

# Better Regulation Statement

## Amendments to the Plantations and Reafforestation Act 1999 and Plantations and Reafforestation (Code) Regulation 2001



December 2009

# DRAFT FOR CONSULTATION

## **Amendments to the *Plantations and Reafforestation Act 1999* and *Plantations and Reafforestation (Code) Regulation 2001* Better Regulation Statement**

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### **Information sources**

In the preparation of this better regulation statement information was sourced from officers of the Industry and Investment NSW.

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## 1. Executive Summary

This document is the Better Regulation Statement (BRS) for the *Plantations and Reafforestation Amendment Bill 2009* ('the Bill') and the *Plantations and Reafforestation (Code) Amendment Regulation 2009* ('the Amending Regulation').

The *Plantations and Reafforestation Act 1999* ('the Act') and *Plantations and Reafforestation (Code) Regulation 2001* ('the Code') provide the regulatory framework for plantation operations in NSW.

The Bill and Amending Regulation include amendments to the Act and Code to:

- Compensate the community for damage to local roads by plantation harvesting trucks;
- Ensure a safer operating environment for fire fighters and plantation workers;
- Provide best practice environmental standards for plantation operations;
- Ensure that plantation owners pay the costs associated with assessing plantation authorisation applications; and
- Clarify and extend existing provisions to better achieve the objectives of the Act.

The proposed transport infrastructure contribution provisions will require plantation owners to either "make" or "make good" local roads used for harvesting. Owners will be required to pay for the repair of damage to local roads caused by harvesting trucks. Alternatively, owners can choose to upgrade roads in advance of harvesting to reduce the impacts of log haulage.

The introduction of fire standards will provide a safer operating environment for fire fighters and plantation workers, and help reduce the risk of fires escaping from plantations, as well as minimising damage to plantation timber from wildfire occurrence.

The Code contains provisions to protect soil and water values during management and harvesting activities on plantations. The proposed amendments will raise environmental standards to be consistent with current environmental and industry best practice.

The proposed introduction of application fees for plantation authorisation is consistent with the NSW Government's cost recovery policy.

A number of other amendments to the Act and Code will clarify or update existing provisions and streamline procedures. In particular, some current compliance provisions will be amended to improve their effectiveness.

The costs and benefits of different options for each of the five groups of proposed amendments are considered in sections 6 – 10 of the BRS. It is

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considered that the preferred options identified in those sections will produce the best outcomes and will be consistent with the objects of the Act.

The amendments proposed in the Bill and Amending Regulation are based on recommendations of the 2005 Report to Parliament on the review of the Act.

They were developed by inter-agency working groups that included representatives from the former Department of Primary Industries, the former Department of Natural Resources, the former Department of Environment and Conservation, the former Department of Environment and Climate Change, NSW Rural Fire Service ('RFS'), the Department of Planning, the former Department of State and Regional Development, NSW Treasury, the Roads and Traffic Authority ('RTA'), the Local Government and Shires Association, and the Department of Premier and Cabinet.

The Department of Local Government and a number of relevant local councils were also consulted on the transport infrastructure contribution proposals.

Recommendations from the working groups were considered by an Industry Reference Group comprising representatives of the major plantation companies and industry groups.

## **2. Need for Government Action**

The Act and Code provide the regulatory framework for plantation operations in NSW. They commenced together in December 2001. The Act provides the general legal framework while the Code contains detailed requirements for plantation establishment, management and harvesting operations.

In accordance with the requirements of the Act, a statutory review of the Act began in 2005. In view of the interdependence of the Act and Code it was decided to review the Code simultaneously. The review considered whether the policy objectives of the Act were valid, and whether the terms of the Act and Code were still appropriate to meet those objectives.

A Discussion Paper was published in June 2005, and submissions were received from a representative range of stakeholders. A Report to Parliament was submitted in December 2005.

Feedback from stakeholders confirmed that the Act and Code are for the most part working well and have industry support, and that there is no need to make extensive changes. The NSW Government's response to the review has therefore been directed to fine-tuning existing provisions and considering issues of concern identified by stakeholders.

The following issues need to be addressed through Government action:

### **2.1 Damage to local roads by plantation harvesting activities**

It is considered that harvesting trucks create more wear and tear on local roads than most other users. Local councils pay for the upkeep of

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local roads out of general rates, without any contribution from the RTA, or the Australian Government through the fuel levy.

Heavy vehicles cause roads to deteriorate more quickly than would otherwise be the case, potentially resulting in unsafe roads for local communities.

Since the Act commenced in 2001 no voluntary payments for road maintenance or upgrades have been made to councils by private plantation owners. Plantation operators do, however, pay general council rates. The industry has publicly stated its opposition to making payments over and above general council rates and existing fuel levies.

### **2.2 Safety concerns for fire fighters**

The RFS is concerned that fire fighters are at risk because the Act and Code do not contain fire protection standards. Currently, fire protection measures on privately-owned plantations are largely dictated by insurance requirements, which differ for each insurance company.

The lack of consistent standards results in a potentially unsafe operating environment for fire fighters. It is unlikely that this situation can be resolved without Government action, because there is no incentive for private plantation owners to agree to standards other than those required by their insurance companies.

### **2.3 Outdated environmental standards**

It was always intended that the Code would prescribe best practice environmental standards, and that was the case when the Code was implemented in 2001. However, since then standards have risen and some of the Code provisions need amending to reflect this.

The purpose of the Code is to prescribe how establishment, management and harvesting operations should be carried out across NSW. It would theoretically be possible to encourage industry to adopt higher standards on a voluntary basis, but this would undermine the existing regulatory framework. It is therefore appropriate for the Government to address this issue by amending the Code to incorporate current best practice environmental standards.

### **2.4 Government bearing the cost of plantation authorisations**

Currently plantation owners do not pay a fee for plantation authorisation. This is different to many other forms of approval or permits, for example development applications under the *Environmental Planning and Assessment Act 1979*, for which fees are payable.

In effect this means that NSW tax payers are paying for this service rather than the individuals or companies seeking to establish plantations. This goes against the established principle of 'user pays'. It

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is in the interests of the Government and the broader community to charge cost-recovery fees for this service.

