

Report to Parliament

by

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Minister for Natural Resources***

on the review of the

Plantations and Reafforestation Act 1999

and

Plantations and Reafforestation (Code) Regulation 2001

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Introduction

I am pleased to table this report on the review of the *Plantations and Reafforestation Act 1999* (the Act) and *Plantations and Reafforestation (Code) Regulation 2001* (the Code).

The Government's intention in creating stand-alone legislation for plantations was to streamline assessment processes in order to provide certainty for the plantations industry. The Act and Code commenced in December 2001, and since that time have gained a high level of industry support. In the four years since the Act and Code were implemented, more than 53,500 hectares of plantations have been authorised.

The statutory five-year review found that generally the objects of the Act remain relevant and that the terms of the Act have delivered the desired outcomes. Therefore the focus of the review has been to fine-tune the Act and Code, and to consider issues of concern raised by stakeholders.

The Department of Natural Resources will be undertaking further work on some of the issues of concern, with a view to putting amendments to the Act and Code before Parliament in 2007.

I commend this report to you.

Ian Macdonald MLC

1. Executive Summary

This report on the statutory five-year review of the *Plantations and Reafforestation Act 1999 and Plantations and Reafforestation (Code) Regulation 2001* is required to be tabled in both houses of Parliament.

The background, terms of reference and review process are outlined in the initial sections of the report.

The report concludes that policy objectives (a), (b) and (c) are still valid, but that objective (d) may no longer be appropriate. The report also concludes that no additional objectives are required.

The report considers the terms of the Act and Code, to assess whether they are still appropriate to secure the Act's objectives. In some cases the terms of the Act and Code require fine-tuning. Additional issues of concern are also examined, and proposed approaches noted.

The report makes the following recommendations:

No	Recommendation
1	Retain objectives (a) – (c), and revise objective (c) to refer to <i>best practice</i> environmental standards.
2	Retain objective (d) until a replacement mechanism for transport infrastructure contribution has been developed.
3	No additional objectives are required.
4	Examine the possibility of introducing Native Vegetation Act 2003 assessment processes into the Act to allow offsets for non-complying plantations, in exchange for clearing low condition native vegetation.
5	Seek to address landscape planning for plantations in a strategic rather than a regulatory way.
6	Consider the issue of consistent assessment methods in the Act and Code and the Native Vegetation Act 2003 once the Native Vegetation Act 2003 has been in operation for a minimum period of six months.
7	Include agreed fire protection standards in the Code.
8	Allow management burning of retained native vegetation in accordance with relevant guidelines produced in conjunction with the NSW Rural Fire Service.
9	Water interception should not be addressed in the Act or Code, and should be left to other legislation and policies developed to implement the National Water Initiative.
10	Introduce application fees based on partial cost recovery outlined in Table 1.
11	Do not introduce third party accreditation at the present time.
12	Revise the harvesting provisions contained in Part 6 of the Code in consultation with industry and relevant State government agencies.
13	Propose necessary amendments to the Act and Code, to be developed in consultation with industry and other key stakeholders and made available for comment through a public exhibition process.
14	Retain Part 5 of the Act and develop an equitable replacement mechanism for transport infrastructure contribution.
15	Amend the Code to require plantation operators to notify relevant local councils of anticipated public road use 2 or 3 years prior to harvesting.

2. Performance of the Act and Code (data current to end September 2005)

The plantation estate in NSW exceeds 350,000 hectares. Since the Act and Code were implemented 367 plantations have been authorised, covering an area exceeding 53,500 hectares. This figure includes some existing plantations for which owners have chosen to seek authorisation. The area authorised for new plantations is around 38,385 hectares.

Figure 1 shows the number and area of plantations authorised between December 2001 and the end of September 2005.

