of planted and native forests, including early detection of exotic forest pests; pest and disease management strategies; and quantifying the impact of invasive pests.
56. There is no dedicated research program on plantation management and silviculture within the DPI, although some of the work done for PNF by the Forest Science Group would have relevance.
57. The PR Act provides for a review of the PR Code every five years, with the outcomes of the last review published in 2023. TAS 15

2.4 References to provisions of Tasmania's forest practices system

TAS 1 Application of regulatory system to different tenures and forest types

Tasmania's forest practices system is unique in Australia in that one single regulatory framework applies across all tenures, forest types, and forest operations and includes the clearance and conversion of forests and threatened non-forest vegetation communities. The clearance and conversion of forest is regulated under the forest practices system in accordance with the State Policy on the Maintenance of a Permanent Native Forest Estate.

TAS 2 Support of private forest owners for the regulatory framework

As a principle, private forest owners do not generally welcome constraints on the management of their land. However, in Tasmania the private forest owners are generally supportive of the regulatory framework because it provides-

1. resource security and a 'right to harvest' through the declaration of land as a Private Timber Reserve, which brings private forestry under a single State-wide regulatory framework and removes the requirement for the consent of local government
2. mechanisms for private forest owners to be formally consulted and engaged in the operation of the framework
3. a streamlined and integrated 'one-stop shop' for planning, approvals and compliance
4. a system for complying with national legislation under the Regional Forest Agreement
5. a platform for meeting the requirements of other processes, such as forest certification.

TAS 3 Defined duty of care

The Tasmanian Forest Practices Code defines a duty of care, which prescribes the contribution that forest owners must make to the conservation of natural and cultural values. Constraints beyond the duty of care can only be achieved through voluntary mechanisms or the payment of compensation (see details in section 12.1).

TAS 4 Engagement with local government and communities

In Tasmania, the consent of local government is not required where the land has been declared as a private timber reserve under the Forest Practices Act. However, the Forest Practices Code requires local councils and authorities to be notified of planned activities and to be consulted in certain circumstances, such as visual management zones, town water supply catchments, and the construction of road access onto municipal roads. Neighbours must be notified of planned operations and the information within forest practices plans (excluding commercial and confidential information) must be provided on request.

In addition, the forestry sector has developed self-regulatory protocols (the *Good Neighbour Protocol* and the *Tourism and Forestry Protocol*) as a basis for engaging with the community and responding to any concerns.

TAS 5 Institutional arrangements

All regulatory components of Tasmania's forest practices system are administered by a single, independent statutory authority, the Forest Practices Authority. The regulatory framework is well integrated and provides an efficient 'one-stop shop' for forest owners and operators.

The Act requires the FPA to act in a manner that *fosters a co-operative approach towards policy development and management in forest practices matters; and takes into account social, economic and environmental outcomes of its decision-making processes.*

The board of the FPA undertakes its statutory functions in an independent manner. It provides advice to the Minister but is not subject to any direction by the Minister.

The board has entered into formal agreements with other government agencies to deliver relevant requirements of their legislation through integration into the forest practices system. This includes requirements under the Threatened Species Protection Act, Environment Protection Act, Land Use Planning and Approvals Act, Aboriginal Heritage Act and the Historic Cultural Heritage Act.

Stakeholders are engaged in the governance and implementation of the forest practices system as detailed in TAS 6 below.

TAS 6 Engagement of stakeholders in the governance and implementation of the regulatory framework

The regulation of private forests in Tasmania began in 1985 with the Forest Practices Act. Private forest owners were engaged in the formulation of the legislation through the forestry committee of the Tasmanian Farmers and Graziers Association. Through their representations they were able to commit the private sector to regulation under the new Act in return for provisions that provided 'resource security' (through the declaration of their land as private timber reserves), and continued engagement through representation on the Forest Practices Advisory Council. The Council is appointed by the Minister and comprises a broad range of prescribed stakeholders, including organisations or individuals with expertise in sustainable forest management, local government, the State's environmental management system, forest harvesting and processing, forest conservation, cultural heritage, public forest management and private forest management, including a person nominated by the Tasmanian Farmers and Graziers Association.

The statutory functions of the Council include to advise the FPA on the review of the Act and the Forest Practices Code, and to advise the Authority on the quality, relevance and cost effectiveness of forest practices administration, operations and research, including the self-funding of forest practices.

The interests of private forest owners were further strengthened by the creation of Private Forests Tasmania in 1994, a statutory body that advocates on their behalf within government. This provides private forest owners with a 'seat at the table' on governmental forestry matters such as changes to legislation, policies and agreements (such as RFAs) (see section 11.3).

TAS 7 Provision of advice to forest owners

Technical advice on forest management, including regulatory requirements and advice on forest harvesting and marketing of forest products, is provided by staff of forest companies and consultants, most of whom are Forest Practices Officers (FPOs) (see TAS 10). The specialists employed by the FPA provide advice on the conservation and management of natural and cultural values as part of the process for the formulation of forest practices plans.

Private Forests Tasmania supports private forest owners through high level advice and advocacy on forest policy and developments such as carbon projects.

TAS 8 Training and education

The objective of the FP Act includes - an emphasis on *self-regulation consultation and education; and.... research, review and continuing improvement.*

The FPA has an extensive training program, with regular refresher courses for forest practices officers and forest industry supervisors. These courses cover all aspects of the Forest Practices Code, including harvesting, reforestation, roading and the management of natural and cultural values. There are also formal processes in place for the training of forestry contractors through forest industry training programs.

There is no formal process for training forest owners *per se*, as most of the work involved in forest practices planning and implementation is done by FPOs. Education programs have been conducted in association with industry and farmers' associations when major changes to the Act have been introduced.

TAS 9 Regulatory costs

The Forest Practices Act requires the forest practices system to be largely self-funded. The State government provides an annual appropriation to the FPA of about \$1.8m, with a further \$1.75 m received from fees and other sources. (see section 11.1). The self-funded value of Forest Practices Officers engaged within the forestry sector to undertake planning, monitoring and compliance under delegated authority of the FPA is estimated to be worth over \$3.0 million per annum.

Total regulatory costs for an forest practices plan in 2014 (i.e. including the cost of preparing, field marking, monitoring and reporting) were estimated as \$80-\$420+ per ha for native forests and \$53-\$212 per ha for plantations (see section 12.2).

The advocacy services provided by Private Forests Tasmania are largely funded from government appropriation (\$1.9m p.a.) and from a levy charged on private forest owners (about \$0.18m p.a.) (see section 11.3)

TAS 10 Forest Practices Officers

The Forest Practices Act allows any person to make application for the certification of a forest practices plan, but the knowledge and skill level required essentially means that only trained persons such as Forest Practices Officers can prepare a plan that would meet the standard for certification.

Forest Practices Officers are suitably qualified persons employed within the forestry sector who are trained and appointed by the FPA and provided with delegated authority to exercise certain functions and powers under the Act, including the certification of forest practices plans, the monitoring of operations, the lodgement of compliance reports and the issue of enforcement notices (see section 13.1).

TAS 11 Codes of Practice

Under the FP Act the Forest Practices Code is issued by the independent FPA. Before amending the code, the FPA must seek public submissions and consult with Private Forests Tasmania, the Forestry Corporation and the Forest Practices Advisory Council. Any person may lodge an objection to any amendment of the code and the FPA must consider such objections before issuing the code.

The Forest Practices Code is designed as a user-friendly field document for forest planners, managers, operators, contractors and Forest Practices Officers. The Code is supported by a supplementary framework of planning and advisory manuals and tools, on topics such as silviculture, biodiversity, soils, geomorphology, cultural heritage, visual landscape management, and risk assessment (see section 12.1).

Relevant provisions of the Code and supporting manuals are interpreted and applied to specific operations through Forest Practices Plans. That is, it is not the Code *per se* that is legally enforceable but the Forest Practices Plan that prescribes the site-specific requirements.

TAS 12 Compliance monitoring and reporting

All operations are subject to compliance monitoring and reporting by FPOs at the end of each discrete operational phase. In addition, the FPA independently audits a representative sample of forest practices plans.

The compliance reports provide an overall assessment of the standards being achieved across all elements of the code, thus identifying areas of good performance and areas where improvements are required, through measures such as training and improved management processes. The methodology for the monitoring program is published on the FPA's website, and the results of all compliance monitoring are published in the FPA's Annual Report.

TAS 13 Enforcement

The FP Act provides a range of enforcement tools, including corrective action notices, fines and prosecutions.

The FPA's regulatory approach, in line with its statutory objectives to foster self-regulation and continuing improvement, is to focus on corrective actions, with punitive sanctions used for serious or wilful offences. On average each year, FPOs issue about 20-30 corrective action notices and the FPA issues about six fines and initiates two prosecutions. The FPA's Annual Report provides details on the enforcement actions undertaken.

TAS 14 Monitoring of the efficacy of the codes of practice

The FP Act requires the FPA to monitor and evaluate the effectiveness of FPPs and the Forest Practices Code in meeting the objectives of the Act. The FPA does this through an active research and monitoring program, with a focus on biodiversity, earth sciences and cultural heritage. The results are published and contribute to the statutory five-year review of the forest practices systems, which is published and tabled in parliament.

TAS 15 Review and improvement

The FP Act provides for the following-

1. Annual assessment and report on compliance standards
2. Five-yearly review of the operation of the State's forest practices system, including the provisions and operation of the Forest Practices Code and key planning and management tools such as the Threatened Species Adviser.
3. Five-yearly report on the State of the Forests.

The FPA conducts an extensive research program, and the findings are directly translated into management prescriptions, manuals and training programs.

3 Recommendations

1. The principle of applying different principles and requirements for native forestry on public and private land, as enshrined in the National Forest Policy Statement 1992, Regional Forest Agreements, and existing State legislation and policies, should be respected and recognised in any future changes to regulatory frameworks, including any changes resulting from the recent amendment of the EBPC Act.
2. The contribution of private forest owners to the conservation of values for the benefit of the public should be clearly defined in terms of a duty of care that incorporates-
 - 2.1. Fair and reasonable thresholds for mandatory contributions; and
 - 2.2. Recognition of any voluntary contribution to the conservation of values beyond the mandatory thresholds; and
 - 2.3. Mechanisms that provide reasonable compensation to private forest owners where constraints are applied above the mandatory thresholds and voluntary contributions.

3. Recommendations

3. The engagement and participation of private forest owners in the ongoing development and implementation of forest management policies and regulations for private native forests and plantations should be actively promoted and supported. Consideration should be given to-
 - 3.1. Fostering the development of an association that can represent the interests of private forest owners and actively promote improved forest management practices; and
 - 3.2. Ensuring that forest owners are represented on a statutory stakeholder body that provides advice to government on forest management and regulation.
 - 3.3. Creating a private forestry advisory unit within government.
4. Support should be provided to enable a private owner association and/or governmental private forestry advisory unit to work in collaboration with the forest industry and other parties, including the Department of Primary Industries (NSW Forest Science), to support strategic planning for the purposes of -
 - 4.1. Fostering the development of the timber sector through research and the collection and analysis of information on topics such as forest inventory, modelling of the potential supply of products, new markets and processing technologies; and
 - 4.2. Evaluating opportunities for private forest owners to diversify their forest management in areas such as carbon markets, conservation programs and forest tourism/recreation.
5. Consideration should be given to consolidating the regulation of PNF under a single, integrated legislative and institutional framework by-
 - 5.1. Removing the requirement for the consent of local government under the Environmental Planning and Assessment Act (see also Recommendation 13 below); and
 - 5.2. Combining the statutory functions of Local Land Services and the EPA into a single regulatory authority that has a legislative requirement to work in a collaborative manner with private forest owners and with other government agencies to promote sustainable forest management, including developing mechanisms for delivering the requirements of other legislation in an integrated manner.
6. Subject to Recommendation 5 above, consideration should be given to consolidating the regulation of PNF and plantations under a single legislative and institutional framework to provide a more consistent and integrated approach to sustainable forest management, and a one-stop-shop for private forest owners.
7. Long-term investment in PNF should be fostered by providing an enduring 'right to harvest' through registration on title without time-limit, with a requirement to lodge a PNF Stewardship Plan that sets out the objectives and procedures for long term forest management, including production, conservation and protection.
8. The former *Silvicultural Guidelines* should be updated and promoted to encourage improved silvicultural regimes through-
 - 8.1. Education, advisory documents and field demonstration sites to demonstrate the benefits to PNF owners, and
 - 8.2. The development of incentives, such as forest industry mechanisms that give priority to the scheduling of harvests and the payment of higher royalties for timber harvested under preferred silvicultural regimes, and
 - 8.3. Representations to the Australian Carbon Credit Units scheme to allow recognition of carbon gains through the improved silvicultural management of native forests.
9. The provision of advice and technical expertise to private forest owners should be strengthened, initially through increased resources for LLS and/or a new private forestry advisory unit and the extension of funding for the Forestry Hub to continue its research and development work, and progressively by increasing the self-management capacity of the private sector through the training and accreditation of

forest industry personnel who are involved in providing advice on forest management, including regulatory requirements (see also Recommendation 11 below).

10. The funding of the regulatory framework for PNF should be reviewed by identifying those advisory and regulatory functions that should be funded by government; and those that could be delivered through self-funding or user-pays mechanisms.
11. Measures should be introduced to foster higher standards of self-management and accountability, including improved compliance monitoring reporting within the PNF and plantations sectors by-
 - 11.1. The training and accreditation of appropriately qualified consultants/industry personnel, and
 - 11.2. The delegation to those personnel of powers to approve PNF plans/Plantation authorisations and related plans, and
 - 11.3. The introduction of a requirement for the applicant for PNF and plantation operational plans to submit to the regulatory authority compliance reports prepared by an accredited person, and
 - 11.4. The regulatory authority undertaking independent audits of an appropriate representative sample of those plans and compliance reports to ensure that they meet the required standards.
12. The content and format of the PNF Codes of Practice should be reviewed to make them more user friendly for practitioners and to link the codes to more detailed technical guidelines for silviculture and the management of natural and cultural values.
13. The private forestry sector should be encouraged to proactively engage with its neighbours and local communities by-
 - 13.1. Transparently providing timely notification and details of planned forestry activities to local councils and neighbours
 - 13.2. Consulting with local councils on matters of public interest, such as the use of local government roads and bridges, water supply catchments, visual landscape and amenity zones, fire and smoke management
 - 13.3. Developing 'good neighbour' policies that seek to resolve any concerns raised by neighbours in a fair and reasonable, non-litigious manner.
14. The provisions in the PR Act relating to unique or special wildlife values should be clarified by-
 - 14.1. Developing a methodology for determining the extent to which plantation operations may have an adverse impact on unique or special wildlife value; and
 - 14.2. Providing guidance on the extent to which any potentially adverse impacts may be mitigated through special management measures; and
 - 14.3. Providing a timeframe and methodology for the determination of compensation payments arising from any claims submitted under the Act.
15. The information available for PNF owners on the EPA and LLS websites should be reviewed and updated to remove duplication and to address gaps, with the intent of creating as far as practicable a 'one-stop shop' for information.
16. The procedures used by the EPA and PRU to monitor and report on compliance should be reviewed to ensure that the methodology provides an unbiased overall assessment of the standards being achieved across all regulatory requirements, including regeneration/restocking after harvesting. The reports of the regulators should clearly recognise areas of good performance, identify areas where improved performance is required, and provide details of the actions that have been taken to foster the continuing improvement of the regulatory framework.

Part A – The Regulation of Private Native Forests in NSW

4 Context

New South Wales has 19.9 million hectares of native forest, of which 7.6 million ha (38%) are privately owned¹. These forests provide for the people on whose land they grow as well as serving the broader public interest through the delivery of environmental, economic, and social benefits.

Private native forest owners are predominantly small-medium scale farmers. They use their forest for a variety of purposes, including stock grazing, firewood collection, timber for on-property use, biodiversity habitat, catchment protection, reducing bushfire risk, hunting to control pests, timber harvest and for aesthetic and recreational activities².

Private native forests are a significant source of hardwood timber, providing 33% of the hardwood timber harvested each year in NSW³. Much of the private native forest resource is located in the North-East NSW region, which has 65% forest cover, half of which (3.4 million ha) is privately owned⁴. The private native forestry sector in this region supports nearly 3,000 Full Time Equivalent positions and contributes \$600 million in gross revenue to the NSW economy⁵.

Private native forests have a critical contribution to make to the conservation of biodiversity and other natural and cultural values. The Regional Forest Agreement (RFA) process for the NSW North East Region in 2000 identified 59 priority forest ecosystems for (voluntary) conservation on private land in order to meet nationally agreed targets for a Comprehensive, Adequate and Representative (CAR) reserve system⁶. The RFA process also identified other indicators of National Estate significance, including vegetation community richness (52.7% of the total area identified was on private land); rare fauna (23% on private land); rare flora (26% on private land); centres of species endemism (41.2% on private land); species of fauna with disjunct populations (36% on private land); refugia for the conservation of environmentally sensitive species (38.5% on private land); habitat richness (38.8% on private land); and old growth forest (21% on private land)⁷.

As a natural renewable resource private native forest is seen as having an important role to play with respect to the following.

1. Supplying industry with high quality hardwoods and other timber products into the future⁸, to offset declining production from public forests and to reduce the importation of timber from overseas, especially from sources that have poor standards of environmental sustainability⁹
2. Contributing to diversified and profitable land management options for individual landholders¹⁰
3. Boosting regional employment associated with the timber industry¹¹
4. Contributing to the conservation and sustainable management of natural and cultural values¹²
5. Providing opportunities for carbon sequestration, particularly through the management of regrowth forest¹³.

¹ (DAFF, 2023)

² (Dare, Schirmer, & Mylek, 2017)

³ (Ernst and Young, 2023)

⁴ (NSW Department of Primary Industries, 2018)

⁵ (Ernst and Young, 2023)

⁶ (Commonwealth of Australia and the State of New South Wales, 2000)

⁷ (Environment Australia, 1999) cited by (Prest, 2004)

⁸ (Forest and Wood Products Australia, 2020)

⁹ (Timber NSW, 2016)

¹⁰ (SFM, undated), (Dare, Schirmer, & Mylek, 2017), (Timber NSW, 2016)

¹¹ (NSW Department of Primary Industries, 2018), (Lewis, et al., 2020)

¹² (Local Government NSW, 2019), (NSW EDO, 2019), (NSW Department of Primary Industries, 2018), (Timber NSW, 2016), (Dare, Schirmer, & Mylek, 2017), (Commonwealth of Australia and the State of New South Wales, 2000)

¹³ (Lewis, et al., 2020)

4. Context

However, the potential contribution of private native forests to the above is constrained by several factors, including the following.