### **2.5 Unclear or inadequate provisions in the Act and Code**

A number of provisions in the Act and Code are not sufficiently clear or strong to achieve the Act's objectives. In particular, certain compliance provisions need clarifying or extending to provide a comprehensive and effective suite of compliance powers.

The proposed amendments have been developed by inter-agency working groups, in consultation with the Industry Reference Group.

## **3. Objectives of Government Action**

In order to maintain a robust plantation industry in NSW, the Bill and Amending Regulation seek to:

- Compensate the community for damage to local roads by plantation harvesting trucks;
- Ensure a safe operating environment for fire fighters and plantation workers;
- Provide best practice environmental standards for plantation operations;
- Ensure that plantation owners pay the costs associated with assessing plantation authorisation applications; and
- Clarify and extend existing provisions to better achieve the objectives of the Act.

## **4. Consideration of Options**

The amendments in the Bill and Amending Regulation fall into five groups, for which the following options were considered:

### *Compensate the community for damage to local roads*

1. Take no action
2. Require compensation for road damage
3. Impose a transport infrastructure levy

### *Fire Protection measures for plantations*

1. Take no action
2. Introduce fire standards for all authorised plantations immediately
3. Phased introduction of fire standards for authorised plantations

### *Best practice environmental standards for plantation operations*

1. Relax environmental standards for plantation operations
2. Take no action
3. Introduce the proposed amendments

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*Cost recovery for the plantations authorisation process*

1. Take no action
2. Phased introduction of limited cost recovery
3. Full cost recovery

*Streamline and improve the effectiveness of the Act and Code*

1. Take no action
2. Introduce the proposed amendments

### **5. Assessment of Costs and Benefits of Options**

This BRS assesses the impacts of the proposed reforms against the alternative options that have been considered. Impacts include direct and indirect costs and benefits. The assessment relies primarily on qualitative analysis.

### **6. Compensate the community for damage to local roads**

Plantation harvesting operations involve the use of heavy vehicles that cause damage to public roads. In recognition of this, one of the objects of the Act is to make provision relating to regional transport infrastructure expenditure in connection with timber plantations.

Part 5 of the Act contains provisions to require financial contributions by plantation owners to local councils or other bodies designated by the Minister for transport infrastructure expenditure. These contributions were similar to development contributions under section 94 of the *Environmental Planning and Assessment Act 1979*, and were intended to compensate local councils for losing the right to impose development contributions.

The process set out in Part 5 required regional Transport Infrastructure Committees to prepare regional contribution plans. This process proved unworkable, and as a result no transport contributions have ever been imposed under the Act to date. It is generally considered that the Part 5 provisions are flawed, and the 2005 Report to Parliament therefore recommended developing an alternative system.

Currently private plantation owners contribute to local roads (meaning roads for which local councils have sole financial responsibility) only through local council rates. Although general rates are adequate to meet regular road maintenance costs, local councils are firmly of the view that they are not sufficient to pay for the repair of damage caused by plantation harvesting trucks. The NSW Government's "in principle" acceptance of this view is reflected in the Part 5 provisions.

Plantation harvesting trucks also pay the diesel fuel levy, which applies across the board to all heavy vehicles in all industries. Although a percentage of the

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fuel levy is dedicated to roads, none of this goes towards the construction, upgrading or maintenance of local roads.

Some other heavy road use industries are required to contribute towards infrastructure, notably operations that require consent under the *Environmental Planning and Assessment Act 1979*, such as quarries. However, other heavy road use industries, for example many types of traditional agriculture and other general freight carriers, are not required to pay special transport infrastructure contributions.

The payment of contributions by plantation owners is an equity issue, because councils and local communities are currently bearing the cost of damage caused by harvesting operations. Application of the 'user pays' principle would require plantation owners to repair damage caused by their operations.

The proposed transport infrastructure contribution provisions will require plantations owners to either "make" or "make good" local roads used for plantation harvesting.

Essentially, plantation owners will be required to pay for repair of damage to local roads by harvesting trucks. Payments will relate to specific damage, rather than being a general contribution or levy. Alternatively, plantation owners can choose to upgrade roads in advance of harvesting instead. This allows owners some flexibility, while ensuring that they do contribute towards the repair or upgrade of harvesting roads.

Plantation owners will be required to provide a security deposit to hold against any necessary repairs, unless they have paid to upgrade a road in advance of harvesting. The balance of the deposit will be returned once repairs have been carried out and paid for. Deposits will take the form of bank guarantees.

The concept of a security deposit is similar to that of rental bonds provided for residential tenancies, and for securities required in respect of mining rehabilitation work. Having a deposit will ensure that if repairs are not paid for by plantation owners within the specified time, councils will have funds available without having to resort to debt recovery proceedings.

An alternative approach to the "make" or "make good" proposal would be for plantation owners to pay an annual levy towards a fund that would be used to pay for harvesting road upgrades and repairs. This could be achieved, for example, by payment of a flat rate levy based on tonnage and distance.

The following options are considered:

1. Take no action
2. Require compensation for road damage
3. Impose a transport infrastructure levy

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## 6.1 Option 1: Take no action

### 6.1.1 Costs of taking no action

Currently councils have sole responsibility for the maintenance of local roads and bridges, although in certain cases funding for specific roads or projects can be accessed from the State and Commonwealth Governments.

Most rural councils have deteriorating infrastructure and insufficient funds to properly maintain their roads. When damage occurs from harvesting activities councils carry out repairs because to not do so would endanger other road users. This in turn impacts on their financial capacity to provide other services to their communities.

If no action is taken the status quo will continue. Except on a voluntary negotiated basis (as happens in some cases between local councils and Forests NSW, which does not pay general rates), no payment will be made by plantation owners to councils for road damage caused by harvesting activities. The cost of any such repairs will continue to be met from general rates revenue and will generally substantially exceed the amount paid in rates by plantation owners.

Although the plantations industry supports the status quo, this can also result in increased log haulage costs where roads used for harvesting are in poor condition.

### 6.1.2 Benefits of taking no action

If no action is taken, plantation owners will not be required to pay for damage to local roads caused by harvesting activities, although they will still be required to pay general council rates and the fuel levy.

There is nothing preventing plantation owners from paying for road damage or carrying out repairs or improvements on a voluntary basis, however, except in the case of Forests NSW, this very rarely happens.