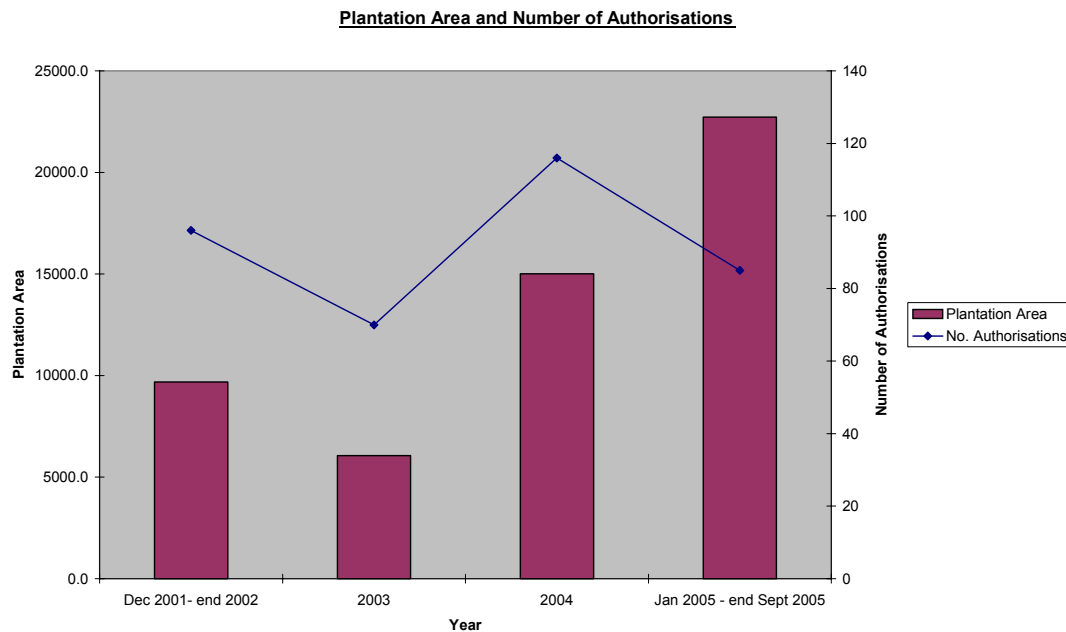


Figure 1: Plantation Area and Number of Authorisations

Softwood plantations account for 58% of the total area authorised, with hardwood and speciality (cabinet timber) plantations accounting for 42%.

Guarantee of service time limits for assessment of applications (14 days for complying plantations, 40 days for non-complying) are met in 90% of cases. This has resulted in a substantial improvement on approval times for approval of clearing for plantations under the *Native Vegetation Conservation Act 1997*.

The provisions of the Act and Code have resulted in only 1,060 hectares of remnant native vegetation having been approved for clearing since December 2001, representing approximately 2.75% of the total area of new plantations. In the same period 12,300 hectares of native vegetation was retained or re-established, representing approximately 32% of the total area of new plantations.

Regular auditing is undertaken to monitor compliance with the Act and Code.

3. Terms of reference for the review

The *Plantations and Reafforestation Act 1999* (section 74) requires:

(1) The Minister is to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to the Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

The *Plantations and Reafforestation Act 1999* (section 30) requires:

(1) The Minister is to arrange for the Code to be reviewed at least every 5 years after it is made.

The Act was assented to on 8 December 1999.

The Act and Code were implemented in December 2001, so a review of the Code is not due until December 2006. However, the interdependence of the Act and Code means that it is appropriate that they have been reviewed together.

4. Policy objectives of the Act

The policy objectives are reflected in the objects of the Act (section 3), which 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 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*).

5. Review process

The review commenced in January 2005.

Given the success of the Act, the Government did not wish to make significant changes to the current regulatory framework for plantations. The review has therefore been directed towards fine-tuning the Act and Code and considering issues of concern identified by stakeholders.

The Government released a discussion paper relating to the review of the Act and Code on 17 June 2005. The closing date for submissions was 1 August 2005.

56 submissions were received from a representative range of stakeholders including industry, individual community members, Councils, Catchment Management Authorities and State government agencies. Issues raised in the discussion paper and the submissions are addressed in sections 10 – 13.

Targeted consultation has also taken place with industry members and State government agencies.

The recommendations included in this report draw upon the submissions and consultation.

Amendments to the Act and Code resulting from the recommendations will be made in 2007 following public exhibition.

6. Linkage to other Departmental initiatives

Two projects coordinated by the Department of Natural Resources, in partnership with other agencies, are linked to the Act and Code review. These are the development of the Forestry and Timber Industry Strategy and the Snowy-Monaro Plantation Strategy.

