



# Review of NSW Plantations and Reafforestation Legislation

Recommendations report

*Plantations and Reafforestation Act 1999*

Plantations and Reafforestation (Code) Regulation 2001

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## Abbreviations, acronyms and links

Abbreviation/acronym	Long form
CC	Climate change
LEPRA	<i>Law Enforcement (Powers and Responsibilities) Act 2002</i>
NRM	Natural resource management
PBP 2019	Planning for Bush Fire Protection 2019
PNF Codes of Practice	Private Native Forestry Codes of Practice
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
PR Act	<i>Plantations and Reafforestation Act 1999</i>
The Code	NSW Plantations and Reafforestation (Code) Regulation 2001
RF Act	<i>Rural Fires Act 1997</i>
RFS	Rural Fire Service

Link to external source	Description
<a href="#">NSW Forestry Industry Roadmap</a>	NSW Government's vision and plan to ensure the forestry industry is economically viable and ecologically sustainable into the future
<a href="#">Request for Comment</a>	Paper prepared by the Department of Primary Industries to support consultation with the public on options to improve the effectiveness of the PR Act and Code
<a href="#">November 1999 second reading debate on the Plantations and Reafforestation Bill</a>	Legislative Assembly Hansard – 18 November 1999, Parliamentary record of speech by Mr Yeadon, then Minister for Information Technology, Minister for Energy, Minister for Forestry, and Minister for Western Sydney on introducing the second reading of the Plantations and Reafforestation Bill
<a href="#">Final Report of the NSW Bushfire Inquiry</a>	Report on the outcomes of the NSW Bushfire Inquiry, released on 31 July 2020, which reported on the causes of, and factors contributing to, the frequency, intensity, timing and location of, bushfires in NSW in the 2019-20 bushfire season, and made recommendations for change

# Executive summary

The forestry and wood products industry in NSW is one of the state's key regional economy engine industries and central to the viability of many communities. Worth around \$2.8 billion and supporting more than 19,800 jobs<sup>1</sup>, it is a significant contributor to the economic recovery of NSW after the challenges of the past two years.

Timber plantations are critical to the timber supply for NSW and Australia and provide a range of benefits to the community. This includes ecological benefits, such as habitat for native fauna and improved soil and water quality, and social benefits, such as visual amenity and sustainable employment. Plantations also provide environmental benefits, playing an important role in long term carbon emissions abatement<sup>2</sup>.

NSW has the second largest timber plantation estate in Australia at just over 432,000 hectares of plantable area and nearly 38,000 hectares of retained native vegetation<sup>3</sup>, and the largest softwood plantation estate, which produces around one third of the nation's softwood timber<sup>4</sup>.

The NSW Government is committed to maintaining a strong, productive timber plantation industry in this state, with the capacity to deliver jobs, investment, and innovation into the future. Part of this commitment involves ensuring there is a robust and contemporary regulatory framework in place to support the industry.

The *NSW Plantations and Reafforestation Act 1999* (PR Act) and the NSW Plantations and Reafforestation (Code) Regulation 2001 (the Code) came into operation in December 2001 and resulted in vastly improved service delivery for the timber plantation industry.

This Review of the PR Act and Code was initiated in 2021 by the Department of Primary Industries, within Regional NSW, as part of the program of reform mapped out in the [NSW Forestry Industry Roadmap](#). The Roadmap is the NSW Government's vision for transforming, reviving and re-invigorating the timber industry in NSW. The PR Act itself also legislated a review after five years, in line with the tenets of good regulatory practice<sup>5</sup>.

The aim of the Review was to assess the continued relevance of and need for the PR Act and Code, consistent with the NSW Government's focus on reducing red tape, and if it was to remain in effect, what changes should be made to strengthen its currency and value.

The outcomes of the Review, as outlined within this report, indicate that the PR Act and Code remain as important today as when they were first introduced. This is reflected in the Review's recommendations to retain the PR Act's objectives as well as provisions around the process for authorising plantations, and the powers to cancel the authorised status of a plantation.

Overall, the Review has put forward 14 recommendations. In formulating these recommendations, careful attention has been paid to the input provided through the public consultation undertaken in May 2021 as well as the outcomes of discussions with industry and other stakeholders, and academic and industry research.

The Department of Primary Industries thanks those who participated in the Review process, and particularly those who provided written submissions.

<sup>1</sup> Department of Primary Industries, Regional NSW. (2022, February 22). Forestry. Retrieved from Performance, Data & Insights, Department of Primary Industries: <https://www.dpi.nsw.gov.au/about-us/publications/pdi/2021/forestry#:~:text=Employment%20and%20Value%20Added>

<sup>2</sup> Timber NSW. (2022, 2 23). Timber: A Renewable Resource. Retrieved from Timber NSW: <https://timbernsw.com.au/timber-a-renewable-resource#:~:text>Select%20Key%20Topics->

<sup>3</sup> Authorised plantations public register: <https://www.dpi.nsw.gov.au/forestry/forestry-operations/plantation-forestry/authorised-plantations-public-register>

<sup>4</sup> Timber NSW. (2022, February 23). Our industry. Retrieved from Timber NSW: <https://timbernsw.com.au/our-industry-2#:~:text=for%20domestic%20heating.-,Softwoods,-NSW%20produces%20one>

<sup>5</sup> Australian Government Attorney-General's Department. (2022, February 24). Reducing the complexity of legislation. Retrieved from Australian Government Attorney-General's Department: <https://www.ag.gov.au/legal-system/access-justice/reducing-complexity-legislation#:~:text=Regular%20review%20of%20legislation>

Key reforms proposed by the Review include:

- Amendment of slope limits in the Code, to prevent soil erosion and better reflect best practice industry management
- Simplification of provisions in the PR Act regarding setback of powerlines, to support plantation owners to better understand and comply with required standards
- Review of provisions in the PR Act regarding haulage contributions by a Reference Group, acknowledging that in more than 20 years these provisions have never been applied and other mechanisms are currently being used to achieve their intended purpose
- Revision of references to outdated legislation and regulations, and mapping information, in the PR Act and Code, to ensure alignment with current legislation and modern mapping technology and practice
- Enhancement of powers of entry in the PR Act (to align with the *Law Enforcement (Powers and Responsibilities) Act 2002* and provide flexibility around the method of notification), and powers to obtain information (regardless of the information's commercial nature), to allow for more effective and fairer enforcement of regulations
- Inclusion of a third-party offence in the PR Act (with appropriate defences for emergency works) in relation to the contravention of conditions associated with a plantation authorisation, so that anyone who intentionally or recklessly causes damage to a plantation is liable to be penalised for their actions
- Inclusion of approval powers for the maintenance and construction of crossings on Crown watercourses.

The Review also recommends that a Reference Group be convened to further examine the fire management provisions of the PR Code and make recommendations to the Minister for Agriculture.

In addition, the Review has proposed two policy (as opposed to legislative) reforms that relate to the responsibilities of the Department of Primary Industries, within Regional NSW:

- Provision of information by the Department of Primary Industries to plantation owners about their obligations to control weeds on their plantation and how they can best achieve this, based on the most recent research and methods
- Promotion by the Department of Primary Industries to plantation owners of the importance of climate change.

Together, these legislative and policy reforms will support plantation owners and operators to successfully manage their plantations, in compliance with legislation that aligns with the most recent scientific research, reflects industry standards and other regulatory frameworks, and is modern and fit for purpose.

# 1. Introduction

## 1.1 Purpose of the review

The NSW *Plantations and Reafforestation Act 1999* (PR Act) and the NSW Plantations and Reafforestation (Code) Regulation 2001 (the Code) streamline the establishment and management of plantation forests in NSW. Together, they provide a single source of plantation approvals and certainty of harvest rights to plantation owners, consistent with the principles of ecologically sustainable development.