Continuation of the status quo will support the plantation industry's position that plantations should be treated in the same way as traditional agriculture and should not be required to contribute to road infrastructure over and above their payment of the fuel levy and general rates.

### 6.1.3 Recommendation

This option is not supported because it will allow an unsatisfactory situation, ie the plantation industry imposing costs on the general community, to continue, and will not fulfil the objectives of the Act.

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### 6.2 Option 2: Require compensation for road damage

#### 6.2.1 Costs of requiring compensation for road damage

Under the proposed reforms, plantation owners will have to pay to repair damage to local roads from harvesting activities in order to return the roads to their pre-harvest condition.

The proposed system will involve councils and owners inspecting relevant roads before and after harvesting to assess any damage. Arrangements will also be put in place for arbitration and a right of appeal to the Land and Environment Court if councils and owners fail to agree on the extent of damage or the cost of repairs.

The proposal will only apply to plantations authorised under the Act after the amendments have been made. Accordingly, payment will not be required for the harvesting of current rotations in plantations previously authorised under the Act, plantations originally certified under the *Timber Plantations (Harvest Guarantee) Act 1995* or 'existing plantations' as defined in the Act. However, transport infrastructure contributions will be required for future rotations on those plantations.

The proposal will result in an additional harvest-related expense for the plantations industry. However, the system adopts the 'user pays' approach, and payment will only be required for actual damage caused by harvesting trucks.

From industry's perspective this approach is preferred to an across the board levy or other contribution systems that would rely on rates or calculations not directly linked to the cost of actual damage.

It is not possible to estimate the likely costs to the industry as a whole or to any individual plantation owner of introducing this proposal. Costs will vary depending on the volume of harvesting undertaken, the distance of travel on local roads and the pre-existing condition of those roads.

The following are indicative examples of road repair costs:

- Grade formation, table and mitre drains on a natural surface road: \$1,200 - \$1,800 per km
- Patch gravel or re-sheet a gravel surface road: \$2,400 - \$3,600 per km
- Reseal a bitumen sealed road: \$50,000 - \$60,000 per km

It is proposed that the amount of the security deposit will be calculated at the rate of 10 cents per tonne per kilometre for haulage of the estimated log harvest. Costs in relation to the deposit will include opportunity costs of borrowing or setting aside money for the deposit, and interest and establishment fees. However, deposits will only be required one month prior to harvest, which should minimise costs. Overall, it is not expected that these

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requirements will be a significant expense for industry in the context of the overall cost of harvesting.

There will be some expense for both councils and plantation owners in connection with inspecting roads before and after harvest, and in calculating the cost of repairs. Inspections should include the structural strength of the underlying road pavement, as well as the surface and seal of the road. Specialised equipment may be required to carry out these assessments, but it is expected that over time councils and industry will develop agreed simple assessment formulas to reduce the cost of road condition assessment.

### 6.2.2 Benefits of requiring compensation for road damage

Plantation harvesting operations that cause damage to local roads impose costs on local communities. The main benefit of this proposal is to communities, which will have reduced exposure to damaged roads and a reduced requirement to use their funds to pay for damage caused by plantation operations.

From community equity and economic efficiency perspectives the proposal is beneficial because it follows the 'user pays' principle.

Payment for damage caused to harvesting roads and more rapid repair of damaged roads may also reduce hostility towards the plantations industry from some local communities.

Councils will not be compelled to implement the compensation provisions. This allows for circumstances where councils and communities do not want to risk discouraging plantation investment by requiring payment for damage to harvesting roads.

### 6.2.3 Recommendation

This option is supported because it will provide some contribution by plantation owners towards road damage caused by their harvesting activities. Payment of transport infrastructure contributions by plantation owners, as originally intended under the Act, will prevent the deterioration of roads due to harvesting activities.

At the aggregate level this option is cost-neutral to the economy as it involves existing costs being transferred from the general community to plantation owners.

In certain respects the proposed contribution arrangements do not go as far as councils would like. In particular, they may not generally result in roads being upgraded prior to harvesting (which would be desirable) and they will not require payment for non-visible road life depreciation.

It is acknowledged, however, that the proposed system represents a reasonable compromise between the strongly polarised positions of industry and councils. The reforms should also be seen as establishing benchmark

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arrangements that will provide a basis for future review of industry and community impacts.

### **6.3 Option 3: Impose a transport infrastructure levy**

#### 6.3.1 Costs of imposing a transport infrastructure levy

Under this option plantation owners would have to pay an annual levy to contribute to a central or regional fund. This would be a recurring cost in addition to council general rates and the fuel levy.

This is likely to be opposed by industry for the following reasons:

- It would be another charge imposed on industry
- Payment of the levy would still be required even if an owner is not harvesting, or their harvesting activities do not cause road damage
- Owners could end up paying a levy even where their harvesting operations did not involve the use of local roads
- Some harvesting operations have greater impacts on local roads than others
- It may be necessary for levies to be set quite high, at least initially, to create a sufficiently large fund

Calculating an appropriate levy would require detailed studies to forecast the likely cost of repairs and upgrades to harvesting roads over a period of time. This would most appropriately be undertaken at a regional level.

It would also be necessary to decide how to allocate money from the fund to local councils. This would probably require the establishment of Regional Committees to identify allocation criteria. It is likely that such Committees would find it hard to reach consensus on criteria for funding priorities.

#### 6.3.2 Benefits of imposing a transport infrastructure levy

A levy would provide certainty for industry, but would be strongly opposed for the reasons outlined above.

Levies would produce some money for local councils. However, funding priorities would be set by Regional Committee, which would not provide certainty that funds would be available for repairs or upgrades to specific harvesting roads when required.

#### 6.3.3 Recommendation

This option is not supported because it would not necessarily ensure complementarity between the impost on plantation operators and the damage caused. Nor would it guarantee that all local councils would receive funding for all road repairs necessitated by harvesting activities, which would be provided under option 2.

### 7. Fire Protection measures for plantations

Fire protection is a major community concern: the community is concerned that plantations can pose a fire risk. The Act provides for the Code to include fire standards but none are currently specified.

The RFS, which is the lead agency for bush fire management in NSW, is strongly in favour of fire protection standards being included in the Code. Consistent standards will provide a safer operating environment for fire fighters and plantation workers, and help to reduce the risk of fires escaping from or entering plantations. They will also minimise damage to plantation resources from wildfire occurrence.