Consultation in connection with the development of the Forestry and Timber Industry Strategy has shown definite support for the Act and Code from industry, because of the certainty it provides. The consultation revealed that infrastructure provision is a major issue for industry.

The Snowy-Monaro Plantation Strategy aims to present a range of recommendations that will better integrate the agricultural and plantation industries in the Snowy-Monaro region. Concerns identified during the community consultation phase include socio-economic impacts, and the impact of plantations on fire, water interception, road infrastructure, and visual landscape.

7. Structure of the report

Sections 8 and 9 contain feedback gained from the submissions on the performance of the Act and Code, including whether the objectives of the Act remain valid, and whether additional objectives are required.

Sections 10 – 13 contain views on whether the terms of the Act remain appropriate for securing the objectives and consider issues of concern identified by stakeholders. Many of these issues were raised in the discussion paper, and have also emerged during the consultation processes in relation to the development of the Forestry and Timber Industry Strategy and the Snowy-Monaro Plantation Strategy.

Each section contains one or more recommendations. The recommendations are also listed in the Executive Summary.

8. Are the objectives of the Act still valid?

Feedback on the performance of the Act and Code contained in the submissions indicates a general level of approval by the Industry.

A large majority of submissions supported retaining objectives (a), (b) and (c). It is proposed that objective (c) would be strengthened by referring to *best practice* environmental standards.

Most respondents felt that objective (d) – relating to transport infrastructure - should be removed from the Act. This issue is discussed further in section 13, where it is recommended that an alternative system for infrastructure contribution be developed. However, it would not be appropriate to remove objective (d) until new arrangements for infrastructure contributions are in place.

Recommendation 1: Retain objectives (a) – (c), and revise objective (c) to refer to ‘best practice’ environmental standards.

Recommendation 2: Retain objective (d) until a replacement mechanism for transport infrastructure contribution has been developed.

9. Are additional objectives required?

The following emerged from the submissions as general areas of concern, and were suggested as requiring additional objectives in the Act:

- Equity between plantations and other agricultural uses
- Commonwealth tax incentives resulting in plantations that will never be harvested
- Whether community socio-economic considerations are addressed by the Act/Code
- Public consultation in the authorisation process for complying plantations
- Council involvement in the plantation authorisation process
- Flexibility to clear larger areas of low condition native vegetation

The Act is concerned with the assessment of individual plantation proposals and the regulation of plantations once they are authorised. Several of the general areas of concern – particularly equity issues - are matters of policy that do not fall within the scope of the Act. Taxation is a Commonwealth responsibility that cannot be addressed in State legislation.

It is not appropriate to include additional objectives to address these concerns.

The current provisions of the Code are intended to provide sufficient and comprehensive safeguards to the community. To add a requirement to consult with local councils or the community in respect of complying plantation applications would involve extending the 14 day guarantee of service, which is undesirable. Furthermore, it would detract from the objective of providing a streamlined scheme for the establishment of plantations.

Section 10.1 considers Industry’s desire for flexibility to clear larger areas of low condition native vegetation.

Recommendation 3: No additional objectives are required.

10. Do the terms of the Act facilitate the reforestation of land and promote and facilitate development for timber plantations on essentially cleared land?

More than 53,500 hectares of plantations have been authorised since the Act and Code were implemented. The vast majority of plantations are timber plantations, with only a very small number and area of environmental plantations, although this is likely to change with the expansion of biodiversity and carbon credit plantations.

The submissions included concerns about the small number of environmental plantations authorised under the Act, and the modest level of new investment in NSW relative to other States. The small number of environmental plantations can be explained by the fact that until recently most environmental plantings have occurred on areas of 30 hectares or less, which are classified as exempt farm forestry that does not require authorisation.

10.1 Requirement for plantations to be established on essentially cleared land

Submissions from industry indicated a desire to establish plantations on land that would not be classed as essentially cleared. Suggestions for a more flexible approach would involve clearing low condition native vegetation in exchange for offsets. This would be consistent with the principles for offsets contained in the *Native Vegetation Act 2003*. Industry has pointed out that this could reduce tensions between plantations and traditional agriculture for the same land.

