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Plantations Regulation Unit Regulatory Policy

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More information

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1. Introduction

The Plantations and Reafforestation Act 1999 (the Act) was created to facilitate the expansion of the NSW timber plantation estate. Managed by the Department of Primary Industries (DPI Forestry), the Act supports ecologically sustainable plantation forestry management by providing an integrated process (one-stop shop) for plantation approvals, including establishment, management and harvesting activities.

The Act is supported by the Plantations and Reafforestation Regulation (Code) 2001 (the Code) which details the minimum environmental standards required for all authorised plantations.

The relevant Minister is empowered to appoint authorised officers (also known as Plantations Officers) for the purposes of upholding the environmental, economic and social values underpinned by the Act.

Plantations officers respond to offending across the plantation estate, using a variety of regulatory options, from voluntary corrective action requests through to prosecution, to enhance voluntary compliance and create effective deterrence to serious offending.

1.1 Purpose

DPI Forestry aims to deliver fairness, consistency and confidence to the plantation forestry industry and the broader community in enforcing the Act and Code.

2. Regulatory Process

DPI Forestry, through the Plantation Regulation Unit (the PR Unit), undertakes regulatory activities focused on the plantation forestry industry across NSW.

We use a range of measures to maximise voluntary compliance and to create effective deterrence across the plantation industry in NSW:

- Site assessments.
- Licensing activities.
- Extension and education activities.
- Proactive risk based auditing.
- Reactive auditing, including reports of alleged illegal activity on a plantation.
- Investigations to identify and discourage serious offending.
- Enforcement actions, including prosecution, for serious environmental or cultural harms.

2.1 Classifying authorised plantations by risk

We apply risk-based principles to focus our finite resources into reducing impacts presenting the greatest technical and environmental risks. This is done through an ongoing analysis of plantations owners, or activities, according to the consequence (impact, or harm), and then the likelihood (probability) of offending.

Technical risks are treated differently to environmental risks, due to the factors that impact on the geophysical nature of plantations, their location and the presence of threatened aquatic and terrestrial flora and fauna species.

Taking a risk-based approach to administering regulation will also result in individuals and businesses not being inconvenienced by unnecessary regulatory activities

2.2 Priorities

The PR Unit documents our priorities each year through a Regulatory Priorities Statement. The statement outlines our targets for that year and what we aim to achieve for industry or communities across NSW.

We select a particular action, program or project consistent with our identified priorities and design and delivery compliance, enforcement or extension activities to achieve outcomes.

2.3 Achieving outcomes

The PR Unit plans regulatory activities and allocates resources to initiatives and programs to achieve the regulatory outcomes identified as key to industry success.

We have developed three key outcomes:

- Delivering authorisation services within the guarantee of service.
- Managing risks to ensure improved industry voluntary compliance.
- Improving community awareness of the benefits of plantations in NSW.

These outcomes link directly into the NSW Department of Primary Industries strategic program of *"Managing the sustainability of Forests in NSW"*.

The PR Unit will:

- Clearly define regulatory outcomes to guide the application of education, licensing, compliance monitoring and enforcement activities to achieve our regulatory core purpose.
- Invest in the development of the PR UNIT staff to ensure we have the skills and knowledge of the desired regulatory outcomes to choose an appropriate and proportionate response to non-compliance.
- Consider innovative approaches to achieve our regulatory core purpose and to solve regulatory problems.
- Regularly report on progress towards the achievement of regulatory outcomes

2.4 Regulatory activities

The PR Unit conducts regulatory operations in accordance with departmental policies and procedures, including those relating to workplace safety.

We use operational plans to facilitate responses to longer-term regulatory concerns and as required for projects that address particular compliance problems.

Our plans are flexible, so we can adjust our activities throughout the year to take into account changes from unforeseen events and new information gained through compliance monitoring activities.

This policy describes the tools we employ to achieve outcomes within the regulatory lifecycle, including the full range of tools available when dealing with non-compliance (a breach of the law).

2.6 Reporting on outcomes

The PR Unit will establish a comprehensive set of effectiveness and efficiency measures and will regularly report progress towards outcomes and regulatory achievements

2.7 Strategic review

At least annually, we will review our strategic risks, what we have achieved and the relevance of our outcomes in preparation for the strategic and business planning cycle for the next financial year.

The regulatory planning cycle includes a strategic risk identification and assessment process, where known and emerging regulatory risks will be identified, assessed and incorporated into the strategic and business planning process, as appropriate.

3. Committing to regulatory best practice

The PR Unit is committed to:

- Building the trust of the forestry industry and the community and fostering mutual respect between the plantation forestry industry and the broader NSW community.
- Understanding the expectations of the community through engagement on key issues and striving to meet those expectations through our activities, regulatory outcomes and our risk-based approach.
- Periodically review our regulatory approach, systems and activities, based on outcomes achieved, feedback from industry and the community and constant assessment against regulatory best practice.

4. Delivering accountability and transparency

The PR Unit is accountable for our compliance and enforcement activity, which means we are answerable for our decisions, including when we take action, the type of action we take, or when we decide not to take action.