In late 2007 the Bush Fire Coordinating Committee (BFCC) replaced *BFCC Policy No 1/2003 – Fire Trails* with the *BFCC Policy No 2/2007 - Fire Trails*. This Policy focuses on such matters as the Bush Fire Management Committee (BFMC) Fire Trail Register, classification of fire access ways, and mapping of fire trails, and also includes reference to vehicle carrying capacity and best practice guidelines for fire trail construction and maintenance.

The BFCC Policy applies across NSW, including to land managed as plantations. However, the Policy is not designed to provide detailed instructions for fire fighting access at a scale relevant and applicable to individual property owners. The Policy only establishes broad principles, rather than a regulatory framework.

The RFS considers that regulating the application of the BFCC Policy to plantations is not appropriate because, although the best practice guidelines for fire trail construction and maintenance provide broad guidance, they are not detailed enough for the Code and were not designed with a view to regulating works.

In addition, the Policy is under constant review and is subject to change at any time. Relying on an evolving set of rules relating to fire trails would not provide any confidence for plantation owners with regard to managing and costing plantation works. This would create problems for Industry & Investment NSW (I&I NSW) in regulating plantations, and more importantly for fire fighting authorities when operating within plantations subject to different standards.

For these reasons the RFS is strongly of the view that consistent, comprehensive and specialised standards informed by industry's own management practices, such as the proposed fire standards, would be a far better approach for plantations.

It is proposed that standards be introduced for:

- Fire roads;
- Turnarounds and passing opportunities;
- Signage;
- Provision of information;

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- Setbacks from habitable buildings and power lines; and
- Access to water supply.

Because of the significant risks to fire fighters posed by poor signage, it is proposed that the standards for signage will apply immediately to all authorised plantations. Other standards will apply immediately to new plantations, but not to current rotations on established plantations.

The following options are considered:

1. Take no action
2. Introduce fire standards for all authorised plantations immediately
3. Phased introduction of fire standards for authorised plantations

### **7.1 Option 1: Take no action**

Currently the Code contains no fire standards, which means that there is no consistency in relation to fire safety measures in plantations. For example, there are no common standards for fire roads, turnarounds and passing opportunities and nor are there any requirements for setbacks from existing dwellings adjacent to plantations.

Although the BFCC Policy applies to all landholders across the State, landholders are not required to implement the best practice guidelines for fire trail construction and maintenance.

Plantation owners are required to comply with fire protection requirements imposed by their insurers. Some of these requirements are comprehensive and would meet the majority of the standards being proposed for inclusion in the Code, while others would not. The fact that requirements differ from insurer to insurer means that there is no consistency.

#### 7.1.1 Costs of Option 1

The major problem with the current situation is the lack of consistency in the provision of fire protection measures in privately-owned plantations. This arises from the 'guidance only' role of the BFCC Policy and variations in the requirements of insurance companies.

The best practice guidelines for fire trail construction and maintenance in the BFCC Policy are not as comprehensive or prescriptive as the standards proposed for the Code, nor are they regulatory.

The requirements imposed by insurance companies are aimed at protecting timber resources, and may change over time. This will not ensure consistent standards across all plantations. It is not appropriate to rely on these requirements to safeguard fire fighters or protect adjacent dwellings and landholders.

The RFS believes that fire fighters are in danger if the status quo does not change. The current inconsistency creates uncertainty and potential danger

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for fire fighters who are attempting to move vehicles and equipment through a plantation. Fire fighters require a degree of confidence with respect to planning safe fire fighting tactics, including the planning of safe egress. Differing approaches within plantations creates the potential for confusion and increases the potential for unsafe decisions to be made on the ground.

It is also likely that community perceptions of the fire risks posed by plantations will continue, and that concerns about establishment of plantations immediately adjacent to their homes without consideration of the impacts of bush fire will remain.

### 7.1.2 Benefits of Option 1

The BFCC Policy applies to plantations in the same way as it applies to other landholders and hence all landholders in the State are subject to the best practice guidelines on fire trails.

Plantation owners may prefer to maintain the status quo, because unless they have to modify arrangements to comply with the BFCC Policy, they will not have to adopt any new or different standards to those currently required under their insurance policies. Therefore plantation owners may not incur any additional costs.

Under this option there would be no costs for Government in administering regulatory fire standards.

### 7.1.3 Recommendation

This option is not supported because it will not result in safe work conditions for fire fighters by providing consistency and certainty across all plantations, nor will it provide consistent protection for adjacent landholders.

## **7.2 Option 2: Immediate introduction of fire standards for all authorised plantations**

The proposed fire standards define fire roads as fire trails that are suitable for use by a Category 1 fire tanker. Fire roads will include: access roads within a plantation; perimeter tracks around plantation areas; and link roads that join discontinuous sections of perimeter track with other sections of perimeter track or access roads.

Standards proposed for fire roads include: minimum widths and overhead clearances; road grades; special requirements for drainage feature crossings; specific requirements for crossbanks; requirements for turnarounds and passing opportunities.

Each section of a fire road must be signposted to indicate that the section is accessible by a Category 1 fire tanker. The location of any watering points and dead end roads must also be signposted. However, existing signage can

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be used if it contains the necessary information, which will reduce costs for plantation owners.

Requirements are proposed for setbacks from habitable dwellings and special fire protection buildings, with some exceptions. Requirements for existing plantations will differ slightly, with reduced setbacks being allowed in certain circumstances.

Setbacks from powerlines will be consistent with those under the *Native Vegetation Act 2003*, with buffer zones dependant on the nominal operating voltage. Plantation establishment will be prohibited within 6 metres either side of power lines or transmission towers, but will be permitted in the remainder of the buffer zones provided that trees do not exceed 3 metres in height.

There will be a requirement to make reasonable provision for access to water and to show water storage points on Plantation Plans. These requirements will not prescribe how much water should be available on a given plantation; this decision will rest with the plantation owner. Therefore if a plantation does not already contain water, a plantation owner will not be required to make water available.

For plantations with an area of 100 hectares or more, information identifying the fire roads within the plantation must be provided to the RFS and the Department of Industry and Investment.