It is already possible to submit a non-complying plantation proposal where an applicant is seeking to clear more native vegetation than would be permitted under the Code. However, the non-complying process includes public consultation and a longer assessment period, which tends to make the non-complying pathway less attractive to industry.

It would not be desirable to try to develop standard offset calculations for the Code to enable proposals including offsets to be assessed as complying plantations, because this would undermine the 'essentially cleared' principle.

It may be desirable to introduce *Native Vegetation Act 2003* assessment processes (which allow offsets in certain situations) into the Act as one pathway for non-complying applications. However, it would not be appropriate to introduce *Native Vegetation Act* concepts or processes until such time as it is possible to assess the extent to which consistency between the PR Act and the *Native Vegetation Act* is warranted. This issue is considered further in section 11.1.

In the short term, applicants seeking greater flexibility to clear native vegetation in exchange for offsets should apply under the *Native Vegetation Act 2003* prior to submitting an application for plantation authorisation.

Recommendation 4: Examine the possibility of introducing Native Vegetation Act assessment processes into the Act for non-complying plantations, to allow offsets in exchange for clearing low condition native vegetation.

10.2 Landscape planning

Submissions from members of the community and local councils expressed concern about the placement of new plantations in the landscape. These concerns related specifically to visual amenity and socio-economic issues, in particular the competition between plantations and traditional agriculture for cleared agricultural land.

There are various models of landscape planning, ranging from a regulatory approach using Environmental Planning Instruments (such as Local Environmental Plans) to strategies and policies that have directive powers only.

A regulatory approach may not be desirable, because it would undermine the Act by prohibiting plantation establishment in certain locations. It would also create 'lines on maps' which would disadvantage some members of communities by introducing differential land values.

A strategic approach would be a better way to address these concerns, and there was some support from industry for this approach, with the suggestion of the establishment of strategic timber investment zones to encourage plantations and infrastructure in certain areas.

Further discussion is required to determine the most appropriate model to adopt.

Recommendation 5: Seek to address landscape planning for plantations in a strategic rather than a regulatory way.

11. To codify environmental standards for the establishment, management and harvesting of timber and other forest plantations

The Act and Code aimed to provide a streamlined regulatory process for plantations, while maintaining existing environmental standards. It is necessary to consider whether the environmental standards in the Code are still adequate and comprehensive.

The Code contains standards relating to protection of biodiversity. The clearing of certain types of vegetation (such as rainforests, wetlands, and high conservation value grasslands) is prohibited. Clearing of other vegetation is limited to patches of 1 hectare or less, or 0.5 hectare or less for communities included in the Regional Vegetation Schedule attached to the Code. There are also requirements for the retention and replanting of native vegetation. In addition, the authorisation process involves carrying out a threatened species assessment.

For the most part industry members regard the provisions in the Code as sufficient, and are concerned that tighter provisions would be a disincentive to plantation investment.

The majority of submissions from community members and local councils maintain that the environmental standards contained in the Code are not as stringent as those required under other legislation. This led some respondents to support the use of the assessment processes under the *Native Vegetation Act 2003*. Many submissions also raised concerns about water interception and fire issues, which are not currently addressed in the Act and Code.

11.1 Native Vegetation Act consistency

It is appropriate to consider consistency across natural resource management legislation, and many community and council submissions supported the idea of consistency between the Act and Code and the *Native Vegetation Act 2003*. Some respondents support adopting the *Native Vegetation Act* assessment processes into the Act and Code to assess plantation proposals.

The issue of consistency applies to the Act and Code in general, and specifically to the vegetation communities included in the Regional Vegetation Schedule.

While consistency is generally desirable, it is important to remember that the two Acts have quite different objectives. The *Native Vegetation Act 2003* is concerned with approvals to clear native vegetation, while the Act and Code aim to promote and facilitate the establishment of plantations on essentially cleared land. The requirement for plantations to be established on essentially cleared land may mean that the same level of assessment is not necessary for plantation applications. It may therefore not be appropriate to use the same assessment processes, but may still be desirable for both Acts to use a consistent scientific approach.

It is not possible to examine consistency between the two Acts at this point in time, because the *Native Vegetation Act 2003* has only recently been implemented.

Recommendation 6: Consider the issue of consistent assessment methods in the Act and Code and the Native Vegetation Act 2003 once the Native Vegetation Act 2003 has been in operation for a minimum period of six months.

