

# Forestry Regulation 2009

## Regulatory Impact Statement



**NSW DEPARTMENT OF  
PRIMARY INDUSTRIES**

April 2009

## **Forestry Regulation 2009 Regulatory Impact Statement**

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Additional copies of this document are available online at [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au) or by telephoning Forests NSW ph.02 9872 0111.

### **Information sources**

In the preparation of this regulatory impact statement information was sourced from officers of the NSW Department of Primary Industries.

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## Executive Summary

The State forests of NSW are managed under the *Forestry Act 1916*. The Act establishes a Forestry Commission with the objects of conserving and utilising timber on the lands it controls or manages to the best advantage of the State.

The objects further include encouraging the use of timber grown in NSW and the preservation and improvement of the soil resources and water catchment capability in forest areas. As well the objects seek, consistent with the use of State forests for flora and forestry reserves, to preserve native flora, to conserve birds and animals and to promote forests for recreation. They also provide for environmental services.

The Act provides for regulations to give it effect, and the *Forestry Regulation 2004* is made under the *Forestry Act* for this purpose. The Regulation will lapse on 1 September 2009, pursuant to the requirements of the *Subordinate Legislation Act 1989*. The Minister for Primary Industries is therefore proposing to recommend the replacement of the Regulation with the *Forestry Regulation 2009*. The proposed 2009 Regulation is unchanged from the 2004 Regulation. It is considered that the unchanged Regulation will continue to meet the requirements of the Act.

The proposed *Forestry Regulation 2009* provides for:

- A licensing system to ensure the orderly cutting and removal of timber from Crown timber lands;
- The collection of royalty from licensees;
- The protection of forest users and the forest environment;
- The protection of the forest estate and life and property through control of the use of fire on State forests and flora reserves;
- Fees for applications for licences, permits and other authorities at a level to at least cover administration costs; and
- Enforcement through offence provisions and penalty notice offences.

Consideration has been given to allowing the Regulation to lapse as well as making it without amendment. It is not considered that any amendments or additions to the current Regulation are required. Allowing the Regulation to lapse would mean that the objects of the Act would not be met, nor could the Act be administered. While the Act provides heads of powers, the Regulation gives them effect.

The costs and benefits of the proposed Regulation were assessed and compared with the option of making no regulation at all. The proposed *Forestry Regulation 2009* is considered the most effective means of achieving the objectives of the Act, and provides the highest net benefit to the community.

## Public consultation and process for submissions

The Regulatory Impact Statement (RIS) provides interested stakeholders, including industry and members of the wider community with an opportunity for direct input into the regulatory development process.

Public notice of the exhibition of this RIS will appear in the NSW Government Gazette and in the following media:

- Bega District News
- Coffs Harbour Advocate
- Denilliquin Pastoral Times
- Eden Inlay Magnet
- Glenn Innes Examiner
- Grafton Examiner
- Kempsey Macleay Argus
- Port Macquarie News
- Sydney Morning Herald
- Taree Manning River Times
- The Land

In accordance with Government requirements, the proposed *Forestry Regulation 2009* and regulatory impact statement will be available for comment for a period of four weeks.

The RIS is accessible at: [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au)

Additional copies may be obtained by telephoning 02 9872 0111

## **How to make a submission**

Interested parties are invited to submit written comments on the proposed Forestry Regulation 2009 and/or the RIS to the NSW Department of Primary Industries in any of the following ways:

### Post

Mr Lal Wimalaratne  
Legal Officer  
Forests NSW  
PO Box 100  
Beecroft NSW 2119

### Facsimile

(02) 9871 6941

### Email

[lalw@sf.nsw.gov.au](mailto:lalw@sf.nsw.gov.au)

**The closing date for submissions is 15 June 2009 at 5.00pm.**

## **What will happen to submissions?**

The NSW Department of Primary Industries will review all submissions received by the closing date and, based on this review, the draft Regulation may be amended as necessary.

A copy of all submissions will be provided to the Legislation Review Committee of the NSW Parliament with the final version of the draft Regulation.

## Part 1: Introduction

### 1.1 Introduction

Under the *Subordinate Legislation Act 1989*, statutory rules including regulations are subject to automatic repeal five years after being made. This process is known as the Staged Repeal program.

When a regulation is due for repeal, the responsible agency must review the regulation and consider its social and economic impacts and whether or not the regulation remains relevant and necessary. The purpose of conducting regular reviews under the Staged Repeal program is to ensure that the regulation continues to provide a net benefit to the community, and that any regulatory burden imposed on industry is justified. This review will assist the agency to make a decision about whether the regulation should be remade, either with or without amendments, or be allowed to lapse.

