Regulatory Framework

Plantations Regulation Unit

Contents

1. Introduction

New South Wales has over 400,000 hectares of planted forests across the coastal and western landscape, incorporating State forests and private landholdings. These forests are primarily timber plantations, made up of softwood (typically radiata pine), and hardwoods, consisting of a variety of low and high value species for a range of products and applications.

Around 60 plantations are classified as environmental plantations, mostly part of the carbon credit scheme, and these plantations cannot be harvested. Some plantations are currently part of trials in bioenergy and other alternative fuel supply models.

DPI Forestry Policy, Research and Development is the regulator responsible for enhancing the viability and expansion of planted forests, both private and public, across NSW.

The Plantations Regulation Unit (the Unit), has the primary responsibility to regulate the development of the planted forest industry, including supporting further development. The Unit seeks to build community confidence as a trusted, credible and transparent regulator.

Through an approved regulatory policy, the Unit applies effective, transparent and accountable authorisation and compliance measures, consistent with the objectives of the *Plantations and Reafforestation Act 1999* (PR Act). The policy adopts an outcomes-focused, risk-based regulatory approach that aligns with the requirements of the NSW Quality Regulatory Services Initiative and aims to grow industry and community confidence in the management and sustainability of planted forests.

This document describes how the Unit addresses each of the regulatory framework elements in Section 2 of our Regulatory Policy (see Figure 1).

The document describes how we address each of the Regulatory Framework elements described in the Department of Regional NSW Regulatory Policy.

2. Plantations Regulation Unit's core purpose

The core regulatory purpose of the Unit is derived from the PR Act and reinforced within the requirements of the *Plantations and Reafforestation (Code) Regulation 2001* (the Code). We aim to:

- assure best practice environmental standards,
- provide a streamlined and integrated scheme for the establishment, management and harvesting of timber and other forest plantations and
- ensure compliance with authorisation and legislated conditions,

consistent with the principles of ecologically sustainable development and the outcomes of the NSW Forestry Industry Roadmap and the programs and sub-programs in the Department of Primary Industries and DPI Forestry Policy, Research and Development Business Plans, which are:

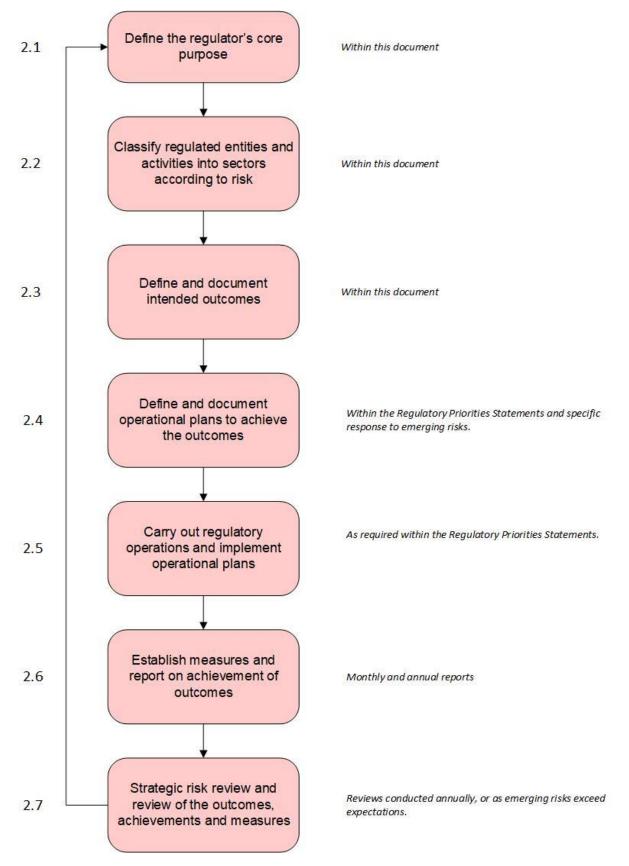- Managing the sustainability of forestry and hunting in NSW, and
- Increasing the capacity of the forestry sector to respond to risks and change.