The Department of Primary Industries, within Regional NSW, initiated a review of the PR Act and the Code to meet the NSW Government's commitment to this under the [NSW Forestry Industry Roadmap](#), and its statutory obligation under the PR Act to review the Code every five years. The purpose of the review was to determine:

- if the policy objectives of the PR Act remain valid and the terms of the Act remain appropriate for securing those objectives
- if the Code is fulfilling the objectives of the PR Act and appropriately dealing with the matters required under the Act.

In line with continuous improvement and best practice principles for regulatory reform, the review considered the contemporary currency of the PR Act and how the Act and Code could be fine-tuned to build on past successes. The Terms of Reference for the review is provided at Appendix A.

## 1.2 Review process

The review process included the following key steps:

- Establishment of a cross agency Development and Steering Group, led by the Department of Primary Industries, to guide the review process. Membership of the Steering Group included:
  - Department of Primary Industries
  - Rural Fire Service;
  - Department of Premier & Cabinet
  - Environment Protection Authority
  - Local Land Services
  - Office of Local Government.
- Discussions with stakeholders, including other Government agencies, members of the plantations industry, local councils, and environmental groups to identify key issues with the current PR Act and Code
- Development and release of a [Request for Comment](#) document, which supported a public consultation on identified issues that commenced on 3 May and ran until 27 June 2021
- Facilitation of three online 1-hour forums (webinars) to provide information on the review – held on 5, 10 and 13 May 2021.

## 1.3 About this report

This report details the outcomes of the review, including feedback provided through the public consultation, and makes recommendations throughout. A summary of these recommendations is provided at section 2.

Matters discussed in this report refer to both the PR Act and the Code and are drawn directly from the Request for Comment document. These matters are grouped into the following six key subject areas within section 3, under which relevant consultation questions from the Request for Comment are also listed:

- Objects of the Act
- Environment
- Social issues
- Fire
- Transport infrastructure
- Miscellaneous (including cross-references to other legislation, mapping references, and other administrative matters).

## 2. Summary of recommendations

Number	Recommendation														
1	Retain the current objects of the PR Act, which remain valid and appropriate.														
2	Disseminate information to new plantation owners and managers, through the Department of Primary Industries, on weed control and applicable obligations, when plantation authorisation is provided and/or ownership changes.														
3	Amend the Code slope limits for soil regolith stability R2 to prevent soil erosion and better reflect best practice industry management.														
4	Highlight the importance of climate change for authorised plantations and the broader forestry industry, including the role of carbon and potential markets, through continued development and dissemination of information to industry by the Department of Primary Industries.														
5	Retain the existing authorisation process for establishing a plantation.														
6	Retain the current provisions in the PR Act regarding powers to cancel the authorised status of a plantation.														
7	Convene a Reference Group, to be chaired by DPI and including the RFS and industry stakeholders, to further examine the fire management provisions of the PR Code and make recommendations to the Minister for Agriculture.														
8	<p>Amend the Code to include the following standards in relation to powerline setbacks:</p> <table> <thead> <tr> <th data-bbox="339 1567 743 1603"><i>Power line voltage</i></th> <th data-bbox="743 1567 1372 1603"><i>Setback</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="339 1603 743 1635">Up to 11kV</td> <td data-bbox="743 1603 1372 1635">10 metres</td> </tr> <tr> <td data-bbox="339 1635 743 1666">Over 11kV and up to 33kV</td> <td data-bbox="743 1635 1372 1666">12.5 metres</td> </tr> <tr> <td data-bbox="339 1666 743 1697">Over 33kV and up to 66kV</td> <td data-bbox="743 1666 1372 1697">15 metres</td> </tr> <tr> <td data-bbox="339 1697 743 1729">Over 66kV and up to 132kV</td> <td data-bbox="743 1697 1372 1729">22.5 metres</td> </tr> <tr> <td data-bbox="339 1729 743 1760">Over 132kV and up to 330kV</td> <td data-bbox="743 1729 1372 1760">30 metres</td> </tr> <tr> <td data-bbox="339 1760 743 1814">Over 330kV</td> <td data-bbox="743 1760 1372 1814">35 metres</td> </tr> </tbody> </table>	<i>Power line voltage</i>	<i>Setback</i>	Up to 11kV	10 metres	Over 11kV and up to 33kV	12.5 metres	Over 33kV and up to 66kV	15 metres	Over 66kV and up to 132kV	22.5 metres	Over 132kV and up to 330kV	30 metres	Over 330kV	35 metres
<i>Power line voltage</i>	<i>Setback</i>														
Up to 11kV	10 metres														
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Over 33kV and up to 66kV	15 metres														
Over 66kV and up to 132kV	22.5 metres														
Over 132kV and up to 330kV	30 metres														
Over 330kV	35 metres														
9	Convene a Reference Group, to be chaired by DPI and including industry and local government stakeholders, to further examine the haulage contribution provisions of the PR Act with a view to making them more workable and provide recommendations to the Minister for Agriculture.														

10	Replace outdated legislative references used throughout the PR Act and Code with current Acts and Regulations, including updating appropriate tests for threatened species assessments and other matters.
11	Update mapping references throughout the PR Code to reflect current mapping technology and practice.
12	<p>Amend the PR Act as follows regarding sections 61A, 61B, and 69, to ensure the Act remains current and allows for effective and fair enforcement:</p> <p><i>Section 61A – Powers of entry and inspection</i></p> <ul style="list-style-type: none"> <li>• Remove the requirement to give reasonable notice to enter an authorised plantation or land that should be authorised as a plantation, where that plantation is in a public place (as per LEPRA).</li> <li>• Stipulate that an authorised officer can give oral or written notice of entry.</li> <li>• Remove s 61A (4) and establish it as a separate power so it is not contingent on the power of entry.</li> </ul> <p><i>Section 61B – Power to obtain information</i></p> <ul style="list-style-type: none"> <li>• Enhance the power to enable an authorised officer to require information from third parties associated with an offence under the PR Act, including a corporation, and answers or information provided binding the corporation.</li> <li>• Amend s 61B (2) to enable an authorised officer to require the information, either in person or in writing, without the need for a delegation.</li> <li>• Amend s 61B (3) to enable an authorised officer to require production of all records irrespective of their commercial nature.</li> </ul> <p><i>Section 69 – Service of notices</i></p> <ul style="list-style-type: none"> <li>• Include electronic service delivery of notices (such as email or other electronic delivery systems).</li> </ul>
13	Include the contravention of a condition of an authorisation as a third-party offence in the PR Act, with appropriate defences for emergency works.
14	Amend Part 6 of the PR Act to allow the approval of the maintenance and construction of crossings on Crown watercourses (within the meaning of Part 5 Division 5.8 Section 5.33 of the <i>Crown Land Management Act 2016</i> )

## 3. Review outcomes

### 3.1 Objects of the Act

*Do the policy objectives of the PR Act remain valid and do the terms of the Act remain appropriate for securing those objectives?*

*Should plantation development and expansion remain an aim of a revised Act, or would an alternative approach better serve the current and future needs of the NSW community?*

*To the extent possible, do the Act and Code allow for consistent management practices across a single property? Noting that all plantations are required to be established on essentially cleared land, are provisions in the Act appropriate for both plantations on private and public land?*

Section 3 of the PR Act defines the current objects of the Act as follows:

#### 3 Objects of Act

The objects of this Act are:

- (a) to facilitate the reafforestation of land, and
- (b) to promote and facilitate development for timber plantations on essentially cleared land, and
- (c) to codify best practice environmental standards, and provide a streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations, and
- (d) to make provision relating to regional transport infrastructure expenditure in connection with timber plantations,

consistently with the principles of ecologically sustainable development (as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*).