Under the *Subordinate Legislation Act 1989*, the Regulatory Impact Statement (RIS) must include:

- a statement of the objective(s) sought to be achieved by the proposed regulation, and the reasons for these objectives;
- consideration of whether or not these objectives: are reasonable and appropriate; accord with the objectives, principles, spirit and intent of the enabling Act; and are consistent with the objectives of other Acts, statutory rules and stated government policies;
- alternative options (both regulatory and non-regulatory) by which those objectives can be achieved, either wholly or in part;
- an evaluation of the costs and benefits of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance;
- an assessment of the costs and benefits of each alternative option to the making of the proposed Regulation, including the costs and benefits relating to resource allocation, administration and compliance. This assessment must include the option of not proceeding with any action;
- an assessment as to which of the alternative options involves the greatest net benefit or least net cost to the community; and
- a statement of the consultation program to be undertaken.

This RIS sets out the analysis of the impact of the proposed *Forestry Regulation 2009*. The preparation of the RIS involved identifying and assessing the relevant costs and benefits of each proposed part of the regulation other than those parts that deal with matters of a machinery nature.

## 1.2 Better Regulation Principles

In accordance with the Better Regulation Office's "Guide to Better Regulation" (April 2008), this RIS also addresses the seven better regulation principles. These are:

- Principle 1: The need for government action should be established;
- Principle 2: The objective of government action should be clear;
- Principle 3: The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
- Principle 4: Government action should be effective and proportional;
- Principle 5: Consultation with business and the community should inform regulatory development;
- Principle 6: The simplification, repeal, reform or consolidation of existing regulation should be considered;
- Principle 7: Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

## **Part 2: Outline of the regulatory proposal**

### **2.1 Title of proposed statutory rule and authority**

The proposed Regulation is the *Forestry Regulation 2009*, under the *Forestry Act 1916*.

### **2.2 Name of proponent and responsible Minister**

The Minister for Primary Industries is the Minister responsible for making the *Forestry Regulation 2009*.

### **2.3 Legislative background**

The *Forestry Act 1916* (“the Act”) provides for the dedication, reservation, control and use of State forests, timber reserves, and Crown lands for forestry and other purposes. It also establishes a commission to administer the Act, with power to sell and convert timber and timber products. Part 5 of the Act provides the general regulation-making power. Section 41 of the Act specifically provides for the making of Regulations to make the Act effective.

The objectives of the *Forestry Regulation 2004* (“the Regulation”) are:

- To facilitate the orderly and responsible cutting and removal of timber from Crown timber lands through the licensing system. Furthermore, the licensing system provides for the management of the forest in environmentally sensitive areas and for the health and safety of forestry workers and visitors;
- To facilitate the collection of royalties;
- To facilitate the protection of all forest users and the forest environment; and
- To control the use of fire on State forests and flora reserves to protect the forest estate.

The Government aims to achieve these objectives by repealing and remaking, without amendment, the Regulation. It is considered that the Regulation is achieving the objectives of the Act and the Forestry Commission, and that no amendments or additions are required. If remade, the proposed *Forestry Regulation 2009* will come into effect by 1 September 2009.

### **2.4 Need for Government Action**

NSW Forests play an important role in the NSW economy. Forests are important for both boosting NSW’s economy and providing jobs in rural areas. Forests are also an important community resource and provide areas for recreational pursuits.

The Act and the Regulation are vital in ensuring that this important resource is managed in a way that balances different forest users’ needs whilst ensuring the forests sustainability.

The Act provides for the control and regulation of the use and enjoyment of State forests. Government action is needed to implement the provisions of the Act and ensure that State forests are managed to fulfil the objects of the Act.

## **2.5 Objective of Government Action**

The objective of Government action is to manage the NSW forest estate in an ecologically sustainable manner and ensure a viable and safe timber industry, whilst allowing for community access to forests for recreational purposes.

## **2.6 Summary of the Regulation**

The Act and the Regulation give effect to, and meet the need for Government action.

### *Part 1 - Preliminary matters*

This Part addresses machinery matters, such as definitions.

### *Part 2 - Establishment and organisation of state forests, special management zones and flora reserves*

This Part provides for the establishment of management plans for all State forests, and for flora reserves and working plans for special management zones.

### *Part 3 - Control and management of state forests, timber reserves and flora reserves*

This Part specifies the circumstances in which a person may be requested to leave a forestry area by an authorised officer. The part also provides for the prohibition and control of entry to persons and vehicles into State forest areas. It allows for separate or exclusive use for activities or events, and prescribes the circumstances in which a fire may be lit, or camping can take place.