The PR Act objectives are to provide for an economically viable and sustainable industry through:

- Facilitating the reafforestation of land
- Promoting and facilitating development for timber plantations on essentially cleared land
- Best practice environmental standards

- Providing a streamlined and integrated scheme for the establishment, management and harvesting of timber and other forest plantations.

Figure 1: PRU Regulatory framework

2.1	Define the regulator's core purpose	*Within this document*
2.2	Classify regulated entities and activities into sectors according to risk	*Within this document*
2.3	Define and document intended outcomes	*Within this document*
2.4	Define and document operational plans to achieve the outcomes	*Within the Regulatory Priorities Statements and specific response to emerging risks.*
2.5	Carry out regulatory operations and implement operational plans	*As required within the Regulatory Priorities Statements.*
2.6	Establish measures and report on achievement of outcomes	*Monthly and annual reports*
2.7	Strategic risk review and review of the outcomes, achievements and measures	*Reviews conducted annually, or as emerging risks exceed expectations.*

3. Classification of regulated entities and activities into sectors according to risk

The Unit has adopted a risk-based approach to design compliance initiatives and allocate its regulatory resources to the areas of highest risk. As an outcome-based regulator, this approach minimises costs and maximises outcomes for the government, industry and the community.

This risk-based approach to regulating industries to mitigate environmental harms extends across policy, administration and operational activities as set out below:

Risk classification	Authorisation classification	Compliance classification
Determined on the consequence of the risk and the likelihood of it occurring. Influenced by national standards and approaches to risk management	Determined by the type of authorisation issued and the class of authority i.e. complying, non complying (conditions) or existing plantations.	Determined by the risk of the authorised activity, seriousness of environmental harm and previous compliance history of the owner/manager.

Our regulatory framework consists of an integrated series of components, including legislation, policy, extension and support, assessment and authorisation, administration, audit, investigation, and enforcement actions.

We apply a responsive and risk-based approach to our regulatory functions to help ensure that our compliance and enforcement activities focus on the highest risk activities to the economy, society and environment, targeting the circumstances and those plantation owners/managers least likely to comply. The Unit escalates regulatory responses according to the risk posed and the seriousness of the non-compliance, the intention of the alleged offender, previous history and frequency of non-compliance.

The Unit's Authorisation and Audit team are responsible for implementing the compliance audit program for planted forests. Complaints and targeted compliance and enforcement activities are managed through the Governance and Systems team, with the assistance of a dedicated investigations officer. Both teams work collaboratively to address and identify emerging risks to industry, community and the environment.

The risk based compliance initiatives conducted are largely separated into the following two categories:

Proactive interventions: programmed audits, site assessments and inspections, extension and industry support activities.

Reactive interventions: investigations and responses to third party complaints, including matters referred from other regulators (such as the NSW EPA, DPI Fisheries or Local Government), unprogrammed audits and inspections and

investigating industry reports of non-compliance, including where the informant is the entity alleged to be non-compliant.

Our Regulatory Policy explains the broad approach to monitoring compliance and enforcement. Resources are focused on those areas that pose the greatest risk to the economy, community and environment. Ensuring that industry, landowners and the community comply with plantation legislation is fundamental to protecting community enjoyment of public lands and keeping markets accessible for NSW primary products. The Policy also ensures the delivery of credible cost-effective regulation.

3.1. Risk classification

The strategy for prioritising plantations regulatory activities is based on principles that focus regulatory resources on plantations having characteristics with the potential for greatest environmental harm.

Risk assessment and the audit strategy is driven by a mapping process based on identifying a range of known key factors for environmental harm and guiding priorities for auditing effort, including:

- Master and derived geospatial datasets
- Erodible landscapes
- Stream and drainage crossings
- Unique or special wildlife values (threatened species).