The Request for Comment noted the PR Act's objects include the promotion and facilitation of plantations against a policy backdrop of actively seeking to encourage growth in the plantation sector. Feedback was specifically sought on whether plantation development and expansion should remain an aim of a revised PR Act (noting that “expansion” is not mentioned explicitly in the objects) or whether an alternative approach would better serve the current and future needs of the community.

The submissions commenting on this section were unanimous in supporting the continuation of the PR Act's existing objects, including specific support for the promotion and active encouragement of growth and expansion of the estate, especially in light of the 2019-20 bushfires and associated impacts on timber supply to meet domestic building (and other) demands. In addition to meeting domestic demand, expansion was also identified as assisting the attainment of carbon policy objectives.

Submissions also noted that the legislation, as highlighted by the PR Act's objects, strikes an appropriate balance between environmental protection, industry operations and regulatory compliance in a practical and effective manner.

As articulated during the [November 1999 second reading debate on the Plantations and Reafforestation Bill](#), the legislation was designed to facilitate the ready and efficient establishment of plantation enterprises without being unduly encumbered by Government regulations and red tape, while providing proper and appropriate environmental protection. The second reading speech introducing the legislation observed that the objectives of the legislation demonstrate the Government's balanced and environmentally responsible approach to forest policy, pointing to an essential underlying feature of the objectives that those activities are to be consistent with the principles of ecologically sustainable development.

These objectives are considered as relevant (if not more) now as they were in 1999, due to increasing timber supply pressures (impacted by the 2019-20 wildfires as well as global market forces) and carbon goals.

The PR Act objects facilitate a framework that integrates the majority of authorisations, licences, permits and approvals required for plantation establishment, maintenance and harvesting into a single approval process, providing a one-stop-shop for plantation authorisation.

The PR Act and its objects also apply to activities on private and public lands, therefore ensuring uniformity of environmental protection across all land tenures, and promote the reafforestation of land and maintenance of environmental standards for plantation operations consistent with the principles of ecologically sustainable development.

### 3.1.1 Object relating to haulage contribution

No submissions addressed the specific object of the PR Act that relates to the provision of regional transport infrastructure expenditure in connection with timber plantations (section 3(d)), however, the haulage contribution provisions outlined in Part 5 of the Act were among the issues considered by this Review.

This Review is recommending that a Reference Group, to be chaired by DPI and including industry and local government stakeholders examine Part 5 of the PR Act is established (see [Recommendation 9](#)). The Reference Group will investigate options to make the haulage contribution provisions of the Act more workable and thus beneficial. The Reference Group will make recommendations based on its learnings to the Minister. Among the reasons for this recommendation is the fact that the provisions of Part 5 have not been utilised since the PR Act's inception and have therefore failed so far to meet their intended purpose. For further discussion on this issue, please refer to part [3.5 of this Report](#).

#### **Recommendation 1:**

Retain the current objects of the PR Act, which remain valid and appropriate.

## 3.2 Environment

### 3.2.1 Threatened species – surveys

*Does the Code currently strike an appropriate balance between environmental protection and commercial interests in relation to threatened species surveys? What is the best way to balance these potentially competing requirements?*

The Request for Comment noted the differing stakeholder opinions around the PR Act and Code provisions regarding the recognition and protection of environmental values, and asked whether the Code strikes an appropriate balance between environmental protection and commercial interests in relation to threatened species surveys.

The provisions of the PR Act and Code contain a range of protections to ensure that environmental values (including threatened species and unique and special wildlife) are protected from the plantation establishment stage through to harvesting.

Applications for new and existing plantation authorisations involve nil to minimal clearing of native vegetation with one of the objectives of the PR Act being to facilitate establishment of plantations on *already essentially cleared* land. Plantation Assessment Officers from the Department of Primary Industries work with the plantation owner pre-application to determine the location and area of plantation that minimises environmental impacts and complies with the limitations on clearing of native vegetation outlined in the Code.

Section 15 of the PR Act requires a threatened species impact statement to be done if it would be required for an application for development consent under the *Environmental Planning and Assessment Act 1979* (the test for which is now contained in the *Biodiversity Conservation Act 2016*). See the discussion at [3.6.1](#) for commentary around updating outdated legislative references and the appropriate tests to be applied for threatened species and other matters.

Under the Code, surveys of threatened species may be required to ensure species and ecological communities are not adversely affected by plantation operations, including harvesting.

Part 4 of the PR Act outlines an obligation on plantation owners and managers to notify the responsible Minister as soon as they become aware that plantation operations have had, or are likely to have, an impact on unique and special wildlife values of the land concerned. In addition, trained Plantation Assessment Officers from DPI regularly audit and inspect authorised plantations to help ensure any threatened species are appropriately identified and protected.

As noted during the [November 1999 second reading debate on the Plantations and Reafforestation Bill](#) when it was introduced, the provisions of the PR Act, while facilitating an efficient approach to the establishment of plantations, ‘in no way undermines or cuts the ground from under existing environmental legislation that operates in this State’. The clear intention was for the PR Act to streamline plantation approvals whilst also ensuring the maintenance of environmental standards in a balanced manner.

Submissions received during the present review, while mixed in their approach to the issue, included support for maintaining the current status quo in relation to the way the PR Act and Code work together (along with ancillary environmental legislation) to support and preserve environmental values (including survey requirements).

It is considered that the provisions of the PR Act and Code continue to strike an appropriate balance between protection of environmental values and the promotion and facilitation of plantation investment. Introducing additional or more rigorous survey requirements would likely produce a financial burden, and an investment disincentive, on plantation owners without necessarily producing a commensurate benefit in environmental protection, especially in light of a lack of evidence suggesting plantation management operations have contributed to species decline in NSW. Change to the existing PR Act and Code provisions is not recommended.

### 3.2.2 Weed management

*Are the current provisions of the Act and Code effective and efficient for preventing soil erosion and ensuring appropriate management of vegetation and weeds in stream buffers and other exclusion zones in timber plantations?*

*Should weed management provisions specifically relating to plantations be included in the Code?*

Submissions were unanimous in highlighting the importance of effective weed management but were mixed on suggested approaches to achieving this outcome. It was noted that the provisions of the *Biosecurity Act 2015* apply to all landowners, who are subject to the general biosecurity duty as well as a number of specific provisions relating to weed management.

It would be inappropriate to replicate the weed management provisions of the Biosecurity Act in the Code, given they already apply to plantations. In fact, doing so could produce perverse outcomes such as unnecessary duplication, landowner confusion, and in some cases, conflicting requirements (if the replicated provisions in the Code failed to keep pace with changes to the original Biosecurity Act provisions).

As a broader whole-of-landscape issue, a preferred approach to duplicating the Biosecurity Act provisions would be to increase plantation owner awareness of the importance of effective weed control and applicable obligations under the Biosecurity Act through dissemination of information to new plantation owners and managers.

#### Recommendation 2:

Disseminate information to new plantation owners and managers, through the Department of Primary Industries, on weed control and applicable obligations, when plantation authorisation is provided and/or ownership changes.

### 3.2.3 Riparian buffer zones

The PR Act and Code contain various provisions to prevent soil erosion and maintain water quality in streams by minimising soil disturbance in riparian zones. The establishment of riparian buffer zones helps reduce sediment loads during plantation operations and provides connectivity and other conservation values.

On the basis of pre-existing stakeholder feedback suggesting different types of land use on a holding be subject to differing rules in relation to riparian buffer zones, the Review posed the following questions:

*Should there be better alignment between the rules governing the protection of streams in timber plantations and the corresponding rules applied under other land uses?*

*Are the current provisions of the PR Act and Code the most effective and efficient arrangements for preventing soil erosion and ensuring appropriate management of vegetation and weeds in stream buffers and other exclusion zones in timber plantations?*

Many submissions expressed the view that the PR Act and Code contained stronger provisions in relation to protection of riparian zones than those applying to other land uses. In this regard, those submissions supported the existing provisions, noting that amendments to legislation governing other land uses is outside the scope of this Review.