### *Part 4 - Licences, permits and forest leases*

This part defines written authorities that can be issued by the Forestry Commission, and prescribes their requirements. It also sets out the Forestry Commission's powers with regard to written authorities, such as the setting or variation of conditions, prescribing fees, or their revocation.

### *Part 5 - Dealings with timber, products and forest materials*

This Part provides for a system of branding timber taken from private land and for the payment of royalties. It also provides for offences for non-compliance with the branding system and misuse or defacing of brands; non-payment of royalty within the specified period; and removing certain timbers without the Commission's consent.

### *Part 6 - Miscellaneous offences*

This Part provides for offences and prescribes penalties for:

- Non-compliance with directions by an authorised officer;
- Interference with timber operations;
- Failure to provide information that is requested or forestry statistics as required;
- NSW forests employees who engage in unauthorised timber or timber products dealings;
- Contravention of conditions and limitations of written authorities.

*Part 7- Miscellaneous provisions*

This Part provides for, among other things, delegations of the Commissioner's functions; penalty notice offences; and definitions for a "small quantity of timber", unauthorised structures, and control signs.

*Schedule 1 - Fees*

The Schedule prescribes fees payable for written authorities.

*Schedule 2 - Forms*

The Schedule prescribes the "Certificate of Release of land from profit a' prendre".

*Schedule 3 - Penalty Notice Offences*

The Schedule prescribes the offences for which penalty notices may be issued and the amounts payable.

## **Part 3: Options**

Two options were considered as ways of achieving the objectives of the Act. The options considered in the RIS are:

- Option 1: Do nothing (allow the existing Regulation to lapse without remake)
- Option 2: Remake the Regulation without change (the proposed Regulation)

### **3.1 Option 1: No Regulation: Allow the existing Regulation to lapse**

Allowing the 2004 Regulation to lapse means that many aspects of the Act are not given effect and the intention of the Act is therefore not fulfilled.

The Act provides broad heads of power relating to the classification and management of State forests, but it does not provide for individual forest identification or specify how management plans or special conservation management zones, such as flora reserves, must be established and maintained. Without a Regulation, the Forestry Commission would not be able to effectively manage the forest estate for industry or the community. For instance, there is no provision in the Act for formally identifying flora reserves, although the Act calls for a detailed scheme for flora reserve operations (s. 25A (5)(a)).

If the Forestry Commission did not have the means under the Regulation to control access to forests it would not be possible to adequately maintain public or industry safety during industry operations. This could lead to a greater risk of injury during forestry operations, increased insurance claims and premiums, and potentially litigation. Further, logging operations could be interrupted frequently to ensure public safety, so reducing industry productivity.

The Act provides for written authorities, but looks to the Regulation to prescribe the details of applications, fees, transfers, variations and conditions. Without the Regulation it would not be possible to have a transparent, systematic approach to the administration of licences that provides certainty for applicants. While forest management could proceed with contractual provisions rather than licences, the system would be cumbersome and more costly. However, industry would be spared the cost of paying fees and meeting its compliance costs.

The Act (s.32F) also requires the Regulation to prescribe the details for special purpose permits. Without the Regulation it would be difficult to grant special purpose permits as the scope of such permits would be unclear.

While the Act provides for the taking of timbers through various timber authorities, it is the Regulation that prescribes the requirements for identifying who harvested the timber and its origins through branding. This helps to ensure that timber limits under written authorities are adhered to and to prevent the theft of timber.

The Regulation facilitates the collection of royalties by Government.

If the Regulation were allowed to lapse it is possible that industry may self-regulate its operations in State forests. However, it is not considered that sustainable management of the forest estate will occur through self regulation. Without regulation the forest resource would be at risk of over-exploitation. Therefore, self-regulation cannot be considered as an option for replacing the current regulatory system.

### **3.2 Option 2: Remake the Regulation without amendment**

The Regulation implements the intent of the Act by establishing and organising special management zones and flora reserves within State forests. This is important to ensure the sustainability of the forest timbers, to maintain conservation values and to manage public access to the forests. The Regulation provides an efficient forest management system and it is not considered that amendments relating to forest management are necessary.

The Regulation provides for authorised officers to assist in the management of forest areas to ensure conservation and public safety. The Regulation also prescribes matters concerning the use of fire. In carrying out their role, authorised officers help to achieve the objectives of the Act.

The requirements for written authorities and associated fees are prescribed in the Regulation. It is proposed that these provisions be maintained without amendment as they are considered to provide effective management of the various activities of forest users, and the fees help to meet the costs of administration.