11.2 Fire issues

Fire protection is a major community concern, as shown in the submissions and the community consultation process in relation to the Snowy-Monaro Plantation Strategy. There is a strong public perception that plantations are a fire risk.

The Code contains no provisions for fire protection, and the NSW Rural Fire Service (RFS) has strongly recommended that fire protection standards be included. The RFS is working with the Department of Natural Resources and Forests NSW to develop clear numeric standards for incorporation in the Code.

Industry does not accept that there is an increased fire risk from plantations and would prefer not to include standards in the Code. However, the proposed standards represent current best practice, and the RFS believe that they are necessary to protect their firefighters.

A further issue concerns management burning of retained native vegetation in plantations. The Code states that retained areas should be managed to conserve biodiversity and ecological integrity. A large majority of submissions was in favour of allowing management burning.

Recommendation 7: Include agreed fire protection standards in the Code.

Recommendation 8: Allow management burning of retained native vegetation in accordance with relevant guidelines produced in conjunction with the NSW Rural Fire Service.

11.3 Water interception

Water interception by plantations was mentioned as a matter of concern in a large number of submissions, but opinion was divided on how to address this issue.

The National Water Initiative was developed through the Council of Australian Governments in 2003. One element of the National Water Initiative is to develop policies to account for changes in land use that affect water availability. Large-scale plantation forestry is given as an example of such an activity.

The Department of Natural Resources will be developing measures to implement the National Water Initiative by 2011. This will require further scientific research and evaluation of a broad range of land use change activities, including plantations. It is clear that plantations can have an impact on water yields, and recent scientific assessment of water yields in the Bombala region supports this view. However, while there is strong scientific evidence that the magnitude of catchment response is proportional to the percentage of the catchment planted, this relationship is less certain when only small areas of catchments are planted.

It would be premature to introduce regulation for plantations in respect of water interception at this point. Also, water interception regulation affecting plantations and other activities

would more appropriately be contained in broader legislation such as the *Water Management Act 2000*.

Recommendation 9: Water interception should not be addressed in the Act or Code, and should be left to other legislation and policies developed to implement the National Water Initiative.

12. To provide a streamlined and integrated scheme for the establishment, management and harvesting of timber and other forest plantations

The Act and Code provide a streamlined and effective regulatory framework for plantations. Industry supports the Act and Code because of the certainty they provide.

The statutory review is an opportunity to consider further fine-tuning of the Act and Code. Areas where improvements could be made include: the introduction of application fees, consideration of third party accreditation, adopting more comprehensive harvesting provisions, and various other changes to the Act and Code.

12.1 Application fees

It was originally intended to charge fees for plantation authorisations, but a moratorium has been in place since the Act and Code were implemented. The introduction of fees would be consistent with the Government's policy of fee for service.

A schedule of fees is attached (Table 1). The schedule is based on partial cost recovery, and should be sufficient to recoup operational costs (excluding salary and on costs). The intention would be to move further towards full cost recovery over time, while bearing in mind the need to encourage plantation establishment. Fees will not be required for environmental plantations, with the exception of environmental (ie biodiversity or carbon) credit plantations.

Total plantation area (ha)	Environmental Credit plantations	Other Environmental plantations	Timber plantations
Up to and including 30	\$250 flat fee	Nil	Flat fee of \$250
>30–100	\$250 flat fee	Nil	\$250 + \$2/ha or part ha over 30 ha
>100–500	\$250 flat fee	Nil	\$395 + \$0.50/ha or part ha over 100 ha
>500–1000	\$250 flat fee	Nil	\$595 + \$0.30/ha or part ha over 500 ha
>1000	\$250 flat fee	Nil	\$745 + \$0.10/ha or part ha over 1000 ha

Table 1: Schedule of proposed application fees.

The introduction of fees was proposed in the discussion paper. The majority of submissions, including many from industry, indicated that fees based on partial cost recovery would be acceptable. The fees proposed would represent a tiny percentage of total establishment costs.