### 7.2.1 Costs of Option 2

Implementation of the proposed fire standards will result in additional costs for some plantation owners, depending on their existing insurance requirements. It is not possible to provide reliable estimates of likely costs, because the topographical aspects of individual plantations will affect the number of fire roads and the costs of construction.

Compliance with the minimum standards for fire roads may involve direct costs, as well as a reduction in plantable area on plantations that have already been established. Costs are also likely to be incurred in relation to the provision of signage and access to water. Although the signs themselves are not that expensive (around \$75), additional costs will be incurred for validating whether roads are suitable for Category 1 tankers, erecting signs, and regularly monitoring to ensure that signs have not been knocked down or removed.

However, where only a few roads within a plantation meet the fire standards, this will reduce costs. In this regard, it should be noted that plantation owners can choose which access roads within a plantation are to be classified as fire roads. Also, where appropriate signage is already in place this can be retained, which will avoid the cost of new signage.

The application of all the proposed standards immediately to all authorised plantations would result in unbudgeted costs for established plantations. This

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would be onerous because plantations do not generate short or medium term income that could be used to pay for the costs associated with the new requirements.

The retrospective imposition of new standards on plantations already in the ground could necessitate the removal of planted trees in order to comply with fire road requirements, which would reduce yields and impact profitability.

Industry would strongly oppose the immediate introduction of the full suite of proposed fire standards for all authorised plantations for these reasons.

This option would result in costs for the Government through having a regulatory role in relation to fire standards. However, this is an appropriate role for Government, and can be undertaken by plantation officers employed by I&I NSW.

### 7.2.2 Benefits of Option 2

The proposed requirements for fire road width and overhead clearance, road grade, turnarounds, passing opportunities and other engineering requirements will ensure safe and reliable access for Category 1 tankers and other fire fighting vehicles.

Setbacks from habitable buildings will reduce the risk of damage to property and infrastructure in and adjacent to plantations. Setbacks from power lines will provide safety for fire fighters during bush fires, and prevent trees and branches falling onto power lines and either starting fires or causing power outages.

Provisions for access to water supply will assist fire fighters to locate water within plantations, while the requirements for signage and provision of information will enable fire fighters, particularly those from outside the area, to navigate safely in plantations during bush fires.

The RFS sees great benefit in having consistent, State-wide standards for plantations. The introduction of the full suite of standards for all plantations immediately would achieve the best outcomes in terms of safety for fire fighters. However, the RFS has indicated that a phased approach is also acceptable.

The introduction of fire standards for plantations will give increased protection for rural communities, as well as providing a safer working environment for fire fighting activities. Having fire standards in place may also help to reduce negative community views of plantations.

The Industry Reference Group acknowledges that the proposed standards represent industry best practice, but does not support the immediate application of the full suite of standards to all plantations immediately, because of the cost implications for established plantations.

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### 7.2.3 Recommendation

This option is not supported because the retrospective imposition of the full suite of fire protection standards for established plantations would impose an unfair burden on those plantation owners.

### **7.3 Option 3: Phased introduction of fire standards for authorised plantations**

Under this option the standards for signage would apply immediately to all authorised plantations, as under option 2. The other standards would apply immediately for new plantations, but only for subsequent rotations on established plantations.

#### 7.3.1 Costs of Option 3

Under this option the same costs will apply in relation to signage requirements as for option 2, because these requirements will still come into force immediately for all plantations.

Similar costs as for option 2 will apply in relation to the other proposed fire standards. However, because these provisions will not apply to established plantations for current plantings the requirements will be less onerous. For example, it will not be necessary to remove areas of timber on established plantations in order to widen roads or create turnarounds.

The phased introduction of the proposed standards will produce less immediate benefits in terms of fire fighter safety. However, the RFS considers the introduction of the signage requirements for all plantations to be the highest priority. This will enable fire fighting crews to check that they are in the location they intended to be during fire fighting operations, and to describe their location to others.

Fire fighters also need to be able to decide whether the trail they will be entering provides for safe access and egress for their vehicle. Signs indicating that a trail meets the standards for a Category 1 tanker will inform a fire crew that the trail will provide safe passage for their Category 1 tanker and that there will be provision for exiting or turning around should fire conditions deteriorate. If there are no signs indicating safe passage then that trail should be avoided.

This option, based on phased introduction, was approved by the Industry Reference Group, which implies that industry itself perceives that the benefits of these provisions outweigh any additional costs.

#### 7.3.2 Benefits of Option 3

The benefits of the immediate introduction of the fire signage requirements are the same as under option 2.

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In relation to the other fire standards, the benefits for fire fighting will take some time to be fully realised because of the delayed application of these standards to established plantations. This means that the levels of protection for fire fighters on already-established authorised plantations will not be as high as on plantations that are established after the provisions come into force.

However, the RFS has indicated that phased application of the fire standards is acceptable if signage requirements are implemented immediately, because signs will provide fire fighters with the information necessary to make decisions regarding access and safety. The phased approach will provide for an improving long-term solution that meets the concerns of landholders and the business planning requirements of private plantation owners.

The main benefit to industry over option 2 is that the new standards (with the exception of the signage requirements) will not be applied retrospectively, meaning that established plantations will not have to incur unbudgeted costs.

While it might be desirable to introduce the full suite of provisions straight away, as proposed under option 2, the economic implications for industry of doing so would be unreasonably onerous. The RFS acknowledges this and supports the phased introduction of the remaining provisions.

### 7.3.3 Recommendation

This option is supported because it will introduce consistent, best practice fire standards for all authorised plantations in NSW without imposing an unfair burden on owners of established plantations.

## **8. Best practice environmental standards for plantation operations**

The intent of the Act is to encourage plantation development in NSW while maintaining environmental standards. One of the objects of the Act is to codify environmental standards, and it is proposed to amend this object to refer to 'best practice' environmental standards.

Part 5 of the Code contains provisions to protect soil and water during management operations on plantations. These provisions represented best practice when the Code was developed in 2001, but new practices have evolved that provide more effective environmental protection. It is therefore considered that some of the existing provisions need updating to comply with current environmental and industry best practice, and in some cases to clarify their original intent.

The regulation of harvesting operations is covered by Part 6 of the Code. The current provisions are not comprehensive and do not in all cases represent best environmental practice.