The requirement under the Regulation to brand harvested timbers provides the Forestry Commission with a simple and effective means of managing timber production. If the present requirements were not in place a more cumbersome system might be required, which could impose greater costs on industry and Government.

The Regulation also provides for offences, including interference with timber operations and failure to comply with directions given by an authorised officer. It further provides for penalty notice offences. Penalty notice offences provide a cost-effective means of enforcement, obviating the need for court hearings with their associated expenses and possible delays. Without the Regulation, there would be less penalty notice offences available.

It is considered an appropriate role for government to administer a public resource such as the State's forests for the benefit of the community. The Regulation will allow government to administer the orderly exploitation of its timber resources.

## Part 4: Cost-Benefit Analysis

### 4.1 Introduction

The Forestry Commission is responsible for managing over 2 million hectares of native and plantation forest on behalf of the people of NSW. In 2007/08, the Commission directly employed over 900 people, received revenue of more than \$293 million (this includes \$139 million in royalty and \$114 million in contract harvest and haulage) and made an operating profit of \$42.6 million.

In 2007/08 the Commission managed self-generating and regenerating assets of over \$1,515 million. The value of the growing stock was assessed utilising a Net Market Value model, which is based on standing volumes of timber and current prices less the direct costs of disposing of the timber. This comprised \$1,115 million for softwood, \$68 million for plantation hardwood and \$333 million for native forest timbers.

Forestry operations create over 14,000 jobs in NSW. Other products that come from forests of value to society include water, opportunities for grazing and beekeeping, seeds and seedlings and firewood.

The Forestry Commission administers 3,998 Aboriginal sites and 544 non-Aboriginal sites. The Forestry Commission is responsible for 219 recreational facilities (for example, picnic areas, forest walks, forest drives and camping areas) and 141km of mountain bike tracks. The Forestry Commission also oversees over 500 organised activities per annum (for example, organised eco tourism, mountain bike rallies, bushwalking and outdoor education schools).

The Commission also manages native species of flora and fauna across the State. In the case of native forests, it has maintained a growth-stage ratio of 22.3% regrowth, 32.3% mature, 4.6% high conservation value old growth, 4.7% rainforest and 36% unassigned.

10% of forests are also managed to assist in the protection of water catchment areas.

The Commission enforces regulatory compliance and ensures that corrective action is carried out by contractors. In 2007/08, 1,096 non-compliance incidents were recorded.

### 4.2 Methodology

The methodology adopted for analysing the options, and the impact of the proposed Regulation, is based on the procedure set out in Schedules 1 and 2 of the *Subordinate Legislation Act 1989*, as well as the following guidelines:

- New South Wales Treasury, *New South Wales Government Guidelines for Economic Appraisal* (July 2007)
- Better Regulation Office, *Guide to Better Regulation* (April 2008)
- Better Regulation Office, *Measuring the Costs of Regulation* (June 2008).

This RIS assesses the impacts of the Regulation against the alternative option of no Regulation. Impacts may include direct and indirect costs and benefits. A summary of the costs and benefits is

included at Appendix 2. Where the impacts of an option cannot be assessed in monetary terms, qualitative judgements have been made. The preferred option is supported by a multi-criteria analysis (Table 1) which assesses the options based on criteria that reflect the objects of the Act and of the Forestry Commission.

### **4.3 Machinery clauses**

The following provisions of the Regulation are machinery clauses:

- Part 1, clauses 1-3, which set out the name of the Regulation, its commencement and interpretation of certain terms used.

It is not considered necessary to discuss these provisions in detail, but comment on the above provisions may nevertheless be included in submissions and will be considered.

### **4.4 Costs and benefits of option 1: no Regulation**

#### **Option 1 - Costs**

##### *Cost for business*

- The absence of defined requirements for the grant of written authorities could reduce the efficient administration of authorities. This could potentially lead to greater costs for the timber industry in seeking to obtain licences, leases and permits. Economic costs could result from uncertainty, delays and a lack of transparency in the grant of authorities and through lost opportunities for business, unclear processes in administration and potential for inequality in setting conditions.
- Similar economic costs could arise for the grazing and beekeeping industries due to uncertainty and potential lost opportunity for businesses relating to seeds, seedlings and firewood.
- Allowing the Regulation to lapse might negatively impact on competition due to the difficulties for new or existing businesses to secure harvesting contracts.
- Increased costs and delays relating to court proceedings due to lack of penalty notice offences, which would mean that all breaches of the Act would have to be prosecuted in court.
- Possible cost to industry due to damage or destruction of the timber resource because of reduced means of controlling fire.

