



State Specific Guideline For New South Wales

This guideline has been prepared by the Australian Government and the New South Wales Government. It is intended to assist businesses who process raw logs grown in New South Wales to better understand the regulatory frameworks covering the harvest of such logs in that jurisdiction. This information can be used to help the businesses satisfy their due diligence obligations, as set out in the *Illegal Logging Prohibition Act 2012* and associated *Illegal Logging Prohibition Regulation 2012*.

This guideline was co-endorsed by the Australian Government and the New South Wales Government on 15 September 2022.

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1. What is required under Australia's Illegal Logging Laws?

The <u>Illegal Logging Prohibition Act 2012</u> (the Act) seeks to 'reduce the harmful environmental, social, and economic impacts of illegal logging by restricting the importation and sale of illegally logged timber products in Australia'.

The Act makes it a criminal offence to process grown raw logs that have been illegally logged. For the Act's purposes, 'illegally logged timber' is defined as timber 'harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested'.

The Act also requires 'processors' to actively assess and manage the risk that the raw logs may have been illegally harvested before processing them. This is known as undertaking 'due diligence', the specifics of which are set out in the <u>Illegal Logging Prohibition Regulation 2012</u> (the Regulation).

The due diligence requirements for processors includes the following key steps:

- Step 1: Establish and maintain a due diligence system
- Step 2: Gather information about the raw log that is being processed
- **Step 3:** Assess the risk (using one of the three methods outlined in the Regulation)
- **Step 4:** Risk mitigation (if required)
- Step 5: Keep records

Further information about the Regulation and the due diligence requirements is available at the Australian Government Department of Agriculture, Fisheries and Forestry's website (agriculture.gov.au/illegallogging).

1.1 Who is a processor?

For the purposes of the Act, a processor is a person who processes Australian grown raw logs into something other than a raw log. This includes activities such as the processing of Australian grown raw logs into woodchips, sawlogs, pulp, or other timber products by a constitutional corporation, or a person processing the raw logs:

- on behalf of a constitutional corporation, the Commonwealth, or a Commonwealth authority
- for trade with other countries or between Australian states or territories; or in a territory.

Entities which are not constitutional corporations include:

- state authorities not established as a body corporate
- partnerships
- un-incorporated associations or individuals.

2. How to use the State Specific Guideline (SSG)

This SSG is intended to assist a processor of raw logs grown in New South Wales to comply with the Regulation's due diligence requirements.

In accordance with section 19 of the Regulation, a processor must gather information about the raw log they are seeking to process. This includes gathering the information or evidence outlined in this SSG.

The information listed in this SSG is not meant to be an exhaustive list of the evidence or documentation required to satisfy the Regulation's due diligence requirements.

The information gathered by applying this SSG, along with any other information gathered in accordance with the Regulation, needs to be assessed in accordance with the processes outlined in section 21 of the Regulation. This includes considering any other information that the processor knows, or ought reasonably to know, but is not contained in the SSG.

All data included in this document is the most current available at the time of publishing.

3. Scope of the SSG for New South Wales

This SSG provides detailed information on the control of pathways for raw logs grown within New South Wales and is intended to inform Australian processors of what is considered legal timber within that jurisdiction. It is only applicable for logs that were harvested within New South Wales.

This guideline does not override or replace any NSW legislative requirements.

4. Overview of Forest Management in New South Wales

The New South Wales Forest Management Framework¹ is the system implemented by the New South Wales Government for sustainably managing the state's forestry resources across all public and private land tenures, including conservation reserves, State forests, private native forests and plantations.

The New South Wales Forest Management Framework includes the legislation, regulations, regulatory instruments and programs supporting the management of forestry consistent with the principles of Ecologically Sustainable Forest Management (ESFM).

The framework is administered by several State agencies that have complementary roles and responsibilities, including the New South Wales Environment Protection Authority (EPA) within the Department of Planning and Environment (DPE) cluster, and the Forestry Corporation of New South Wales (FCNSW), the Department of Primary Industries (DPI) and Local Land Services (LLS), which are part of the Department of Regional New South Wales (DRNSW)².

Forested areas in NSW make up about 25 percent of the state, covering around 20 million hectares. This is primarily made up of approximately: 11.6 million hectares of private and leasehold forest, 5.5 million hectares of nature conservation reserves, and 2.2 million hectares of State Forest.