In a similar vein, there was support for the existing provisions of the PR Act and Code in relation to the prevention of soil erosion and appropriate management of vegetation and weeds in stream buffers and other exclusion zones. Some submissions observed operational challenges in the ability to operate in buffer zones and other exclusion areas in order to more effectively manage vegetation and weeds. However, it is unclear how an increased ability to access buffer areas might impact road and track construction requirements and other safeguards contained within the PR Act and Code. For this reason, this issue may require ongoing monitoring ahead of further consideration of any changes.

It is considered that the current provisions of the PR Act and Code are effective and efficient arrangements for preventing soil erosion and ensuring appropriate management of vegetation and weeds in stream buffers and other exclusion zones in timber plantations. No changes are recommended.

### 3.2.4 Slope limits

*Should additional factors be taken into account when determining the harvest slope limits to better cater for local geography?*

*Are there alternative approaches to defining and setting [harvest] slope limits that would allow adaptation to new technology into the future without compromising environmental protection?*

The Request for Comment sought feedback on current harvesting slope limits and whether alternative approaches should be considered. Only minor feedback was provided through submissions on this issue, with the general consensus being that the existing prescribed limits are appropriate, not onerous, and do not prescribe or inhibit advancements in technology.

PRU compliance monitoring and advisory activities have however identified minor changes to slope limits of the Code to further reduce the risk of soil erosion, particularly on more vulnerable R2 soils. Slight amendments to limits on R2 sandy soils would reduce risk and better reflect industry best practice. To improve clarity for industry, consistent slope limit categories could be applied for mounding and snagging.

The Review doesn't consider that changes to slope limits are required in relation to other soil classifications. DPI's operational experience is that R2 soils are at risk due to their location in the landscape, whereas R4 soils differ as they are generally located on lower slopes and low undulating terrain. Due to the location of the R4 soils, similar changes to slope limits are not required to reduce soil erosion risk.

Proposed revised slope limits for Clause 18 and Clause 59 of the Code are listed in the following tables.

#### Proposed R2 mounding slope limits for Clause 18 of the Code

1. If the rainfall erosivity of the area is:	2. And class of soil regolith stability for the area is:			
	R1	R2	R3	R4
	3. Then the slope of the area must not exceed:			
0-1999	30°	10°	25°	10°
2000-3999	25°	5°	20°	5°
4000-5999	25°	5°	20°	no mounding allowed
6000+	20°	no mounding allowed	10°	no mounding allowed

#### Proposed snigging slope limit amendments for Clause 59 of the Code

1. If the rainfall erosivity of the area is:	2. And class of soil regolith stability for the area is:			
	R1	R2	R3	R4
	3. Then the slope of the area must not exceed:			
0-1999	30°	20	30°	25°
2000-3999	30°	10	30°	20°
4000-5999	30°	5	25°	15°
6000+	25°	no snigging allowed	20°	10°

#### Recommendation 3:

Amend the Code slope limits for mounding and snigging in relation to soil regolith stability R2 to prevent soil erosion and better reflect best practice industry management.

#### 3.2.5 Slash management

*Are the current slash retention and slash management provisions in the Code adequate or should they be modified in some way?*

In response to the question posed in the Request for Comment regarding whether the current slash management provisions in the Code are adequate or should be modified, the majority of submissions favoured the existing provisions.

Noting that the Code is silent on slash retention after harvest, some submissions supported maintaining the status quo in this regard, arguing that it is optimally left to the plantation manager to determine if (and the point at which) slash can be removed without compromising soil

structure. Others argued that the management of slash on clear-fell sites is not a straightforward issue and varies significantly between sites depending on silvicultural history and other factors.

The Review agrees with these positions, noting the wide range of incentives for plantation owners and managers to either retain slash or remove it in accordance with relevant attendant circumstances.

These circumstances could include the need to retain slash to minimise soil compaction and disturbance, sediment control and moisture and nutrient retention. It is considered that a mandated approach to the treatment of slash post-harvest may risk constraining best practice as optimal for the unique circumstances of individual cases.

No changes are recommended.

### 3.2.6 Climate change

*Are there any specific elements that should be considered in the review or captured in a revised PR Act or Code in relation to climate change?*

The NSW Government supports increased opportunities for the plantation industry through the provision of wood and non-wood products and services. This includes the opportunity for plantations to be engaged in the carbon market domestically, through the Emissions Reduction Fund, and markets globally. Numerous submissions to the review supported the participation of reauthorised plantations in carbon markets.

The Department of Primary Industries understands the importance of carbon neutrality and the specific opportunities the forestry industry, and plantations in particular, offer to sequester or displace fossil carbon. However, climate change (CC), either the impact on plantation health and growth or the opportunities presented through sequestration or product substitution, is not currently recognised in the PR Code.

In relation to the impact of CC on plantations, selected responses indicated that this needs to be considered by the plantation proponents in the selection of species (e.g., alternative species having different survival and growth strategies whilst offering multiple benefits) and the location and design of the plantation (e.g., spacing at planting to accommodate potential changes in the availability of soil water).

Whilst recognising that CC can impact the survival and growth of species, the Review considers that how this is managed is best left to the plantation owners and managers at the site scale.

There are existing and growing opportunities for the recognition of plantations participating in non-wood markets, and this was raised by multiple submissions specifically focused on the capture (sequestration) of carbon rather than the use of wood products. The Review considers that the current focus in the PR Code on environmentally sustainable management of plantations permits and facilitates a market-based approach to deal with CC and that this is the most efficient way to ensure optimum production. Hence, no regulatory changes are recommended.

Submissions were supportive of addressing CC but also noted the potential impact and competition for resources (e.g., water availability). There is a link between CC and increasing stress on plantations due to the evaporative demand (by either a reduction in rainfall or an increase in temperature, or both). Encouraging new and prospective plantation owners to consider the anticipated risks of a changing climate, and how these will be mitigated, at the point of plantation authorisation will assist in the establishment of resilient plantations. A better understanding of the scale and landscape position of plantations would also be useful, accepting that there is a need for site-specific management, especially in relation to species selection and site establishment techniques that, for example, minimises soil erosion and enhances soil water retention and use.

DPI Forest Science provides evidence-based forest research services that underpin sustainable use of NSW's native forests and productive plantations. Its science-based research outcomes play a key role in shaping policy, industry and environment management decisions that share a common aim: sustainable management of forest landscapes through active and adaptive management.

Among this body of work is a dedicated team focussing on forest carbon, which includes useful information for industry consumption on CC and associated risks and opportunities.

#### **Recommendation 4:**

Highlight the importance of climate change for authorised plantations and the broader forestry industry, including the role of carbon and potential markets, through continued development and dissemination of information to industry by the Department of Primary Industries.

### 3.3 Social Issues

#### 3.3.1 Neighbours, public amenity and community attitudes

*What alternatives should be considered in the review to effectively manage the interaction of plantation operations with adjacent local communities?*

The Request for Comment noted that some stakeholders have periodically raised concerns about negative impacts of plantation activities on neighbours and surrounding local communities, particularly during and after timber harvesting. This includes the potential for smoke and noise to affect neighbours, the possible impact of trucks on roads and bridges, and the visual impact of harvesting on local residents and tourists.

These impacts may be increased close to higher traffic or visually prominent areas where some stakeholders have noted that clear felling is an issue for local communities. Residential development of adjacent areas over the relatively long cycle between planting and harvesting can be a factor in this regard.