##### *Costs for Government*

- Without the Regulation the Government would not have a practical collection system for royalties from the sale of timber and related products. Without a practical collection system the income from royalties could be impacted. In 2007/08 royalty income amounted to \$139 million. The Forestry Commission receives the royalties and invests this revenue in forest management for the long term sustainability of forests.
- Without the Regulation, Government would not have clearly defined responsibilities for authorised officers and would not be able to manage activities in forests as effectively.

- Contract harvest and haulage income (\$114 million in 2007/08) could be compromised for Forests NSW (the trading name of the Forestry Commission) as contractors would have difficulty in obtaining licences without a Regulation.
- The risk of uncontrolled fires would be greater without appropriate management controls in place, leading to potential damage to the forest estate and greater cost of providing fire fighting resources. There may also be a forest rehabilitation cost.
- Without the Regulation, the intent of the Act to have the Forestry Commission sustainably manage the NSW forest estate could not be implemented. The Government could be seen to be an ineffective steward of community resources.
- Without the Regulation the Government would not be able to prescribe the requirements, conditions and limitations for written authorities as specified by the Act. The Government therefore would have reduced capacity to effectively manage the activities under the authorities. The income from licences, leases and permits for 2007/08 was just over \$4 million. Without the Regulation it is likely that this income would be reduced and it would potentially cost more to administer authorities.

#### *Costs for consumers*

- If industry were to properly manage the forest resource in the long term it is not anticipated that consumers would be impacted by the absence of regulation. However, if the forest resource were not properly managed then timber supplies may be reduced, thus increasing the price of timber.

#### *Costs for community & the environment*

- The capacity for the forest estate to be managed sustainably could be reduced and could result in environmental degradation.
- Heritage or cultural sites might not be adequately protected.
- It would be difficult if not impossible to administer recreational facilities and formal events.
- The extent and distribution of native species of flora and fauna across the NSW State forests might no longer be assured.
- Protection to the public might no longer be provided during forestry activities such as logging operations and hazard reduction burning.
- The Government's capacity to control activities in forests would be reduced, potentially resulting in degradation of the forest environment and reduced sustainability of operations.

### **Option 1 – Benefits**

#### *Benefits for business*

- Business would not have to pay fees for written authorities. The total cost of licences and leases for 2007/08 was just over \$4 million.
- There would be no means of determining how much royalty to pay or when to pay. Industry paid government \$139 million in royalties in 2007/08.
- Business might not be subject to appropriate restrictions on their activities which are imposed under written authorities.
- Business would not have to provide statistics about their activities.
- Business would not have to brand the location and ownership of the timber they have cut.

### *Benefits for Government*

- Costs to remake the Regulation would not be incurred and there would be a concurrent reduction in red tape. However, the cost of making a regulation is considered minimal, and preparation of a regulation is considered part of the core business of government in managing community owned resources effectively and efficiently.
- The administrative workload to administer licences without conditions would mean a reduction in costs to Government. It is estimated that the cost for administering written authorities during 2007/08 was close to \$1.4 million (based on salaries of officers performing this role).

### *Benefits for consumers*

- There are no anticipated benefits to consumers.

### *Benefits for community & the environment*

- There are no expected benefits for the community or the environment which are anticipated to arise through lack of a regulation.

## **4.5 Cost and Benefits Option 2: Remake the Regulation**

### ***Option 2 – Costs***

#### *Costs for businesses*

- The forestry industry incurs costs in obtaining licences and leases to work in forest areas. The cost of licences and leases during the 2007/08 period was just over \$4 million.
- There are costs for industry associated with ensuring compliance with the Regulation. For example, businesses are required to report and provide statistics on their activities to the Forestry Commission.
- Under the current Regulation, if a business does not comply with Regulation requirements it may be issued a penalty notice and will be required to pay a fine. In 2007/2008 there were 1096 incidences of non-compliance by contractors.
- Businesses are required under the current Regulation to pay a royalty for taking timber from a forestry area. The payment of a royalty is a cost for business. In 2007/08 the cost to industry for royalty payments to government was \$139 million.

#### *Costs for Government*

- There will be costs for the government associated with remaking the proposed Regulation. These costs are considered minimal and core business for government.
- The operation of a licensing scheme is estimated as costing government almost \$1.4 million (based on salaries of officers performing this role).
- Government incurs a cost through the administration and monitoring of forestry activities. For example, the Forestry Commission sets certain requirements for people camping in forestry areas. There is a cost to Government in ensuring that these requirements are met and that forest users are safe and are provided with basic amenities.
- Government incurs a cost to brand timber. This cost is offset by the benefits to Government of branding timber which includes the collection of royalties from industry.

