

DPI Forests - *Plantations and Reafforestation Act 1999*

Compliance and Enforcement Policy

Introduction

The *Plantations and Reafforestation Act 1999* (PRA) was created to facilitate expansion of the NSW timber plantation estate. It supports the sustainable development of plantation forestry in NSW through a streamlined regulatory framework which encourages sustainable plantation establishment and management. A key component of the PRA is the *Plantations and Reafforestation Regulation (Code) 2001* which specifies environmental standards that must be achieved on all authorised plantations.

The PRA also provides for the appointment of Authorised Officers to investigate and report on compliance with the PRA and Code. DPI Forests Plantation Officers are Authorised Officers for this purpose. Their role is to facilitate plantation forestry whilst ensuring industry practices meet the environmental standards of the Code.

Policy statement

DPI Forests aims to exercise influence, fairness, transparency and consistency in the application of the PRA in order to meet legislated objectives to:

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

We will achieve this through appropriate communication, consultation, negotiation, compliance and enforcement in accordance with the guiding principles of this policy.

Scope

The PRA and Code facilitate plantation development and management in accordance with the principles of ecologically sustainable development. Specifically, the Code identifies the minimum standards required to protect soil and water; biodiversity; and cultural and environmental heritage within authorised plantations. Activities that are inconsistent with these standards are in breach of the Code and, as a consequence, may be subject to compliance action by DPI Forests.

This policy applies to the compliance and enforcement activities of DPI Forests Authorised Officers.

Principles of Compliance and Enforcement

DPI Forests is guided by eight principles when undertaking its compliance and enforcement role under the PRA.

Targeted: Compliance and enforcement activities will be targeted to prevent the most serious environmental risk or harm.

Proportionate: Regulatory measures and responses will be in proportion to the problem they seek to address.

Transparent: Interpretation of the Code will be developed and enforced transparently. Enforcement actions will be made public to build the credibility of, and confidence in, the DPI Forests regulatory approach and processes. Information and lessons learned will be shared and promoted.

Consistent: Enforcement will be applied consistently. Under similar circumstances, non-compliances and incidents will result in similar enforcement outcomes.

Accountable: DPI Forests will be held accountable for enforcement decisions and the conduct of Authorised Officers. Accountability will be delivered by the clear identification and documentation of compliance principles, processes and systems. Decisions to commence proceedings may be reviewed to ensure they are based on sound decision making processes.

Inclusive: DPI Forests will engage with the community, industry and government to promote forest plantation laws, set standards and provide opportunities to participate in compliance and enforcement.

Authoritative: DPI Forests will set clear standards, and clarify and interpret legislation to provide authoritative guidance on industry requirements for compliance with the PRA. DPI Forests will also be an authoritative source of information on the level of compliance with the PRA and of key risks and new and emerging issues.

Effective: Compliance activity will seek to prevent environmental harm and improve the environmental performance of the plantation forestry sector. Enforcement action will be timely to minimise environmental impacts and maximise deterrence.

Regulatory approach

DPI Forests utilises a range of proactive and reactive measures to maximise legislative compliance. These can be divided into two broad categories:

Education

DPI Forests aims to achieve compliance through education of, and communication with, forest owners and managers. It will actively engage with proponents to provide information on legislative changes, respond to requests for advice relating to the PRA and Code and provide key documents (e.g., legislation). DPI Forests will engage with industry representatives to discuss compliance issues and improve compliance by providing information on the objectives of the PRA.

Enforcement

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, DPI Forests adopts a risk-based approach to compliance and enforcement.

One way to determine the level of compliance within a plantation is by conducting an audit of plantation operations. Auditing will be focused on areas considered to have a high risk of non-compliance due to factors such as:

- a) physical environment, including soil type, topography and rainfall erosivity;
- b) proximity to environmentally sensitive areas such as endangered ecological communities, threatened species habitat, wetlands and cultural heritage sites;
- c) proximity to major urban centres (accounting for increased recreational vehicle damage to roads and creek crossings);
- d) roading;
- e) dispersal of the plantation estate;
- f) rotation length (intensive management may cause greater impact);
- g) a client's compliance history;
- h) third party reports; and
- i) owner/manager reports.

Based on these factors, DPI Forests will identify priority areas for auditing. This process will be periodically reviewed as part of DPI Forests commitment to continuous improvement (see below).

During an audit, Authorised Officers will examine instances of non-compliance and assess their seriousness. Where serious breaches occur, a full compliance inspection is carried out. Enforcement actions are then determined, appropriate to the severity of the breach.

DPI Forests relies on a number of enforcement measures provided by the PRA. These include Stop Work Orders, Remediation Notices, Penalty Infringement Notices (PINs), prosecution and cancellation of an authorisation. In addition, DPI Forests regularly uses a non-legislated approach to remediate minor non-conformances by issuing Corrective Action Requests (CARs) and warning letters.

The approach regarding compliance employed by DPI Forests is summarised as:

Step 1: Determine the severity level of non-compliance

Each enforceable Clause of the Code has been assigned a 'Class of Non-compliance' based on the environmental sensitivity of a site. For example, a wetland buffer zone is considered a more sensitive area than the buffer of a drainage line.

Step 2: Establish the level of exposure to environmental harm

Exposure to environmental harm is then assessed. Guidelines have been developed, however, their interpretation is flexible and depends on the type of plantation operation that resulted in the breach and the sensitivity of the site. For example, rip-mounding to the edge of a wetland is likely to result in more environmental harm than manual planting to the edge of a wetland.