For the Review, stakeholder feedback was sought on the question of whether alternatives should be considered (through either the PR Act or Code) in relation to the interaction of plantation operations with neighbours and adjacent communities.

Among the submissions received, most pointed to measures outside the operation of the PR Act and Code to improve relations between plantation owners and neighbours. For example, enhanced community engagement by plantation owners and Councils, together with community education around the applicability of the *Right to Farm Act 2019* to plantations and other forestry activities, were among the suggestions to improve understanding and cooperation between neighbours.

Other submissions pointed to the range of existing legislation in place to manage community and neighbourhood issues, such as noise. Voluntary certification schemes, for instance the Australian Standard for Sustainable Forest Management, were also identified as detailing best practice management of neighbour and community concerns as well as providing existing mechanisms to audit and measure these activities.

#### 3.3.2 Authorisation for establishing a plantation

*Comment is sought on whether the legislation should continue to reflect [encouraging plantation sector growth within environmental constraints through a simplified approval process] as a key objective into the future or whether an alternative policy position would be more appropriate. Suggestions to modify or retain provisions of the Act and Code will be considered in the context of the answer to this question.*

*Does the current plantation approval process provide adequate consideration of local planning and environmental factors? If not, what changes would you recommend?*

In observing the streamlined authorisation process for the establishment of plantations on already cleared land, in which plantations meet planning and environmental requirements established within and regulated through the purpose-specific PR Act and Code, the Request for Comment sought feedback on whether this process provides adequate consideration of local planning and environmental factors.

Integral to consideration of this question is whether new authorisations should be subject to public consultation so that local planning and environmental characteristics can be better taken

into account or alternatively that local development prescriptions should be included in the PR Code.

The majority of submissions were opposed to any change to the existing process, for the following reasons:

- The current plantation authorisation process provides appropriate consideration of local planning and environmental issues such as land use, heritage, soils, roads, drainage features, species and ecological communities
- To incorporate additional requirements including public consultation and local planning processes would contradict and undermine the PR Act and Code's streamlined authorisation process, discriminate against plantation forestry compared to other rural land uses, and discourage investor confidence and investment in the plantation sector
- The current approval process has not generated any significant objections.

The Review agrees that there are significant reasons to maintain the existing process, especially as the fundamental tenet of the PR Act and its objectives (which the Review has found remain valid and appropriate) is to provide a one-stop-shop framework that integrates the majority of authorisations, licences, permits and approvals required for plantation establishment maintenance and harvesting into a single approval process.

As noted earlier in this report, the PR Act and its objects apply to activities on private and public lands, therefore ensuring uniformity of environmental protection across all land tenures, and promote the reafforestation of land and maintenance of environmental standards for plantation operations consistent with the principles of ecologically sustainable development.

#### **Recommendation 5:**

Retain the existing authorisation process for establishing a plantation.

#### 3.3.3 Harvest guarantee vs loss of plantation accreditation status

*Are current powers to cancel authorised plantation status adequate under the Act?*

*Should changes be made to the PR Act and/or the Code to increase community confidence that authorised plantation status is not being unreasonably retained while striking a suitable balance with the security of investment provided by the harvest guarantee?*

The Request for Comment sought stakeholder feedback on whether the current powers under the PR Act to cancel authorised plantation status are adequate, noting that it may be difficult for the casual observer to determine whether an area with authorised plantation status should still be considered a plantation. This can occur where:

- Genuine plantations have failed to establish
- Infill vegetation has developed suggesting that a plantation is abandoned
- The area is dominated by naturally propagated trees and it is not clear that this was an intended silvicultural practice
- Harvested areas have not been replanted.

In addition, community concern can be raised prior to harvest where authorised plantations do not 'look like' plantations due to species mix, particularly native hardwood species, and silviculture methods. Harvesting can then be misinterpreted as 'clear felling native forest' which can lead to community concern. Conversely, the statutory right to harvest provides surety to plantation owners and managers and could be a determining factor in whether a plantation is replanted or indeed established in the first place.

Currently, the responsible Minister has power under the PR Act to cancel the authorisation of a plantation if it has been abandoned, to protect special wildlife values of the land<sup>6</sup> or where it is significantly in breach of legal requirements.

<sup>6</sup> Compensation may be payable if the approval is cancelled under special wildlife provisions

In addition to seeking feedback on the adequacy of current powers to cancel authorised plantation status, the Request for Comment also asked whether changes should be made to the PR Act and/or the Code to increase community confidence that authorised plantation status is not being unreasonably retained while striking a suitable balance with the security of investment provided by the harvest guarantee.

The submissions received were overwhelmingly in support of retaining the existing provisions of the PR Act and Code with respect to cancellation of authorised plantation status. Once authorised, the plantation owner should retain the harvest guarantee on the plantation and have the right to determine the appropriate management of the plantation.

It was noted that plantation management activities depend not just on best practice silvicultural practices, but also on the size and location of the plantation site, any ingress of other species from surrounding areas, market factors, labour resource availability and operational budget in a given year. None of these reasons should preclude the plantation owner from retaining the authorisation status of the plantation or from being able to re-establish the plantation in the future.

Other submissions asserted that plantation investment is a long-term risky investment and there should be as few barriers as possible to that investment. If there is a risk of the harvest guarantee not being secure, the private sector would be less likely to invest in plantation forestry.

The Review agrees with the above sentiments and supports the current provisions.

#### **Recommendation 6:**

Retain the current provisions in the PR Act regarding powers to cancel the authorised status of a plantation.

## 3.4 Fire

### *Are the current plantation fire requirements in the Code appropriate or should changes be made?*

Bushfire provisions were introduced into the Code following the 2011 review, largely in response to major bushfires in 2003. Prior to this, the Code remained silent on bushfire provisions, instead relying on the *Rural Fires Act 1997* (RF Act) to govern the obligations of plantation owners.

The Code now includes requirements in relation to:

- Identifying roads and water storage for firefighting in plantation plans
- Bushfire hazard reduction
- Digital mapping to identify fire roads and water storage
- The provision of fire roads, and specifications for same.

As a result, plantations are currently subject to regulation by both section 63 of the RF Act and the PR Code.

Outside of plantations legislation, all owners and occupiers of land have a duty to prevent bushfires under section 63 of the RF Act, including through bushfire risk management plans. Bushfire considerations for land use development operate through the *Planning for Bush Fire Protection 2019* document (PBP), which is recognised in the Environmental Planning & Assessment Act and Regulations.

Fire provisions were a popular topic in submissions to the review. Responses were mixed in their assessment, and frequently suggested bushfire provisions to be adopted or discontinued. Far less frequent was consideration of whether the PR legislation was the appropriate vehicle for the proposals.

### 3.4.1 Fire roads

Submissions to the review and landholder comments to DPI officers indicate that there is significant confusion around the Fire Roads section of the Code (Subdivision 2A) and its interaction with other bushfire-related requirements.

Issues such as potential duplication of boundary tracks on adjoining properties have been highlighted. Other illustrative concerns raised include: the requirement for 'No Fire Roads' signs, noting these are potentially confusing to both Rural Fire Service (RFS) brigades and the general public, particularly in times of emergency; and that despite clause 28A(1) of the Code requiring a digital mapping layer be provided to RFS and the Director General identifying fire roads and water storage within a plantation, plantation owners have never been able to comply with this as no approved form has ever been provided under clause 28A(2).

The primary reason for the introduction of fire standards in the Code was centred around firefighter safety and the egress of the RFS's largest 4x4 Category 1 Tanker throughout plantation forestry areas. Roads designated as Fire Roads and drainage features crossings must be capable of accommodating Category 1 Tankers and meet certain design standards. The establishment or construction of Fire Roads is dependent on practicability, which can be restricted by topography, soil type, and drainage feature crossings.