Additional considerations include:

- Temporal factors, like plantation establishment, mid rotation management or harvesting operations.
- Management actions:
    - History of non-compliance
    - Emerging trends or broad scale issues affecting other plantations across the State.
- Landscape impacts from fire or rainfall events.

The stage or nature of operations will determine disturbance and the potential risk of environmental harm.

The methodology, combined with an adaptive risk matrix identifying the key environmental harms likely to be experienced during an audit and the resultant harm, assist the Unit to direct its assets and resources towards mitigating the highest regulatory threats.

3.2. Compliance and enforcement

We have the responsibility for compliance monitoring and enforcement activities associated with plantation operations including:

- establishment
- management, and
- harvesting.

Each of these operations are defined in the PR Act and may involve specific planning requirements. Authorised officers may require the owner/manager of a plantation to produce those planning document to ensure the operational activities are consistent with the plans, in addition to negating or mitigating possible harms.

3.3. Extension and industry support

We use proactive extension and communication activities to support industry development and to ensure plantation owners and managers are:

- informed about best practice application of the Code
- assisted to work within the rules
- aware of the consequences of breaking the rules
- confident to self report breaches and provide feedback.

We also employ an adaptive enforcement response model to non-compliance when the:

- non-compliance is low in severity, i.e. where the actual or potential risk and impacts on the environment are low, and the
- alleged offender has a low level of culpability and demonstrates a willingness and capacity to voluntarily remediate the situation.
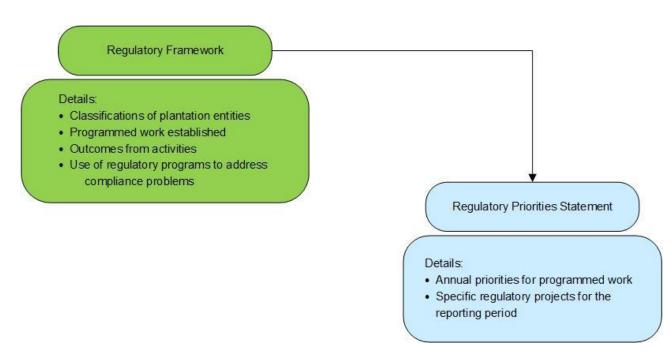
In this context, educating and assisting the plantation owner/manager is considered to be an effective strategy to drive future voluntary compliance.

We conduct extension and communication activities within the wider community, especially where interested parties are considering establishing a plantation. These activities are aimed at raising the community's awareness of the sustainability of the plantation industry, including its operation within the legislative framework and to establish if we are achieving public confidence in the enforcement of the PR Act and Code and effectively supporting industry development.

3.4. Classification—identifying regulatory responses

This classification section and our Regulatory Priorities Statement work together to establish the outputs for the Unit's operational planning processes. This ensures that our resources are used most effectively and efficiently to achieve the required regulatory outcomes.

Figure 2. Regulatory framework relationship to priorities

4. Defining and documenting outcomes

The Unit has identified four key regulatory outcomes:

- Meeting the statutory guarantee of service for complying plantations
- Managing audit risk
- Improving industry voluntary compliance
- Improved community awareness of the opportunities for and benefits of plantations.

4.1. Guarantee of service

The PR Act places a statutory burden on us to assess an application for a complying plantation within 14 days of receipt.

Assessment includes a desktop review of the land on which the plantation is to be established, followed by a site visit, identifying:

- Relevant spatial and geophysical characteristics.
- Soil regolith stability
- Native vegetation already present and the extent of cleared land.
- Previous land use and suitability.
- The presence of any sites or artefacts of Aboriginal and European cultural significance.
- The presence of threatened flora and fauna either on or immediately adjacent to the proposed plantation.

Priority is given to the assessment of plantation applications to meet the statutory timeframe. If more information is required, or mapping activities require additional site visits, the timeframe can be extended by consent with the applicant. We will only seek to extend the timeframe where necessary.

Once approved, the applicant is provided with an authorisation detailing the extent of the plantation and a map highlighting the net plantable area and any areas requiring protection, such as habitat trees, retained vegetation or significant sites.