Softwood makes up over 80 percent of the timber produced in New South Wales, including native Cyprus and plantation grown radiata pine (which is the most commonly produced timber in New South Wales).

Around 16 percent of the timber produced in New South Wales is native hardwood and around 4 percent is plantation hardwood. Key hardwood species include blackbutt, spotted gum, Sydney blue gum, flooded gum, and alpine ash.

¹ https://www.dpi.nsw.gov.au/ data/assets/pdf file/0005/1318505/overview-of-the-nsw-fmf.v1.1-march-2021.pdf

² From April 2020, the Department of Regional New South Wales brought together the primary industries and local land services functions from the former Planning & Environment and Industry clusters. www.regional.nsw.gov.au

5. Laws and regulations governing forestry in New South Wales

The key NSW instruments underpinning the regulation of the timber industry, on public land, private land, and in plantations are:

- The <u>Forestry Act 2012</u> is the primary legislation for the management of forestry in State Forests and other Crown-timber lands under which Integrated Forestry Operations Approvals are granted.
- The <u>Biodiversity Conservation Act 2016</u> provides for the protection of flora, fauna, ecological communities and their habitat. It, along with the <u>Local Land Services Act 2013</u>, also replaces the now repealed <u>Native Vegetation Act 2003</u> with respect to native forestry operations on private and some public land.
- <u>Local Land Services Act 2013</u> provides for the authorisation and regulation of native vegetation management on private and some public land and the authorisation and regulation of private native forestry operations.
- The <u>Plantations and Reafforestation Act 1999</u> and the supporting <u>Plantations and Reafforestation (Code) Regulation 2001</u>³ provides for the authorisation and regulation of plantations.

Table 5.1 provides more details on NSW forest management legislation, and the agencies responsible.

There are also other legislation complements these primary instruments with respect to their application across specific land tenures.

³ Note – this is currently being reviewed

Table 5.1 Summary of key NSW agencies, legislation and responsibilities for forest management⁴

Agency	Legislation	Responsibilities for forest management
Department of Primary Industries	Forestry Act 2012 Plantations and Reafforestation Act 1999 Fisheries Management Act 1994	 Forest industry policy and forest science. Regulation of plantations.
Local Land Services	Local Land Services Act 2013	 Approvals and advice for private native forestry. Advice to private landholders on land management options.
Forestry Corporation of NSW	Forestry Act 2012	 Land manager of Crown-timber land, including State forest, timber reserves and flora reserves. Forestry operations on Crown-timber land in compliance with IFOAs. Selling wood. Establishing and maintaining plantations.
Environment Protection Authority	Forestry Act 2012 Local Land Services Act 2013 Protection of the Environment Operations Act 1997 Biodiversity Conservation Act 2016	 Primary environmental regulator of native forestry operations. Compliance of Crown forestry with IFOAs and Part 5B of the Forestry Act 2012. Compliance of private native forestry with the Local Land Services Act 2013, approved Private Native Forestry plans, Private Native Forestry Codes of Practice (PNF Codes) Develops environment protection policy and statutory instruments.
National Parks and Wildlife Service	National Parks and Wildlife Act 1974 Wilderness Act 1987	 Manages the National Park estate. Investigation, protection and management of wilderness.
Biodiversity Conservation Trust	Biodiversity Conservation Act 2016	Manages private land conservation program.
Department of Premier and Cabinet	Aboriginal Land Rights Act 1983 Heritage Act 1977 National Parks and Wildlife Act 1974	 Assesses Aboriginal land claims. Protection of Aboriginal and non-Aboriginal heritage. Protection of Aboriginal places and objects.
Department of Planning and Environment and other consent authorities	Crown Land Management Act 2016 Biodiversity Conservation Act 2016 Part 5A Local Land Services Act 2013 Environmental Planning and Assessment Act 1979	 Manages Crown reserves. Protection of threatened species and communities. Native vegetation mapping and compliance. Responsible for State environmental planning policies (SEPPs) and related regulatory requirements.

 $From: www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/833792/Overview-of-the-NSW-Forest-Management-Framework.pdf$

5.1 Public native forests

The <u>Forestry Act 2012</u> (Forestry Act) provides for Integrated Forestry Operations Approvals (IFOAs), which integrate the regulatory regimes for environmental planning and assessment, the protection of the environment, and threatened species conservation.