1. Many of the forests are in a degraded condition, due to factors such as high grading, fragmentation, invasive species, altered fire regimes and climate change¹⁴. From a timber production perspective, many stands are young and overstocked with small diameter trees and a low stocking of potentially merchantable sawlogs¹⁵. Very little silvicultural management has been carried out. Only 13% of private forest owners currently practice silviculture, although 50% would consider thinning to improve forest health, reduce fire risk and increase merchantable volume and carbon sequestration¹⁶.
2. Not all private forest owners have an intention to harvest their forests. A survey in 2017 found that 20% of landholders (covering 31% of the total private native forest area in northern NSW) intended to engage in commercial sale of timber over the next 10 years¹⁷. However, there is significant potential to increase the potential resource available for timber harvesting. Modelling of private forests available for forestry on the NSW north coast has shown that 10% of the forests have very high suitability for timber harvesting, 60% have high suitability, 27% have moderate suitability and only 2% have low suitability¹⁸.
3. Many private forest owners do not have the necessary knowledge, expertise or governmental support to manage their forests sustainably for wood production on a commercial basis¹⁹. Local Lands Services (LLS) is respected for its advice on land management, but it lacks sufficient capacity to fully meet the needs of private forest owners²⁰. Many forest owners are reluctant to deal with the EPA²¹.
4. The regulatory framework for forestry is seen by many landowners as complex, inconsistent and difficult to navigate. Repeated reviews and regulatory changes have compounded uncertainty and contributed to a lack of confidence about investing in long term forest management and industry development²². Most private forest owners regard the regulatory framework as a barrier to timber harvesting²³.
5. Private forest owners are generally apprehensive about the potential impact of nature conservation values on their property²⁴. Current regulatory constraints and exclusions amount to 26% of the total area of private native forest on the NSW north coast; further restrictions will continue to reduce the availability of timber resources and will impact on social and economic values²⁵. This begs the question as to what extent private forest owners should be required to forgo income and bear the costs of conserving common-pool resources such as biodiversity for the public good.²⁶
6. Many private forest owners are supportive of measures to conserve natural and cultural values, but they are reluctant to enter into long term conservation agreements²⁷. Forest owners contend that their forests need to be actively managed for both economic and conservation outcomes. In the words of one private forest owner “Forestry and biodiversity can and do co-exist. Conservation covenants often just become benign neglect”.²⁸

¹⁴ (Byron, Craik, Keniry, & Possingham, 2014), (Lewis, et al., 2020)

¹⁵ (Wood, 2003), (Lewis, et al., 2020), (Timber NSW, 2016), (Jay, 2017), (Prest, 2004)

¹⁶ (Lewis, et al., 2020), (Local Land Services, 2025)

¹⁷ (Dare, Schirmer, & Mylek, 2017)

¹⁸ (NSW Department of Primary Industries, 2019)

¹⁹ (Timber NSW, 2016), (StollzNow, 2025), (Jamax Forest Solutions, 2017), (Dare, Schirmer, & Mylek, 2017)

²⁰ (StollzNow, 2024), (Timber NSW, 2016)

²¹ (Dare, Schirmer, & Mylek, 2017), (Timber NSW, 2016)

²² (Timber NSW, 2016), (Timber NSW, 2019), (NSW Department of Primary Industries, 2018), (Wood, 2003), (Dare, Schirmer, & Mylek, 2017), (Lewis, et al., 2020)

²³ (Dare, Schirmer, & Mylek, 2017)

²⁴ (Dare, Schirmer, & Mylek, 2017),

²⁵ (NSW Department of Primary Industries, 2018)

²⁶ (Jay, Thompson, Macgregor-Skinner, & Vanclay, 2007), (Wilkinson, 2015)

²⁷ (Dare, Schirmer, & Mylek, 2017)

²⁸ Private forest owner 1, pers. comm. March 2026

5. History of the regulatory framework

7. As with conservation covenants, many forest owners are concerned that the carbon market needs to allow carbon credits to be gained without overly restricting other reasonable uses of their forests²⁹.
8. Continued national and state-wide lobbying to end or further constrain native forest logging represents an ongoing socio-political risk for private forest owners. A recent survey found that 70% of stakeholders support timber harvesting as legitimate and important for regional economies³⁰. However, concerns about the impact of private native forestry on biodiversity continue to be raised in governmental reviews, driving calls for further restrictions at both the national and state level³¹.

5 History of the regulatory framework

There was little to no regulation of management in private forests prior to the 1990s, due to a lack of knowledge about their extent and conservation value, and political reluctance to restrict private property rights³².

5.1 National instruments

5.1.1 National Forest Policy Statement 1992

The National Forest Policy Statement (NFPS) of 1992 was the first instrument to recognise the importance of private native forests for their timber resources and conservation value, noting that they contained ecosystems and species that were not well represented in the public conservation reserves³³. Relevant key provisions of the NFPS included the following-

- The State and Commonwealth Governments agreed to pursue the goal of maintaining an extensive and permanent native forest estate and the protection of nature conservation values through- the setting aside of some public forests in reserves; complementary management of public forests outside of reserves; and *the management of private forests in sympathy with nature conservation goals*.
- The objectives for private native forests were to encourage the maintenance of the existing private forest cover and to facilitate the ecologically sustainable management (ESFM) of such forests for nature conservation, catchment protection, wood production or other economic pursuits.
- Recognition that these objectives would be more easily achieved by encouraging landowners to manage their forests for long term economic use, without unnecessary impediments.
- Providing incentives and programs to promote ESFM so that the private native forest estate complements the public forest estate.
- Making the codes of practice for wood production in public forests applicable to private native forests.

The current RFAs (2018) for NSW (see section 5.1.2 below) reaffirm the commitment of the Commonwealth and State Governments to the goals, objectives and implementation of the National Forest Policy Statement, including by *promoting the conservation and management of the private forest estate*³⁴.

5.1.2 Regional Forest Agreements

The Commonwealth and NSW entered into three Regional Forest Agreements from 1999 to 2001-(Eden Region in 1999; North East Region in 2000; and the Southern Region in 2001).

²⁹ Private forestry consultant 2, pers. comm, March 2026

³⁰ (StollzNow, 2023)

³¹ (North Coast Region State of the Environment Report Working Group, 2016), (Samuel, 2020), (Henry, Keniry, Leishman, & Mrdak, 2023)

³² (Resource Assessment Commission, 1992)

³³ (Commonwealth of Australia, 1992)

³⁴ (Commonwealth of Australia and the State of New South Wales, 2018)

Private native forests were comprehensively assessed during the development of the RFAs and the subsequent RFAs defined the contribution that private lands should make to the objectives of ESFM and to the establishment of a Comprehensive, Adequate and Representative (CAR) reserve system.

Relevant provisions of the RFAs (based on the North East NSW RFA³⁵) included the following.

- The Parties reaffirmed their commitments made in the National Forest Policy Statement (1992) in relation to the conservation and management of the private forest estate (see section 5.1.1 above).
- Private forest owners will be encouraged to ensure that their management operations are consistent with ESFM practices
- In complementing the CAR Reserve System on public land, conservation on Private Land can only be voluntary and cannot be used as a basis for preventing timber harvesting on private land.
- The State will develop a regulatory framework that enables a more efficient and integrated approval process to allow for effective private forestry development
- NSW will produce a Code of Practice for timber harvesting of native forest on private lands (by time of the first five-yearly review)³⁶.
- The Commonwealth will amend the EPBC Act to recognise RFAs as meeting the requirements for environmental approvals under that Act (see section 5.1.3 below).
- No controls will apply under the Export Control Act 1982 (Cth) to hardwood woodchips or unprocessed wood sourced from areas covered by an RFA.

The NSW RFAs were renewed by the Commonwealth and the State of NSW on 20 Nov 2018 as rolling 20-year agreements. Relevant provisions include the following.

- New South Wales confirms that the CAR Reserve System is being maintained and implemented through the RFAs, and that conservation levels achieved will not subsequently be used as a basis for preventing timber harvesting in accordance with the Private Native Forestry Code of Practice.
- Voluntary conservation measures and mechanisms to protect CAR Values on private land should continue to be pursued.
- Values protected by prescription on private land will be protected during forestry operations by adherence to regulatory instruments including the Private Native Forestry Code of Practice
- Best endeavours will be used to ensure any changes to the Regional Prescriptions applied to private land will not subsequently lead to a net deterioration in Environment and Heritage Values on private land.
- Environment and Heritage Values on private land are important to the CAR Reserve System and the State agrees to continue to support processes that will facilitate the voluntary participation by private land owners to protect CAR Values on private land.
- All conservation mechanisms for the establishment of the private land component of the CAR Reserve System will be voluntary.
- Both Parties recognise that for private land to be included in the CAR Reserve System the conservation mechanism applied must be legally binding and in perpetuity.

5.1.3 Environment Protection and Biodiversity Conservation Act 1999

With the introduction of the *Environment Protection and Biodiversity Conservation Act* in 1999 forestry operations on both public and private land were faced with the requirement to obtain approvals under both state and federal frameworks. To avoid this, as part of the RFAs, the Commonwealth undertook to amend the EPBC Act to recognise RFAs as meeting the requirements for environmental approvals under that Act. This was completed in 2002 with the enactment of the *Regional Forest Agreement Act 2002*³⁷. This legislation was

³⁵ (Commonwealth of Australia and the State of New South Wales, 2000)

³⁶ This was reported as being completed in the 2009 review of the RFA (Spencer, 2009)

³⁷ <https://www.legislation.gov.au/C2004A00965/latest/text>

5. History of the regulatory framework

misinterpreted and opposed by some as ‘exempting’ forestry operations from the operation of the EPBC Act. However, this view was not found to be substantiated by the first independent review of the EPBC Act in 2009³⁸ (the “Hawke Report”³⁹) which noted-

The interaction between the EPBC Act and forestry operations is often referred to as an ‘exemption’. This term does not, however, accurately reflect the relationship. The rationale for the RFA provisions in the Act recognises ‘that in each RFA region a comprehensive assessment has been undertaken to address the environmental, economic and social impacts of forestry operations’. Rather than being an exemption from the Act, the establishment of RFAs (through comprehensive regional assessments) actually constitutes a form of assessment and approval for the purposes of the Act.

The second independent review of the EPBC Act in 2020 (the “Samuel Report”⁴⁰) was highly critical of the Act, concluding that-

The EPBC Act is ineffective. It does not enable the Commonwealth to effectively protect environmental matters that are important for the nation. It is not fit to address current or future environmental challenges.

The review found that the Act had no comprehensive mechanism to describe the environmental outcomes it was seeking to achieve and it recommended the establishment of legally enforceable National Environmental Standards to provide a pathway for the Commonwealth to recognise and accredit the regulatory processes and environmental management activities of the States. With respect to RFAs, it recommended-

Legal ambiguities in the relationship between the EPBC Act and the RFA Act should be clarified. This should be achieved by requiring that RFAs demonstrate consistency with the National Environmental Standards to avoid the need for an EPBC Act assessment and approval. Adopting the accreditation model would support greater Commonwealth oversight of the RFAs, including the effectiveness of the State-based compliance and enforcement regimes.

The review recommended that the EPBC Act should be amended to replace the RFA 'exemption' with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of a proposed Environment Assurance Commissioner.

The Commonwealth Government accepted the recommendations of the Samuel Review and amended the EPBC Act in 2025 to remove the ‘exemption’ for RFAs with effect from 1 July 2027⁴¹. National Environmental Standards are now being developed, and the Commonwealth has advised that-

The Australian Government will work closely with the RFA state governments to support them to demonstrate their regulatory systems for forestry meet these requirements and to gain suitable approvals under the EPBC Act for RFA forestry operations⁴².

5.2 State instruments

This section presents a chronology of instruments relevant to the regulation of PNF.

5.2.1 Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) seeks to *facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment*⁴³.

³⁸ An independent review of the EPBC Act 1999 was required at least every 10 years pursuant to section 522A of that Act.

³⁹ (Hawke, 2009)

⁴⁰ (Samuel, 2020)

⁴¹ <https://www.legislation.gov.au/C2025A00068/latest/text>

⁴² <https://www.agriculture.gov.au/agriculture-land/forestry/policies/rfa> as at 13/1/2026

5. History of the regulatory framework

The Act requires development consent to be obtained for any development specified in a local environmental plan (or LEP) made by a local plan-making authority, which is invariably the local government council. The Act also provides that the Governor may make environmental planning instruments, known as State environmental planning policies (or SEPPs) for the purpose of environmental planning by the State.

Local environmental plans

Local environmental plans apply zoning to assert planning control over land-use activities. These zones may be broadly grouped into three classes: Rural (RU), Environmental (E) and Industrial/Residential (IN/R). Each zone within an LEP categorises land-use activities into one of three categories:

- prohibited development or
- development permissible with consent of the council or
- development permitted without consent of the council.

In general forestry is prohibited in land zoned E or IN/R and permitted with or without consent on RU zoned land. Conditions applying to activities that are ‘permissible with consent of the council’ are determined by individual councils. Except for forests zoned RU3, there are no state-based planning guidelines that are specific to PNF. A survey conducted by the NSW Department of Primary Industries (NSW DPI) in 2018⁴⁴ found that LEP zoning by itself was not a clear indicator of how PNF is regulated, with different councils applying different rules to land with the same zoning. These differences were attributed to local decision making which was not readily explainable by science. To guide E zoning Councils are required to undertake environmental land studies across their local government area (LGA). If the study identifies land as having high environmental value the zoning of this land may be changed when an LEP is updated. If the land found to be high value is being used for forestry, forestry may be prohibited. There is no evidence that the NSW Department of Planning has taken any notice of the RFA provisions requiring conservation efforts on private land to be voluntary when approving the updates of LEPs (see section 5.1 above).

Applications for development consent

Applications for development consent are lodged with councils online through the NSW Planning Portal and the following details are required-

- a description of the development
- the estimated cost of the development
- a plan of the land
- a sketch of development
- environmental assessment, for example, environmental impact statement or statement of environment effects.

Public engagement in the development application process differs according to how PNF is categorised in the LEP and the requirements, if any, in the council’s Community Participation Plan. There are no appeal rights where PNF is designated as a ‘local development’, although any person may bring judicial review proceedings in the Land and Environment Court within 3 months of the decision⁴⁵.

Where development consent is required, the proponent is required to obtain council consent even though the clearing itself may be authorised under a separate consent by LLS under the *Local Land Services Act 2013* (see section 5.2.9 below). The survey conducted by NSW DPI (above) found that for private native forest land-

- 25% would require ‘dual consent’ to undertake PNF, i.e. separate approvals under both the EP&A Act and the LLS Act
- 6.5% was prohibited for private native forestry under LEPs
- 68.5% has zoning that permits forestry without council consent (but may still require consent under the LLS Act).

⁴⁴ (NSW Department of Primary Industries, 2018)

⁴⁵ (Environmental Defenders Office, 2022)

5. History of the regulatory framework

Monitoring and enforcement of compliance

Monitoring and enforcing compliance are the responsibility of the local council, who can-

- Issue a compliance order or a "stop work" order
- Issue fines or pursue prosecution for serious offences
- Commence civil enforcement proceedings in the NSW Land and Environment Court (LEC) to remedy or restrain a breach
- Recover costs incurred in ensuring compliance.

In addition, any person can initiate legal action in the NSW Land and Environment Court to remedy or restrain a breach of the Act.

State environmental planning policies

State Environmental Planning Policies (SEPPs) are prepared by the Department of Planning and Environment to address land use and regional development on a state-wide basis. SEPPs can override an LEP and can prohibit certain types of development or can allow development in a certain zone.

The existing 45 SEPPs were consolidated into 11 policies in 2021⁴⁶. The key SEPP for PNF is the *Biodiversity and Conservation SEPP*. This SEPP incorporates SEPP (*Koala Habitat Protection*) 2020, which applies to rural zoned land in 74 LGAs, and SEPP (*Koala Habitat Protection*) 2021 which applies to all other land zones and to all land zones in LGAs within metropolitan Sydney and the Central Coast. The purpose of these SEPPs is to encourage the conservation of areas of natural vegetation that provide habitat for koalas and to reverse the trend of population decline. The SEPP (*Koala Habitat Protection*) 2020 applies to PNF through the *PNF Code of Practice for Northern NSW*, which prohibits forestry operations within any area identified as core koala habitat⁴⁷ and imposes additional tree retention requirement in areas mapped as high koala habitat suitability. Additional constraints may be applied by councils where development consent is required. Such constraints may be at a level that would constitute a form of *de facto* reservation, contrary to the provisions of the RFAs (see section 5.1 above).

5.2.2 Protection of the Environment Administration Act 1991

The *Protection of the Environment Administration Act 1991* (PEA Act) establishes the Environment Protection Authority (EPA) and requires the EPA to make a report on the state of the environment every three years.

The overriding objective of the EPA is to protect⁴⁸, restore and enhance the quality of the environment in NSW, having regard to the need to maintain ecologically sustainable development.

5.2.3 Protection of the Environment Operations Act 1997

The *Protection of the Environment Operations Act 1997* (POEO Act) is the primary law for environmental protection in NSW. It regulates pollution (air, water, noise), waste, and contaminated land and enables the Government to set out protection of the environment policies (PEPs)⁴⁹

The Act establishes the EPA as the main regulator, responsible for issuing licenses and enforcing penalties for non-compliance. The regulation of PNF is primarily addressed under the LLS Act (see section 5.2.9 below).

⁴⁷ core koala habitat means an area of land with a resident population of koalas, evidenced by attributes such as breeding females, being females with young, and recent sightings of and historical records of a population.

⁴⁸ The word 'protect' is used extensively throughout this Act and the PEA Act but is not defined in either.

⁴⁹ Previously, PEPs could only apply to public authorities. As from December 2025, industry and the regulated community, including holders of environment protection licences, may be required to comply with a PEP where they are carrying out any activity specified in a PEP (<https://www.epa.nsw.gov.au/Working-together/For-local-government/environmental-legislation-amendment-act-2025>)

5.2.4 Native Vegetation Conservation Act 1997 (repealed in 2003)

(The *Native Vegetation Conservation Act 1997* was replaced by the *Native Vegetation Act* in 2003.)

The *Native Vegetation Conservation Act 1997* was introduced with the objects, *inter alia*, to provide for the conservation and management of native vegetation on a regional basis, and... to encourage and promote native vegetation management in the social, economic and environmental interests of the State.

The Act provided the mechanism to apply the development consent process of the EP&A Act in relation to clearing native vegetation. Under the Act, the clearing⁵⁰ of native vegetation required development consent (from the local government authority) unless the clearing was designated as exempt under a Regional Vegetation Management Plan.

The provisions of the Act included-

- The development of Regional Vegetation Management Plans for the conservation and management of native vegetation at a regional level.
- Regional Vegetation Committees that were responsible for preparing and monitoring regional vegetation management plans.
- A Native Vegetation Advisory Council to develop, and advise the Minister on, a native vegetation conservation strategy and to monitor and report to the Minister on the status of native vegetation throughout the State.
- The development of Native Vegetation Codes of Practice to regulate the clearing of native vegetation for a specified purpose.
- Property Agreements to encourage landholders to adopt an integrated approach for the management of vegetation on their land. Property Agreements could be entered into between landowners and the Director-General of the Department of Land and Water Conservation for an agreed period and registered on title. The benefits for landowners included-
 - potential payments from a Native Vegetation Management Fund for management activities
 - allowing development consent for clearing to operate for the duration of the property agreement.

5.2.5 Native Vegetation Act 2003 (repealed in 2017)

(This Act replaced the *Native Vegetation Conservation Act 1997*. The Act was repealed in 2017 and provisions relating to vegetation clearance were transferred to the *Local Land Services Act 2013*).

The objects of the *Native Vegetation Act 2003* were similar to those of the 1997 Act, although it strengthened the restrictions on the clearing⁵¹ of native vegetation, from *prevent the inappropriate clearing of vegetation* (1997 Act) to *prevent broadscale clearing unless it improves or maintains environmental outcomes* (2003 Act).