4.2. Managing audit risk

Over the life of a plantation, the risk of environmental harm varies depending on the operations being undertaken. Some risks are more significant during the establishment and harvesting cycle than through the management phase. To manage all the inherent risks in plantation operations, we aim to audit a plantation at least once through each operational phase. This means that during each rotation of an authorised plantation, it is likely to be audited every 8-10 years.

There are plantations across NSW that were established before the introduction of the PR Act and the Code. To ensure we fully manage and mitigate the biophysical risks of any legacy issues (such as highly erodible soil), those plantations may require more frequent auditing.

All authorisations are assessed to ensure that plantation operations meet the Code, reducing the risk that plantation operations will have a detrimental impact on soil, biodiversity or cultural heritage requirements.

The ability to maintain an acceptable level of compliance across plantations is achieved by determining those that have a lower susceptibility to environmental harm. A planned audit program can assess and encourage compliance, leading to reduced chances of environmental harm. Better outcomes for threatened species are obtained when plantations with known populations of threatened species are audited at times of likely disruption to the habitat.

Plantation owners and managers who demonstrate repeated non-compliance will be subjected to a higher level of monitoring to ensure that plantation operations remain compliant.

4.3. Improving industry voluntary compliance

Extension activities have been demonstrated to increase the level of an industry and entity's voluntary compliance. A heightened awareness of practical applications of the rules will, over time, lead to lower incidents of recidivism, generally and at an individual business level.

We will take every opportunity to use practical and common-sense approaches with industry to deliver greater voluntary compliance. This approach may be through formal activities, such as field days, community workshops or extension materials, or through informal actions, like site assessments, industry networking and drop-ins to confer with plantation owners and managers on site specific issues.

To assist plantation owners and managers with operational compliance, we will develop and publish extension materials, highlighting specific rules that impact operations on plantations. These materials will be published on the DPI Forestry website and be made available in hardcopy format. Being available publicly also assists the broader community with an understanding of plantation operations and may alleviate anxiety or concern over industry practices.

4.4. Improving community awareness

We provide support and industry development opportunities, one of which is growing community confidence in the sustainability and productivity of plantations in NSW and acceptance of the planted forests as an important component of the forestry industry. Strategies include:

- Being transparent and accountable for all regulatory decision making
- Reporting on outcomes publicly, e.g. demonstrating how the level of industry voluntary compliance leads to superior business, industry and community outcomes and lower recidivism.
- Responding to request for information and outcomes from interested community members.
- Responding to complaints promptly, especially where the complaint originated from the community
- Providing extension and advisory activities, whether electronically, or in person, to create positive feedback loops reinforcing the economic, social and environmental benefits of plantations.

In conjunction with the DPI Engagement and Industry Assistance Branch, we will consider means to gauge community sentiment on plantations in NSW. We will then work closely with other DPI Forestry teams and key industry stakeholders to develop specific campaigns to improve perceptions and understanding. Surveys, community workshops and other advisory style activities may be used to provide snapshots of community understanding and how the campaigns are influencing or changing community awareness.

5. Defining and documenting operational plans to achieve the outcomes

We use a publicly available Regulatory Priorities Statement to highlight annual work priorities and focus work programming to achieve regulatory objectives. We will develop an annual operational

plan specific to each Unit team. That plan will drive prioritisation of workloads and activities, including those undertaken at a local level.

The Regulatory Priorities Statement and operational plans will be reviewed every six months, incorporating changes in priorities that arise from unforeseen corporate, industry or environmental risks, or responses to our activities, and information gained through intelligence, compliance and monitoring activities.

Intelligence may be sourced from the following areas and is used to prepare for or amend activities across the year:

- Feedback from the community and stakeholder groups.
- Industry monitoring.
- Ministerial advisory committees.
- Timber market trends, focusing on plantation timbers.
- Trends in non-compliance.

Our priorities are developed in line with a hierarchy of DPI Forestry planning processes, ensuring activities are complementary and in line with NSW DPI Strategic Plan 2019-23.