The IFOAs provide the formal approval for, and conditions that apply to, native forest harvesting activities on Crown-timber land as defined in the Forestry Act, including State forests. An IFOA applies to anyone carrying out forestry operations on State forests and other Crown-timber lands. The Forestry Corporation of NSW (FCNSW) is the only organisation authorised to remove timber from these areas. FCNSW engages contractors to undertake forestry activities on their behalf.

The IFOAs replace the need for a licence under the <u>Protection of the Environment Operations Act</u> 1997 (POEO Act), the <u>Biodiversity Conservation Act 2016</u> (BC Act) and the <u>Fisheries Management</u> <u>Act 1994</u> (FM Act). Enforcement of the IFOAs rests with the EPA. Copies of the IFOAS can be found on the EPA website.

The IFOAs allow forestry operations to occur in eligible Crown-timber lands within coastal regions of NSW, as well as in the three IFOA regions of western NSW, Brigalow and Nandewar, South Western Cypress, and Riverina Red Gum.

Details of current and planned forestry operations are published on the FCNSW website. IFOAs include conditions that must be complied with and may require compliance with protocols and site-specific operating conditions (SSOCs). All relevant IFOA conditions, protocols and SSOCs are published on the EPA's website.

Failure to comply with any requirement imposed by an IFOA is an offence against section 69SA of the Forestry Act. The relevant conduct may also be an offence under other environmental legislation. Compliance with an applicable IFOA is a defence to prosecution for various offences under the POEO Act, BC Act and the FM Act. Compliance with the provisions of relevant Aboriginal cultural heritage codes is also required for a due diligence defence to the offence of harming Aboriginal objects under the *National Parks and Wildlife Act 1974*. Non-Aboriginal heritage items and places of significance subject to the provisions of the *Heritage Act 1977* may also require site specific protection when undertaking forest activities.

5.2 Private native forests

Under the <u>Local Land Services Act 2013</u> (LLS Act) forestry operations conducted for the purposes of private native forestry – including operations on certain Crown land that is not considered Crown-timber land under the Forestry Act – require a private native forestry plan (PNF Plan) approved by Local Land Services (LLS).

An approved PNF Plan identifies the land to which it applies and the kinds of forestry operations that are authorised on that land. An approved PNF plan usually includes conditions that must be complied with. It is an offence against s 60ZZA of the LLS Act to contravene a requirement imposed by an approved PNF plan. The relevant conduct may also be an offence under other environmental legislation, including the BC Act.

In addition to a PNF Plan, private landholders in some local government areas may also be required to seek development consent from their local council under the <u>Environmental Planning</u> <u>and Assessment Act 1979</u> (EP&A Act).

Forestry operations to which a PNF Plan applies must be conducted in accordance with the relevant Private Native Forestry Code of Practice for that region (PNF Code of Practice). There are four PNF Codes of Practice, with each Code applying to a particular area within New South Wales:

- Northern New South Wales land north of the Sydney CBD (except those defined as River Red Gum or Cypress and Western hardwood forests)
- Southern New South Wales land south of the Sydney CBD (except those defined as River Red Gum or Cypress and Western hardwood forests)
- River Red Gum Forests
- Cypress and Western Hardwood Forests.

The PNF Codes of Practice form part of the regulatory framework for the sustainable management of private native forests by ensuring that operations are in line with the principles of ESFM.

Enforcement of the PNF Code of Practice and approved PNF plans rests with the EPA. It is an offence against s 60ZZA of the LLS Act to contravene a requirement imposed by an applicable PNF Code of Practice.

Compliance with an approved PNF plan that authorises the forestry operation, and the applicable PNF Code of Practice, is also a defence to prosecution for various offences under the POEO Act, BC Act and the FM Act. Compliance with the relevant PNF codes of practice also constitutes a defence to the offence of harming Aboriginal objects. Non-Aboriginal heritage items and places of significance may also require site specific protection when undertaking forest activities.

5.3 Plantations

DPI authorises new and existing plantations on both public and private lands under the <u>Plantations</u> <u>and Reafforestation Act 1999</u> (PR Act) and <u>Plantations and Reafforestation Regulation (Code) 2001</u> (Plantations Code).