The standards in relation to road signage have markedly improved the ability of people unfamiliar with a forest to navigate and become aware of potential entrapment areas such as dead-end roads. Since 2011, all new plantations are required to comply with the standards.

Notwithstanding this, the Code is centred around minimising the environmental impacts associated with undertaking plantation operations. In all other respects, legislative responsibilities for other land management activities generally remain with the appropriate agency in line with the objects of the PR Act.

Under this model, provisions relating to fire management should logically remain the responsibility of the relevant fire authority and be specified within the regulatory instruments that all landholders must comply with. It has been suggested that the application of fire standards in relation to plantations should be case or at least region specific to account for variances in topography, rainfall, plantation species and access, and this can and should occur at a local Bushfire Management Plan level. However, removal of the fire management provisions of the Code may leave a gap if the RF Act does not (without amendment) provide the power to impose similar requirements as those in the PR Code. Accordingly, it is beyond the scope of this Review to recommend changes to other legislation (in the same way that considerations such as Forest Industry Brigades are beyond scope – see discussion below).

The Review sees merit in further exploration of the fire management provisions of the Code to ensure they are meeting their intended objectives and are operating in an optimal manner to achieve bushfire management outcomes within the context of the PR Act's objectives, without causing confusion or placing unnecessary regulatory burden on plantation owners and managers.

Therefore, the Review recommends the establishment of a Reference Group, to be chaired by DPI, to further examine the fire management provisions of the Code. The reference group should importantly include the RFS as well as industry and other relevant stakeholders.

#### **Recommendation 7:**

Convene a Reference Group, to be chaired by DPI and including the RFS and industry stakeholders, to further examine the fire management provisions of the PR Code and make recommendations to the Minister for Agriculture.

#### 3.4.2 Setbacks – buildings

Clause 25A of the PR Code provides plantation owners with options in relation to building setbacks. This includes a standard 70 metre setback from habitable dwellings [clause 25A(2)] or an alternative setback distance in accordance with the PBP [per clause 25A(5)].

Submissions identified discrepancies between the PBP and the PR Code in relation to building setbacks. For example, the 70 metre setback required from habitable buildings in clause 25A(2) of the Code may be less than the distance recommended under PBP in some circumstances, where land slopes and buildings are not modified. In the majority of cases, the 70 metre setback in the PR Code provides for a greater setback than the PBP.

There are minimal operational issues associated with these different approaches for determining the setback distance. The plantation authorisation process applies a 70metre setback consistently, which reduces red tape by providing a streamlined determination whilst maintaining fire protection for buildings. The PR Code provides a simplified approach, whilst having both the Code and the PBP apply provides flexibility for plantation proponents whilst still ensuring an appropriate level of fire risk mitigation. The 70metre setback was a distance determined in consultation with the RFS experts.

While the majority of plantation owners utilise the 70 metre setback provision in clause 25A(2) of the PR Code, in a small minority of cases owners (of smaller plantations with reduced fire risk, for example) may elect to utilise the PBP method for determining the appropriate setback on the basis that the standard 70 metre setback may not reflect the fire risk associated with the particular circumstances. In such cases, a tailored approach under the PBP may be more appropriate.

The Review considers it is important that the PR Code retains this level of flexibility in the interests of reducing red tape and streamlining authorisations, while incentivising growth in the plantation estate and encouraging new plantations, in facilitating the determination of appropriate setbacks in accordance with fire safety considerations and individual circumstances.

Accordingly, the Review concludes that the existing provisions of clause 25A, including the PBP option, should remain unchanged.

### 3.4.3 Setbacks – power lines

*Has the section of the Code dealing with setbacks from powerlines effectively performed its intended purpose to date? Should this provision remain in its current form, or would change be appropriate?*

The Code includes details of acceptable setbacks from powerlines. These were developed on the premise that smaller trees and shrubs under three metres tall could occupy an area closer to powerlines than the trees commonly grown for timber harvest without creating an unacceptable fire risk.

A small number of submissions addressed this issue, with only one supporting the status quo. Others were generally in support of simplification, although not advocating changes to the effective setbacks for plantation trees.

The powerline setbacks in clause 25B of the Code are complex and anecdotally are not currently functional, a key factor in this being that plantation trees almost invariably exceed three metres in height.

The Review considers that simplification could be achieved by adopting setbacks based on existing values, without the option of trees under three metres in height being able to be planted within the setback area. While Clause 25B could possibly be removed from the regulation, instead relying on energy utility guidelines, it was considered that this would add unnecessary complexity for plantation owners.

#### **Recommendation 8:**

Amend the Code to include the following revised standards in relation to powerline setbacks:

<i>Power line voltage</i>	<i>Setback</i>
Up to 11kV	10 metres
Over 11kV and up to 33kV	12.5 metres
Over 33kV and up to 66kV	15 metres
Over 66kV and up to 132kV	22.5 metres
Over 132kV and up to 330kV	30 metres
Over 330kV	35 metres

### 3.4.4 Community concerns

*Are there community concerns about increased risk of fire from plantations? What is the best way to address these concerns?*

Submissions made the following points about community concerns and risk of fire from plantation:

- *Bushfire impacts on neighbours must be assessed and be consistent with or of a higher standard than those that the Rural Fire Service would apply to any development, including the application of setbacks around dwellings and fire breaks across the plantation.*

**Review response:** This is currently beyond the scope of the PR Act being a matter under the RF Act.

- *Heightened awareness and scrutiny of fire activity and response may lead to criticism of fuel loads and maintenance of forestry lands.*

**Review response:** Noted.

- *The validity of community concerns about increased risk of fire from plantations should be tested and addressed by a central organisation with access to current research rather than by individual plantation owners.*

**Review response:** This was an issue debated when the legislation was introduced in 1999.

- *Observations from the recent major fires was that the forward spread of the fire was exacerbated by the spotting originating from the Eucalypts retained within the plantations.*

**Review response:** The [Final Report of the NSW Bushfire Inquiry](#) made no recommendations in relation to the PR Act and Code.

### 3.4.5 Additional bushfire related matters

Submissions identified a number of other fire related matters, some of which are beyond the scope of this review including:

- The possibility of natural strategic fire breaks and avoidance of continuous vegetation in plantations
- Adoption of ‘whole of landscape’ fire management, particularly the fuel management status of retained native vegetation in and around plantations
- Ensuring the benefits of riparian protection and wildlife habitat are balanced against the risk of periodic incineration of the plantations and the native vegetation within them
- Provision by the NSW Government (not industry) of more specialist firefighting resources suitable for fighting plantation fires.
- The legislation of Forest Industry Fire Brigades.

## 3.5 Transport infrastructure

*Are the existing mechanisms in the Act relating to transport infrastructure contributions adequate and appropriate? If not, what changes should be made?*

The transport infrastructure contribution section of the PR Act establishes a mechanism to collect financial contributions toward the cost of road and bridge maintenance attributable to plantation forestry operations. In order to do this, the legislation requires contribution plans to be prepared by regional committees which include representatives of local councils.

Part 5 of the PR Act dealing with transport contributions was included in the original version of the Act in 1999 to provide a mechanism to ensure that forestry plantations paid their way in terms of public funded infrastructure. The PR Act describes a system where transport fees are paid at harvest to correspond to the income streams of the plantation.

Since the commencement of the PR Act in December 2001, no contribution plans have been proposed and hence no contributions have ever been levied under this section of the Act.

Submissions received were mixed in their view of the relative merits of the haulage contribution provisions. Councils understandably favoured amendment to the provisions to make them more workable and to enable contributions to be more easily recovered (without actually suggesting proposed changes), while industry participants strongly opposed the provisions and sought their repeal.