These planning activities are conducted at least annually and are recalibrated by:

- Identifying and prioritising risks.
- Developing actions to minimise inherent and emerging risks for these industries.
- Understanding the context in which regulated entities operate to enable effective engagement with industry.
- Collaborating with key industry and government stakeholders to assist in implementation and information dissemination.

We will look to adopt business maturity and program logic models to underpin decision making and to design and cost specific initiatives that target underlying risk drivers.

6. Carry out regulatory operations – implement the operational plans

As a regulator, we advocate and encourage voluntary compliance and commit to detect and deter non-compliant behaviour. If non-compliant activity continues, we will apply proportionate and escalated enforcement actions. Those actions will be applied transparently, with consistency and fairness.

All compliance, extension and enforcement activities follow the:

- Plantations Regulation Unit Regulatory Policy, and the
- Plantations Regulation Unit Prosecutions Policy.

Further guidance documents are summarised in Appendix 2.

We conduct routine audits and inspections of individuals and businesses to monitor compliance.

Audit and inspection frequency is determined by:
- the level of risk related to the activity being conducted; and
- the compliance and enforcement history of the individual or businesses.

Reactive inspections may also be conducted in response to complaints or external intelligence about non-compliant activity. Complaints relating to plantation operations are triaged through the Governance and Systems team and responses are monitored to ensure customer satisfaction.

Complaints not related to plantation forestry are referred to the relevant regulator (such as Local Land Services or the Environment Protection Authority).

7. Establishing measures and reporting on achievement of outcomes

A series of measures are being determined to enable reporting of outcomes. These measures may include but are not limited to:

- Total area (in hectares) of new plantations authorised.
- The economic contribution of new plantations (e.g. dollar value at establishment, jobs created).
- The total area (in hectares) of other plantations authorised (e.g. existing plantations not previously authorised under the PR Act).
- Numbers of site assessments/extension activities undertaken to improve industry voluntary compliance or improve community confidence.
- Complaint management:
    - Numbers received
    - Resolution and outcome
    - Numbers referred to another regulator.
- Numbers of high risk audits completed.
- The audit compliance rate (expressed as a %).
- The number of actions arising from completed audits:
    - Corrective action requests
    - Warnings
    - Orders to comply (such as stop work or remediation orders)
    - Directions to produce documentation (such as harvesting plans)
    - Penalty Notices
    - Prosecutions.

We will move to report on activities on the DPI Forestry public website. Initially, measures will be determined on current statutory and department requirements. Over time, measures will be refined to highlight how we are achieving regulatory outcomes per the QRSI.

8. Strategic Review, Risk Assessment and Planning

The PR Unit is embedded in the DPI Forestry corporate planning process, cascading reviews, assessments and planning to derive outcomes, outputs and actions.

The review of measures is conducted by managers as part of fortnightly reporting for internal stakeholders. Annually, we will assess measures to ensure that activities are conducted proportionately and that any escalated enforcement actions are applied consistently and fairly.

An annual review of outcomes and achievements is conducted in preparation for resource and operational planning each year.

Appendix 1 Regulatory Principles

Regulatory principles support and influence the way we perform our functions, exercise our powers and engage with industry and the community.

We apply the principles to complement the NSW Public Sector's core values of service, integrity, trust and accountability and the Department's Code of Ethics and Conduct.

1.1 Committing to regulatory best practice

We are committed to building trust and fostering mutual respect between the Unit, the plantation forests industry and the community.

We seek to understand the expectations of industry through engagement on key issues. We strive to meet those expectations through our regulatory framework and our assessment of segment and individual entity regulatory risk.

We will ensure that we have the skills, systems, processes and equipment to implement our regulatory approach efficiently and effectively.

We will periodically review our regulatory approach, systems and activities, based on whether we have achieved our outcomes, feedback from industry and the community, and whether our framework and approach achieve best practice for regulators.