Our decision-making will be done within effective processes of corporate governance to maintain objectivity, independence and integrity.

We will employ processes that provide procedural fairness and natural justice, make decisions based on evidence and will keep appropriate records of our regulatory activities so that decisions can be readily accessed and scrutinised.

Our policies and priorities will be published and provide information that explains what the community and regulated entities should expect from us.

We will promote awareness of our regulatory activities. Where legislation allows, the results of enforcement actions may be made public to deter future non-compliance as well as to build the credibility of, and confidence in, our regulatory approach and processes.

When we detect non-compliance, we will be clear about what is needed, when it is required and the consequences of continuing non-compliance.

Education, licensing, compliance monitoring and enforcement activities will be conducted in a timely way to minimise harmful impacts, maximise deterrence, minimise disruption and provide certainty to industry and the wider community.

Delivery of assessment and authorisation actions will meet legislated timeframes, acknowledging that industry values excellent customer service delivery.

We commit to:

- Timely compliance and enforcement action to maintain the principle of fairness to those involved.
- Strategically reviewing our approach to compliance and enforcement, including the way in which contentious decisions were made.
- Welcoming and valuing industry and community feedback on our compliance and enforcement program.

5. Being consistent, flexible and fair in decision making.

The PR Unit aims for high levels of consistency in the decision-making process, based on the use of clear policies and processes that take into account the specific circumstances of a situation, to produce sensible, predictable and fair results.

We will:

- Act within the law and our statutory powers when undertaking enforcement activity.
- Not require affected industry members or the community to observe requirements that are not authorised by law.
- Expect plantations owners (individuals or corporations), managers and contractors to comply with all elements of the Act and Code.
- Take enforcement action that is proportionate to the seriousness of the alleged offending. The more serious the harm, the stronger the response.
- Not hesitate to use the full range of enforcement powers available, such as stop work and remediation orders, to reinforce the seriousness of the harm, irrespective of the potential cost to the offender.
- Not hesitate to prosecute serious breaches of the Act and Code, especially where the breach adversely impacts the environment or cultural heritage values.
- Strive to achieve fairness while ensuring we act in the public interest.

6. Being innovative

The PR Unit will develop innovative approaches, use modern technologies and the skills, systems and equipment to drive voluntary compliance, achieve our outcomes and solve compliance and enforcement problems.

Our approach to compliance and enforcement should evolve over time, in response to adopting improved digital solutions and improved statutes.

We are committed to continual improvement by:

- Developing digital field solutions to assist in assessments and data collection.
- Creating capacity for industry to transact with us electronically.
- Increasing our range of extension and advisory services.
- Adopting best practice compliance and enforcement policies and procedures.
- Increasing the capacity and capabilities of PR UNIT officers.

7. Extension and advisory activities

The PR Unit will develop and deliver targeted extension activities aimed at:

- Creating greater industry voluntary compliance.
- Increasing the awareness of the broader community of the values and benefits of plantation forestry.

We will engage with plantations owners, forestry workers and interested landowners to provide clear and unambiguous advice on:

- Plantation activities (such as establishing a plantation or harvesting operations).
- Compliance with the Act and Code.
- Enhancing industry development and environmental outcomes.

We aim to:

- Proactively engage with the community and industry to discuss compliance problems and develop appropriate solutions.
- Seek to maximise voluntary compliance through collaborative engagement with industry and the community as an important way to influence compliance behaviours.
- Communicate through a variety of channels including websites and social and traditional media platforms.

Extension activities may include:

- Providing detailed information to give industry certainty for future planning.
- Building industry capacity through participating in workshops, field days and industry events.

8. Monitoring and auditing

Industry monitoring is an essential part of our role. We commit to achieving our regulatory outcomes by monitoring activities on plantations throughout their life cycle of establishment, management and harvesting.

Monitoring plantation activities assists in:

- Timely detection of non-compliance, including where action may be needed to avoid or mitigate harm.

- Determining compliance trends.
- Identifying emerging work practices that may impact the surrounding environment or the risks to compliance.
- Assessing and reviewing the effectiveness of our regulatory approach.

8.1 Proactive Audits

We will conduct a program of proactive audits of plantations with high risk environment or work practice related risks

Proactive audit monitoring includes:

- PR Unit officers attending plantations, or specific areas of plantations to inspect, examine, sample and otherwise review plantation activities.
- The use of remote surveillance techniques such as unmanned aerial vehicles (drones), aerial photography, satellite imagery and data from land and river surveys.
- Follow-up audits or higher frequency visits of plantations with a history of poor compliance, or high-risk activities or businesses.
- Operational plans targeting an industry wide compliance issue.

Proactive audits will be conducted on an announced basis, with the plantation owner or manager given reasonable notice of the intended audit.

8.2 Reactive audits

Reactive plantation audits will be completed where we receive credible reports, incidents or other information alleging illegal plantation activities, including where third parties may be impacting authorised activities.

Before, during or after reactive audits, we may lawfully use remote surveillance techniques such as:

- Unmanned aerial vehicles (drones).
- Overt and covert surveillance cameras.