### *Costs for consumers*

- No major costs to consumers are anticipated to arise through the remaking of the proposed Regulation.

### *Costs for community & the environment*

- The community may occasionally incur a cost for using forestry areas for organised recreational or community activities, such as religious gatherings, sporting events or school excursions. These activities may require a special purpose permit.
- An indirect cost borne by the community is the limited access that the community has to forestry areas. The Regulation restricts community access to certain forestry areas in the interests of safety, resource sustainability and protection of sensitive cultural heritage sites.

## **Option 2 - Benefits**

### *Benefits for businesses*

- The proposed Regulation clearly sets out the requirements for applications for a written authority, providing for a transparent and efficient licensing system.
- Prescribing licence conditions under written authorities provides certainty for the industry, enabling improved resource allocation decisions by industry. For instance, it prescribes the royalty rate or purchase price payable under agreement.
- The proposed Regulation provides for the removal from the forest area of persons interfering with other forest users. This provides a benefit to industry as it allows industry to operate without interference and protects the safety of both workers and visitors to forest areas. Without these provisions the timber industry could lose productivity and therefore lose profitability.
- By providing for safe and controlled use of fire the proposed Regulation helps protect the timber resource.
- The conditions attached to written authorities allow multiple businesses and industries to operate in the same forest.
- Compliance certainty. The proposed Regulation provides for both prescribed penalties and penalty notice offences.

### *Benefits for Government*

- There will be certainty regarding the conditions that must be enforced by government. Any failure to comply with the conditions of written authorities will be a breach of the licence and an inspector can direct the licensee to take action.
- Cost recovery via annual licence, lease and permit fees (for 2007/08 this was just over \$4 million).
- Availability of penalty notice offences as an efficient means of enforcement. This is a more cost effective option than pursuing breaches of conditions through litigation.
- More effective collection of data which can be used for monitoring royalties, forest management and licence conditions.

### *Benefits for consumers*

- An effective licensing scheme ensures a sustainable industry and therefore ensures stable timber supplies (e.g. for housing) and contributes to greater stability of prices.

### *Benefits for community & the environment*

- Effective management of Aboriginal and non-Aboriginal cultural heritage sites and recreational areas within State forests.
- The environment will benefit from the effective management of State forest resources to ensure sustainability and protection of these resources. For example, the protection of flora and fauna includes 35 targeted species at risk.
- Authorised officers ensure the safety of persons entering forest areas, as well as safeguarding the forest environment.
- Having transparent management plans for forests is a benefit to the community.
- A further benefit of management plans for the community is the ability to tailor management plans to the needs of individual forestry areas, taking into account the intended use of that area.
- The controlled use of fire in forest areas protects the forest environment and the community from out of control burning but still allows for the limited use of fire for community enjoyment, such as camp fires.
- The proposed Regulation provides for a continuing sustainable forestry resource that may be used by businesses and communities alike. The industries that rely on forest resources are able to provide employment in many locations which is of significant benefit to rural communities.

## **4.6 Preferred Option**

Making the proposed Regulation (Option 2) is the most effective and efficient means of supporting the aims and objectives of the Act by helping to facilitate the sustainable use of forests in NSW. The functions of the Forestry Commission are consistent with the expectations of the community. The proposed Regulation does not place an unnecessary burden on community. This preferred option is supported by the multi-criteria analysis (Table 1).

The financial saving or benefit to industry by not having a regulation would possibly be more than \$143 million per year (based on the total cost of leases, licences and royalties for 2007/08). However, this benefit is offset by the considerable uncertainty and potential instability industry could experience if there were no regulation because there would be a lack of structure and transparency in the management of the forestry resource.

The proposed Regulation protects the forest resource from potential over-exploitation by industry. The proposed Regulation also aims to protect forest workers and visitors from the risk of injury through the enforcement of safety provisions contained in the Regulation and through restrictions on the use of fire in forest areas.

The penalty notice offences contained under the proposed Regulation assist with the enforcement of the objectives of the Act and the proposed Regulation. Authorised officers who monitor activities and operations in forest areas also assist in enforcing the provisions of the Act and proposed Regulation. Additionally, the proposed Regulation contains reporting requirements for businesses operating in forest areas to assist authorised officers to monitor compliance with the proposed Regulations provisions.

Option 2 is considered to be an environmentally, socially and economically sustainable option for the forest resource. It represents the greatest benefit to the community due to its safety provisions and protection of forest areas for community use and enjoyment.