The Act provided landholders with the option of either submitting a development application for clearing to the local government authority pursuant to the EP&A Act or submitting a Property Vegetation Plan for approval by the Minister (this function was delegated to the local Catchment Management Authority). A Property Vegetation Plan operated for the period outlined in it, subject to a maximum period of 15 years for provisions dealing with clearing or for any time that was approved by the Minister for plans that did not include clearing. Once approved, it could be registered in the General Register of Deeds, and once registered, the plan was binding on title.

⁵⁰ 'clearing' includes cutting down, felling, thinning, logging or removing native vegetation

⁵¹ As with the 1997 Act, 'clearing' under the 2003 Act includes cutting down, felling, thinning, logging or removing native vegetation

5. History of the regulatory framework

Enforcement powers for contravention of the Act⁵² were vested in the Director-General of the Department of Infrastructure, Planning and Natural Resources. However, the Act did not prescribe matters such as compliance monitoring and reporting.

The Act did not make provision for codes of practice, although it provided that the regulations may include ‘clearing principles’ to which the Minister must or may have regard in determining whether to approve property vegetation plans. The *Native Vegetation Regulation 2005* subsequently laid down an *Environmental Outcomes Assessment Methodology* as a means of determining whether proposed broadscale clearing will improve or maintain environmental outcomes.

The Department of Environment, Climate Change and Water reviewed the Act in 2009⁵³ and concluded that the framework and philosophy of the Act should be maintained, although it noted that stakeholders consistently expressed a view that there was a need to consider simplifying, streamlining and/or strengthening some aspects related to the clearing of native vegetation.

5.2.6 Carbon Credits (Carbon Farming Initiative) Act 2011

This Act provides for the types of abatement projects eligible for Australian carbon credit units (ACCUs) and the methodology for determinations, including permanence arrangements for sequestration projects. The legislation provided opportunities for carbon credits in planted forests and for the regeneration of native forests on (previously cleared) pastoral land⁵⁴.

The carbon credit methodology is complex and subject to regular review and change. The Australian Government is currently reviewing a proposal for native forests developed by the NSW Department of Climate Change, Energy, the Environment and Water (NSW DCCEEW). This proposal, the *Improved Native Forest Management in Multiple-use Public Native Forests* (INFM) method, aims to generate greenhouse gas abatement by stopping or reducing harvesting in multiple-use public native forests. Projects registered under the proposed method would generate Australian Carbon Credit Units (ACCUs). In a submission to the review, Forestry Australia has argued that Australia’s carbon credit scheme should be expanded across all native forest tenures, including State forests and private native forests to incentivise investment in the ecologically sustainable management of Australia’s native forests, while also allowing for continuing supply of locally and sustainably sourced timber and wood products⁵⁵. This submission is backed up by recent research that has highlighted the potential for regrowth to sequester more carbon in the long run when managed under a selection harvesting regime than when managed strictly for conservation⁵⁶.

5.2.7 Native Vegetation Regulations 2013 (repealed in 2017)

(Both the Native Vegetation Act 2003 and the Native Vegetation Regulations 2013 were repealed in 2017 and provisions relating to vegetation clearance were transferred to the Local Land Services Act 2013).

The *Native Vegetation Regulations 2013* introduced separate rules for private native forestry⁵⁷ from those applying to the conversion of native vegetation to non-forest use. The regulations provided that *Broadscale clearing for the purposes of private native forestry is, for the purposes of the Act, taken to be clearing that will improve or maintain environmental outcomes if it is carried out in accordance with the PNF [Private Native Forestry] code of practice*⁵⁸. This provision allowed the Minister to approve a private native forestry property vegetation plan for broadscale clearing where the plan adopted the code of practice and the clearing was carried out in accordance with the code of practice.

⁵² includes contraventions of a property vegetation plan, development consent or an order or direction of the Director-General.

⁵³ (Department of Environment, Climate Change and Water, 2009)

⁵⁴ Regeneration of native forest on cleared land is no longer eligible for new projects - <https://www.dcceew.gov.au/climate-change/emissions-reduction/accu-scheme/methods-closed/native-forest-from-managed-regrowth>

⁵⁵ (Forestry Australia, 2024)

⁵⁶ (Venn, et al., 2024)

⁵⁷ The Regulations defined private native forestry as the management of native vegetation on privately owned land for the purpose of obtaining, on a sustainable basis, timber products (including sawlogs, veneer logs, poles, girders, piles and pulp logs

⁵⁸ Codes of practice for private native forestry had been developed and gazetted for four regions in NSW by 2008

5. History of the regulatory framework

Under the *Native Vegetation Amendment (Local Land Services) Regulation 2013*⁵⁹ the approval and advisory functions previously assigned to catchment management authorities were transferred to Local Land Services, with the Department of Planning and Environment overseeing policy and mapping.

In 2014 the Minister for the Environment made three orders under the *Native Vegetation Regulations 2013* to establish three “self-assessable codes” permitting landholders to carry out certain clearing and thinning of native vegetation species as a ‘*routine agricultural management activity*’ without the need to apply for development consent, or to seek approval for a property vegetation plan under Part 4 of the *Native Vegetation Act 2003*. The three self-assessable codes covered the clearing of invasive native species, the thinning of native vegetation and the clearing of paddock trees in a cultivation area. These codes were subsequently amalgamated into the Land Management (Native Vegetation) Code 2018. This code appears to have been intended to identify situations where landowners could undertake certain types of clearing without undue regulatory burden. However, it is a highly legalistic, complex document, 52 pages in length. There are many exclusions and any clearing is subject to Local Land Services being notified and/or issuing a voluntary code compliant certificate.

The code was supported by a web-based Native Vegetation Regulatory Map⁶⁰, which displays the land categories outlined in the Act.

5.2.8 Forestry Act 2012 (applied to PNF 2017- 18)

Provisions relating to the regulation of forestry operations⁶¹ in private native forests were transferred to the *Forestry Act 2012* in 2017, including the following.

- Existing private native forestry codes of practice remained in force. The legislation did not prescribe how codes must be made etc.
- Private native forestry plans replaced property vegetation plans, but with similar provisions relating to duration, registration on title, and requirements to comply with the applicable private native forestry code of practice.
- The approving authority for private native forestry plans was initially the EPA⁶² but was transferred to the LLS in March 2018⁶³
- The approval of a private native forestry plan did not remove the requirement for approval of an activity under the EP&A Act.

5.2.9 Local Land Services Act 2013

In 2017/18 the provisions relating to private native forestry in the *Forestry Act* and the provisions relating to the clearing of native vegetation in the *Native Vegetation Act* and *Regulations* were consolidated into the *Local Land Services Act 2013*⁶⁴. The objects of the Act include, *inter alia* –

- to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development

⁵⁹ chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.austlii.edu.au/au/legis/nsw/num_reg/nva2003nvalsr2013201367916d2013796.pdf

⁶⁰ https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map/view-your-map/map-categories

⁶¹ The Act defines *forestry operations* as:

- logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- the harvesting of forest products, or
- on-going forest management operations, namely, activities relating to the management of land for timber production such as thinning and other silvicultural activities and bush fire hazard reduction, or
- ancillary road construction, namely, the provision of roads and fire trails, and the maintenance of existing railways, to enable or assist in the above operations.

⁶² (NSW Parliament Legislative Council, 2018)

⁶³ (Government of NSW, 2018)

⁶⁴ (Parliament of NSW, 2018)

5. History of the regulatory framework

- to apply sound scientific knowledge to achieve a fully functioning and productive landscape
- to encourage collaboration and shared responsibility by involving communities, industries and non-government organisations in making the best use of local knowledge and expertise in relation to the provision of local land services
- to provide a framework for financial assistance and incentives to landholders, including, but not limited to, incentives that promote land and biodiversity conservation.

The Act establishes Local Land Services (LLS) as a statutory corporation with responsibility for the administration of the Act, together with a governance framework including local boards.

The main provisions of the Act for PNF are as follows-

- The definition of ‘forestry operations’ remained as previously laid down in the Forestry Act⁶⁵.
- Provisions relating to private native forestry plans and the requirement for approval of an activity under the EP&A Act were essentially unchanged.
- The objects for private native forestry (Part 5B of the Act) included-
 - to protect biodiversity and water quality. The term ‘protect’⁶⁶ is not defined and goes beyond the more general object in Part 3 of the Act, viz. to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development⁶⁷
 - to ensure that differences between private native forestry and native forestry operations in State forests or other Crown-timber land are recognised, including in the application of protocols, codes, standards and other instruments
- The Act prescribed how new private native forestry codes of practice may be made, including-
 - requirements for public consultation
 - approval by the Minister (administering the *Local Land Services Act 2013*⁶⁸, including Part 5A of the Act) only with the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*, and after consultation with the Minister administering the *Fisheries Management Act 1994*.
- Regulations under the Act are to be made on the joint recommendation of the Minister administering the *Local Land Services Act 2013* and the Minister administering the *Biodiversity Conservation Act 2016*.
- Ministerial responsibility for regulating private native forestry under the Act shifted from the Minister for the Environment to the Minister for Land and Forestry.
- Responsibility for approving private native forestry plans (PNF plans) was moved from the EPA to LLS in April 2018.
- The EPA is solely responsible for private native forestry compliance and enforcement under the LLS Act⁶⁹.
- Substantial penalties were prescribed for the contravention of a PNF plan or an applicable private native forestry code of practice.
- The Act recognised that enforcement measures could also be taken under other legislation, including the *Biodiversity Conservation Act 2016*.

⁶⁵ See footnote 61

⁶⁶ See also footnote 48

⁶⁷ As described in section 6 (2) of the PEA Act

⁶⁸ Minister for the Environment and the Office of Environment and Heritage

⁶⁹ But note that a private individual may be able to bring legal proceedings under the POEO Act to remedy or restrain a breach if the activity is causing or is likely to cause harm to the environment

5. History of the regulatory framework

The LLS Act remains as the primary legislation regulating PNF through a requirement for forestry operations to be authorised by an approved PNF plan and for such operations and plans to be conducted in accordance with a code of practice.

5.2.9.1 PNF Plans

The process for approving forestry operations is prescribed in Part 5B Division 3 of the LLS Act, as summarised below.

Eligible land

- Private land other than timber plantations and land set aside as an offset or under various conservation measures or agreements

Application process

- The landowner or their nominee must prepare a private native forestry plan (PNF plan) and submit it to LLS for approval
- The PNF plan must contain the consent in writing of all landowners of land to which the plan applies; and all persons who have a forestry right in the land to which the plan applies; and any other person who has an interest in the land prescribed by the regulations.

Approval process

- In determining whether to approve a draft plan (with or without modification), LLS must have regard to whether forestry operations can be carried out under the plan in accordance with the applicable private native forestry code of practice, and any other matters required by the regulations

Content of an approved private native forestry plan

- The plan must identify the land to which the plan applies and on which forestry operations are to be carried out (by means of a map and any other identification particulars), and
 - specify the kinds of forestry operations that are authorised to be carried out, and
 - specify the period for which the plan is to have effect, and
 - include such other details or information as may be required by the regulations.

Duration, variation and termination of private native forestry plans

A PNF plan may be-

- approved for a term not exceeding 15 years.
- terminated by LLS⁷⁰ or the landowner
- varied by LLS on application by the landholder.

Relationship to development consent under the EP&A Act

An approval of a PNF plan under the LLS Act is not an approval of an activity for the purposes of Part 5 of the EP&A Act. This means that separate development consent may also be required under the EP&A Act (see section 5.2.1 above).

In addition to the above statutory provisions, further requirements are prescribed in the PNF codes (see below).

⁷⁰ LLS may only terminate a plan where it is satisfied that approval of the plan was obtained as a result of false or misleading information provided by or on behalf of the landholder; or a requirement imposed by the plan or by an applicable private native forestry code of practice has been contravened by the landholder or by a person carrying out forestry operations on behalf of the landholder; or that no further forestry operations to which the plan applies are to be carried out

5.2.9.2 PNF Codes of Practice

The LLS Act prescribes that-

A private native forestry code of practice is to make provision for or with respect to the carrying out of forestry operations to which private native forestry plans apply, including provisions relating to:

- (a) notification of the commencement and cessation of forestry operations, and*
- (b) biodiversity conservation, and*
- (c) the prevention of water pollution, and*
- (d) threatened species, populations and ecological communities under Part 7A of the Fisheries Management Act 1994, and*
- (e) the provision of information about forestry operations to Local Land Services and the public, and*
- (f) any other matter prescribed by the regulations.*

The PNF code for northern NSW⁷¹ prescribes that forestry operations under an approved PNF Plan must not occur until a Forest Management Plan has been approved by LLS. The code also requires that prior to the commencement of any harvest operations, the landholder(s) must obtain from LLS any updated information on plants, animals and ecological communities listed in the schedules of the Biodiversity Conservation Act, so they are identified for protection in accordance with the provisions of the Code.

5.2.10 Biodiversity Conservation Act 2016

The *Biodiversity Conservation Act 2016* contains the following provisions.

- List of threatened species and threatened ecological communities.
- List of key threatening processes, which included: clearing of native vegetation; loss of hollow-bearing trees; and removal of dead wood and dead trees.
- Numerous conservation programs⁷², including-
 - Biodiversity Conservation Program
 - Biodiversity Conservation Investment Strategy
 - Biodiversity Stewardship Agreements
 - Conservation Agreements
 - Wildlife Refuge Agreements
 - Biodiversity Offsets Scheme and biodiversity credits
 - Administrative arrangements for a Biodiversity Conservation Trust and Biodiversity Conservation Fund
- Requirements to conduct biodiversity assessments where an activity is likely to significantly affect threatened species.
- Comprehensive regulatory compliance mechanisms.

It is an offence under the Act to damage any habitat of a threatened species or threatened ecological community. However, the Act provides a defence if the person was carrying out –

- development in accordance with a development consent within the meaning of the EP&A Act; or
- development that is exempt development under that Act, or
- the carrying out of a forestry operation that is in accordance with a private native forestry plan under Part 5B of the LLS Act and the applicable private native forestry code of practice.

The main effect of this Act on PNF is through land being excluded from production by landholders who enter into contractual conservation agreements with the Minister for the Environment.

⁷¹ (NSW Government, 2022)

⁷² The range and complexity of such programs was criticised by the Independent Biodiversity Legislation Review Panel in its 2014 report (see section 5.3.1), however much complexity was incorporated into the new Act.

The Act remains in force and has been subject to 75 amendments to date⁷³. The Act was the subject of a very critical independent review in 2023 (see section 5.3.7 below).

5.2.11 Other legislation

PNF is subject to the operation of other legislation, that applies to land management in general. Two of these laws are below.

The *Biosecurity Act 2015* provides the framework to protect the environment, infrastructure and other assets from the adverse effects from animal and plant pests, diseases and weeds. Under the Act all landowners (public and private) have an obligation to comply with control orders and directions that may be issued by an authority. The administration of the Act falls under various bodies, with local councils primarily responsible for weed management and LLS responsible for coordinating the control of pest animals through Regional Pest Animal Committees⁷⁴.

The *Rural Fires Act 1997* establishes the NSW Rural Fire Service and defines its functions, and makes provision for the prevention, mitigation and suppression of rural fires. Under the Act, all landowners have obligations to take steps to prevent bushfires on their land and to prevent the spread of bush fires to other land. The Act also sets out requirements for notifications and permits with respect to planned burns by landowners.

5.3 Major reviews of State instruments

5.3.1 Independent Biodiversity Legislation Review 2014

In 2014 the Minister for the Environment appointed an Independent Biodiversity Legislation Review Panel to conduct a comprehensive review of biodiversity conservation legislation, including the Native Vegetation Act, Threatened Species Conservation Act, *Nature Conservation Trust Act 2001*, and parts of the *National Parks and Wildlife Act 1974*. The aims of the review were to recommend a simpler, streamlined and more effective legislation which improves the conservation of biodiversity and supports sustainable development thereby reducing the compliance and administrative burdens.

The Independent Biodiversity Legislation Review Panel⁷⁵ found that-

- Two decades of changes to the native vegetation laws have created a complex, over-regulated system that is difficult to navigate and presents an unnecessary barrier to innovation, sustainable agricultural production and efficient land management.
- The native vegetation laws are based on a ‘command and control’ approach to regulation, which has resulted in mistrust between the farming community and the government, resistance and non-compliance amongst some landholders, and perverse outcomes for conservation. NSW should use educational, persuasive and incentive measures, rather than focussing on the coercive powers of government.
- Native timber harvesting on private land should not be treated as a type of native vegetation clearing which must ‘improve or maintain’ environmental outcomes. Private native forestry is not a form of land use change, and it should be treated differently to clearing. The panel noted-
Private native forestry (for example, on the North Coast, in the New England region and the red gum forests in the Murray region). When carried out sustainably, forestry is not a form of land use change because the forest regenerates after harvesting.
- There are many mechanisms for private land conservation delivered by multiple parties. Improved outcomes for private land conservation would be achieved if the current range of mechanisms was consolidated into fewer, but more fit-for-purpose tools with a more integrated mechanism to deliver options for landowners.

⁷³ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2016-063/lh>

⁷⁴ <https://lgnsw.org.au/Public/Public/Policy/Biosecurity.aspx>

⁷⁵ (Byron, Craik, Keniry, & Possingham, 2014)

5. History of the regulatory framework

The review panel recommended, *inter alia*, -

- repealing the Native Vegetation Act
- repealing the Threatened Species Conservation Act, parts of the National Parks and Wildlife Act and reconstituting elements of them in a new 'Biodiversity Conservation Act'.

5.3.2 NSW Forestry Industry Roadmap 2016

In 2016 the NSW Government released a Forestry Industry Roadmap⁷⁶, with a vision *that NSW will have a sustainably managed forest estate that underpins a dynamic, economically efficient forestry industry, which continues to support regional economies and delivers social and environmental benefits.*

The elements of the roadmap of relevance to PNF included-

- The introduction of new native forestry legislation with a rigorous and robust regulatory framework, modern penalties for environmental offences and a suite of regulatory tools.
- A regulatory framework that continues to recognise key differences between forestry operations on public and private land.
- The commencement of public discussion around a future review of the Private Native Forestry Codes of Practice.
- No longer recognising private native forestry as a form of land clearing and considering regulating sustainable forestry operations based on their scale and intensity rather than tenure⁷⁷.

The roadmap overall had a focus on improving environmental outcomes, strengthening regulation and penalties for non-compliance, building community understanding and confidence in the forestry industry, and supporting industry innovation. It sought to deliver the outcomes of the Independent Biodiversity Legislation Review (section 5.3.1 above), noting that the *NSW Government accepted all 43 recommendations* [of the review] *including one relating specifically to PNF.* However, it fell short of recognising or making any commitment to the importance of mechanisms such as training, education and incentives for forest managers and operators as the front line of 'responsive regulation'⁷⁸. As such, it failed to adequately address the advice of the independent panel with respect to the regulation of PNF-

We are not aware of anywhere in the world where long-term conservation of historical, cultural or biophysical resources has been successfully achieved solely through exerting the coercive powers of government. Educational, suasive and incentive measures are invariably an important part of successful regimes – we believe that these mechanisms should be used more in NSW. Without such measures, there is a strong probability of perverse outcomes⁷⁹.