1.2 Taking a risk-based and strategic approach to regulation and decision-making

We will employ a risk-based and intelligence-led approach to regulation to ensure our finite resources are applied to their greatest effect. We will proactively focus on where the consequences of non-compliance are greatest and where the likelihood of non-compliance is highest.

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

1.3. Taking an outcomes-focused approach to regulation

We will clearly define regulatory outcomes to guide authorisation, compliance monitoring, extension and enforcement activities to achieve our regulatory purpose.

We will invest in the capability and capacity of our staff, to ensure we have the skills and the knowledge of desired regulatory outcomes, to choose an appropriate and proportionate response to non-compliance.

We will regularly report on progress towards the achievement of regulatory objectives.

1.4 Accepting accountability

We are accountable for our authorisation, 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 made within effective processes of corporate governance to maintain objectivity, independence and integrity.

We will employ transparent processes which provide procedural fairness and natural justice.

We will make decisions based on evidence and will ensure that appropriate records are kept of our regulatory activities so that decisions can be readily accessed and scrutinised.

1.5 Providing transparency

We will publish our policies and priorities and information that explains what the community and industry should expect from our regulatory processes.

We will promote improved 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.

We will use plain language and be clear and concise when we communicate with the community and industry. When non-compliance is detected, we will be clear about what is required, the time frames and the consequences of continuing non-compliance.

1.6 Acting in a timely way

We will conduct authorisation, compliance monitoring, extension and enforcement activities in a timely way to minimise harms, maximise deterrence, minimise disruption and provide certainty to industry and the broader community.

We acknowledge that authorisation is a significant regulatory tool and that industry values timeliness in assessing and issuing planation authorities.

We commit to timely compliance and enforcement action to maintain the principle of fairness to those involved.

1.7 Balancing the need for consistency with the need for flexibility

We aim for high levels of consistency in decision making, based on the development of clear policies and standard processes that consider the specific circumstances of a situation, to produce sensible, predictable and fair results.

1.8 Demonstrating proportionality and exercising discretion in regulatory decision-making

We expect people and organisations to comply with regulatory requirements. We commit to taking regulatory action that is proportionate to the circumstances of the regulatory breach. The more serious the offence, the more serious should be the response.

We strive to achieve fairness in regulatory outcomes while ensuring we act in the public interest.

1.9 Acting within the law

We will act within our statutory powers when undertaking any of our activities and will not require plantation owners or managers to observe requirements that are not authorised by law.

Appendix 2 Procedural and SOP guidance documents

Document	Purpose
Plantations Regulation Unit Regulatory Policy	• Summarises the Unit's approach to regulation, compliance and enforcement • Explains how the Unit will complete its regulatory functions • Sets out the mechanisms to achieve compliance with rules
Plantations Regulation Unit Prosecution Policy	• Summarises the Unit's general approach to enforcement and prosecutions • Drives decision-making to ensure that enforcement actions are transparent, consistent, fair, and based on best practice
Assessment of plantations procedure	• Under review
Audit procedure	• Under review
Enforcement response guidelines	• Drives decision-making to ensure that enforcement actions are transparent, consistent, fair, and based on best practice
Decision support guidelines	• Under review
Risk mapping process for auditing plantations	• Identifies the risks associated with plantation forestry and categorises the risks as low, medium or high • Under review
Unique or special wildlife values guidelines	• Provides direction and templates for consideration of matters relating to endangered flora and fauna and impacts on harvesting activities of plantations • Drives decision-making to ensure that actions are transparent, consistent and fair • *Under review*
Remediation notices procedure	• Provides direction and templates for the issuing of remediation orders under a delegation from the relevant Minister • Drives decision-making to ensure that actions are transparent, consistent, fair, and based on best practice
Stop work order procedure	• Provides direction and templates for the issuing of remediation orders under a delegation from the relevant Minister • Drives decision-making to ensure that actions are transparent, consistent, fair, and based on best practice
Complaint handling procedure	• Outlines the systems and measures used to manage complaints. • *Under review*

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