Part of the rationale behind Part 5 is that, but for the PR Act, plantations would be considered a land use development under planning arrangements. As a development, associated fees would be payable to local councils, and these could be used to fund infrastructure such as roads and bridges. A new development approval would likely be required at each rotation (harvest and replanting) and associated fees would be payable. Section 5 of the PR Act provides for an alternative way of channelling funds from plantations to councils that intentionally avoided plantation development being subject to the broader planning system consistent with the one-stop-shop principle.

In comparison with other farm commodities, that are produced every year and often involve frequent heavy vehicle movements year-in year-out, plantation timber is generally harvested once in 30 years or more, perhaps with thinning operations at around 10-12 years. The quantity of timber transported at harvest is large, but - unless thinning occurs and the residue is moved off-site - for the rest of the growing period, there is no movement of timber. The transport infrastructure contribution provisions of the PRA Act recognised this fundamental difference.

While the desire to extract transport contributions from plantation operators was expressed in submissions to this Review, the Part 5 provisions have now been in place for more than 20 years and there is no record of any council actively pursuing their use. Nor did any submission cite evidence of financial difficulties being caused by plantation timber movements on council-funded roads.

Upon consideration of the submissions received, together with the fact that the provisions of Part 5 of the PR Act have never been applied, it is recommended that a Reference Group be established in order to further examine the provisions with a view to making them more workable and in keeping with their original objectives. The proposed Reference Group would be chaired by DPI and comprise representation from industry and local government stakeholders. The Reference Group will make recommendations to the Minister on how to make the haulage contribution provisions of the Act more workable and thus beneficial.

It is also important to recognise, as articulated by some submissions, the manner in which the maintenance and upgrade of significant haulage routes have been funded over the 22 years since the PR Act's inception. These include financial and in-kind contributions from industry and the Forestry Corporation, NSW Government funding and equity injections, grant programs run by the NSW and Commonwealth Governments, and direct negotiation between plantation owners and local councils. It would be remiss not to acknowledge these mechanisms, or to assume that they cannot continue to be utilised effectively into the future in order to ensure the maintenance and upgrade of key log haulage routes, which are also used by non-timber industry participants and the general public.

### **Recommendation 9:**

Convene a Reference Group, to be chaired by DPI and including industry and local government stakeholders, to further examine the haulage contribution provisions of the PR Act with a view to making them more workable and provide recommendations to the Minister for Agriculture.

## 3.6 Miscellaneous

### 3.6.1 Cross references to other legislation

*Are the current arrangements [in relation to legislative cross referencing and audit] appropriate? If not, what additional level of cross reference and audit would be appropriate?*

The PR Act and Code each contain references to other legislation, including Acts requiring compliance or which have been specifically excluded from the operation of the PR legislation. This Review therefore provides an important opportunity to ensure that these references remain current, including updating references to repealed or new legislation.

Examples of required updates, identified through a combination of internal review and from submissions received in response to the Request for Comment, include the following:

- Updating references to the repealed *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995* (replacing with the *Local Land Services Act 2013* and *Biodiversity Conservation Act 2016* respectively) and the appropriate tests to be applied with respect to threatened species.
- Replacing references to the *National Parks and Wildlife Act 1974* with the *Biodiversity Conservation Act 2016* in relation to unique and special wildlife and threatened species provisions
- Consequential amendments to position titles as a result of machinery of government changes.

The Department of Primary Industries will work with the Parliamentary Counsel's Office to thoroughly review, identify and update legislation and related references.

#### **Recommendation 10:**

Replace outdated legislative references used throughout the PR Act and Code with current Acts and Regulations, including updating appropriate tests for threatened species assessments and other matters.

#### 3.6.2 Update mapping references

*Are the current references adequate and appropriate, or could accuracy and clarity be improved by adopting more contemporary definitions? If changes are required, how should the Code be modified to be more technology neutral?*

The Request for Comment observed that the Dictionary definitions in the Code refer to various features being determined with reference to outdated mapping technology. For example, references to '1:25,000 or 1:50,000 topographic maps published by the Government'.

Mapping technology has evolved significantly since the Code was introduced, and the existing wording does not specifically provide for these advances.

While only a small number of submissions addressed this issue, the majority of those received agreed that the mapping references currently in the Code are outdated and would benefit from an update, either to reflect modern technology or redrafted to become technologically non-specific.

#### **Recommendation 11:**

Update mapping references throughout the PR Code to allow for digital mapping tools to be utilised.

#### 3.6.3 Compliance and enforcement

*Are there areas where wording and expression in the PR Act or Code could be improved to clarify meaning and requirements, or to otherwise improve aspects of regulatory compliance and enforcement?*

*Are regulatory and enforcement provisions sufficiently current? If not, what changes should be made?*

The Request for Comment posed questions around whether current compliance and enforcement provisions in the PR legislation were adequate or in need of amendment/updating.

Following receipt of submissions and internal review, two key themes emerged:

- Amendments aimed at improving regulatory efficiency (for example, through updates to accommodate modern technologies such as electronic communication for notices and other improvements, and removal of red tape and regulatory burdens)
- Introduction of a third party (e.g. contractor) offence.

## Improvements to regulatory efficiency

Twenty years of operations under the PR Act and comparisons with other legislation have identified a number of enforcement provisions of the Act that could be improved to allow more effective compliance and enforcement, as listed below.

Some of the improvements are updates to allow for current technologies such as electronic communication for notices and other improvements that would allow for better investigation and appropriate enforcement action.

### PR Act Section 61A – Powers of entry and inspection

Recommended amendment	Rationale
Remove the requirement to give reasonable notice to enter an authorised plantation or land that should be authorised as a plantation, where that plantation is in a public place (as per the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> ).	It is a regulatory burden to give notice to enter a public place and this requirement is not consistent with other legislation.
Stipulate that an authorised officer can give oral or written notice of entry.	Serving notices by mail or in person creates an administrative burden for both authorised officers and plantation owners. Industry has accepted email and phone calls previously. Giving an authorised officer the ability to call or email a plantation owner to give reasonable notice of entry brings the PR Act into line with other natural resource management (NRM) statutes.
(4) <i>A person may accompany an authorised officer and take all reasonable steps to assist an officer in the exercise of the officer's functions under this Act if the officer is of the opinion that the person is capable of providing assistance to the officer in the exercise of those functions.</i>	The power to use an assistant is consistent across other NRM statutes where it is a separate and additional power, not one contingent on an existing power, such as entry.

### PR Act Section 61B – Power to obtain information

Recommended amendment	Rationale
Enhance the power to enable an authorised officer to require information from third parties associated with an offence under the PR Act, including a corporation, with answers or information provided binding the corporation.	Consistency with other legislation and allow an effective investigation.

<p>Amend s 61B (2) to enable an authorised officer to require the information, either in person or in writing, without the need for a delegation.</p> <p><i>(2) The Secretary may, by notice in writing served on the owner or manager of land, require the owner or manager to give to an authorised officer, in accordance with the notice, any relevant information.</i></p>	<p>The ability to require information by written notice should not be contingent on the Secretary or a delegation being in place. Consistent with other authorised officers under NRM legislation, the authorised officer should be empowered to require information in verbal, written or any other form needed to investigate an offence.</p>
<p>Amend s 61B (3) to enable an authorised officer to require production of all records irrespective of their commercial nature.</p> <p><i>(3) In this section, <b>relevant information</b> means information or documents relating to matters that are reasonably connected with the administration of this Act or required for the purposes of determining whether this Act or the Code is being complied with, but does not include information or documents of a commercially sensitive nature.</i></p>	<p>The requirement to provide information should not exclude material that is 'commercially sensitive' in nature. This information may expose the liability of the plantation owner/manager in an offence and given it is used for the purposes of investigation only, the information requirement should override the sensitivities surrounding the documents.</p>

## PR Act Section 69 – Service of notices

Recommended amendment	Rationale
<p>Include electronic service delivery of notices (such as email or other electronic delivery systems)</p>	<p>Serving notices by mail or in person creates administrative burdens for both authorised officers and plantation owners. Industry has accepted email and phone calls previously. Giving an authorised officer the ability to call or email a plantation owner to give reasonable notice of entry brings the PR Act into line with other NRM statutes.</p>

## Recommendation 12:

Amend the PR Act as follows regarding sections 61A, 61B, and 69, to ensure the Act remains current and allows for effective and fair enforcement:

### Section 61A – Powers of entry and inspection

- Remove the requirement to give reasonable notice to enter an authorised plantation or land that should be authorised as a plantation, where that plantation is in a public place (as per LEPRA).
- Stipulate that an authorised officer can give oral or written notice of entry.
- Remove s 61A (4) and establish it as a separate power so it is not contingent on the power of entry.