Step 3: Establish the compliance level

'Level of breach' is then determined, using a matrix that allows cross-referencing of the 'Class of Non-compliance' and the 'Level of impact to the environment'.

Step 4: Determine most appropriate course of action

Each compliance level has been assigned appropriate enforcement measures. For example, minor technical breaches or documentation issues are generally dealt with through an instruction to monitor the site and/or repair the non-conformance when an opportunity is available. Depending on severity, more serious breaches may be managed via a Corrective Action Request (CAR), Remediation Notice, PIN, cancellation of an authorisation and prosecution. Failure to comply with a CAR, Remediation Notice or PIN may be dealt with through a similar hierarchical approach.

For each compliance level, the lowest listed Compliance Action will usually be applied. Decisions will be made with consideration of, for example: where there are multiple breaches of the same kind and severity on the one plantation; where the proponent has a track record of the same or similar type of breach; where the proponent has a track record of not adhering to CARs, Stop Work Orders or Remediation Notices; or where the public interest demands it.

An additional enforcement option, the Stop Work Order, is generally invoked only when the Authorised Officer is witness to a serious breach in progress. However they may also be used for lesser issues, such as where the environmental impact is minor but the client has breached the legislation in a similar way previously.

Outcomes

DPI Forests will work towards achieving the following goals, designed to enhance the effectiveness of its compliance and enforcement process. These will be reviewed annually.

Short-term Goals

- a) the establishment of an annual audit target;
- b) the allocation of all plantations to a priority level;
- c) finalisation of key compliance documents and systems such as the Audit Application for mobile devices and the Audit Results Database;
- d) continuation of Authorised Officer compliance training.

Medium-term Goals

- a) all audit reports/results sent to clients in a timely manner;
- b) all compliance action followed up by DPI Forests in a timely manner;
- c) improved education to assist Industry in meeting PRA obligations.

Long-term Goals

- a) a reduction in incidences of non-conformance (this can be tracked with a consistent audit target and the storing of audit data);
- b) no major non-conformances detected.

Risks to compliance

Regulation aims to assist in achieving the objectives of the PRA. Without cooperation and compliance by industry it is unlikely that this will be achieved. The significant risks to substantive compliance can therefore be allocated to the following categories:

Regulatory-centric risks which include but are not limited to:

- a) insufficient resources;
- b) imprecise audit focus;
- c) inconsistent adherence to the compliance strategy, including the principles of compliance and enforcement (see above) and compliance action;
- d) failing to follow due diligence requirements, including giving adequate notice of planned audits, collecting evidence, and communicating audit results;
- e) failing to follow up on compliance action taken.

Industry-centric risks which include but are not limited to:

- a) the cost (of bringing the plantation estate up to the standard in the Code);
- b) the commitment of industry to improving its environmental performance;
- c) changed plantation ownership resulting in changed management standards.

External risks which include but are not limited to:

- a) climate;
- b) bush fire;
- c) impacts caused by third parties (e.g., recreational vehicle users).

Measures employed to mitigate risk may include:

- a) recruiting additional officers as required to manage increases in workload;
- b) developing methods for prioritising audit focus;
- c) improving system efficiencies for delivery;
- d) ensuring staff are aware of audit and compliance procedures;
- e) staff training;
- f) increase collaboration with other compliance sections and organisations;
- g) providing information sessions to assist Industry on DPI Forests compliance role and expectations.

DPI Forests believes that these measures will ultimately drive an improvement in the environmental standard of the plantation forestry sector across NSW.

Accountability

In the majority of cases Authorised Officers are responsible for deciding on the appropriate compliance action if, and when, a breach of the legislation is detected. This is achieved by referencing this policy, the PRA Code, and through consultation with other members of Forests DPI.

DPI Forests will periodically review the compliance approach, including the way in which contentious decisions were managed, delivered and processed by Industry. At all times, Industry has the opportunity to respond and provide feedback on the way the compliance and enforcement program is enacted.

Continuous improvement

DPI Forests approach to compliance and enforcement will improve and evolve over time. This will occur through implementation of a number of measures, including:

- a) development of applications to assist in data collection, increase objective decision making, and to aid in the reporting of audit outcomes;
- b) increased communication with Industry;
- c) updating and finalisation of key compliance documents, providing guidance on enforcement;
- d) development of an Audit Results Database, aiding data analysis for reporting and refining audit focus;
- e) continued training for Authorised Officers;
- f) regular internal review of audit and compliance procedures and policies.

An annual review of compliance activities and procedures will be conducted.

NSW DPI Forests

For further information, please contact your nearest Authorised (Plantation) Officer as detailed at the following web-link:

<http://www.dpi.nsw.gov.au/agriculture/resources/private-forestry/plantation-authorisation/plantation-assessment-contacts>

The *Plantations and Reafforestation Act 1999* and the Code are available to view or download from the Plantation Forestry website (<http://www.dpi.nsw.gov.au/agriculture/resources/private-forestry/plantation-forestry>), or from <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

© State of New South Wales through the Department of Trade and Investment, Regional Infrastructure and Services, 2015. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute the NSW Department of Primary Industries as the owner.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (February 2015). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Primary Industries or the user's independent adviser.

Published by the Department of Primary Industries.

[Insert Reference number].