5.3.3 Land Management and Biodiversity Conservation reform package 2017

Following the independent review (section 5.3.1 above) and the Forestry Industry Roadmap (section 5.3.2 above) the NSW Government implemented the Land Management and Biodiversity Conservation reform package in 2017⁸⁰, which repealed the Native Vegetation Act, Threatened Species Conservation Act, and (parts of) the National Parks and Wildlife Act, and introduced the new Biodiversity Conservation Act 2016 (see section 5.2.10 above) and made amendments to the Local Land Services Act (see section 5.2.9 above). The reforms were intended to be delivered through four key pillars, which were:

⁷⁶ (NSW Government, 2016)

⁷⁷ Vegetation clearing and PNF were subsequently regulated under different Acts. However, the NSW Government continues to include PNF with data on land clearing under its SEED 'vegetation clearing dashboard' (<https://www.seed.nsw.gov.au/>)

⁷⁸ models of 'responsive regulation' involve a hierarchy of graduated responses, often shown as an 'enforcement pyramid' (Ayres & Braithwaite, 1992) in which the regulatory approach is predominantly one of cooperation and persuasion, followed by progressively tougher sanctions depending upon the seriousness of the non-compliance and the responsiveness of the offender.

⁷⁹ (Byron, Craik, Keniry, & Possingham, 2014)

⁸⁰ (Natural Resources Commission, 2019)

5. History of the regulatory framework

- the Land Management Framework, including the Land Management (Native Vegetation) Code⁸¹
- \$240 million investment in private land conservation, managed by the Biodiversity Conservation Trust (BCT)
- improved frameworks to manage native plants and animals, including investment in the Saving our Species program, a process for protecting Areas of Outstanding Biodiversity Value, risk-based wildlife licensing and codes and a modernised process for listing threatened plants and animals
- the Biodiversity Offsets Scheme.

5.3.4 Review of land management and biodiversity conservation reforms 2019

As part of the 2017 reforms, a policy review trigger was agreed upon between the then Minister for the Environment and the then Minister for Primary Industries to initiate a review of the policy framework (including legislative, regulatory and financial settings) if notified clearing and applications for certification for clearing reached an annualised threshold figure of 20,000 hectares measured in any six-month period. The review was undertaken in 2019 by the Natural Resources Commission⁸², which found-

- The current trigger values indicate that there is a state-wide risk to biodiversity value from native vegetation clearing and that the policy intent of the reforms is not being achieved.
- A Native Vegetation Regulatory Map showing all map categories was not publicly available to assist landowners.
- Monitoring, Evaluation and Reporting (MER) and Compliance frameworks are inadequate and high rates of unexplained clearing pose a major risk.
- There are shortcomings in coordination, implementation and reporting across responsible agencies (Biodiversity Conservation Trust, Local Land Services and the Environmental, Energy and Science Division of Planning, Industry and Environment Cluster)
- A lack of applications for clearing to the Native Vegetation Panel⁸³ suggested that there are barriers to landholders engaging with the processes due to potentially high costs, including biodiversity assessments.

5.3.5 Private Native Forestry Review 2019

The Private Native Forestry Review was initiated in 2018 with a focus on regulations, Codes of Practice for sustainable timber on private land, balancing industry with environmental protection (especially for koalas), and improving compliance. A total of 204 public submissions were received from a wide range of stakeholders including timber groups, workers, contractors, forestry consultants, individuals, landholders, local government and environment groups. The majority of submissions believed that the PNF regulatory framework needed improvement (83%), with key areas being compliance and enforcement (65%), the need for an outcomes based approach (48%) as well as concerns about dual consent (45%)⁸⁴.

Key comments on the regulatory framework from Local Government NSW⁸⁵, NSW EDO⁸⁶, Timber NSW⁸⁷, and the Natural Resources Commission⁸⁸ are summarised below (see section 5.3.6 below for comments on the PNF Codes of Practice).

⁸¹ See section 5.2.7 on Native Vegetation Regulations 2013 in this report

⁸² (Natural Resources Commission, 2019)

⁸³ The Native Vegetation Panel was formed in July 2018 under the Local Land Services Act 2013, to assess clearing proposals that do not require development consent under the EP&A Act

⁸⁴ (Elton Consulting, 2019)

⁸⁵ (Local Government NSW, 2019)

⁸⁶ (NSW EDO, 2019)

⁸⁷ (Timber NSW, 2019)

⁸⁸ (Natural Resources Commission, 2022)

5. History of the regulatory framework

Local Government NSW

- Ensure that the EPA has adequate resources for compliance and monitoring
- Exclude private native forestry from all environmentally sensitive land including threatened ecological communities.
- Improve consultation and transparency with respect to private native forestry agreements and Forest Operation Plans.
- Monitor the cumulative impact of private native forestry plan approvals and consider the results in future decision making on approvals.
- The standards for threatened species identification are inadequate and not consistent with requirements for other land use and development proposals. Ecological assessments to determine species on the site, including threatened species should be mandatory prior to PNF approvals being granted.
- Include cultural heritage as a consideration in the development of PNF plans and ensure appropriate cultural plans and relevant sources of information are referred to in the planning and approval process.
- Training and accreditation schemes should be extended to include landholders developing a PNF plan.

NSW EDO

- Require the statutory objects for PNF to protect biodiversity and water quality and soil quality and ensure the contribution of native forests to sustainable global carbon cycles.
- Improve public consultation and access to PNF plans.
- Improve monitoring and reporting of PNF operations, including an assessment of the cumulative impacts of PNF on environmental assets over time.
- Require threatened species and habit surveys to be carried out by an accredited ecologist before logging operations can occur and ensure ecological prescriptions are comprehensive

Timber NSW

The submission of Timber NSW mainly addressed the draft PR Codes of practice (see section 5.3.6 below). Comments on the regulatory framework included the following.

- Responsibility for day-to-day code compliance should be given to LLS, who can monitor compliance in a non-threatening way and make landholders aware if their operations are less than best practice. The NSW EPA could retain its role as the ‘environmental enforcement agency’ but only be involved if requested by LLS where the contravention of Code conditions poses a major risk to the environment.
- The dual consent process under the LLS Act and the EP&A Act is inefficient and a disincentive for involvement in forestry.
- There is no consistency between Councils with respect to the assessment of applications or to the conditions that may be imposed. Inconsistency is sometimes drive by ideology, leading to conditions that are impractical and/or economically unviable.
- The term of a PNF Plan approval should be greater than 15 years (at least 20 years) to encourage landholders to manage their forests for long-term sustainably.
- Careful consideration should be given to the introduction of an impartial independent appeal process for alleged breaches.
- Government resources should be directed to extension services - education, training and guidance.

Natural Resources Commission

The NRC identified five elements to improve regulatory outcomes

1. clear and workable guidelines and operating standards (through the PNF codes)

5. History of the regulatory framework

2. *extension and incentives* (through LLS working with landholders to understand the PR Codes and how good forest stewardship can benefit their property and business)
3. *strong enforcement capability* (provided by the EPA with support from LLS, including timely sharing of information)
4. *understanding best practice and effective evidence base* (by generating knowledge and evidence about what aspects of PNF are working and what needs improvement, guided by the NSW Forest Monitoring Steering Committee)
5. *communication and collaboration* (by building better relationships between Government agencies, particularly LLS and EPA, to foster collaborative co-regulation and improve PNF outcomes).

With respect to element 5 above, the NRC added that –

LLS and EPA should seek a more collaborative approach to regulation. The benefits of shared understanding and avoidance of potential costly litigation can readily outweigh the initial upfront costs of collaborative co-regulation. Memorandums of Understanding between the agencies should be used to strengthen relationships and co-operation, including for information sharing. LLS should also consult with EPA when developing the necessary protocols and guidance that will accompany the PR Codes, particularly where enforceability is a consideration.

5.3.6 2019 review of the PNF Codes of Practice

The history of codes of practice for PNF can be summarised as follow-

1990s - the National Forest Policy Statement (1992 prescribed that codes of practice for wood production in public forests should be applicable to private native forests⁸⁹. The Regional Forest Agreement for the North East NSW Region (2000) required the production of a Code of Practice for timber harvesting of native forest on Private Lands by the first five-yearly review⁹⁰.

2007 – PNF Codes of Practice for four regions of NSW were prepared by the Department of Environment and Climate Change and were gazetted by the Minister for Climate Change, Environment and Water in August 2007⁹¹. The four codes were-

- A. Private Native Forestry Code of Practice for Northern NSW
- B. Private Native Forestry Code of Practice for Southern NSW
- C. Private Native Forestry Code of Practice for the River Red Gum Forests
- D. Private Native Forestry Code of Practice for Cypress and Western Hardwood Forests

2008 – Minor amendments were made to the four regional codes, and they were gazetted by the Minister for Climate Change, Environment and Water in February 2008⁹².

2013 -The PNF Code of Practice for the North East Region was revised by the EPA and gazetted in August 2013⁹³.

2018 – Procedures were included in the LLS Act with respect to the making of codes, including matters that must be addressed (see below) and requirements for public consultation. Ministerial responsibility for the issue of the codes was changed from the Minister for Environment (at that time, the Minister for Climate Change, Environment and Water), to the Minister (administering the LLS Act⁹⁴, including Part 5A of the Act) only with the concurrence of the Minister administering the *Biodiversity Conservation Act 2016*, and after consultation with the Minister administering the *Fisheries Management Act 1994*.

⁸⁹ (Commonwealth of Australia, 1992)

⁹⁰ (Commonwealth of Australia and the State of New South Wales, 2000)

⁹¹ (NSW Government, 2007)

⁹² (NSW Government, 2008)

⁹³ (NSW Government, 2013)

⁹⁴ Minister for the Environment and the Office of Environment and Heritage

5. History of the regulatory framework

2019 – The codes were included as part of the Private Native Forestry Review (see section 5.3.5 above and summary of submissions below).

2020 – Draft PNF Codes for the four regions were developed by Local Land Services (LLS) and released for public consultation in March 2020.

2022 – Following review by the Natural Resources Commission, the four codes were finalised by LLS and were gazetted by the Minister for Agriculture and the Minister for Environment and Heritage.

In the 2019 PNF review (see section 5.3.5 above) most stakeholders reported that the Codes were unclear and difficult to use. There was mixed feedback on whether the Codes are too prescriptive (48%) or not prescriptive enough (12%) and not easily enforceable (8%)⁹⁵.

Key comments from Local Government NSW⁹⁶, NSW EDO⁹⁷, Timber NSW⁹⁸, and the Natural Resources Commission⁹⁹ are summarised below.

Local Government NSW

- The Codes must be strengthened to ensure consistency with the objectives of Part 5B of the LLS Act and the principles of ecologically sustainable forest management.
- Improve the consultative process for drafting the codes and include a mechanism for independent expert review.

NSW EDO

- The Minister for the Environment (not the Minister for Lands and Forests as prescribed) and should have responsibility for making PNF Codes of Practice and approving PNF plans.
- Require PNF Codes and PNF plans to be consistent with the objects for PNF.
- Exclude PNF from all environmentally sensitive land (for example all threatened ecological communities, and category 2-sensitive and category 2-vulnerable land).
- Extend public consultation, expert peer review and transparency on draft PNF Codes
- PNF Codes should address and provide adequate protections for koala habitat, and unmapped drainage lines, and address Bell Miner Associated Dieback and commercial firewood collection.

Timber NSW

- The PNF Codes of Practice are unduly complex, overly prescriptive, and need to be much more outcome focused.
- Having different Codes of Practice in NSW is supported as it keeps them regionally specific
- Silviculture should feature more prominently in the codes.
- Codes need to be instruments of extension and harness the goodwill of landholders to foster best practice. Codes that are punitive and based principally on coercion (like the Coastal IFOA) will not work.

Natural Resources Commission

The 2020 draft codes were reviewed by the Natural Resources Commission¹⁰⁰, including a review by the Office of the NSW Chief Scientist & Engineer (OCSE) as to whether the draft codes delivered the Government's dual

⁹⁵ (Elton Consulting, 2019)

⁹⁶ (Local Government NSW, 2019)

⁹⁷ (NSW EDO, 2019)

⁹⁸ (Timber NSW, 2019)

⁹⁹ (Natural Resources Commission, 2022)

¹⁰⁰ (Natural Resources Commission, 2022)

objectives of robust koala protections in high value koala habitat and certainty and consistency for primary producers. The final codes incorporated the advice of NRC, included the following provisions.

- Long-term outcomes statements to support a shift towards outcomes-based regulation
- A range of different planning options with provisions and approval processes commensurate to the scale and intensity of the proposed activities, including PNF Plans, Forest Management Plans, and Forest Stewardship Plans.
- Changes to the minimum basal area for single tree selection and thinning, and revised rules for Australian Group Selection.
- Improved protections for koalas and streams.
- Commitment to the development of a PNF MER framework.
- Periodic reporting on PNF planning, activities and outcomes to improve accountability and transparency.

5.3.7 2023 Report on the review of the Biodiversity Conservation Act

The 2023 report of the independent panel on the review of the Biodiversity Conservation Act was highly critical of its effectiveness, stating that *it is not meeting its primary purpose of maintaining a healthy, productive and resilient environment, and is never likely to do so.*¹⁰¹ It identified seven major causes of environmental decline - clearing of native vegetation; climate change; weeds feral animals; worsening bushfires; water extraction from inland rivers; and native forest logging. It found that the Act's objectives lacked primacy, being undermined by a range of other legislation including specific Acts relating to native vegetation management, land use planning and public and private native forestry.

In response to the review, the NSW Government in 2024 announced that it would amend the BC Act to remake its objectives and operations, and to introduce a NSW Nature Strategy with 'nature positive aims'¹⁰² and make changes to the Land Management (Native Vegetation) Codes.

6 Analysis of current regulatory framework for PNF

6.1 National framework

As noted in section 5.1 above the National Forest Policy Statement and the RFAs remain in force.

The future process for RFA forestry operations under the amendments to the EPBC Act in 2025 is not yet clear, although it appears that some form of accreditation process will apply to operations under RFAs, rather than a requirement for approval of individual operations. The Samuel review noted that the accreditation of environmental management will -

*provide confidence to the community and certainty for the forestry industry, with forestry activities able to continue under well-made, well-implemented, transparent RFAs. To do this, the Commonwealth should require a State to commit to the application of the National Environmental Standards to RFAs and consequential oversight by the EAC, as a condition of any accreditation process*¹⁰³.

A key question is to what extent the development of the National Environmental Standards will take account of policies and commitments made by the Commonwealth and State governments with respect to private native forests under devices including-

- The National Forest Policy Statement and RFAs (section 5.1 above), that all conservation mechanisms for the establishment of the private land component of the CAR Reserve System will be voluntary and

¹⁰¹ (Henry, Keniry, Leishman, & Mrdak, 2023)

¹⁰² Nature positive means the environment is being repaired and regenerated. This contrasts with traditional sustainability approaches, which have sought to minimise negative impacts by slowing or stabilising the rate of biodiversity loss (NSW Government, 2024)

¹⁰³ (Samuel, 2020)

6. Analysis of current regulatory framework for PNF

that conservation levels achieved will not subsequently be used as a basis for preventing timber harvesting in accordance with the Private Native Forestry Code of Practice¹⁰⁴.

- The objects for PNF in the NSW LLS Act (s.60ZR), which seek to ensure that differences between private native forestry and native forestry operations in State forests or other Crown-timber land are recognised, including in the application of protocols, codes, standards and other instruments.

6.2 State framework

A regulatory system for forest practices can be regarded as a type of environmental management system, and its components may be scrutinised from the perspective of a framework such as that provided by the ISO 14000 Management System Series¹⁰⁵, as used in the RFA process to evaluate Ecologically Sustainable Forest Management systems. Under this approach, the key components of a regulatory system for forest practices are as follows-

1. **Legislation**, including institutional arrangements and regulatory approach
2. **Planning**, including codes of practice and operational plans
3. **Implementation**, including training and education
4. **Monitoring**, including evaluation and reporting
5. **Enforcement**, including the range of corrective and punitive tools available
6. **Review and Improvement**, including research, adaptive management and continuing improvement.

6.2.1 Legislation

The regulation of PNF is principally governed by the application of two Acts, the LLS Act and the EP&A Act.

The Local Land Services Act

- All forestry operations are required to be authorised by a PNF plan approved by LLS.
- The PNF plan can only be approved if the forestry operations can be carried out in accordance with the applicable private native forestry code of practice
- The private native forestry codes of practice for each region provide a consistent set of prescriptions
- The codes of practice require a Forest Management Plan to be prepared, which is an operational map and text that prescribes the activities to be conducted, the features and values that are present, and the areas that are to be excluded from operations.
- The EPA has the function of monitoring the forestry operations and enforcing compliance with the Act.
- An 'offence' under the Act is prescribed as a contravention of a requirement imposed by a PNF plan or an applicable private native forestry code of practice (s.60ZZA) (this section does not preclude the commission of an offence under Part 5A of the EP&A Act, or relevant sections of the POEO Act, Biodiversity Conservation Act or Fisheries Management Act).

The Environment Planning and Assessment Act

- Forestry operations are required to obtain development consent if specified in the LEP of the applicable council
- LEPs are drawn up by the individual councils and there is significant inconsistency between councils with respect to how they categorise land use into zones and apply conditions to each zone and type of development application¹⁰⁶
- Councils are responsible for monitoring and enforcing the PNF provisions of the Act
- Offences include non-compliance with the consent requirements under an LEP and/or conditions of an approval.

¹⁰⁴ (Commonwealth of Australia and the State of New South Wales, 2018)

¹⁰⁵ (Standards Australia, 2016), (Independent Expert Advisory Group, 1997), (Wilkinson, 1999)

¹⁰⁶ (NSW Department of Primary Industries, 2018)

The operation of these two acts constitutes a ‘dual approval’ process. Many landowners are discouraged from investing in PNF because of concerns about the duplication, potential inconsistencies and additional costs of a dual system¹⁰⁷. These concerns are only exacerbated by the frequency of changes in regulatory requirements, and uncertainty about future changes¹⁰⁸.

The continuation of a dual approval process is somewhat at odds with the statement in the Second Reading of the Forestry Legislation Amendment Bill 2018, where the Minister states that the Bill - amends *the Local Land Services Act 2013 to formalise the transfer of responsibility for private native forestry advice and approvals to Local Land Services. New South Wales now has a single Act for overseeing land management activities on private land. Further, Local Land Services will be installed as the one-stop shop for landholders seeking land management advice and services, leading to improved service delivery for landholders and industry*¹⁰⁹.

In addition to the above two primary acts, PNF must also comply with other relevant legislation, such the POEO Act and Biodiversity Conservation Act (see sections 5.2.3 and 5.2.10 above).

There is no current proposal for a single regulatory framework for forestry on public and private land (as exists in Tasmania). The objectives for PNF under s.60ZR of the LLS Act clearly state –

to ensure that differences between private native forestry and native forestry operations in State forests or other Crown-timber land are recognised, including in the application of protocols, codes, standards and other instruments.

The model that applies to public native forests under the IFOA as administered by the EPA would certainly not be appropriate for PNF. A review undertaken for the Forestry Corporation in 2012¹¹⁰ described the model as-

an increasingly dysfunctional regulatory framework highly prescriptive, legalistic and adversarial in nature. It shows little evidence of a ‘best practice’ approach to achieving good practice through activities such as education, training and accreditation, instead relying upon heavy-handed enforcement through the threat of sanctions.