### Section 61B – Power to obtain information

- Enhance the power to enable an authorised officer to require information from third parties associated with an offence under the PR Act, including a corporation, and answers or information provided binding the corporation.

- Amend s 61B (2) to enable an authorised officer to require the information, either in person or in writing, without the need for a delegation.
- Amend s 61B (3) to enable an authorised officer to require production of all records irrespective of their commercial nature.

#### *Section 69 – Service of notices*

- Include electronic service delivery of notices (such as email or other electronic delivery systems)

### **Introduction of a third party offence**

Section 20 provides that an owner or manager of an authorised plantation who contravenes, or causes or permits the contravention of, any condition to which the authorisation is subject is guilty of an offence. Currently, where a plantation owner or manager can establish due diligence showing they did not contravene, cause or permit the contravention of any condition, no action can be taken. This exposes the PR Act to a failure where a third party (a contractor for example, or a recreational four-wheel drive enthusiast in a public plantation or a person damaging native trees in a retained area for firewood) can intentionally or recklessly cause damage to a plantation and they are not liable to any penalty for their actions. Similarly, in circumstances where a plantation owner or manager is unable to demonstrate the requisite due diligence, the lack of a third party offence leaves them open to compliance action for the acts of another party.

To resolve this issue, it is recommended that an offence provision is added in the PR Act to provide that where a person, other than the plantation owner or manager, contravenes any condition of an authorisation, whether by act or omission, they are guilty of an offence. It would be appropriate for there to be a defence provision for works conducted during emergencies.

#### **Recommendation 13:**

Include the contravention of a condition of an authorisation as a third party offence in the PR Act, with an appropriate defence for works during emergencies.

#### **3.6.4 Alignment with other legislation**

*Do you think there is sufficient alignment of plantations regulation with other NSW policy/regulatory regimes? Are there any specific changes you would suggest? Are there opportunities to improve the alignment of the plantations legislation with other land management legislation?*

*Are current requirements under the Act and Code suitably consistent with other legislative requirements, e.g., land use constraints and environment protection, which would be in force if the land were used for a different purpose? Is this true of plantations on both private and public land?*

Submissions received by the Review were mixed on this issue. Some submitters suggested that environmental protections should be strengthened. Other submitters expressed the view that the PR legislation is more stringent than requirements for other rural land uses, while another view is that existing differences are workable and appropriate, given the intentional one-stop-shop nature of the legislation, whereby the majority of authorisations, licences, permits and approvals required for plantation establishment, maintenance and harvesting are incorporated into a single approval process.

The amendment of other legislation is beyond the scope of this Review, including suggestions to amend the PR Act to more closely align with the RF Act. However, this Review recommends that the fire provisions in the Code be further examined by a Reference Group (Recommendation 7).

One area where improved consistency with other provisions and streamlining of processes would be desirable is the requirements for crossings of drainage features. Amendments are recommended to allow construction or maintenance of crossings on Crown Land for drainage features within the plantation (i.e. where there is plantation on both sides of a crossing). The

provisions could be similar to those included for Crown roads. All environmental and other standards for crossings under this subdivision would apply. This would reduce administrative complexities for plantation owners and Government.

**Recommendation 14:**

Amend Part 6 of the PR Act to allow the approval of the maintenance and construction of crossings on Crown watercourses (within the meaning of Part 5 Division 5.8 Section 5.33 of the *Crown Land Management Act 2016*)

# Appendix A – Terms of Reference

## **NSW Government Review of the *NSW Plantations and Reafforestation Act 1999* and the *NSW Plantations and Reafforestation (Code) Regulation 2001***

### Background

The *Plantation and Reafforestation Act 1999* (PR Act) and the NSW Plantations and Reafforestation (Code) Regulation 2001 (the Code) streamline the establishment and management of plantation forests in NSW by providing a single source of plantation approvals and providing certainty of harvest rights to plantation owners, consistently with the principles of ecologically sustainable development.

The last major review of the PR Act and the Code was in 2010. Review of the PR Act and the Code is a Government commitment under the NSW Forestry Industry Roadmap, and five yearly review of the Code is a statutory requirement.

### Review Objectives

The objectives of the current review are to:

1. Determine whether the policy objectives of the PR Act remain valid and whether the terms of the Act remain appropriate for securing those objectives
2. Consider possible improvements to the Act and Code in light of current best practice, and recent improvements in other forestry regulation frameworks
3. Modernise the Act and Code to more efficiently and effectively achieve the objectives of the Act
4. Fulfil commitments under the NSW Forestry Industry Roadmap to review the PR Act and Code
5. Meet statutory review requirements for the PR Code.

Specifically, the review will:

- a) Determine whether the policy objectives of the PR Act remain valid and whether the terms of the Act remain appropriate for securing those objectives
- b) Seek public input into the review process in relation to:
  - Objectives, terms and content of the Act
  - Content and functions of the Code
- c) Consider possible improvements to the Act and Code in light of current best practice and stakeholder input
- d) Report on the outcomes of the review and provide recommendations to the NSW Government to modernise the PR Act and Code to more efficiently and effectively achieve the objectives of the Act.

### Scope Development

#### Objectives of the Act

The objects of the PR Act are:

- a. to facilitate the reafforestation of land
- b. to promote and facilitate development for timber plantations on essentially cleared land
- c. to codify best practice environmental standards, and provide a streamlined and integrated scheme, for the establishment, management and harvesting of timber and other forest plantations

- d. to make provision relating to regional transport infrastructure expenditure in connection with timber plantations.

[The above to be achieved] consistently with the principles of ecologically sustainable development (as described in section 6 (2) of the Protection of the Environment Administration Act 1991).

The PR Act legislates the development of the Code, by way of regulation, for furthering the objects of the Act.

The PR Act and Code were formally reviewed in 2010 and subsequently amended under the *Plantations and Reafforestation Amendment Act 2010* and the Plantations and Reafforestation (Code) Amendment Regulation 2010.

#### Definition of plantations

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

- a. for the purpose of timber production, or
  - b. for the protection of the environment (including for the purpose of reducing the salinity of the land or otherwise repairing or improving the land, for the purpose of biodiversity conservation or for the purpose of acquiring or trading in carbon sequestration rights), or
  - c. for any other purpose, but not principally for the purpose of the production of food or any other farm produce other than timber.
- (2) To avoid doubt, a natural forest is not a plantation for the purposes of this Act. However, an area is not a natural forest merely because it contains some native trees or shrubs that have not been planted.
- (3) The Code may specify the distance between planted trees or shrubs that constitute a single canopy and plantation for the purposes of this Act.
- (4) A plantation can be a privately-owned area of land, or it can be a State forest or other Crown timber lands, or any other land.
- (5) A plantation can comprise more than one area of land if those areas are under the same ownership or management and the Minister determines that those areas may comprise a single plantation for the purposes of this Act.