

Submission
No 42

INQUIRY INTO PROVISIONS OF THE FORESTRY LEGISLATION AMENDMENT BILL 2018

Organisation: Joint Industry Group

Date Received: 30 May 2018

NSW Parliament
Legislative Council
Standing Committee on State Development
Email: state.development@parliament.nsw.gov.au
30 May 2018

Dear Standing Committee Members,

Re: Inquiry into the Provisions of the Forestry Legislation Amendment Bill 2018

Thank you for the opportunity to make a submission. We write on behalf of non-government members of the NSW Forestry Industries Taskforce.

The Forestry Legislation Amendment Bill 2018 seeks to apply reforms to both private native forestry and public native forestry. For private native forestry the Bill facilitates its transition to the *Local Land Services Act 2013*. For public native forestry the Bill amends the *Forestry Act 2012*.

The Bill has been drafted in a way that harmonises private and public native forestry, applying a single set of objectives and principles. Major differences exist, however, between private and public land. As the Bill is currently written, there is no recognition of these differences.

Most private landholders manage their land holistically for multiple production and conservation values. Most private landholders are also dependent on their land to generate income from primary production. Maintaining access to productive land be it for farming or forestry is a critical issue for most private landholders. Sustainable primary production undertaken on private land is a right not a privilege.

On public forested land there is a much greater focus on the protection of environmental values using tenure-based reservations. 90% of public forested lands is currently set aside in formal and informal conservation reserves. Social and economic values can be afforded a lower priority on public land as the government is not obliged to make a profit.

Under the NSW Forestry Industry Roadmap the NSW Government has given a commitment that sustainable harvesting of native forest timber will no longer be treated as a form of land-use change such as clearing. This position is supported by the Independent Biodiversity Legislation Review Panel. Under section 60N of the Bill a failure to comply with a private native forestry code is treated as a land clearing offence.

The maximum penalties for land clearing offences under *the Local Land Services Act 2013* are \$5 million for a corporation and \$1 million for an individual. These penalties well exceed the maximum penalties which apply for offences under the *Biodiversity Act 2016* which range from a maximum of \$22,000 for a Tier 5 offence up to \$1,650,000 for a Tier 1 offence. Similarly, under the *Fisheries Management Act 1994* the maximum penalty is 2,000 penalty units which equates to about \$240,000. The legislative tiers show that there is an escalating scale of penalties based on the type and seriousness of an offence. Under the legislative framework land clearing is treated as the most serious of all the offences. This is because land-clearing typically results in permanent land-use change and when undertaken on a large scale that can cause significant environmental impacts. In this context it is very difficult to understand why the Bill has allowed a 'contravention of a timber harvesting plan or code' to be treated as a land clearing offence. We are deeply concerned that if this issue is not addressed, it will act as a major deterrent to participation in private native forestry.

The following amendments to the Bill are recommended to address the issues raised above:

60N Unauthorised clearing of native vegetation in regulated rural areas—offence

Delete the following subsection:

- ~~• (e) that the clearing is the carrying out of a forestry operation authorised under Part 5B (Private native forestry).~~

Comment

On numerous occasions and in submissions since 2015, industry raised the need for alternative provisions to redefine timber harvesting so that it is not categorised as a land clearing activity.

60ZR Objects of Part

Insert the following subsections:

- (c) to recognise and accept differences between private and publicly owned native forestry in relation to land-use priorities; land-use emphasis; protocols; codes; and standards.
- (d) to regulate native forestry as an ecologically sustainable land-use
- (e) to ensure the rights to carry out mixed-use primary production on private land remains unfettered.

60ZT Responsibility for preparation and making of codes

Delete the following subsections:

- ~~• (5) A private native forestry code of practice may apply or adopt protocols, codes, standards or other instruments that are publicly available and in force from time to time.~~
- ~~• (6) Without limiting subsection (5), any such protocols may include those prepared by the Environment Protection Authority.~~

Insert the following replacement subsections:

- (5) A private native forestry code of practice is not obliged to apply or adopt protocols, codes, standards or other instruments that are in force on public land.
- (6) A private native forestry code of practice is to encourage private landholders to actively manage their native forests and paddock trees to optimise their productivity, health and value.

Re-number subsection (7) as subsection (8)

Re-number subsection (8) as subsection (9)

Insert as subsection (7)

- (7) A private native forestry code of practice is to encourage the management of private native forestry for long term generation timber supply and income generation.

60ZZA Offences of contravening requirements of plan or code of practice

Delete the following subsections:

~~(1) A person who contravenes a requirement imposed by a private native forestry plan or by an applicable private native forestry code of practice is guilty of an offence.~~

~~Maximum penalty:~~

~~(a) for an offence that was committed intentionally and that caused or was likely to cause significant harm to the environment:~~

~~(i) in the case of a corporation—\$5 million, or~~

~~(ii) in the case of an individual—\$1 million, or~~

~~(b) for any other offence:~~

~~(i) in the case of a corporation—\$2 million, or~~

~~(ii) in the case of an individual—\$500,000.~~

Comment

Industry recommends replacing this subsection with a tiered penalty regime comprised of much lower penalties which recognise that native timber harvesting is not a land clearing activity.

We look forward to continuing to work with the Government on addressing these concerns to ensure that the legislation does not have unintended impacts on private native forestry and the rights of landowners.

Yours faithfully

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