6.2.2 Planning

6.2.2.1 PNF Codes of Practice

The legislation requires that before a PNF code of practice is made or amended it must be released for public comment. The Minister is required to consider any submissions duly made on the proposed code but is not required to make submissions, or the response to the submissions, publicly available. This process has been described as ‘tokenistic’ by some private forest owners¹¹¹. There is no specific requirement for the private forestry sector to be formally engaged and consulted with respect to any changes to the codes (this is different to the legislative process in Tasmania where private forest owners must be engaged and consulted before any changes can be made to the code – see section 12.1 below).

Perspectives on the PNF codes of practice are polarised, from those seeking to make them more prescriptive and restrictive¹¹² to those who see them as unduly complex and overly prescriptive¹¹³, and symptomatic of an unhelpful and coercive regulatory regime¹¹⁴.

The criticism of the codes being unduly rigid and prescriptive is valid¹¹⁵. They are written as a set of legal conditions, akin to regulations, rather than as practical tools for practitioners and regulators. The prescriptions

¹⁰⁷ (NSW Department of Primary Industries, 2018), (Timber NSW, 2019), (Dare, Schirmer, & Mylek, 2017)

¹⁰⁸ (Lewis, et al., 2020)

¹⁰⁹ (Parliament of NSW, 2018)

¹¹⁰ (Wilkinson, 2021)

¹¹¹ Private forest owner 1, pers. comm. March 2026

¹¹² (Local Government NSW, 2019), (NSW EDO, 2019)

¹¹³ (Timber NSW, 2019), (NSW Department of Primary Industries, 2018), (Lewis, et al., 2020)

¹¹⁴ (Timber NSW, 2019)

¹¹⁵ (Timber NSW, 2019), (NSW Department of Primary Industries, 2018), (Lewis, et al., 2020)

6. Analysis of current regulatory framework for PNF

for listed species take up nearly 60% of the code. These prescriptions could be more efficiently addressed in a supplementary document, making it easier to regularly update them based on new information.

The provisions in the codes relating to silviculture are relatively basic, focussing on retained basal area and canopy openings for the two main harvesting systems (single tree selection/thinning and Australian Group Selection respectively). These two harvesting regimes broadly take account of the regeneration requirements of shade tolerant and shade intolerant species and they have been shown by many studies to have only minor and transient effects on tree species composition¹¹⁶. The codes do not provide guidance with respect to the planning, selection and implementation of silvicultural regimes in terms of factors such as pre-harvest inventory, the selection of trees to be removed/retained (e.g. retention of currently merchantable growing stock for future value increment) and the demarcation of harvesting regimes and/or tree marking. These factors were included in the former *Silvicultural Guidelines*¹¹⁷. A similar, useful silviculture manual is in use by the Forestry Corporation.¹¹⁸ The referencing of the PNF codes to silvicultural guidelines would help to promote longer term forest management by improving the understanding of the benefits of appropriate silviculture, particularly on issues such as the thinning of overstocked stands to improve stand health and productivity.

The exclusion of forest area from forestry operations under the codes is not limited by any consideration of the impact on the forest owner. Current regulatory exclusions now amount to 26% of the total area of private native forest on the NSW north coast¹¹⁹. This level of constraint and *de facto* reservation, primarily driven by prescriptions for biodiversity, is a form of regulatory creep and it is likely to continue to increase in the absence of a defined duty of care for private native forest owners. This form of *de facto* reservation is at odds with the commitments made in the RFAs that any conservation mechanisms on private land can only be voluntary and cannot be used as a basis for preventing timber harvesting (see section 5.1.2 above). It also highlights the importance of having voluntary conservation mechanisms that are attractive to landowners, noting that many private forest owners support measures to conserve natural and cultural values, but they are reluctant to enter into long term conservation agreements¹²⁰.

The PNF Codes require fire management to be conducted in accordance with the *NSW Rural Fire Service Standards for Low Intensity Bush Fire Hazard Reduction Burning (for private landholders)* and the *Bush Fire Environmental Assessment Code for New South Wales*. Fire management, including prescribed fire, is a critical tool in managing and protecting private forest values. However, little attention is given to this issue from a governance perspective. Landholders find the requirements to be complex and onerous, with little government support. Compliance levels are therefore believed to be low.

6.2.2.2 PNF Plan and FMP process

The LLS Act provides that an application for approval of a PNF plan may be submitted by the landowner(s) or by any person on behalf of the landowner(s).

The PNF plans are very basic documents; the FMPs are poorly named as they are not forest management plans in the traditional sense. That is, they do not contain objectives and procedures for long term forest management, including production, conservation and protection. The FMPs are more comparable to short term, operational plans (such as harvesting plans) used in other jurisdictions.

The biggest single barrier to creating a PNF plan and FMP is the landowner's lack of knowledge about the regulatory process¹²¹, exacerbated by their lack of knowledge about the quality and value of their timber resources¹²². The decision process to harvest their forests is generally of a short term, opportunistic nature,

¹¹⁶ (Kohane, Kathuria, & Law, 2025)

¹¹⁷ (NSW Department of Environment, Climate Change and Water, 2010)

¹¹⁸ (Forestry Corporation of NSW, 2023)

¹¹⁹ (NSW Department of Primary Industries, 2018)

¹²⁰ (Dare, Schirmer, & Mylek, 2017)

¹²¹ (StollzNow, 2024), (StollzNow, 2025), (Dare, Schirmer, & Mylek, 2017)

¹²² (Jamax Forest Solutions, 2017)

with PNF owners responding to approaches by contractors operating within the local area¹²³. In the absence of any requirement for a long-term forest management plans there is no incentive for landholders to look beyond the immediate operation. Those private forest owners who are interested in improving the long-term management and productivity of their forests often feel that they are “at mercy of contractors who want access to their timber but have a short-term outlook”¹²⁴.

A survey published in 2017¹²⁵ found that 41% of landowners did not seek external advice about the management of their native forest resource. The source of advice for the remainder was family, friends and neighbours (40%), LLS (19%), Landcare (15%), private environmental or forestry consultants (9%) and the Office of Environment and Heritage (6%). A separate survey in 2017¹²⁶ found that 74% of landowners had an approved PNF plan in place before approaching a harvesting contractor. Once engaged, harvesting contractors usually undertook the development of the FMP and associated tree and boundary marking, as well as financial and administrative tasks such as preparation of a written contract, collection and distribution of payments and the marketing of wood products. Forestry consultants were only involved in the planning and management of harvest in about 6-10% of cases; sawmills were involved in the preparation of timber sale agreements and payments but were rarely involved in other aspects of harvesting¹²⁷.

The approval process for PNF Plans and FMPs by LLS is largely a desk top exercise, with the plans checked against planning tools such as the Koala Prescription Map and databases on threatened species and Threatened Ecological Communities that may occur in the vicinity of the FMP area, as well as any known Aboriginal cultural heritage sites.

The LLS has separate approval processes for forestry plans (PNF Plans and FMPs) and vegetation clearing plans, which means that some property-based operations will require the landowner to deal with two systems and different officers.

Local Government NSW has raised concerns about the general lack of knowledge and expertise in forest management among landowners, and it has argued that landholders should be trained and accredited to undertake PNF plans, particularly in relation to the assessment of threatened species¹²⁸. The 2019 PNF review showed that most stakeholders supported training and advice for landowners, with a small proportion also supporting training and accreditation programs for harvesting contractors¹²⁹.

In NSW, as in most jurisdictions across Australia, most private forest owners are only involved in forestry operations on an intermittent basis. It is therefore unrealistic to expect that these owners will have sufficient knowledge to meet regulatory requirements without some expert support.

6.2.3 Implementation

6.2.3.1 Governmental institutions

There are four bodies that are principally involved in the implementation of the regulatory framework- the LLS, EPA, local councils and the NRC. Their approaches are discussed below.

6.2.3.2 Environment Protection Authority

The statutory objectives and functions of the EPA include- *promoting community involvement in decisions about environmental matters; and advising persons engaged in industry and commerce and other members of the community on environment protection*. These are addressed in the EPA’s comprehensive Regulatory

¹²³ Forest sawmiller 1 pers. comm.; forestry consultant 1 pers. comm. March 2026

¹²⁴ Private forest owner 1, pers. comm. March 2026

¹²⁵ (Dare, Schirmer, & Mylek, 2017)

¹²⁶ (Jamax Forest Solutions, 2017)

¹²⁷ (Dare, Schirmer, & Mylek, 2017)

¹²⁸ (Local Government NSW, 2019)

¹²⁹ (Elton Consulting, 2019)

6. Analysis of current regulatory framework for PNF

Policy¹³⁰, in which the EPA states that its regulatory approach is based on education, collaboration, monitoring and enforcement. However, many believe that this inclusive approach is not actually delivered on the ground. Environmental groups and local government support the enforcement role of the EPA and would like to see it better resourced to strengthen its monitoring and enforcement capabilities¹³¹. The views of forest owners generally reflect a traditional distrust of government, with nearly half reporting a reluctance to deal with the EPA¹³². The timber industry is highly critical of the EPA's approach, believing that it is too focussed on coercion rather than education and collaboration¹³³. Timber NSW strongly advocates that the regulatory approach on private land must be different to the approach on public land under the Coastal Integrated Forestry Operations Approval (IFOA), which it states is-

*a coercive and punitive document which is not outcome based..... extremely costly and resource intensive to implement..... to address political sensitivities and public perceptions which do not apply (to anywhere near the same extent) on private land.*¹³⁴

Many in the timber industry believe that the EPA is not supportive of timber harvesting and primarily sees its role as constraining and discouraging the industry, rather than working in partnership to foster the sustainable development of the sector. The possibility of a greater role for the EPA in the regulation of PNF has been described as 'an existential threat to the sector'.¹³⁵

6.2.3.3 Local Land Services

The statutory objects of the LLS Act include-

to encourage collaboration and shared responsibility by involving communities, industries and non-government organisations in making the best use of local knowledge and expertise in relation to the provision of local land services.

The functions of LLS include-

to provide and facilitate education and training in connection with agricultural production, biosecurity, natural resource management and emergency management, and to communicate, consult and engage with the community, including the Aboriginal community, to encourage participation in relation to the delivery of local land services.

These objects and functions are highlighted in the Strategic Plan¹³⁶ of LLS, which has an emphasis on service delivery, engagement, innovation and enhanced management and productivity of NSW land.

LLS has both advisory and regulatory functions for PNF, principally through the approval process for Private Native Forest Plans and FMPs. It does not directly undertake compliance monitoring or enforcement activities: these are undertaken by NRC and the EPA respectively.

LLS's PNF functions are fully funded by government. There is no fee payable by applicants with respect to the lodgement of PNF Plans or FMPs.

The 2024/25 Annual Report of LLS¹³⁷ shows that it approved 300 PNF plans, covering just over 73,190 ha. It ran a series of field days, formal training courses and presentations for 135 participants on topics such as tree measurement, eucalypt ecology, products and markets and legislative and code requirements.

LLS also administers the NSW Forest Stewardship Pilot¹³⁸, which offers expert advice and incentives to landholders to diversify the productive value of land and sustainable development of the timber industry, and

¹³⁰ (Environment Protection Authority, 2024)

¹³¹ (NSW EDO, 2019), (Local Government NSW, 2019)

¹³² (Dare, Schirmer, & Mylek, 2017)

¹³³ Forest industry persons 1 and 2 pers. comm. March 2026, Forestry Consultants 1 and 2, pers. comm. March 2026

¹³⁴ (Timber NSW, 2019)

¹³⁵ Forestry Consultant 1, pers. comm. March 2026, Forest Industry person 1, pers. comm. March 2026

¹³⁶ (Local Land Services, 2024)

¹³⁷ (Local Land Services, 2025)

¹³⁸ <https://www.nsw.gov.au/grants-and-funding/nsw-forest-stewardship-pilot#toc-key-information>

to improve environmental, cultural and social outcomes of private forests and foster engagement with Aboriginal forest owners and managers.

LLS is highly respected by landowners for its training courses and on-farm advice on land management, but it is perceived as lacking sufficient capacity to adequately service the needs of private native forest owners¹³⁹ and provide advice on topics such as the utilisation and marketing of timber¹⁴⁰. Private forest owners have appreciated access to educational programs such as Master Treegrower programs and feel that they should be followed up with on-going support.

Both the LLS and the EPA provide educative and advisory guidelines for landowners to assist in the interpretation and application of the codes of practice. These are very useful documents, although there is considerable duplication of advisory notes etc across the EPA and LLS and some guidelines on the EPA website are out of date and appear to be archived e.g. the *Private Native Forestry Field Guide for Northern NSW* (dated 2010)¹⁴¹ and the (excellent) *Silvicultural Guidelines*.¹⁴²

6.2.3.4 Local Government

Stakeholders have varied views on the role of local councils in approving development applications for PNF (where required) and imposing conditions on the consent. A survey in 2017 found that most landowners felt it would be too hard to interact with local council if planning permission was required¹⁴³. The timber industry believes that councils are inconsistent, unpredictable and often impose conditions that are impractical¹⁴⁴.

Many landowners appear to have obtained PNFs and have proceeded to undertake harvesting operations without obtaining any necessary development consent from council, possibly because the landowners were not aware of the requirements of the council's LEP, and the council was not aware of the existence of the forestry operations and associated PNF plans¹⁴⁵. This situation prompted Local Government NSW to advocate for-

*a formalised referral process of proposed PNF agreements to councils to ensure consistency with the LEP and other planning instruments*¹⁴⁶.

There appears to be no formal requirements under the PNF codes of practice for landowners undertaking PNF to consult with their council on matters of traditional interest to councils and communities, such as –

- load limits on local council bridges
- haulage routes, particularly for sensitive areas and times, such as school bus routes, and roads where mud or dust may cause an environmental or safety concern
- impacts on water catchments and important visual and amenity zones.

6.2.3.5 Natural Resources Commission

The NRC is an independent body with specific legislative functions relating to the management of water, soil, native vegetation and biodiversity. Specific functions relevant to PNF include - undertaking significant inquiries and assessments; conducting audits of LLS state and local strategic plans; and undertaking audits and reviews (see section 6.2.4 below).

The NRC chairs the NSW Forest Monitoring Steering Committee, which oversees the design, implementation and continuous improvement of the NSW Forest Monitoring and Improvement Program. The Steering Committee includes agency representatives from Aboriginal Affairs NSW, DPE, Department of Primary

¹³⁹ (StollzNow, 2024); (Timber NSW, 2016), Forest contractor 1, pers. comm. March 20206, Forest sawmiller 1, pers. comm. March 2026

¹⁴⁰ Private forest owner 1, pers. comm, March 2026

¹⁴¹ <https://www.epa.nsw.gov.au/Publications/pnf/09761PNFFldGdNthnNSW>

¹⁴² (NSW Department of Environment, Climate Change and Water, 2010)

¹⁴³ (Dare, Schirmer, & Mylek, 2017)

¹⁴⁴ (Timber NSW, 2019)

¹⁴⁵ (NSW Department of Primary Industries, 2018), (Local Government NSW, 2019)

¹⁴⁶ (Local Government NSW, 2019)

6. Analysis of current regulatory framework for PNF

Industries, EPA, Forestry Corporation of NSW, LLS, National Parks and Wildlife Services, and the Commission, and independent experts.

The NRC is generally perceived as an independent, evidence-based advisory body. However, the timber industry¹⁴⁷ has criticised representation on the Steering Committee, arguing that it is-

unbalanced and unrepresentative.....[with] too many government agencies with an over representation of DPE officials.... [and that] the Steering Committee ‘experts’ are hand-picked by the NRC. To that extent they could be perceived to be not truly independent as their views are assumed to align with those of the NRC.

Timber NSW argued that the committee should have representation of industry practitioners and expertise in forestry and silviculture.

6.2.3.6 Stakeholder engagement

There is no specific legislative provision for the engagement of stakeholders in the governance and implementation framework other than through provisions in the LLS Act requiring public consultation on the making, amendment or repeal of PNF codes of practice.

There is no forest owner association in NSW that provides a forum for forest owners to discuss forest management issues and make representations to government. Timber NSW is seen as having a focus on the forest industry and the NSW Farmers’ Association has historically had little engagement with PNF *per se*.¹⁴⁸

There are eleven Regional Forestry Hubs across Australia, which were established by the Australian Government under the National Forestry Industry Plan 2018 and are currently funded until 2026-27.

The role of the North-East NSW Forestry Hub is to assess and determine the barriers and opportunities for the forestry and wood products sector in the north east region of New South Wales, through consultation with forest growers, wood processors, government agencies and other stakeholders¹⁴⁹. The Hub has commissioned several dozen projects. Those relevant to private forestry include-

- A series of field days for landholders interested in learning about Private Native Forestry (PNF).
- A survey of current skills and gaps in the forest and wood products industry workforce and identifying opportunities to increase skills and innovation in the industry.
- An integrated stewardship strategy for forest residues.
- Identifying ways to improve national carbon accounting for PNF in Qld and NSW.
- A survey of landholder attitudes, barriers and incentives to forestry in NE NSW.
- A survey of community attitudes to native forest harvesting.
- A report on the economic contribution of the NSW hardwood timber industry.
- A survey of land suitable for new planted forests in NE NSW.
- Integrating traditional and emerging markets for trees
- Raising awareness of the uses of NSW hardwood timber
- Identifying ways to make private native forestry future fit
- Comparing investment in hardwood plantations with managed regrowth
- Making hardwood log prices more transparent
- Evaluating the costs and benefits of forest management cooperatives

6.2.4 Monitoring

The monitoring of forest practices generally comprises monitoring of compliance (with rules and procedures under devices such as codes of practice and plans etc) and monitoring of the efficacy of those devices in terms of meeting the objectives for the management of important values such as biodiversity.

¹⁴⁷ (Timber NSW, 2024)

¹⁴⁸ Forestry Consultant 1 pers. comm., March 2026, Forest Industry person 2, pers. Comm. March 2026

¹⁴⁹ <https://nenswforestryhub.com.au/about-us/what-we-do>

The relationship between the LLS, EPA and NRC is potentially problematic with respect to monitoring and enforcement of the PNF codes of practice. The LLS is responsible for issuing the PNF codes; the EPA is responsible for compliance monitoring and enforcement; and the NRC is responsible for monitoring forest area and condition, and for reviewing prescriptions and models for biodiversity. This arrangement requires close collaboration and collation of information between the agencies to ensure that the outcomes of monitoring (both compliance and efficacy) contribute to the continuing improvement of the codes.

6.2.4.1 Monitoring of compliance

The EPA is responsible for monitoring compliance under s.60ZZB of the LLS Act. The EPA's website advises that it *conducts inspections and investigations into operations carried out under a Private Native Forestry Plan approved by the Local Land Services, and the Private Native Forestry Code of Practice*¹⁵⁰.

As of 30 June 2025, there were 4,202 approved PNF plans in NSW (not all of them active), with 300 new plans approved in 2024/25¹⁵¹. Between 1 July 2025 and 30 September 2025, the EPA conducted 16 inspections of forestry operations on private land¹⁵².

The reports of the EPA are focussed on outcomes of investigations and enforcement actions, and there is no reporting on the overall performance standards that are being achieved for each of the elements of the PNF Codes, and whether these standards are changing over time.

The PR Codes also define monitoring and reporting requirements for landholders. These include reporting to LLS prior to harvesting and after completion of forestry operations on the approximate volume of forest products harvested and the approximate number of hectares on which forestry operations have occurred. Landholders are also required to monitor regeneration of their forests, including at two-, six- and 10-years after harvesting. However, there appears to be no published reports on the results of such monitoring.