Plantations officers will also share and seek information from partner agencies at local, state and commonwealth level, relevant to enforcement activities associated with plantations.

Reactive audits will largely be on an unannounced basis, with the plantation owner or manager given notice immediately prior to the audit.

The PR Unit commits to responding reports of alleged illegal plantation activities, such as operations that impact on retained native vegetation, harming endangered species or damaging cultural heritage sites.

Plantations Officers will not act on information, or at the request of individuals, where we believe the allegations are not in the public interest, create a real or perceived conflict of interest for the Government or where the allegations have arisen as a result of a civil dispute between adjoining landowners.

8.3 Intelligence systems

The PR Unit commits to developing a comprehensive information management system to process information about plantations owners, managers, contractors, or groups of these entities, to determine an appropriate regulatory strategy, regulatory response, or to inform operational planning.

We commit to developing a web based complaint/illegal activity reporting form for industry or the community to provide confidential information on suspected illegal plantation activities.

9. Investigations and enforcement

The PR Unit structure includes a dedicated investigations and enforcement team. Officers within this team will focus their efforts into completing high level investigations into serious offending, especially where significant environmental harm is alleged. These investigations may be initiated through internal referrals from other PR Unit officers, from detailed reports from industry or community members or as a result of emerging trends observed through the proactive audit program.

We employ a graduated and proportionate approach to non-compliance, based on the severity of the non-compliance (its technical or environmental impacts and potential harm to people or property), the offender's culpability, cooperation and approach to the non-compliance, and the public interest.

Plantations officers will consider the following factors when deciding on the enforcement response to offending:

- The degree of harm.
- The seriousness of the offence, based on the actual, potential or perceived impacts on industry, the community and the environment.
- The culpability of the person, corporation or entity.
- The compliance history of the person, in general, and with respect to the specific incident.
- Any motivation, including financial gain, mitigation or aggravation.
- The cause of the behaviour - intentional, opportunistic or careless.
- False or misleading statements to investigators.
- Public interest and community expectations.
- The time the offence was committed.
- Would a decision not to act undermine public confidence?
- Is action necessary to provide specific or general deterrence?
- The offender voluntarily remediating any environmental harm and any work practices introduced or modified to prevent a recurrence.
- Cooperation demonstrated by the person involved.
- The offender's willingness to comply with requirements.

Responses to non-compliance, in increasing severity, include:

- Advisory letters.
- Warnings (formal written and verbal).
- Corrective action requests.
- Stop work orders.
- Remediation orders.
- Penalty notices.
- Administrative sanctions, including variation or cancellation of authorities.
- Civil enforcement in the Land and Environment Court.
- Criminal prosecution.

These enforcement responses allow a balanced approach to offending encourages a change in attitudes and behaviours, rather than solely applying a punishment. Combinations of the actions may be taken, for example, remediation orders and penalty notices.

Generally, enforcement responses aim to create specific (personal) and general deterrence against authorised plantations owners, managers and contractors committing offences.

All enforcement action taken against any person, corporation or other entity for offences under the Act and Code will be:

- Based on sound, lawfully gathered evidence.
- Consistent with the principles of natural justice and procedural fairness.

Wherever possible, the PR Unit provides reasons for decisions and explains avenues for review.

9.1 Authorisation conditions and cancellation

If an authority holder is no longer willing or able to comply with any legislative obligations under their authority, we may revoke, vary or add conditions to the authority.

Where a plantation owner or manager has consistently not been able to maintain a high level of voluntary compliance, or where the authority holder requests, we will cancel the authority.

To ensure fairness, we will ask plantation owners to tell us why their authority should not be cancelled before we take any action unless the request has come from the plantation owner.

We commit to providing plantation owners written notice of the cancellation of an authority.

Owners of a cancelled plantation may appeal the decision to the NSW Land and Environment Court.

9.2 Prosecution

Prosecution is a strategic response the PR Unit may choose, based on the circumstances and supporting evidence.

The key aim of any prosecution is to achieve compliance and drive specific and general deterrence. We will only use prosecution when it is in the public interest and where it will assist in maintaining community confidence in the regulatory oversight provided by the PR Unit.

Our Prosecution Guidelines detail the approach that the PR Unit will take when considering and undertaking prosecution action.

9.3 Publication of enforcement action

The PR Unit will consider the value of publishing enforcement actions, including prosecution matters, to aid deterrence, create voluntary compliance and to maintain transparency and public confidence.

9.4 Enforcement campaigns

Compliance in plantation forestry relies on proponents being aware of, and committed to, minimising operational impacts by abiding with the standards outlined in the Code. To facilitate improved regulatory and environmental outcomes, we may from time to time develop and conduct enforcement campaigns. These campaigns will be used to eliminate, mitigate or prevent environmental harms, or technical offences as observed through data analysis and emerging risks.

We commit to working collaboratively with industry and the community during these campaigns, however, on occasion we may be required to adopt a covert approach in order to enhance voluntary compliance and to create general deterrence across the plantations sector.