The PR Act is a single legislative instrument intended to meet the requirements of forest plantation activities and streamlining the process of meeting legislative requirements under multiple pieces of NSW legislation. The PR Act promotes plantation establishment on essentially cleared land. It is supported by the Plantations Code, which contains clear and comprehensive standards for the establishment, management and delivery of harvesting operations on authorised plantations.

All harvesting, including site preparation, must comply with the Plantations Code. A failure to comply with Part 5 (Regulation of management operations) or Part 6 (Regulation of harvesting operations) of the Plantations Code is an offence under the Code.

The Plantations Code details requirements for:

• the protection of biodiversity, including levels of permissible clearing

- protection of rivers and other drainage features
- protection of cultural and environmental heritage
- roading and harvesting operations
- fire prevention/ safety provisions.

All plantations must be authorised before harvesting occurs, with the following exceptions:

- Plantations previously accredited under the (now repealed) <u>Timber Plantations (Harvest Guarantee) Act 1995</u>. These are automatically authorised under the PR Act.
- Plantations established before 14 December 2001, if establishment was in accordance with the requirements of EP&A Act (excluding any re-plantings less than 30 hectares) or any other relevant law. These areas must be harvested in accordance with the existing approvals.
- Plantations meeting the definition of 'exempt farm forestry' under the PR Act, i.e. where
 plantation operations are carried out on a farm; the total area of those operations is less
 than 30 hectares at any one time; any clearing for establishment would not have required
 approval under the (now repealed) Native Vegetation Act 2003; and the harvesting of
 timber does not exceed the maximum amount of harvesting permitted by the Plantations
 Code for exempt farm forestry. Harvesting of these areas is an allowable activity under the
 LLS Act.

However, this does not exempt plantation activities, such as establishment and harvest, which occur in areas less than 30 hectares, from complying with other relevant legislation, such as the federal <u>Environment Protection and Biodiversity Conservation Act 1999</u> and the BC Act.

While plantations with an area less than 30 hectares are not required to seek authorisation under the PR Act, they can still do so.

5.4 Raw logs from other sources

Processors may also source logs from a number of other sources, including:

- State significant developments or infrastructure projects
- Activities carried out and approved by public authorities
- Local infrastructure projects
- Managing native vegetation on rural land
- Clearing as a result of land use change.

The type of approval required will depend on which of the above activities the raw log was sourced from. Approvals may include:

 development consent issued under Part 4 of the EP&A Act authorising the clearing of trees and removal of logs as part of the approved development on the land.

- an approval issued under an act other than the EP&A Act where the removal of logs is necessary for carrying out either integrated development or state significant development authorised by a development consent under the EP&A Act.
- approval granted by the Minister for Planning for development declared under a state environmental planning policy to be state significant infrastructure.
- approval granted by a public authority for activities carried out by or on behalf of public authorities under Part 5 of the EP&A Act (including FCNSW).
- a notification, or certificate or Division 6 approval to clear native vegetation under Part 5A of the LLS Act.
- In some circumstances, timber may also be sourced from clearing in accordance with the allowable activities provided for under Schedule 5A of the LLS Act.

In any of the above cases, details of the approval or allowable activity authorising the vegetation removal may be provided to the processor.

6. Identifying legal raw logs from New South Wales

Processors sourcing domestically grown raw logs from New South Wales should maintain good business practices and gather what information is available to assure themselves that the raw log has been harvested in compliance with relevant laws. For example, all commercial transactions are subject to Australian consumer law, which requires suppliers of goods to provide a proof of transaction. A proof of transaction includes a receipt or tax invoice, a copy of which may assist processors in undertaking their due diligence obligations.

6.1 Public native forests

For most raw logs sourced from Crown-timber land, including State forests, information regarding the source of the logs will be readily available from FCNSW, who are the only legal suppliers of timber from public native forests.

When accepting deliveries from FCNSW, delivery dockets (see the sample document at <u>Attachment A</u>) will be provided to processors containing the following information:

- the name of the logging contractor
- the region, location and compartment the log was sourced from
- the type and dimensions of the log
- the total volume of logs delivered.

FCNSW also provides monthly statements to processors which include the above information and the certification number (if the operation is certified). Although it is not mandatory under law to obtain a FCNSW monthly report, it can assist processors in fulfilling their due diligence obligations.

When sourcing timber taken from Crown-timber land, including State forests, it is also recommended that processors obtain a copy of the operational plan approved under the IFOA for the compartment from which the logs were sourced. FCNSW maintains information about operational plans on its website and Plan Portal.