6.2.4.2 Monitoring of efficacy

On private land the PNF Codes provide for a PNF Monitoring, Evaluation and Reporting (MER) Framework to be jointly approved by the CEO of LLS and the Secretary of the Department of Planning and Environment and overseen by the NSW Forest Monitoring Steering Committee and administered by the NRC. The role of the committee is to conduct annual checks to ensure the evidence base, is up to date (including maps such as the PNF Koala Prescription Map); and to formally assess the data and evidence every five years and advise relevant Ministers whether there is sufficient evidence to warrant a review of the PNF Codes.

6.2.5 Enforcement

The EPA is solely responsible for private native forestry compliance and enforcement under the LLS Act. Part 11 of the Act sets out the powers for authorised officers and Divisions 2 and 3 of Part 12 deal with proceedings for offences and miscellaneous provisions related to proceedings under the Act.

The EPA can also bring proceedings for any environmental offence against the POEO Act, as can other public authorities, such as local councils.

The EPA can initiate proceedings under the Biodiversity Conservation Act for offences such as causing damage to habitat of a threatened species or threatened ecological community. However, s.2.8 of that Act provides a defence if the person was carrying out –

- development in accordance with a development consent within the meaning of the EP&A Act; or
- development that is exempt development under that Act, or
- the carrying out of a forestry operation that is in accordance with a private native forestry plan under Part 5B of the LLS Act and the applicable private native forestry code of practice.

¹⁵⁰ <https://www.epa.nsw.gov.au/Your-environment/Native-forestry/Regulating/Compliance-update> as at 21/1/26

¹⁵¹ (Natural Resources Commission, 2025)

¹⁵² <https://www.epa.nsw.gov.au/Your-environment/Native-forestry/Regulating/Compliance-update> as at 21/1/26

6. Analysis of current regulatory framework for PNF

The EPA has a range of enforcement tools available, which are comprehensively detailed in its Regulation Policy and Prosecution Guidelines¹⁵³. The tools include:

- Issuing penalty infringement notices (fines)
- Issuing Stop Work Orders to halt operations
- Requiring remedial work to be carried out
- Prosecuting serious offences in the NSW Land and Environment Court.

The annual average of enforcement actions taken by the EPA for the years 2021/22 to 2024/25 was follows¹⁵⁴–

Formal warnings	2.75
Official cautions	2
Penalty notices	1
Prosecutions completed	2.25
Clean up notices	0.25
Stop work orders	0
Total	8.25

These figures indicate that punitive measures (prosecutions, formal warnings, official cautions and penalty notices) account for most matters involving non-compliance, with little evidence of non-compliances being dealt with by way of corrective actions.

There are no readily available public reports on enforcement actions undertaken by councils for PNF.

While the EPA is the primary enforcer, a private individual may be able to bring legal proceedings in the Land and Environment Court of NSW to remedy or restrain a breach if the activity is causing or is likely to cause harm to the environment, particularly under the open standing provisions in the POEO Act.

Penalties for offences under the LLS Act are up to a maximum of \$5 million for corporations and \$1 million for individuals. Opinions about the appropriateness of current fines and penalties varies between stakeholder groups. In general, the PNF and timber industry sector believes that the penalties are inappropriately excessive and disproportionate to the risk that PNF activity presents, other stakeholders believe that they are meaningful and effective, while some environment groups and individuals argue that they are too low to ensure compliance¹⁵⁵.

There is no provision for independent appeal by persons alleged to have breached the PNF Code without having to formally defend the matter in the Land and Environment Court.

6.2.6 Review and Improvement

As summarised in section 5.2 above, the regulatory framework for PNF has been subjected to frequent review and change over the last 30 years.

The main legislative provisions that relate to ongoing review of the regulatory framework are as follows:

- The LLS Act makes provision for the making or amendment of the PR Codes but there is no time frame given in the Act, or in the codes. as to how often the codes should be reviewed.
- The PR Codes prescribe the following under the MER Framework the NSW Forest Monitoring Steering Committee (section 6.2.4.2 above) will undertake the following –
 - *conduct annual checks that the evidence base is up to date (including relevant maps), identify emerging evidence from monitoring and research, and opportunities for improvement*
 - *formally assess the data and evidence from the program (and any other lines of evidence) every five years and advise the Minister administering the Forestry Act 2012, the Minister administering the*

¹⁵³ (Environment Protection Authority, 2024), (Environment Protection Authority, 2025)

¹⁵⁴ <https://www.epa.nsw.gov.au/Your-environment/Native-forestry/Regulating/Compliance-update> as at 22/1/26

¹⁵⁵ (Elton Consulting, 2019)

Local Land Services Act 2013 and the Minister administering the Biodiversity Conservation Act 2016 whether there is sufficient evidence to warrant a review of the PNF Codes.

- *Where an unforeseen event (such as wildfire, mass dieback or a forest biosecurity event) has caused, or has the potential risk of causing serious or irreversible environmental damage on private land at a bioregional scale, the Chief Executive Officer of the Environment Protection Authority can inform the Chief Executive Officer of Local Land Services that a review under clause 4.3 (5) of this Code may be required.*

In addition to the above, there is a dedicated forest research team within the Department of Primary Industries (NSW Forest Science), which conducts research and provides advice on sustainable forest management for native forests and plantations under the following programs-

- Forest Ecology & Biodiversity
- Forest Resource Assessment
- Forest Health & Biosecurity
- Carbon in Forests, Wood Products & Bioenergy
- Technical Support

Most of the research is carried out in public forests, but many of the findings are applicable to PNF. Recent work specifically carried out on PNF for the LLS includes projects on the following topics-

- remote sensing to- investigate the scale and intensity of timber harvesting on private native forests; quantify the impacts of drought and fire on private native forests; and quantify the extent and severity of the 2019-2020 wildfires
- assessment of the suitability of PNF to produce sawlogs in various regions
- Forest Yield Association Group Mapping of PNF
- Fauna in a sample of farm forests in Northern NSW
- Forest Monitoring and Inventory on a sample of farm forests in Northern NSW

Part B – The Regulation of Plantations in NSW

7 Context

There were about 350,000 ha of plantation in NSW in 2023/24, with about 74% on public land and 36% on private land. Softwoods (predominantly *Pinus radiata*) accounted for about 86% of the plantation area, with hardwoods (mainly eucalypt spp) accounting for about 14%¹⁵⁶. The forestry plantation industry in NSW in 2016 was worth an estimated \$1.9 billion annually and supported 11,600 jobs¹⁵⁷.

The establishment of softwood plantations commenced over 100 years ago, with a major period of expansion from the 1960s. Today, the softwood plantations and the associated harvesting and processing sector make a substantial contribution to regional economies in the south and central west of NSW.

In contrast, plantation establishment in the north east of NSW has been relatively small scale. The transfer of large areas of public wood production forest into conservation reserves in the early 2000s prompted the establishment of hardwood plantations as a means of providing an alternative timber resource. However, poor plantation management and poor relationships with rural communities have resulted in low returns and limited interest in continuing investment¹⁵⁸.

¹⁵⁶ (ABARES, 2025)

¹⁵⁷ (NSW Department of Primary Industries, 2016)

¹⁵⁸ (Cassidy & Palmer, 2024), (NSW Department of Primary Industries, 2016)

8. History of the regulatory framework

The total area of plantation in NSW has remained steady over the last 20 years, although it is now expected to increase as a result of incentives under the Australian Carbon Credit Unit Scheme and the Australian Government's Support Plantation Establishment program, which is awarding grant funding of over \$70 million from 2023-24 to 2026-27 to support the establishment of new long-rotation softwood and hardwood plantation forests in Australia.¹⁵⁹

8 History of the regulatory framework

8.1 National instruments

The National Forest Policy Statement (1992) seeks to increase the area and productivity of the plantation estate. Under the policy, the national and state governments agreed to provide planning frameworks that facilitated the development of large-scale industrial plantations in an ecologically sustainable manner. In 1996 the governments issued *Forest Practices Related to Wood Production in Plantations - National Principles*¹⁶⁰. These principles were designed to provide a basis for the development of codes of practice for plantations.

The Regional Forest Agreement for the NE Region (2000)¹⁶¹ included the following-

- NSW will ensure that an integrated Code of Practice is developed for plantation activities across all tenures, under the *Plantations and Reafforestation Act* (1999).
- Planning consent by local government for plantation establishment and reafforestation projects has been replaced under the above Act by a stand-alone authorisation process administered by the NSW Department for Land and Water Conservation (DLWC).
- Industry development will take account of private forest resources including plantations.
- The purchase of suitable private land and joint venture schemes will be pursued to establish at least 10,000 ha of hardwood plantations across both the Upper and Lower North East Regions to supplement supplies of high-quality large sawlogs and large veneer logs from public forests.
- No controls will apply under the *Export Control Act 1982* (Cth) to hardwood woodchips or unprocessed wood sourced from areas covered by an RFA.
- The Commonwealth undertook to remove the 'dual approval' process under National and State legislation by amending the EPBC Act to recognise RFAs as meeting the requirements for environmental approvals under that Act (see 5.1.3 above for details and current situation).

8.2 State instruments

8.2.1 Timber Plantations (Harvest Guarantee) Act (1995) (repealed 1999)

The object of the *Timber Plantations (Harvest Guarantee) Act* (1995) was to *remove impediments to the harvesting of plantation¹⁶² timber so as to encourage the establishment of commercial timber plantations.*

The Act provided for the following -

- a scheme for the accreditation of timber plantations and proposed timber plantations,

¹⁵⁹ (ABARES, 2025)

¹⁶⁰ (Ministerial Council on Forestry, Fisheries and Aquaculture, 1996)

¹⁶¹ (Commonwealth of Australia and the State of New South Wales, 2000)

¹⁶² s.6 of the Act defines timber plantation as an area of land on which the predominant number of trees forming, or expected to form, the canopy are trees that have been planted (whether by sowing seed or otherwise) for the purpose of timber production.

- removing the need to obtain licences under the NPW Act or the Threatened Species Conservation Act 1995 in connection with the carrying out of harvesting operations on accredited timber plantations
- removing the need for development consent under Part 4 of the EPA Act, or environmental assessment under Part 5 of that Act, in relation to the carrying out of harvesting operations on accredited timber plantations
- the protection of the environment by requiring harvesting operations on accredited timber plantations to be carried out in accordance with timber plantation (environment protection) harvesting codes
- the appointment of appropriately qualified public servants (or such other qualified persons as may be prescribed by the regulations) as timber plantation officers to investigate and report to the Director-General on whether a Code is being complied with.

8.2.2 Timber Plantations (Harvest Guarantee) Regulation 1997 (repealed 1999)

This Regulation sets out the *Timber Plantations (Environment Protection) Harvesting Code 1997*.

The purpose of the code was to regulate *the carrying out of harvesting operations on accredited timber plantations, for the purposes of protecting the environment*.

The Code provided that-

- plantation owners must prepare a harvesting plan, which did not need to be approved by any authority, but which had to be made available for inspection by any timber plantation officer who asked to see it.
- payment of compensation could be made where harvesting operations were required to be suspended or modified in order to protect unique or special wildlife values.

8.2.3 Plantations and Reafforestation Act 1999

The *Plantations and Reafforestation Act (1999)* (PR Act) repealed the Timber Plantations (Harvest Guarantee) Act (1995) (and regulations) and replaced it with the broader objects of facilitating the reafforestation of land and the establishment forest plantations for timber production and other uses, including biodiversity conservation and carbon sequestration¹⁶³. The Act was updated in 2010 with the passing of the *Plantations and Reafforestation Amendment Act 2010*.

The Act applies to public and private tenures and includes the following provisions-

- The making of a Plantations and Reafforestation Code
- Plantations¹⁶⁴ must be authorised by the Minister. The purpose of authorisation is laid down in s.8 as-
 - (a) *to provide a streamlined and integrated process for obtaining approval to establish timber and other forest plantations, and*
 - (b) *to guarantee harvesting operations on timber plantations, and*

¹⁶³ In this Act plantation means an area of land on which the predominant number of trees or shrubs forming, or expected to form, the canopy are trees or shrubs that have been planted (whether by sowing seed or otherwise)—

- (a) for the purpose of timber production, or
 - (b) for the protection of the environment (including for the purpose of reducing the salinity of the land or otherwise repairing or improving the land, for the purpose of biodiversity conservation or for the purpose of acquiring or trading in carbon sequestration rights), or
 - (c) for any other purpose,
- but not principally for the purpose of the production of food or any other farm produce other than timber.

¹⁶⁴ Defined as plantation operations means any or all of the following—

- (a) establishment operations,
- (b) management operations,
- (c) harvesting operations.

(c) to apply codified environmental standards to establishment, management and harvesting operations on plantations.

- *Exempt farm forestry* is not required to be authorised. Exempt farm forestry includes plantations less than 30 hectares in area and where any harvesting of timber does not exceed 100 trees/ha/yr.
- Plantation operations in authorised plantations are not subject to the EP&A Act¹⁶⁵, and to certain provisions of the following Acts-
 - National Parks and Wildlife Act 1974
 - Biodiversity Conservation Act 2016
 - Fisheries Management Act 1994
 - Heritage Act 1997
 - Local Government Act 1993
 - Water Management Act 2000
 - Soil Conservation Act 1938
- The Minister may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act or the Code
- The Minister¹⁶⁶ may issue stop work orders or directions for remedial work in relation to contraventions of the Act or the Code
- The owner or manager of a plantation may appeal against an order or direction of the Minister to the Land and Environment Court
- The Minister may appoint appropriately qualified persons as authorised officers to investigate and report to him/her on whether the Act and the Code are being complied with.
- The Minister and the Director General may delegate the exercise of any function of the Minister under this Act or the regulations to: (a) any member of staff of a Division of the Government Service for which the Minister is responsible, or (b) any person, or any class of persons, authorised for the purposes of this subsection by the regulations.
- The circumstances in which compensation will be available to protect unique or special wildlife values on an authorised timber plantation.

8.2.4 Plantations and Reafforestation (Code) Regulation 2001 (amended 2010)

The *Plantations and Reafforestation (Code) Regulation 2001* sets out the *Plantations and Reafforestation Code (PR Code)*. The PR Code was updated in 2010 with the making of the *Plantations and Reafforestation (Code) Amendment Regulation 2010*.

The Act provides that before a Code is made or amended, the Minister is to provide the public with an opportunity to make submissions on the draft and must prepare and make public a report on the public consultation undertaken (including information about any submissions received by the Minister).

The PR Code contains provisions relating to the following-

- Obtaining authorisation for a plantation
- Preparation of a plantation plan
- Standards relating to the protection of soil and water; heritage; biodiversity; and bush fire hazard reduction
- Operational plans, records and data
- Roads and tracks, including- location and design; crossings; construction, drainage; maintenance; and closure

¹⁶⁵ Other than prescribed exceptions, which include listed (mainly urban) local government areas, land that is within a zone designated "residential", and land to which the State Environmental Planning Policies for Coastal Wetlands and Littoral Rainforest apply.

¹⁶⁶ As delegated to departmental officers

- Harvesting, including- managing retained areas and buffers; slope limits for harvesting operations; log dumps and landings; timber extraction; wet weather provisions; and restoration of harvested areas
- Offences and penalty notices

The planning process for plantation operations is laid down in the PR Code as follows-

1. Authorisation for a plantation

- The site must be visited by person authorised by the Secretary¹⁶⁷ before the application is submitted
- The authorised person will undertake an assessment of- prescribed soil characteristics; native vegetation that requires protection under the PR Code; and heritage values (including any Aboriginal objects¹⁶⁸).
- The applicant is required to submit the application to the Secretary with the following-
 - a statement that shows compliance or proposed compliance with the complying development standards in the PR Code
 - a plantation plan that is prepared in accordance with the PR Code and contains details of the landholding; roads or proposed roads; the location of any water storage for firefighting purposes; the proposed plantation area (and years of planting) that are to be progressively planted.
- Determination on authorisations are made within 14 days (from submission of a completed application and associated documents) unless further information is required.

The process for obtaining authorisations is clearly explained in an excellent guide for applicants¹⁶⁹.

2. Operational plan

- An operational plan and map must be prepared and submitted to the Secretary at least 7 days before the commencement of plantation operations involving- site preparation; construction of roads and crossings; and any harvesting that exceeds more than 100 trees/ha/yr.

Clear guidelines and a template for preparing a plantation operational plan are provided on the DPI website¹⁷⁰.

The PR Act and PR Code were reviewed in 2021 as part of the program of reform mapped out in the NSW Forestry Industry Roadmap (see section 5.3.2 above) and the statutory five-yearly review of the Act. The outcomes of the review were supportive of retaining the objectives and provisions of the PR Act and some technical updates were incorporated into the PR Code¹⁷¹.

9 Analysis of the current regulatory framework for plantations

9.1 National framework

As noted in section 6.1 above the future process for RFA forestry operations under the amendments to the EPBC Act in 2025 is not yet clear, although it appears that some form of accreditation process will apply to operations under RFAs, rather than a requirement for approval of individual operations.

¹⁶⁷ of NSW Department of Primary Industries and Regional Development (DPIRD)

¹⁶⁸ in accordance with the Aboriginal Due Diligence Code for Plantation Officers administering the Plantations and Reafforestation (Code) Regulation 2001

¹⁶⁹ (Department of Primary Industries and Regional Development, 2025)

¹⁷⁰ (Department of Primary Industries, 2023)

¹⁷¹ (Regional NSW, 2023)

9.2 State framework

This section analyses the NSW framework in accordance with the following components of an environmental management system (see section 6.2 above)-

1. **Legislation**, including institutional arrangements and regulatory approach
2. **Planning**, including codes of practice and operational plans
3. **Implementation**, including training and education
4. **Monitoring**, including evaluation and reporting
5. **Enforcement**, including the range of corrective and punitive tools available
6. **Review and Improvement**, including research, adaptive management and continuing improvement.

9.2.1 Legislation

The legislative framework for plantations in NSW has achieved the statutory objective under the PR Act of providing a *streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations*. The framework achieves this through the elements that-

1. prescribe that plantations are not subject to other legislation, in particular the EP&A Act¹⁷²; and
2. vest the regulation of plantations in a single agency.

The removal of plantation regulation from any control by local councils is notable¹⁷³. In other jurisdictions, councils have imposed, or sought to impose, restrictions on plantations in response to concerns from local communities. These concerns have related to issues such as- conversion and loss of agricultural land; use of herbicides and pesticides; fire risk; increased traffic on roads and bridges and potential impacts on water supplies, landscape amenity and recreational values.¹⁷⁴ There are no requirements in the legislation or code with respect to consultation or notification of planned operations to local councils or neighbours.

The regulatory framework is administered by the Plantations Regulation Unit (PRU) within the Department of Primary Industries and Regional Development. The framework is integrated, with the PRU covering education, advice on regulatory approvals, monitoring and compliance. The website of the PRU¹⁷⁵ is comprehensive and useful.

The regulatory approach used by the PRU is consistent with the objects in s.3 of the PR Act to *facilitate the reforestation of land*, and *promote and facilitate development for timber plantations*. The PRU shows strong commitment to its role as a facilitator through its Regulatory Policy¹⁷⁶, in which it seeks to operate in a manner that builds trust and respect with, and between, the plantation industry and the community.