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The Code also contains management prescriptions for areas of retained native vegetation within plantations. These provisions require clarifying and strengthening in certain respects.

The proposals to improve the environmental standards in the Code were developed by a working group consisting of members from the former Department of Environment and Conservation, the former Department of Natural Resources and the former Department of Primary Industries. Environmental groups were not part of this process, which was appropriate in view of the technical nature of the Code provisions. However the environmental perspective was provided by the Department of Environment and Conservation.

As part of the review process, initial consideration was given to achieving greater consistency between the Plantations Act and Code and the *Native Vegetation Act 2003*

The aims of the *Native Vegetation Act 2003* and the Plantations Act and Code are different, and they do not currently share a common assessment process. The *Native Vegetation Act* aims to restrict the clearing of native vegetation, while the Plantations Act and Code aim to facilitate the establishment of plantations on essentially cleared land.

It was decided that further consideration of this issue should be postponed pending the review of the *Native Vegetation Act 2003* which is currently under way, and the development of new legislation for private native forestry.

This deferral should not be a cause for concern as the current environmental assessment process under the Plantations Act and Code appears to be working well. In the seven years since the Act and Code came into operation no significant issues in relation to environmental assessment have been identified. A comparison of vegetation approved for clearing and offset/retention areas under the Plantations Act and Code and the *Native Vegetation Act* shows that the ratios are similar under both Acts.

The question of water interception by plantations was not considered as part of the review, because water interception is being addressed in the broader context of the National Water Initiative.

The following options are considered:

1. Relax environmental standards for plantation operations
2. Take no action
3. Introduce the proposed amendments

### **8.1 Option 1: Relax environmental standards for plantation operations**

#### 8.1.1 Costs of relaxing environmental standards

The 2005 Review did not find any grounds to remove or relax the existing environmental standards in the Act and Code. Indeed, concerns were

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expressed in relation to the adverse soil erosion and water quality impacts of some plantation operations.

Relaxing the existing environmental standards for plantation operations, which as noted are in some respects already less exacting than current industry best practice, would fail to address these concerns and would exacerbate the potential for environmental outcomes on plantations that are unacceptable to the general community.

### 8.1.2 Benefits of relaxing environmental standards

No environmental benefits would result from a relaxation of environmental standards. However, this would benefit the plantation industry because plantable areas could be larger if restrictions on clearing native vegetation, and other environmental standards in the Code were relaxed.

### 8.1.3 Recommendation

This option is not recommended.

## **8.2 Option 2: Take no action**

### 8.2.1 Costs of taking no action

Incidents have been reported where plantation operations have resulted in adverse soil erosion and water quality outcomes that could have been avoided through implementation of industry best practice standards.

Maintaining the status quo would mean that some Code provisions continue to fall below current best practice standards. This may result in less than optimal environmental outcomes in relation to soil erosion, and impacts on water quality and biodiversity.

The proposed changes have been identified as necessary by a working group including relevant State government agencies responsible for environmental standards.

If no changes are made, it is likely that some local communities will continue to have concerns that plantation operations, including harvesting, result in poor environmental outcomes and should be more tightly regulated.

### 8.2.2 Benefits of taking no action

Plantation owners and managers would not have to make any changes to their current practices.

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### 8.2.3 Recommendation

This option is not supported because it fails to incorporate current environmental best practice standards into the Code and therefore does not provide the highest level of protection to environmental assets in plantations.

### **8.3 Option 3: Introduce the proposed amendments**

In relation to Part 5 of the Code, new standards are proposed for the location, design, construction, drainage and maintenance of roads. In particular, new provisions are included to reduce the impacts on roads from runoff and erosion. Revised standards are proposed to ensure that crossings over drainage lines are maintained in a stable condition. Provisions relating to blading off (ie grading away mud and loose dirt), slope limits and requirements for operational plans and records are also proposed.

In relation to Part 6 of the Code, new provisions are proposed to regulate timber extraction in order to protect soil and water values during harvesting activities, and to regulate operations in wet weather to allow harvesting to be undertaken provided that proper precautions are taken to prevent soil erosion. A number of other amendments (for example a requirement to use directional felling where possible in order to protect buffer zones) will strengthen the existing environmental protection requirements. Other amendments clarify the original intent of provisions.

Requirements for the management of areas of retained native vegetation within plantations will be strengthened by clarifying the activities that are permitted and prohibited in those areas. It will be made clear that hazard reduction burning is permitted in retained areas, subject to obtaining any necessary approvals, and that private native forestry is not permitted. Other provisions will provide additional protection for retained habitat trees.

It is also proposed to adopt the definition of regrowth vegetation that is contained in the *Native Vegetation Act 2003* in place of the existing definition in the Plantations Code. This will avoid the confusion that could arise from having two different definitions.

#### 8.3.1 Costs of introducing the proposed amendments

Plantation owners may incur some additional operational costs as a result of the proposed amendments to the environmental protection provisions. However, for the most part these higher standards are already recognised within the plantation industry as best practice.

Furthermore, many of the changes will not require immediate action or expense, and will only affect growers when they have to undertake specific works such as constructing or maintaining roads or crossings, or when they are involved in harvesting operations.

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The changes have been approved by the Industry Reference Group, which indicates that industry itself considers that any additional costs are manageable and that improved environmental outcomes on plantations are supported.

### 8.3.2 Benefits of introducing the proposed amendments

Proposed amendments to the soil and water, and harvesting provisions will result in higher standards, consistent with current industry and environmental best practice, in relation to the following:

- Road location, design, construction, drainage and maintenance;
- Operational plans and records, including harvest notification;
- Crossings over drainage features;
- Preservation of vegetation on steep slopes;
- Windrows and debris heaps; and
- Blading off roads.

These amendments will result in improved environmental outcomes, especially in relation to soil erosion, water quality and biodiversity, without imposing undue costs on plantations operators.

Amendments relating to native vegetation will clarify the requirements for the management of habitat trees and retained areas of native vegetation.

### 8.3.3 Recommendation

This option is supported because it is consistent with the objects of the Act and will provide the best environmental protection outcomes.

## **9. Cost recovery for the plantation authorisation process**

The Act provides for the prescription of application fees to cover the costs of dealing with applications for authorisation. The introduction of application fees was recommended in 2001 in the Regulatory Impact Statement prepared for the Code, but an initial 12 month moratorium on fees has been allowed to continue indefinitely. Currently the plantation industry does not pay anything towards the costs of services provided by I&I NSW in assessing applications.