6.2 Public plantations

Timber from public plantations can only be sourced from FCNSW. Nearly all FCNSW plantations are authorised under the PR Act. In sourcing timber taken from public plantations, processors should ask FCNSW for a copy of the operational plan that has been prepared in line with the Plantations Code and approved by the Director General of DPI.

FCNSW should also provide a monthly report to processors outlining the areas from where the timber was sourced, monthly volume figures and the certification number (if the plantation is certified). Although it is not mandatory under law to obtain a FCNSW monthly report, it can assist processors in fulfilling their due diligence obligations.

6.3 Private and other sources

The timber industry in NSW has developed a template form (see <u>Attachment B</u>) that may assist processors who source their raw logs from private native forests, private plantations, and/or other sources to fulfil their due diligence requirements.

The form contains fields for processors to record all the information required under the <u>Illegal</u> <u>Logging Prohibition Regulation 2012</u> (Regulation). Although completing and maintaining this form is not required under the Regulation, it may be a useful way for businesses to consistently record relevant information.

6.4 Private native forest

A PNF Plan should be in place for all private native forest logs received by a processor. The processor should record the PNF Plan number provided by their supplier. In addition, landholders in some local government areas may need development consent in accordance with the EP&A Act. Processors should request information about any development consent from the supplier and keep a record of the development consent number or other information provided.

6.5 Private plantation

If a processor receives logs from a private plantation, they should ask for a copy of any approvals authorising the plantation and confirm with the supplier that the log was harvested in accordance with the approval. They can use this information to check if it is:

- authorised as a complying plantation under the PR Act, or for non-complying plantations, that harvesting has been approved by the Minister; or
- accredited under the <u>Timber Plantations (Harvest Guarantee) Act 1995</u>; or
- issued with a Development Approval under the EP&A Act; or

is exempt farm forestry (as described above in Section 5.3).

6.6 Raw logs from other sources

If a processor receives a log from any other source, they should collect information from the supplier about the area and activity where the log is sourced from. This could include the development consent number, the reference number for a state significant development or infrastructure project, the approval number for a project approved under Pt 5 Div 5.1 of the EP&A Act, or the certification or notification reference under the <u>Land Management (Native Vegetation)</u> <u>Code 2018</u>, or an approval to clear vegetation under Part 5A, Division 6 of the LLS Act, and copies of the relevant approvals.

The required evidence will depend on the planning requirements or clearing approval relevant to the area from which the logs are sourced.

6.7 Raw logs sourced from interstate

In Australia, each state or territory is responsible for regulating the timber industry to meet a range of Commonwealth and state legislative and policy requirements. Processors who source raw logs interstate have a responsibility to understand the laws in force in the place of harvest when undertaking their due diligence.

Similar to the New South Wales State Specific Guideline, the Australian Government has developed state specific guidelines for other states. Each state specific guideline contains relevant information to allow processors to identify the information they can obtain in order to establish that the raw logs they process have been legally harvested.

NSW forestry regions are in close proximity to forestry regions in Victoria and Queensland, and there are important cross-border industry relationships for these States. For this reason, the State Specific Guidelines for Victoria and Queensland should be read in conjunction with the State Specific Guidelines for NSW to understand and apply the due diligence requirements of the State where the raw log is sourced.

The State Specific Guidelines for Victoria and Queensland are available on the Department of Agriculture, Fisheries and Forestry's website (agriculture-land/forestry/policies/illegal-logging/processors/resources)

Who should I contact for further information?