The costs of the regulatory framework are currently largely borne by government. Plantation owners/managers must carry the cost of preparing applications for the authorisation of plantations and for the preparation of operational plans, albeit with the support of PRU officers where requested. They must also pay an administrative fee for authorisations, although the fee has been waived since 2020 (see 9.2.2.2 below).

The governmental cost of the PRU has not been determined for the purpose of this report. The PRU is part of a larger unit (the Hunting and Plantations Regulation), the total budget for which is \$7.8 m in 2025/26¹⁷⁷.

The PR Act allows the Minister to impose constraints or suspend plantation operations where the operations may have an adverse impact on unique or special wildlife values. The Act provides for the payment of compensation where the owner or manager of the plantation has suffered a direct financial loss because of the Minister's direction. However, there appears to be no process for determining the extent to which plantation

¹⁷² Other than the exceptions prescribed in the Act – see footnote 165

¹⁷³ The PR Act does require councils to be notified of the granting of an application for authorisation of a plantation in their area

¹⁷⁴ (Wilkinson & Drielsma, 2001), (Williams, 2014)

¹⁷⁵ <https://www.dpi.nsw.gov.au/forestry/plantations>

¹⁷⁶ (NSW Department of Primary Industries, 2020)

¹⁷⁷ H. Cherry, pers comm 11/3/26

operations may have an adverse impact on unique or special wildlife values as defined in the PR Act, or for formally investigating and taking account of the extent to which any potentially adverse impacts may be mitigated through special management measures. The lack of process represents a potentially significant regulatory risk for plantation managers, and a potential barrier to investment in new plantations, particularly with respect to the establishment of commercial hardwood plantations that may create favourable habitat for species such as koalas. Concern has also been raised about the lack of clarity about the process and the methodology for determining payments for claims under the compensation provisions of the Act.

9.2.2 Planning

9.2.2.1 Plantations and Reafforestation Code

The technical content of the PR Code is relatively comprehensive, although it does not fully cover some aspects such as the dispersal of harvesting units (in time and space) to reduce impacts on catchment hydrology and landscape amenity, cultivation; weed and pest control; fire management; and replanting. It is written in the form of a Regulation, i.e. in a legalistic style. In this respect, the PR Code is a very different document to the PRU's much better educative and advisory documents-

- Soil erosion and sediment control in fire affected plantations
- Fire standards under the Plantations and Reafforestation Act 1999
- Aboriginal heritage protection
- Best management practices for retained areas in plantations
- Plantations owner's guide to setbacks and water access requirements
- Plantations owner's guide to buffer zone requirements

9.2.2.2 Plans

The process for the authorisation of plantations and the accompanying plantation plan provides broad baseline information with respect to the location and attributes of the plantation area.

Applications for the above authorisation and plantation plan can be made by any person. The application must include the name, contact details and consent of the plantation manager or the owner(s) of the landholding.¹⁷⁸ The applications for authorisation are assessed by Plantations Assessment Officers within the PRU, and they are approved by a departmental officer under delegated authority. An administrative fee applies to applications for authorisation of a plantation. The fee schedule varies according to the area of plantation and ranges from \$1750 for a plantation of 100 ha and \$7730 for a plantation of 1,000 ha.¹⁷⁹ The fee was waived in August 2020 for a period of five years and has not yet been reinstated.¹⁸⁰

Plantation owners/managers are responsible for preparing operational plans, which must be submitted to PRU at least seven days before the commencement of operations. The PRU provides guidance materials on the website and staff assist plantation owners/managers on request.

9.2.3 Implementation

In the past the PRU has provided training on the PR Code to contractors, plantation owners, and other interested parties. Training has not been offered in recent years due to resource and capacity constraints¹⁸¹. This may also reflect the fact that the large plantation companies have internal systems of training, such as those required under EMS or forest certification.

¹⁷⁸ (Department of Primary Industries and Regional Development, 2025)

¹⁷⁹ Fees for plantations in Tasmania are incurred for each operation plan. For example, the fee would be about \$11/ha for a plantation thinning operation and about \$30/ha for a clearfell operation

¹⁸⁰ These figures are derived from the fee schedule. The fee schedule is not currently on the PRU website but was provided to the author of this report by H. Cherry, PRU

¹⁸¹ H. Cherry, PRU, pers comm 11/3/26

9. Analysis of the current regulatory framework for plantations

A review undertaken by CSIRO for the Commonwealth Government in 2012 found that-

The plantation forest management system in NSW is facilitated by a sound code that is reviewed every five years, and a single point of contact for developing plantation proposals and operational plans, and for conducting audits. There is also cooperation between large plantation companies and the State government during the planning and auditing phases. In addition, most companies have forest management certification to meet international standards of environmental care and are supported by internal company systems and expertise aimed at achieving positive environmental outcomes. During our assessment we found a positive and participatory attitude towards the Code and related guidance and implementation mechanisms, by all stakeholders including State government, large plantation companies and small growers.¹⁸²

9.2.4 Monitoring

9.2.4.1 Monitoring of compliance

The PRU has a risk-based approach to monitoring and compliance, in which it allocates its resources to the areas of highest risk. It aims to audit a plantation at least once during each operational phase. This means that each rotation of an authorised plantation is likely to be audited every 8-10 years¹⁸³.

The PRU publishes reports on its website of the outcomes of individual compliance investigations. The PRU's document *Plantations Regulation Unit Regulatory Framework (2020)*¹⁸⁴ indicates that a series of measures are being determined to enable reporting of outcomes. There is not yet any published report on the overall number of investigations and outcomes. However, the PRU has advised the author of this report that in 2024/25 the unit undertook 22 compliance inspections resulting in 45 Corrective Action Requests, 1 remediation notice, 1 warning letter and 2 advisory letters.¹⁸⁵

9.2.4.2 Monitoring of efficacy

There appears to be no formal program for monitoring and evaluating to what extent the provisions of the PR Code achieve its objectives for the protection of natural and cultural values (for example, evaluating the effectiveness of prescribed buffer widths in reducing sedimentation of streams).

9.2.5 Enforcement

The PRU is responsible for the enforcement of the PR Act and PR Code, and its approach is laid down in its *Regulatory Framework and Prosecution Guidelines*¹⁸⁶. The guidelines reflect a very sound and contemporary attitude to enforcement, based on a 'graduated compliance approach' (aka an enforcement pyramid), where the initial approach is to encourage voluntary compliance, followed by progressively tougher sanctions depending upon the seriousness of the non-compliance and the responsiveness of the offender¹⁸⁷.

Prosecutions are at the discretion of the DPI (PRU) and there are no provisions in the PR Act for complaints to be laid by other parties or individuals.

9.2.6 Review and Improvement

The DPI Forest Health and Biosecurity Forest Health team conducts forest health surveillance of planted and native forests, including early detection of exotic forest pests; pest and disease management strategies; and quantifying the impact of invasive pests.

¹⁸² (CSIRO, 2012)

¹⁸³ (NSW Department of Primary Industries, 2020)

¹⁸⁴ (NSW Department of Primary Industries, 2020)

¹⁸⁵ H. Cherry, PRU, pers comm 11/3/26

¹⁸⁶ (NSW Department of Primary Industries, 2019), (NSW Department of Primary Industries, 2020)

¹⁸⁷ (Ayres & Braithwaite, 1992), (Wilkinson, Schofield, & Kanowski, 2014)

There is no dedicated research program on plantation management and silviculture within the DPI, although some of the work done for PNF by the Forest Science Group would have relevance.

The PRU has a commitment to *develop innovative approaches, use modern technologies and the skills, systems and equipment to drive voluntary compliance, achieve our outcomes and solve compliance and enforcement problems*. The PRU seeks to achieve continual improvement through developing new technologies, increasing its range of extension and advisory services; adopting best practice compliance and enforcement policies and procedures; and increasing the capacity and capabilities of PRU officers.¹⁸⁸

The PR Act provides for a review of the PR Code every five years, with the outcomes of the last review published in 2023¹⁸⁹.

Part C - Comparison of regulatory systems within Australia

Each state and territory of Australia has a unique approach to the regulation of forestry across tenures (i.e. public and private land) and forest types (i.e. native forests and plantations), and the legislative and institutional frameworks are highly variable and subject to frequent change.

A summary of the regulatory approaches within Australia is presented in Table 1. A summary of the different regulatory approaches for codes of practice and the primary regulatory authority is provided below.

Codes of practice

- NSW has different codes/rules for native forests on public and private land, and one code and regulatory system for plantations on both tenures.
- Tasmania has a single code that applies to both tenures and forest types.
- Victoria has a single code that applies to both tenures and forest types, but the implementation framework is different, with public forests regulated by a State agency (Department of Energy, Environment and Climate Action) and private forests regulated by local government. Queensland has separate codes for tenures and forest types, with different mandatory codes for public and private native forests; and one voluntary code for plantations on public and private land.
- South Australia and Western Australia have guidelines for plantations that apply to both tenures.

Regulatory authority

- NSW has up to four regulatory systems: public native forests are regulated under Integrated Forestry Operations Approvals (IFOAs) and regulated by the EPA; private native forests are administered under separate legislation by LLS, and some may also require the consent of local government through a separate “dual” process; and plantations across both tenures are administered by the DPI.
- Tasmania has one regulatory authority (Forest Practices Authority) responsible for regulation across both tenures and forest types. Operations on private land do not require local government consent if the land is declared as a private timber reserve. Tasmania’s forest practices system has been recognised as one of the most comprehensive and prescriptive regulatory frameworks across 45 global jurisdictions and one of only two cases in that sample in which the forest practices system is overseen by a dedicated, independent, forest practices agency¹⁹⁰.
- Victoria has two systems; public forests are regulated by the Department of Energy, Environment and Climate Action; and private forests are regulated by local government. Local Government

¹⁸⁸ (NSW Department of Primary Industries, 2019)

¹⁸⁹ (Regional NSW, 2023)

¹⁹⁰ (McDermott, Cashore, & Kanowski, 2010)

authorities often place onerous conditions on private native forestry, despite having little or no skill or capacity to monitor outcomes¹⁹¹.

- Queensland has three systems; public native forests are regulated by the Department of Environment, Tourism, Science and Innovation; private native forests are regulated under different legislation by the Department of Resources; and plantations across both tenures are subject to local government regulations. Queensland has a risk-based approach, where high quality mapping and assessment has identified areas of native vegetation where 'low risk' activities such as native forest harvesting can proceed without the requirement for approval, only notification¹⁹².
- In South Australia vegetation clearance and the establishment of new plantations are regulated by local government.
- In Western Australia native forestry is regulated by a state agency and establishment of new plantations is regulated by local government. A recent review¹⁹³ found that the regulatory framework for private native forestry *struggles to deliver reliable, consistent, equitable and efficient outcomes. For native forests, the vegetation clearing framework is designed for broadscale clearing and does not necessarily work well for less intrusive forest management activities.*

¹⁹¹ (Greenwood Strategy, 2025)

¹⁹² (Greenwood Strategy, 2025)

¹⁹³ *ibid*

Table 1. Comparison of regulatory approaches across Australia¹⁹⁴

STATE/TERRITORY	NATIVE FORESTS		PLANTATIONS	
	PUBLIC LAND	PRIVATE LAND	PUBLIC LAND	PRIVATE LAND
New South Wales	The Forestry Corporation must comply with the highly prescriptive requirements of the Integrated Forestry Operations Approvals (IFOAs). The IFOAs are intended to integrate the regulatory regimes for environmental planning and assessment, protection of the environment and threatened species conservation. The EPA is responsible for compliance with the IFOAs.	Operations require a Private Native Forestry Plan and a Forest Management Plan approved by the NSW Government Local Land Services. Operations must comply with the relevant Private Native Forestry Code of Practice. A development consent may also be required in some local government areas.	Regulation falls under the Plantations and Reafforestation Act (1999) and PR Regulation administered by the Department of Primary Industries. The Regulation is in the form of a Code of Practice. Plantations must be assessed by an authorised person (Department officer) following an application for an authorised plantation. Plantations under 30 hectares are exempt.	
Tasmania	All forest management activities in Tasmania, regardless of tenure and forest type, must be undertaken in accordance with the Forest Practices Code (2020). Operations require a forest practices plan to be certified by the Forest Practices Authority (or delegated Forest Practices Officer). Private land may be declared as a Private Timber Reserve, which removes the need for development consent of local government. FFPs are not required for the establishment of plantations less than 10 ha on previously cleared land or for harvesting less than 1ha per year.			
Victoria	All timber harvesting activities in native forests and plantations, on public and private land, must be undertaken in accordance with the Code of Practice for Timber Harvesting 2014 (amended 2021).			
	The planning and regulatory framework for timber harvesting in Victoria is highly prescriptive and legalistic in nature. The Department of Energy, Environment and Climate Action is the regulatory authority.	Harvesting is regulated by local government and requires a planning permit in addition to complying with the Code	As for native forests, public plantations are regulated by the Department of Energy, Environment and Climate Action.	A Plantation Development Notice or planning permit must be submitted to local government to notify them of the development of new plantations (if required under the local planning scheme). A timber harvesting plan must be submitted to local government prior to harvesting.
Queensland	Native timber harvesting must follow the <i>Code of Practice for Native Forest Timber Production on Queensland's State Forest Estate 2020</i> . The Code is regulated by the Department of Environment, Tourism, Science and Innovation (DETSI) under the Forestry Act, and it seeks to deliver outcomes with respect to environmental care and heritage protection under other laws.	Operations are regulated through the code <i>Managing a native forest practice</i> under the Vegetation Management Act 1999. The Code is mandatory and self-assessable. Forest practices are regulated by the Department of Resources. Landholders must notify the department before commencing a native forest practice.	The Timber Plantations Code of Practice (2015) is a voluntary code that provides guidance about operational activities associated with commercial timber plantations to enable plantation operators to meet all legal and regulatory requirements. If a municipality elects to regulate forests for wood production separate to other forms of cropping, there are additional requirements under the Sustainable Planning Act (2009) and local government regulations and codes. Environmental values, cultural heritage, lands and safety are regulated by several State government departments.	

¹⁹⁴ Compiled from (Forest and Wood Products Australia, 2023b), (Forest and Wood Products Australia, 2023a) and government websites

STATE/TERRITORY	NATIVE FORESTS		PLANTATIONS	
	PUBLIC LAND	PRIVATE LAND	PUBLIC LAND	PRIVATE LAND
South Australia	All native vegetation is protected under the Native Vegetation Act 1991. Local government consent applies to any clearance of native vegetation for land management or development purposes		The Guidelines for Plantation Forestry in South Australia (2009) provide a framework for compliance with legislated and mandatory obligations. In some areas a water allocation for commercial plantations may be required. New plantations are considered a change in land use and generally require a development application to be submitted through local council. There is little direct governmental regulation per se, with the above Guidelines noting that much of SA's plantation estate is under internationally recognised certification programs.	
Western Australia	Harvesting of public native forests is generally no longer permitted		The clearing of native vegetation requires a valid clearing permit under the Environmental Protection Act 1986, unless exempt. A private land supplier's licence is also required under the Biodiversity Conservation Regulations 2018 to supply native forest products from private land.	
Northern Territory	Development applications for the purpose of clearing native vegetation under the Planning Act 1999 and applications to clear pastoral land under the Pastoral Land Act 1992 must comply with the Land Clearing Guidelines under the Northern Territory Planning Scheme.		Sustainable Forestry Practices: Guidelines for the Northern Territory provides guidance for all forestry activities. New plantations on pastoral leases require approval by the Pastoral Land Board for non-pastoral use. Plantations on freehold land may require consent to re-clear previously cleared land if native vegetation has re-established on the property.	
Australian Capital Territory	No forestry operations		Operations are managed by ACT Parks and Conservation Service and are subject to the ACT Code of Forest Practice (2005), which incorporates schedules for environmental authorisation under the Environment Protection Act 1997.	No forestry operations

Part D - Regulatory system in Tasmania

10 Context

Tasmania has 3,045,000 ha of native forest and 282,000 ha of plantations¹⁹⁵. Of the 3.045 million ha of total native forest area, 1.255 million ha (41%) are in conservation and public reserves, 957,000 ha (31%) are on Permanent Timber Production Zone (PTPZ) land and other publicly managed land, and 833,000 ha (27%) are on private freehold land.

There are over 5,000 private forest owners in Tasmania. About 92% of the private native forest estate is owned by small-medium landowners, and these forests produce more than 25% (348,000 m³) of the native forest log harvest¹⁹⁶.

Over 93% of the plantation area is on private land, most of which is owned or managed by large industrial forestry companies.

The direct value of primary processed products was \$712 million in 2015/16, which amounted to more than \$1.2 billion when flow-on effects are included. This economic contribution is spread across different regions and different forestry sectors, including native forestry (\$290 million), softwood plantations (\$564 million) and hardwood plantations (\$441 million). Direct employment is estimated at more than 3,000 jobs in primary and secondary processing, with an additional 2,650 indirect jobs created in service and downstream industries. Forest industry employment is particularly important in regional areas, with up to 10% of employees engaged directly in the forest and wood products sector in some regions¹⁹⁷.

Tasmania's forest practices system has evolved and operated successfully for over 40 years and is widely regarded as the most comprehensive and integrated model in Australia¹⁹⁸.

11 Legislation

11.1 Forest Practices Act 1985

All forest practices in native forests and plantations on public and private land are regulated under the *Forest Practices Act 1985* (FP Act). 'Forest Practices' include-

- The establishment of forests
- The harvesting of timber
- The clearing of trees¹⁹⁹
- The clearance and conversion of a threatened native vegetation community (including non-forest communities)
- The construction of a road or quarry in connection with the above.

Key components of the Act are described below.

¹⁹⁵ (Forest Practices Authority, 2022)

¹⁹⁶ (Tasmania Regional Forestry Industries Hub, 2023)

¹⁹⁷ Ibid

¹⁹⁸ (McDermott, Cashore, & Kanowski, 2010) (Smethurst, E.K.S. Nambiar, Raison, & Moggridge, 2012)

¹⁹⁹ The clearance and conversion of forest is regulated by the FPA in accordance with the State Policy on the Maintenance of a Permanent Native Forest Estate (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.stategrowth.tas.gov.au/__data/assets/pdf_file/0010/525448/Tasmanian_Government_Policy_for_Maintaining_a_Permanent_Native_Forest_Estate.pdf)

Statutory objectives

The statutory objectives of the forest practices system are as follows-

.....to achieve sustainable management of Crown and private forests with due care for the environment and taking into account social, economic and environmental outcomes while delivering, in a way that is as far as possible self-funding –

- *an emphasis on self-regulation*
- *planning before forest operations*
- *delegated and decentralized approvals for forest practices plans and other forest practices matters*
- *a forest practices code which provides practical standards for forest management, timber harvesting and other forest operations*
- *an emphasis on consultation and education*
- *an emphasis on research, review and continuing improvement*
- *the conservation of threatened native vegetation communities*
- *provision for the rehabilitation of land in cases where the forest practices code is contravened*
- *an independent appeal process*
- *through the declaration of private timber reserves – a means by which private land holders are able to ensure the security of their forest resources.*

Governance

The FP Act is administered by a statutory authority (the Forest Practices Authority (FPA)). The FPA is governed by an expertise-based board appointed by the Minister to comprise-

- a person with prescribed expertise in public administration
- a person with environmental or natural resource management and governance
- a person with applied knowledge and expertise in sustainable forest management on private land
- a person with applied knowledge and expertise in sustainable forest management on public land
- a person with applied knowledge and expertise in community liaison and local government, from a municipal area in which forestry is a major land use
- a person with expertise in biological science or nature conservation.