Examples of fees that would be charged for typical plantations are:

- Proposed plantation of 78 hectares owned by a family company with sawmilling interests, where establishment costs are expected to be in the region of \$900 per hectare. Application fee would be \$346.
- Proposed plantation of 682 hectares owned by a large corporate enterprise, where establishment costs are expected to be in the region of \$1,300 per hectare. Application fee would be \$631.10.

Recommendation 10: Introduce application fees based on partial cost recovery outlined in Table 1.

12.2 Third party accreditation

The Act allows for the introduction of third party accreditation, but to date all assessments have been undertaken by the Department of Natural Resources.

Submissions indicate that industry supports the introduction of third party accreditation, while councils and community in general oppose it. Risks associated with third party accreditation include conflict of interest for consultants or employees of plantation owners. A robust accreditation system would be required to avoid this risk and ensure that standards are maintained. Establishing a third party accreditation system would initially be extremely resource intensive.

Analysis shows that guarantee of service time limits for assessment are met in the large majority of cases. In situations where the guarantee of service cannot be met, the reasons for this are explained to the proponents and an extension of time agreed.

It is therefore not apparent that there is a need for third party accreditation to improve service delivery at the present time. If the level of service falls in the future, for resourcing or other reasons, a full cost benefit analysis should be undertaken before steps are taken to introduce third party accreditation.

Recommendation 11: Do not introduce third party accreditation at the present time.

12.3 Harvesting provisions

The harvesting standards contained in the Code are not comprehensive and do not in all cases represent environmental best practice. The discussion paper included some proposals for change. The proposals were supported in principle in the majority of submissions, although several respondents suggested different wording.

It is proposed to consult with industry and State government agencies to develop appropriate provisions that represent best practice. The provisions would be placed on public exhibition prior to amendments being made to the Code.

Recommendation 12: Revise the harvesting provisions contained in Part 6 of the Code in consultation with industry and relevant State government agencies.

12.4 Other changes to the Act and Code

Changes to the Act and Code are required for a variety of reasons, including to clarify certain provisions, update some requirements, and to comply with current environmental and industry best practice. The emphasis will be on fine-tuning existing provisions, rather than on radically revising them.

For example, the provisions in the Code relating to the size and stability of drainage feature crossings need to be updated in line with Department of Primary Industries guidelines for fish passage.

Changes to the technical standards in the Code will involve detailed work and consultation with industry and other key stakeholders, to ensure that proposed changes are necessary and are not onerous. There will be a chance for all stakeholders to comment on any changes proposed to the Act and Code when the proposed amendments go on public exhibition.

Recommendation 13: Propose necessary amendments to the Act and Code, to be developed in consultation with industry and other key stakeholders and made available for comment through a public exhibition process.

13. To make provision relating to regional transport infrastructure expenditure in connection with timber plantations

Part 5 of the Act sets out a procedure for regional transport infrastructure committees to produce regional infrastructure contribution plans. These plans would establish a contribution scheme for plantations authorised under the Act, with contributions payable on harvest rather than up front at the plantation authorisation/establishment stage. No contributions would be payable by existing plantations that do not require authorisation under the Act.

Although committees were established with the assistance of the Department of State and Regional Development, none of the committees has prepared a contribution plan, and therefore no levies have been set. Any contribution towards road construction and maintenance by plantation operators has been on a voluntary basis. By contrast, activities requiring development approval under the *Environmental Planning and Assessment Act 1979* have to contribute to infrastructure provision by way of section 94 contributions.

Local councils have a strong interest in obtaining contributions towards infrastructure from all heavy road users. They would also like to know in advance when major harvesting operations will occur, in order to assist them with future roadwork management planning.

This is clearly a major area of concern, and industry has identified infrastructure provision including roads as a significant issue during consultation in relation to the Forestry and Timber Industry Strategy. There is general agreement by all parties involved that the provisions of Part 5 have not worked, and that a better system needs to be developed.

It is possible for the Minister to fix a rate of financial contribution if no relevant contribution plan is in force. However, it would not be appropriate for the Minister to fix a levy as either a short or long-term measure, since it appears that other approaches should be explored.

Recommendation 14: Retain Part 5 of the Act and develop an equitable replacement mechanism for transport infrastructure contribution.

Recommendation 15: Amend the Code to require plantation operators to notify relevant local councils of anticipated public road use 2 or 3 years prior to harvesting.