Australian Government

Department of Agriculture, Fisheries and Forestry

GPO Box 858 Canberra ACT 2601

Phone: +61 (0) 2 6272 3933

agriculture.gov.au/illegallogging

illegallogging@agriculture.gov.au



New South Wales Government

Department of Primary Industries - Forestry 161 Kite St, Orange NSW 2800

Phone: 02 6391 3100

forests@dpi.nsw.gov.au

dpi.nsw.gov.au/forestry



New South Wales Government

Environment Protection Authority

Locked Bag 5022

Parramatta NSW 2124Phone: (02) 9995

5555

epa.nsw.gov.au/yourenvironment/native-forestry

info@environment.nsw.gov.au



New South Wales Government

Local Land Services

Phone: 1300 795 299

pnf.info@lls.nsw.gov.au

lls.nsw.gov.au/landmanagement/pnforestry

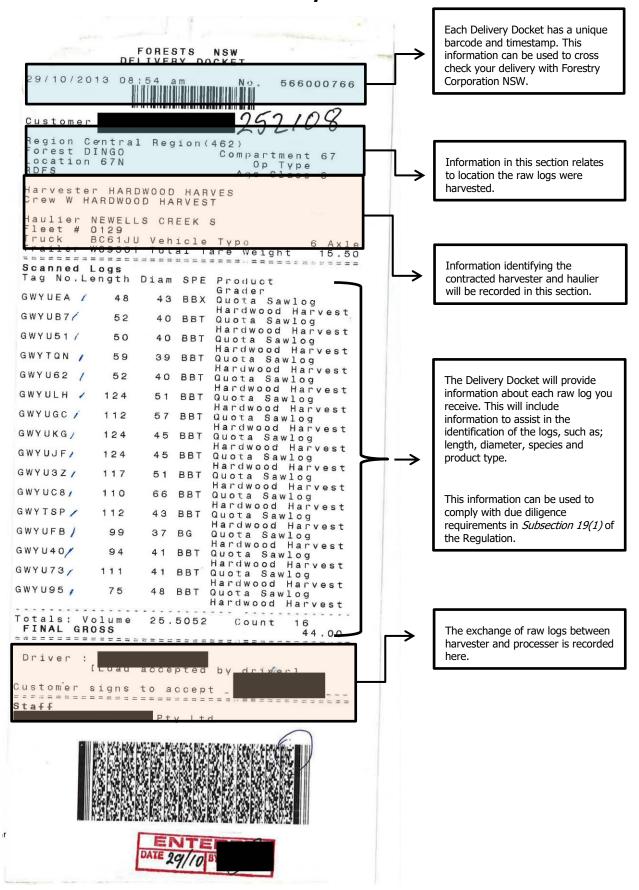
Disclaimer

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This guideline and its associated quick reference guide are made available on the understanding that the Commonwealth of Australia and the New South Wales Government are not providing professional advice. Before relying on this guideline or its associated quick reference guide, readers should obtain appropriate professional advice suitable to their particular circumstances.

Readers should also confirm that this is the most up-to-date available guideline by referring to the Department of Agriculture, Fisheries and Forestry's website.

Attachment A – FCNSW delivery docket



Attachment B - Due diligence summary template

Due Diligence Summary Template for Domestic Processors of Raw Logs

This form is to assist with fulfilling the due diligence requirements set out under the <u>Illegal Logging</u> <u>Prohibition Regulation 2012</u>. Completion of this form does not change the need to comply with NSW legislative requirements.

<u>Domestic Processor Details</u>	
Business or company name	ABN or ACN
Street address	
Postal address	
Principal business activity	
Chain of Custody #*	
Person responsible for maintaining the system	
Name	Position
Telephone number	Email
Areas where raw logs harvested / Supplier of raw logs (add as necessary):
Public/Crown Land	
Name/trading name (leaseholder)	ABN/ACN
Address	
Forest Agreement Region	
Forest Management Certification #*	
Other authority to harvest	
Quantity of raw logs purchased (m³, number, tonnes) _	
Species of logs purchased	
Name/trading name (leaseholder)	ABN/ACN
Address	
Forest Agreement Region	
Forest Management Certification #*	
Other authority to harvest	
Quantity of raw logs purchased (m³, number, tonnes) _	
Species of logs purchased	
Private Land	
Name (landowner)	ABN/ACN
Address	
PNF Plan/Plantation/Council Approval documentation _	
Other authority to harvest	
Quantity of raw logs purchased (m³, number, tonnes) _	
Species of logs purchased	
Name (landowner)	ABN/ACN
Address	Phone
PNF Plan/Plantation/Other Approval documentation	
Other authority to harvest	
Quantity of raw logs purchased (m³, number, tonnes) _	

Delivery dockets and/or records supporting this information, including a copy of any harvesting approval and confirmation from the supplier that harvesting of the raw log(s) was undertaken in accordance with the approval/authorisation are maintained on site.

This information is in accordance with the NSW State Specific Guideline document.

Signed	 Date	

^{*}Chain of Custody and Forest Management certification numbers to be recorded only if available.