## 4.7 Multi-Criteria Analysis

### Primary objectives of Regulation:

- To facilitate the orderly and responsible cutting and removal of timber from Crown timber lands through the licensing system. Furthermore, the licensing system provides for the management of environmentally sensitive forest areas and for the health and safety of forestry workers and visitors;
- To facilitate the collection of royalty;
- To facilitate the protection of all forest users and the forest environment; and
- To control the use of fire on State forests and flora reserves to protect the forest estate.

The objectives of the Regulation are reflected in the criteria listed below. The criteria also reflect the other interests in State forests that are affected by the Regulation. The options are considered in terms of their capacity to fulfil the criteria and thus meet the objectives of the Regulation and the Forestry Commission.

### Option 1: Allow the Regulation to lapse

### Option 2: Remake the Regulation

Multi-Criteria Analysis					
		Option 1		Option 2	
Criteria	Weight %	Score	Weighted Score	Score	Weighted Score
Certainty for businesses	15	-3	-0.45	4	0.6
Protection of forest environment	30	-1	-0.3	3	0.9
Community safety and enjoyment	20	-1	-0.2	4	0.8
Sustainability of the timber industry	15	-2	-0.3	4	0.6
Collection of revenue and royalty by Forestry Commission	10	-2	-0.2	4	0.4
Minimal compliance costs for industry	10	3	0.3	-3	-0.3
<b>TOTAL</b>	<b>100</b>		<b>-1.15</b>		<b>3.0</b>

(Note: Scores are between -5 and +5. A score < 0 indicates that the option does not fulfil the criteria. A score of > 0 indicates that the option meets the criteria).

## **Part 5: Implementation and Compliance**

The Regulation is implemented and enforced by the Forestry Commission and other authorised officers. Other authorised officers include NSW police officers who may assist with enforcement.

Management plans, which are required for all State forests, implement the objects of the Act and the Regulation. Management plans are required to specify: the ecologically sustainable forest management strategy to be adopted by the Commission; the conditions under which any timber, products or forest material may be taken from the forest; and conditions relating to the use of the forest.

The Regulation establishes a system for applying for a licence to remove timber from a State forest and for other activities within State forests. Licences are subject to conditions and incur a fee, as specified by the Regulation. Failure to comply with the licence provisions may incur a penalty or may result in the suspension or cancellation of that licence. The Forestry Commission is responsible for the issuing of licences and the monitoring of compliance with licence conditions. The requirement for licences provides for a transparent compliance system and reduces the risk of over-exploitation of forest resources.

The Regulation enforces the provisions of the Act through prescribing penalty notices offences for contravention of the Act or Regulation. Schedule 3 of the Regulation lists offences and penalty notice amounts.

## **Part 6: Consultation**

### **6.1 Consultation**

The proposed Regulation and the RIS will be sent directly to a range of organisations, including industry, non-government organisations and government, for comment. See Appendix A for the list of organisations.

In addition, the RIS and the draft Regulation will be advertised in the Government Gazette, *The Land* newspaper, and the *Sydney Morning Herald*, as well as local newspapers in areas of forestry operations across the State. The RIS and the draft Regulation will be available on the Department of Primary Industries' website, and the public will be able to make submissions.

### **6.2 Evaluation and Review**

In accordance with current government policy, this regulation will be reviewed again after a period of five years.

## Appendix A: Consultation program

The consultation period for the proposed Regulation and RIS will be from 18 May until 15 June 2009. This will be advertised in the Government Gazette, the *Sydney Morning Herald* and *The Land* newspapers as well as several other regional newspapers. The draft Regulation and RIS will also be available on the NSW DPI website at [www.dpi.nsw.gov.au](http://www.dpi.nsw.gov.au)

A copy of the draft Regulation and RIS will be forwarded to:

- Auditor General's Office
- Forest Products Association
- Big River Timbers
- Department of Agriculture, Fisheries & Forestry
- Department of Environment & Climate Change
- WorkCover NSW
- Tourism New South Wales
- Boral Timber
- State & Regional Development
- Sydney Catchment Authority
- Australian Forestry Standard Limited
- Norske Skog
- NSW Treasury
- Timber Queensland
- Timber Development Association
- Visy Industries Pty Ltd
- Penrose Pine Products
- ITC Limited
- Willmott Forests
- Department of Premier and Cabinet
- Southern Cross University
- Macquarie Generation
- Game Council NSW
- Carter Holt Harvey Timber
- The Audit Office of NSW
- ATP Pty Ltd
- Forest Products Association
- Highland Pine Products Pty Ltd
- Australian National University
- Public Service Association
- Hurford's Building Supplies Ltd
- Notaras & Sons
- Northern Rivers Private Forestry
- Rural Fire Service
- Institute of Foresters of Australia
- South East Fibre Exports
- Australian Forest Growers
- CHEP Asia Pacific
- Bonum Sawmills
- Gunnedah Timbers
- Environmental Defenders Office
- VIC Forests
- Weyerhaeuser Australia Pty Ltd
- Department of Lands
- Merbein Sawmills
- Clarence Siding Sawmill
- Koppers Wood Products
- Australian Forest Growers
- National Parks Association
- Kempsey Timbers (Sawmilling) Pty Ltd
- Forestry Tasmania
- BIS Shrapnel Pty Ltd
- CFMEU
- Forest Enterprises Australia.
- Forest Industry Council
- Nature Conservation Council
- Total Environment Centre
- Australian Conservation Foundation
- Wilderness Society
- World Wildlife Fund