The 2005 Report to Parliament recommended a sliding scale of application fees based on partial cost recovery that would have recovered only operational costs. It is now proposed that fees be introduced that will initially recover 50% of salary costs directly attributable to assessing and issuing plantation authorisations, rising to 100% recovery over a 3 year period. Recovery of operational costs will be considered after that time.

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The following options are considered:

1. Take no action
2. Phased introduction of limited cost recovery
3. Introduce full cost recovery

### **9.1 Option 1: Take no action**

#### 9.1.1 Costs of taking no action

If no action is taken, the NSW Government will continue to bear all the costs of assessing applications for authorisation under the Act. This is contrary to the Government's policy of cost recovery for regulatory activities.

Currently I&I NSW has 6 full time equivalent plantation officers, who spend 60% of their time on assessing plantation authorisation applications. Their salary costs, including on-costs, associated with assessment work are approximately \$360,000 per annum.

If cost recovery is not introduced, it may in future not be possible for the Department to continue to provide the same level of service that it provides currently.

#### 9.1.2 Benefits of taking no action

Plantation owners will benefit from the status quo continuing because they will continue to pay nothing for the services provided by I&I NSW in relation to assessing applications for authorisation.

#### 9.1.3 Recommendation

This option is not supported.

### **9.2 Option 2: Phased introduction of limited cost recovery**

The proposed phased introduction of application fees will provide revenue that will initially recover 50% of the salary costs attributable to processing plantation authorisations, rising to 100% recovery of salary costs over a three year period.

It is estimated that plantation officers employed by I&I NSW spend 60% of their time on assessment and authorisations, and their remaining time on other regulatory activities including auditing. The proposed fees are therefore based on recovering 60% of the salary and on costs for the Department's plantation officers. The fees will not include an element for operational costs.

The proposed schedule of fees is shown in Attachment 1. The fees proposed for years 2 and 3 include a 3% Consumer Price Index adjustment.

Fees will be based on the plantable area of the plantation because this most accurately reflects the time and cost of assessing proposed plantations of different sizes. Fees will be lower for environmental plantations, which are

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simpler to assess because only limited clearing of native vegetation will occur, which reduces the likely impacts and the assessment requirements.

The Industry Reference Group suggested that there could be a flat fee of \$250 for smaller plantations. However, this would mean that fees for larger plantations would need to increase substantially in order to still achieve full cost recovery. This approach is therefore not recommended.

### 9.2.1 Costs of introducing limited cost recovery

Application fees will be an additional cost for plantation owners. However, the fees proposed are not onerous when considered in the broader context of plantation establishment costs. Establishment costs are between \$2,500 and \$3,500 per hectare. Hence the proposed fees, even at the 100% cost recovery level, will in most cases represent less than one per cent of establishment costs. In addition, fees will be tax deductible as a business cost.

Phased introduction, starting at 50% and rising to 100% over 3 years, will lessen the impact on industry.

The main concern expressed by the Industry Reference Group in relation to the introduction of application fees, was that the fee levels currently proposed are higher than those suggested in 2005. However, it is appropriate to recover the salary costs associated with assessing plantation authorisation applications, rather than merely recovering operational costs, as was proposed in 2005.

There may be an initial cost to I&I NSW in establishing a fee payment process. However, this cost should be minimal because similar processes already exist within the Department for similar charges under other legislation.

### 9.2.2 Benefits of introducing limited cost recovery

The proposal is consistent with the 'user pays' approach requiring cost recovery for regulatory activities, which is Government policy.

At the end of the three year introduction period the proposed fees will recoup 100% of the salary costs of plantation officers in relation to their assessment and authorisation roles. It is estimated that cost recovery will recoup \$179,000 in year 1, \$274,000 in year 2, and \$371,000 in year 3 and annually thereafter.

### 9.2.3 Recommendation

This option is supported because it is consistent with the NSW Government's cost recovery policy, while allowing for the phased introduction of fees which will reduce the immediate impact on the industry.

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### 9.3 Option 3: Full cost recovery

#### 9.3.1 Costs of full cost recovery

The full cost recovery option would require plantation owners to commence paying fees representing 100% of salary costs immediately. In order to recover operational costs as well as salary costs, fees would need to be approximately 16% higher than those shown in the proposed fee schedule.

This approach would be significantly more expensive for the industry, and could cause hardship, particularly for small growers. It is also likely to result in a strong negative reaction from the industry as a whole, particularly as these costs have not been budgeted for, and because this approach has not been discussed with the Industry Reference Group.

#### 9.3.2 Benefits of full cost recovery

This option would enable the Government to immediately recover 100% of the total costs associated with assessment and authorisation of plantations.

#### 9.3.3 Recommendation

This option is not preferred, because of the adverse impacts it could have on individual growers and the strong negative reaction that is expected from the industry.

## 10. Streamline and improve the effectiveness of the Act and Code

It is proposed to make changes to some of the compliance provisions in the Act, to improve their effectiveness. A number of other amendments to the Act and Code will clarify or update existing provisions and streamline procedures.

Changes to the compliance provisions include: clarifying the provisions relating to the issue of stop work orders and remedial notices; allowing proceedings for offences to be brought within 2 years of an alleged offence being brought to the attention of I&I NSW; clarifying the provisions relating to investigation, power of entry, notice requirements and requests for information and documents; and designating all offences under the Act and Code as penalty notice offences.

Changes to clarify, update or streamline existing provisions and procedures include:

- Clarifying the procedure for comment by local councils and neighbours on non-complying plantation proposals;
- Confirming the requirements for authorised plantations where land on which a plantation is situated is divided and transferred to different owners, and the plantation is no longer under common management;

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- Providing that conditions can be imposed on non-complying plantation authorisations in relation to management and harvesting operations as well as establishment operations; and
- Updating requirements for the public register of plantation authorisations.

These measures will cut red tape, providing benefits for industry and Government.

The following options are considered:

1. Take no action
2. Introduce the proposed amendments

### **10.1 Option 1: Take no action**

#### *10.1.1 Costs of taking no action*

Maintaining the status quo would mean that some provisions in the Act and Code continue to lack clarity, which has the potential to cause conflict between I&I NSW and plantation owners.