The board exercises its powers and functions in an independent manner, and it is not subject to any direction by the Minister. The Act prescribes that the FPA must act in a manner that-

- (a) *best advances the objective of the State's forest practices system; and*
- (b) *fosters a co-operative approach towards policy development and management in forest practices matters; and*
- (c) *takes into account social, economic and environmental outcomes of its decision-making processes.*

The key functions of the FPA are as follows-

- to make and administer the Forest Practices Code
- to implement the Policy for Maintaining a Permanent Native Forest Estate²⁰⁰
- to make decisions with respect to applications for private timber reserves (PTRs) and forest practices plans (FPPs)
- to monitor and report on compliance with FPPs and the Act
- to enforce the provisions of the Act
- to appoint Forest Practices Officers
- to conduct research and training to foster the continuing improvement of the forest practices system

²⁰⁰ This policy prohibits broad scale clearing and conversion of native forest except in prescribed circumstances (Tasmanian Government, 2017)

11. Legislation

The operations of the FPA are funded about 50:50 by a government appropriation and from self-funding services. The income in 2024-25²⁰¹ was \$3.55 million, of which the government appropriation was \$1.8m, fees from the certification of plans was \$0.9m, consultancies were \$0.49m, interest and other sources were \$0.26m and income from fines was \$0.1m. In addition, the self-regulatory costs carried by the industry in terms of the employment of Forest Practices Officers are valued at about \$3.0m per annum (see section 13.1 below).

Engagement with stakeholders

The FP Act provides for the establishment of the Forest Practices Advisory Council (FPAC), which comprises a broad range of stakeholders, including organisations or individuals with expertise in sustainable forest management, local government, the State's environmental management system, forest harvesting and processing, forest conservation, cultural heritage, public forest management and private forest management.

The functions of FPAC are to promote discussion within government and the forestry industry, and by land owners and land users, of forest practices issues, and to provide advice to the FPA on matters such as –

- the implementation and review of the Act and Code
- the quality, relevance and cost effectiveness of forest practices administration, operations and research
- financial matters including the self-funding of forest practices

Appeal rights

The Act provides for appeals rights for affected persons against decisions made by the FPA with respect to the declaration of private timber reserves, the issue of compliance notices and the refusal of forest practices plans. The appeals are heard by the Tasmanian Civil and Administrative Tribunal.

Co-regulatory approach

The FP Act establishes a co-regulatory framework characterised by-

- Self-regulatory functions by the forestry sector, including a requirement to engage a Forest Practices Officer for the certification (approval) of forest practices plans and certain compliance functions (see section 13.1 below)
- Independent monitoring and enforcement by the FPA.

Private timber reserves

The FP Act allows private forest owners to have their land declared as a private timber reserve (PTR). PTRs are registered on title but can be removed at the request of the landowner. The effect of a PTR is that forestry operations upon the land do not require the consent of local government under their planning schemes²⁰². The PTR provision was a key part of the socio-political negotiations that brought private land owners under the umbrella of the Forest Practices Act in 1985. In return for accepting a consistent state-wide system of regulation they obtained enduring security of the right to harvest their forests without the potential additional costs, uncertainties and inconsistencies under local planning controls.

Land may be declared as a PTR provided that forestry is not a prohibited use under the local planning scheme. Councils may object to applications for PTRs and the FPA must provide a hearing before making a determination. Both the applicant and council have the right to appeal an adverse determination before the Tribunal. Although PTRs are not directly subject to conditions imposed by councils, the Forest Practices Code recognises that consultation with local government must occur in certain circumstances, such as visual management zones, town water supply catchments, and the construction of road access onto municipal roads.

Other provisions

The Act also provides for a Forest Practices Code, forest practices plans, forest practices officers, monitoring and enforcement as discussed in sections 12 to 16 below.

²⁰¹ (Forest Practices Authority, Tasmania, 2025)

11.2 Other regulatory legislation

Other legislation applies to forests practices in Tasmania but as far as possible the provisions relevant to forest practices are delivered through integration into the forest practices system, as described below.

Threatened Species Protection Act 1995

The *Threatened Species Protection Act 1995* provides that a permit to 'take' (kill, injure, catch, damage, destroy or collect) a threatened species is not required if the operation is being carried out in accordance with a certified forest plan under the Forest Practice Act (see section 12.1 below).

Environment Protection Act 1994

The FPA has a Memorandum of Understanding with the Tasmania's Environment Protection Authority (EPA)²⁰³ which sets out how the FPA will take the lead on environmental management related to forest practices. One example is the Coordinated Smoke Management Strategy (CSMS), which is a management tool, coordinated by the FPA, to reduce smoke pollution levels near populated areas resulting from planned burns. The CSMS was developed in consultation with the EPA, the forest industry, the Department of Health, Tasmania Fire Service (TFS) and Parks and Wildlife Service (PWS)²⁰⁴.

Land Use Planning and Approvals Act 1993

As described in section 11.1 above, forest practices within land declared as a PTR does not require the consent of local government under the *Land Use Planning and Approvals Act 1993*.

Aboriginal Heritage Act 1975 and Historic Cultural Heritage Act 1995

The FPA has agreed procedures with the Department of Natural Resources and Environment Tasmania for managing the above heritage during the planning and conduct of forest practices.

11.3 Other forest management legislation

The following two Acts apply to forest management on public and private land.

Public forests (Forest Management Act 2013)

The *Forest Management Act 2013* is a very lean Act that establishes a Forestry Corporation with the functions to manage and control all permanent timber production zone land²⁰⁵ and to undertake forest operations on that land for the purpose of selling forest products. The Act requires the Corporation to *perform its functions in a manner that is consistent with the principles of forest management set out in the Forest Practices Code, as a contribution to the sustainable management of Tasmania's forests*. All such activities are bound by the requirements of the Forest Practices Act.

Private forests (Private Forests Act 1994)

The *Private Forest Act 1994* creates Private Forests Tasmania (PFT), which has the following objectives

- (a) to promote the development of private forestry in Tasmania
- (b) to foster competitive markets for private forest growers
- (c) to provide strategic planning and policy direction for private forestry in Tasmania
- (d) to foster progressive and incremental funding from all private forest growers to fund the Authority
- (e) to foster commercial wood production forestry on private land in Tasmania
- (f) to foster the use and values of trees in sustainable land management.

PFT has an advisory and advocacy role rather than any regulatory role. In the past, it provided some general forestry advice to small forest owners, but it is now focussed on strategic and demonstration projects such as

²⁰³ https://www.fpa.tas.gov.au/about_us/our_partners

²⁰⁴ https://www.fpa.tas.gov.au/landowners/burning_off_your_plan

²⁰⁵ Means Crown land (former State forests) set aside for timber production

integrated farm forestry and carbon plantings. It does not undertake any advisory services that would be perceived as unfairly competing with the private sector.

PFT is funded from government appropriation (86%), from a levy charged on private forest owners (7%) and interest (6%). Total income in 2024-25 was \$2.327m²⁰⁶. The levy is charged when the forest owner undertakes harvesting or afforestation of land. The rate is \$17²⁰⁷ per ha of the nett operational area within a forest practices plan. This mechanism was chosen so that the payment was due at a time when the private forest owner was receiving income from harvesting. However, it does not align with the services that are provided by PFT, which are not directly related to forest practices plans. There has been some pushback from private forest owners on this funding mechanism given that they already have to pay for the cost of a forest practices plan, which comprises the cost of a consultant forest practices officer plus the FPP fee charged by the FPA (see section 12.2 below). Despite this, the PFT levy has survived since it was introduced in 2001 because it is seen as giving the industry and large private forest owners a seat at the table in governmental discussions on forest policy/RFAs etc.

12 Planning

12.1 Forest Practices Code 2020

The Forest Practices Code is issued by the FPA, following consultation with FPAC, PFT and the Forestry Corporation and following a call for public comments. Private forest owners are engaged in the process through their representation on FPAC, through the advocacy of PFT and through their individual right to make submissions. All persons have a right to object to any amendment of the Code.

The Code is used by forest managers, operators and contractors, but its primary audience is Forest Practices Officers. The Code is supported by a comprehensive framework of planning and advisory documents, on topics such as silviculture, biodiversity, soils, geomorphology, cultural heritage, visual landscape management, and risk assessment. Some of these documents have been developed into sophisticated on-line planning tools. For example, the ‘Threatened Species Adviser’ program, which allows a forest planner to enter site details through an online process that delivers a site-specific management prescription (in most cases) or a referral to a specialist for further advice. These tools were developed by the FPA in collaboration with experts in other agencies and research bodies and they are endorsed as meeting the requirements of other legislation, such as the Threatened Species Protection Act, Environment Protection Act, Aboriginal Heritage Act and the Historic Cultural Heritage Act.

A key provision of the Code is the definition of a duty of care, which sets out the following (minimum) contribution that forest owners must make to the conservation of environmental and social values -

- *all measures which are required to protect soil and water values, as detailed in this Code, and*
- *the exclusion of forest practices from areas containing other significant environmental and social values at a level of up to an additional 5% of the existing or proposed forest on the property for areas totally excluded from the forest operations, or at a level of up to an additional 10%, where partial harvesting of the reserve area is compatible with the protection of the values.*
- *The conservation of values beyond Duty of Care levels is deemed to be for the community benefit and beyond what can reasonably be required of landowners and should be achieved on a voluntary basis through relevant governmental and market-based programs and incentives.*

The duty of care policy has been applied to private forests in Tasmania since 1997. The FPA has reported a median value of 14.2% of forest area set aside in forest practices plans for all values (i.e. soil and water plus biodiversity, cultural and visual values) under the duty of care. The median value of set asides specifically for

²⁰⁶ <https://pft.tas.gov.au/annual-reports>

²⁰⁷ As at 1/7/25 and is adjusted annually

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biodiversity, cultural and visual values was 4.7%, meaning that about half of the forest owners voluntarily exceeded the minimum mandatory duty of care for these values.²⁰⁸

Where a forest practices plan has been amended or refused by the FPA on the basis that the duty of care and voluntary contributions are not sufficient to achieve acceptable outcomes, the affected landowner may apply for compensation under the Nature Conservation Act²⁰⁹. Where the Minister declines to pay compensation, the landowner may resubmit the plan to the FPA and the FPA may not impose conditions that exceed the minimum duty of care. Such situations are extremely rare and are usually resolved through negotiated outcomes.

In general, the application of the duty of care has been accepted by private forest owners as a fair and equitable way to make a reasonable contribution to the conservation of non-wood values, with less than 0.3% of applications for forest practices plans being subject to appeals to the Tribunal²¹⁰.

12.2 Forest Practices Plans

All ‘forest practices’ in Tasmania (section 11.1 above) must be undertaken in accordance with a certified forest practices plan (FPP) that is prepared in accordance with the Forest Practices Code²¹¹. FPPs must provide details of the operation area, boundaries, roads, snig tracks, landings, bridges, streams and forest areas retained for conservation purposes. They must also include prescriptions that protect natural and cultural values, planned harvest systems, and reforestation.

The FP Act allows any person to prepare an FPP and submit it to the FPA for certification. However, the knowledge and expertise required to prepare an FPP means that virtually all FPPs are prepared by FPOs or by specialist planners within forest companies.

FPPs are certified by an FPO under delegated authority from the FPA.

The Act prescribes that the applicant for the certification of an FPP must pay a fee prescribed by the FPA. The FPA has a fee schedule²¹² that prescribes the applicable fee based on the nett area of the FPP and the type of operation. For example, a thinning operation in a plantation would incur a fee of about \$11/ha whilst the fee for the clearance and conversion of native forest to non-forest is about \$57/ha.

There were 434 FPPs certified in 2024-25 covering 25,000 of varying operations across native forests and plantation on public and private land. This equates to an average fee of \$2100 per plan, or \$35 per ha. Total regulatory costs for an FPP in 2014 were estimated as between \$80-\$420+ per ha for native forests and \$53-\$212 per ha for plantations (see Table 2).

Table 2. Average regulatory costs for forest owners in Tasmania in 2014 (Based on an average 50 ha harvesting unit. Operational costs such as road construction, logging, haulage and reforestation are not included)²¹³

Cost item	Native forest operations (\$/ha)	Plantation operations (\$/ha)
Planning		
1. Preparation of forest practices plan (FPP)	30-200	20-80
2. FPP application fee	20-40	8-22
Implementation (marking of boundaries, reserves etc)	10-100+	10-30
Inspection/monitoring by Forest Practices Officer (FPO)	10-40	10-40
Compliance checks and report by FPO	10-40	5-40
Total regulatory costs for forest owner	80-420+	53-212

²⁰⁸ (Wilkinson, 2015)

²⁰⁹ Applies to applications involving the clearance and conversion of threatened species or threatened vegetation communities – see Part 5 of the Act at <https://www.legislation.tas.gov.au/view/whole/html/inforce/current/act-2002-063>

²¹⁰ (Wilkinson, 2015)

²¹¹ Exemptions for small scale operations etc are prescribed in the Forest Practices Regulations

²¹² https://www.fpa.tas.gov.au/forest_practices_officers/fpp-fees

²¹³ From (Wilkinson, Schofield, & Kanowski, 2014)

13 Implementation

13.1 Forest Practices Officers

The main mechanism for the implementation of the forest practices system is through Forest Practices Officers (FPOs). FPOs are suitably qualified persons who are appointed by the FPA and provided with delegated authority to exercise certain functions and powers under the Act, including the certification of forest practices plans, the monitoring of operations and the lodgement of compliance reports and the issue of enforcement notices. They must meet prerequisite knowledge and experience to qualify for appointment, and they must complete an FPO course conducted by the FPA and attend annual refresher courses. FPOs are an outstanding feature of Tasmania's forest practices system. They are well trained, dedicated professionals who take pride in their work. They are subject to a code of conduct, and their standards are monitored by the FPA. Any instances of poor performance can result in a requirement for additional training or suspension or revocation of their warrant.

The FPOs are trained and supported in their role by scientists and technical experts within the FPA. These experts provide ongoing advice on the use of the planning and assessment tools, and in undertaking specialist field surveys where required.

In addition to their statutory role above, FPOs are experienced forestry practitioners who can also provide advice to forest owners on other issues such as fire management, the marketing of forest products and organising contractors etc.

There was a total of 163 FPOs in 2025, with 32% employed by forest companies, 32% by the Forestry Corporation, 22% employed as consultants, 7% employed within the FPA (7%) and 7% within other government bodies²¹⁴. The planning, monitoring and enforcement functions performed by FPOs is estimated to be valued at over \$3.0 million per annum.

13.2 Forest Owners and industry personnel

Engagement with the community

The Forest Practices Code requires forest managers to consult with local government on certain matters of public interest. In addition, the forestry sector has developed self-regulatory protocols²¹⁵ (the *Good Neighbour Protocol* and the *Tourism and Forestry Protocol*) as a basis for engaging with the community and responding to any concerns.

Training and education

There is no formal process for training forest owners *per se*, as most of the work involved in forest practices planning and implementation is done by FPOs. Education programs have been conducted in association with industry and farmers' associations when major changes to the Act have been introduced. However, a lack of knowledge about the Act and Code continues to be a challenge, accounting for 29% of recorded non-compliances during the period 2000–2006, some 15–20 years after the introduction of the Act²¹⁶. These results highlight the importance of maintaining ongoing training and education programmes, where many small-scale forest owners are only involved with forest operations on a once-off or intermittent basis.

There are formal processes in place for the training of forestry contractors through forest industry training programs, which include components on the forest practices code and FPPs.

The FPA produces a range of educational and advisory documents and newsletters for forest owners and the industry. The FPA has an awards program that recognises outstanding performance in forest practices by

²¹⁴ (Forest Practices Authority, Tasmania, 2025)

²¹⁵ <https://permits.sttas.com.au/about-us/engaging-us/industry-stakeholder-agreements>

²¹⁶ (Wilkinson, 2007)

people and organisations within the sector, including forest owners, forest practices officers, forest companies, contractors, researchers, planners and managers.

14 Monitoring

14.1 Monitoring of compliance

The FP Act requires two types of compliance monitoring-

Submission of compliance reports by FPP applicant

- 100% of operations are subject to a requirement for compliance reports be submitted to the FPA at the end of each discrete operational phase within a FPP (for example, at the end of road construction, harvesting, reforestation treatments and stocking surveys).
- The compliance reports must be prepared by an FPO and lodged with the FPA within 30 days after the completion of each phase.
- The FPA checks the accuracy of compliance reports as part of its regular assessment program (below).

Independent monitoring by the FPA

- The Act requires the FPA to *assess the implementation and effectiveness of a representative sample of forest practices plans*. The does this through a stratified random sample of FPPs equivalent to about 10–15% of the FPPs certified in each year
- The monitoring is conducted at varying stages, from desk-top assessment of new FPPs to field checks of completed operations, in accordance with formal monitoring procedures.

The procedures for the independent monitoring program are published on the FPA’s website²¹⁷ and the results of all monitoring programs are published in the FPA’s Annual Report.

14.2 Monitoring of efficacy

The FP Act requires the FPA to monitor and evaluate the effectiveness of FPPs and the Forest Practices Code in meeting the objectives of the Act. The FPA does this through an active research and monitoring program, with a focus on biodiversity, earth sciences and cultural heritage²¹⁸. The results are published and contribute to the statutory five-year review of the forest practices systems which is published and tabled in parliament.

15 Enforcement

The FP Act provides a range of enforcement tools, as follows-

- FPOs have the right to enter upon any land and obtain information relating to any forest practices
- FPOs can issue verbal or written notices to stop work and/or take prescribed actions in order to comply with the Act or certified forest practices plan
- The FPA can issue fines
- The FPA may initiate prosecutions.

The FPA’s regulatory response to non-compliances, in line with its statutory objectives to foster self-regulation and continuing improvement, is to focus on corrective actions, with punitive sanctions used for serious or wilful offences. On average each year, FPOs issue about 20-30 notices and the FPA issues about six fines and initiates 2 prosecutions²¹⁹. The FPA’s enforcement protocols are published on its website²²⁰.

²¹⁷ (Forest Practices Authority, Tasmania, 2023)

²¹⁸ For an example of a report see (Koch, 2025)

²¹⁹ (Wilkinson, Schofield, & Kanowski, 2014)

²²⁰ (Forest Practices Authority, Tasmania, 2020)

16 Review and Improvement

The FP Act provides for the following-

- Annual assessment and report on compliance
- Five-yearly review of the operation of the State's forest practices system, including the provisions and operation of the Forest Practices Code
- Five-yearly report on the State of the Forests²²¹.

The FPA has a team of scientists that conducts research in disciplines such as biodiversity, earth sciences and cultural heritage. The FPA team is funded from the FPP fee income, and the research capacity is extended through research grants and active collaboration with other organisations, including joint supervision of undergraduate and graduate projects.

The results of research are directly translated into improved planning and operational outcomes through new or updated planning tools and training programs for FPOs.

²²¹ This report provides the Tasmanian data that contributes to the criteria and indicator framework used in the national State of the Forests Report (<https://www.agriculture.gov.au/abares/forestsaustralia/sofr>)

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