## Appendix B

Summary of estimated costs and benefits to Government and businesses for Option 1				
Option 1	Costs		Benefits	
	Tangible	Intangible	Tangible	Intangible
<b>Government</b>	<ul style="list-style-type: none"> <li>● Potential loss of revenue from licences, leases &amp; permits = cost \$4 million p.a.</li> <li>● Potential loss of revenue from royalty = cost \$139 million p.a.</li> <li>● Potential loss of harvest and haulage income (\$114 million in 2007/08).</li> </ul>	<ul style="list-style-type: none"> <li>● Cost of forest rehabilitation due to fire.</li> <li>● Loss of effective control over limited public resource and potential for public backlash.</li> <li>● Reduced ability to protect and manage the NSW forest environment.</li> </ul>	<ul style="list-style-type: none"> <li>● Cost of administering written authorities would be considerably reduced. Cost of administration was \$1.4 million 2007/08.</li> </ul>	<ul style="list-style-type: none"> <li>● Avoid the cost of remaking the Regulation and further review.</li> <li>● The Forestry Commission would no longer need to brand timber</li> </ul>
<b>Business</b>	No tangible costs were able to be accurately calculated.	<ul style="list-style-type: none"> <li>● Uncertainty, delays and a lack of transparency in the grant of authorities.</li> <li>● Loss of penalty notice offences may result in increased legal costs.</li> <li>● High risk of damage to timber due to uncontrolled fires.</li> </ul>	<ul style="list-style-type: none"> <li>● Avoid paying fees for written authorities = saving \$4 million p.a.</li> <li>● Avoid paying royalty to the Forestry Commission = potential saving of \$139 million p.a.</li> <li>● Avoid paying fines for offences under Regulation.</li> </ul>	<ul style="list-style-type: none"> <li>● Relaxation of restrictions imposed under the Regulation.</li> <li>● No requirement to report on activities.</li> </ul>
Summary of estimated costs and benefits to Government and businesses for Option 2				
Option 2	Costs		Benefits	
	Tangible	Intangible	Tangible	Intangible
<b>Government</b>	<ul style="list-style-type: none"> <li>● Cost of administering licensing system = \$1.4 million p.a.</li> </ul>	<ul style="list-style-type: none"> <li>● Cost to government to remake Regulation.</li> <li>● Cost to brand timber.</li> </ul>	<ul style="list-style-type: none"> <li>● Government would collect revenue from fees for written authorities = benefit of \$4 million p.a.</li> <li>● Government can collect revenue from fines for offences committed under Regulation.</li> <li>● Ability to demand royalty payments within a specified period (\$139 million in royalty paid in 2007/08).</li> </ul>	<ul style="list-style-type: none"> <li>● More effective collection of data for monitoring royalties, forest management and licence conditions.</li> <li>● More effective and efficient means of enforcement through penalty notices.</li> <li>● Reduced ability to protect and manage NSW forest environment.</li> </ul>
<b>Business</b>	<ul style="list-style-type: none"> <li>● Required to pay fees for obtaining a written authority = cost of \$4 million p.a.</li> <li>● Requirement to pay Forestry Commission royalty within specified time period (payment of royalty to government in 2007/08 \$139 million).</li> </ul>	<ul style="list-style-type: none"> <li>● Compliance costs for business.</li> <li>● Requirement to pay fines for breaches of the Regulation.</li> </ul>	No tangible benefits were able to be accurately calculated	<ul style="list-style-type: none"> <li>● Transparent and efficient licensing scheme.</li> <li>● Protection from interruption during operations.</li> <li>● Protection of timber resource through sustainable management and restriction of the use of fire.</li> <li>● Sustainable management allowing a number of industries to operate in forest areas.</li> </ul>