Some of the compliance provisions in the Act are unclear or not sufficiently comprehensive. Without change this could hinder the efficient investigation of alleged offences.

The proposed changes have been identified as necessary during the review process. A failure to implement the proposals would reflect poorly on the Government, and could result in negative perceptions of the regulatory review process.

#### *10.1.2 Benefits of taking no action*

Plantation owners and managers would not have to make any changes to their current practices.

#### *10.1.3 Recommendation*

This option is not recommended because it will fail to incorporate current best practice standards into the Code and because it will leave some provisions unclear.

### **10.2 Option 2: Introduce the proposed amendments**

#### *10.2.1 Costs of introducing the proposed amendments*

There is no cost to industry or the NSW Government associated with the proposed amendments to clarify and streamline provisions in the Act and Code.

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### 10.2.2 Benefits of introducing the proposed amendments

The proposed amendments will improve the performance of the Act and Code, and will reduce the potential for conflict between I&I NSW and plantation owners over issues of interpretation.

Changes to the compliance provisions will enable compliance investigation and action to be carried out more effectively.

Streamlining measures, such as restricting comment on non-complying plantation applications to the non-complying aspects of these applications, will produce savings for the Government in time and money.

### 10.2.3 Recommendation

This option is supported because it will implement changes identified as necessary during the review process.

## **11. Consultation**

The proposed amendments are based on the recommendations contained in the 2005 Report to Parliament. This Report took into account submissions made by stakeholders in response to the initial Discussion Paper. In all 56 submissions were received from a representative range of stakeholders including industry, individual community members, local councils, Catchment Management Authorities and NSW Government agencies.

Five inter-agency working groups were established, to consider the following issues identified in the Report: transport infrastructure contributions; fire standards; operational issues; legal issues; and consistency with the Native Vegetation Act 2003. These groups met during 2006 and 2007.

The working groups included representatives of the former Department of Primary Industries, the former Department of Natural Resources, the former Department of Environment and Conservation, the former Department of Environment and Climate Change, NSW Rural Fire Service, the Department of Planning, the former Department of State and Regional Development, NSW Treasury, the Roads and Traffic Authority, the Local Government and Shires Association, and the Department of Premier and Cabinet.

The Department of Local Government and a number of relevant local councils were also consulted on the proposals for a new system for transport infrastructure contribution.

There has been extensive consultation on the working group recommendations with an Industry Reference Group comprising representatives of the major plantation companies and industry groups. Members of the Industry Reference Group included Willmott Forests, Forest Enterprises Australia, Great Southern Plantations, Hume Forests, Plantations International, Gunns, CO2 Australia, Visy Pulp and Paper, SE Fibre Exports,

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Australian Forest Growers (AFG), and the National Association of Forest Industries (NAFI).

In general the Industry Reference Group has approved the proposed amendments, although members are fundamentally opposed to paying transport infrastructure contributions.

There has been no direct consultation with environmental groups. However, several groups made submissions to the Discussion Paper, and there will be a further opportunity for comment when the Bill is on public exhibition. The former Department of Environment and Conservation was closely involved in developing the proposed amendments to the environmental provisions of the Code. This provided an environmental perspective, and was appropriate bearing in mind the technical nature of many of the provisions.

### **12. Preferred Option**

The preferred options for each of the five groups of proposed amendments are noted above.

### **13. Evaluation and Review**

The implementation of the proposed amendments will be kept under regular review to evaluate whether they are achieving the desired outcomes. No formal review is planned for most of the provisions, but any issues with implementation will be addressed as soon as they are identified. This should provide a robust regulatory framework for plantation establishment, and ensure that the plantation estate in NSW continues to grow.

It is proposed to review the application fee system and fee scale after 3 years, at the end of the phased introduction period, to assess whether the fees are achieving the desired level of cost recovery and whether they should be increased to recover operational costs as well.

The provisions for payment towards the repair of harvesting roads will also be reviewed, particularly in regard to:

- Uptake of the system
- Problems with assessing pre and post harvest road conditions
- Alternative approaches adopted by councils to simplify the assessment of road damage

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### ATTACHMENT 1 – APPLICATION FEES

Year 1

Total plantation area (ha)	Environmental plantations (Not harvested)	Timber plantations (Harvested)
Up to and including 30	\$500 Base fee	\$500 Base fee + \$3.50/ha of plantable area
31–100	\$500 Base fee + \$2.00/ha of plantable area	\$500 Base fee + \$3.50/ha of plantable area
101–500	\$700 + \$2.00 of plantable area	\$850 + \$2.75/ha of plantable area
501–1000	\$1700 + \$1.00/ha of plantable area	\$2225 + \$1.25/ha of plantable area
>1000	\$2700 + \$0.10/ha of plantable area	\$3475 + \$0.25/ha of plantable area

Year 2 (includes 3% CPI adjustment)

Total plantation area (ha)	Environmental plantations (Not harvested)	Timber plantations (Harvested)
Up to and including 30	\$765 Base fee	\$765 Base fee + \$5.35/ha of plantable area
31–100	\$765 Base fee + \$3.10/ha of plantable area	\$765 Base fee + \$5.35/ha of plantable area
101–500	\$1070 + \$3.10/ha of plantable area	\$1300 + \$4.20/ha of plantable area
501–1000	\$2620 + \$1.55/ha of plantable area	\$3400 + \$2.00/ha of plantable area
>1000	\$4170 + \$0.20/ha of plantable area	\$5400 + \$0.40/ha of plantable area

Year 3 (includes 3% CPI adjustment)

Total plantation area (ha)	Environmental plantations (Not harvested)	Timber plantations (Harvested)
Up to and including 30	\$1030 Base fee	\$1030 Base fee + \$7.20/ha of plantable area
31–100	\$1030 Base fee + \$4.15/ha of plantable area	\$1030 Base fee + \$7.20/ha of plantable area
101–500	\$1445 + \$4.15 of plantable area	\$1780 + \$5.70/ha of plantable area
501–1000	\$3520 + \$2.10/ha of plantable area	\$4630 + \$2.60/ha of plantable area
>1000	\$5620 + \$0.20/ha of plantable area	\$7230 + \$0.50/ha of plantable area