

FOREST MANAGEMENT AND THE LAW

INTRODUCTION

This fact sheet was produced by the Environmental Law Association to provide a plain language introduction to legal issues related to logging, including: landowner consent, timber licensing, logging plans, environmental impact assessment and operational standards set out in the national logging code of practice. This fact sheet also describes legal mechanisms for protecting forests, including nature reserves, protected catchment areas and conservation leases.

LANDOWNER CONSENT

Most forests are found on native land. It is illegal to fell timber on **native land** without a **licence** issued by the Native Land Trust Board (NLTB).¹ Before issuing the licence, the NLTB must obtain the **consent** of the majority of the relevant landowning clan. It is an offence to log on native land without an NLTB licence, or to breach a condition of an NLTB licence.²

Logging on **Crown land** requires a licence from the Department of Lands.³ It is an offence to fell timber on Crown land without a licence, or breach the conditions of a licence.⁴

It is illegal to take timber from **freehold land** without the permission of the land owner.⁵

DECLARATION OF RESERVES

The Minister for Forests may declare nature reserves and forest reserves.

Nature reserves are strict reserves that must 'be managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water'.⁶

Forest reserves may be used for multiple purposes, including the felling and extraction of timber. Forest reserves must 'be managed as permanent forest in order to provide on a permanent basis the optimum combination of benefits of protection and production'.⁷

The Minister may only declare a reserve on the recommendation of the Forestry Board. The Forestry Board is an advisory board, chaired by the Conservator for Forests. In the case of native land, the Minister must also obtain the consent of landowners and the NLTB before establishing a reserve.

CUSTOMARY RIGHTS

The following rights may be exercised on native land without government approval, provided that the land has not been declared to be a forest reserve or nature reserve:

- customary rights to hunt, fish, or collect fruits and vegetables growing wild; and
- customary rights to cut or remove timber for construction of village buildings and domestic firewood use.⁸

TIMBER LICENCES

It is illegal to fell or extract timber (except in accordance with customary rights) without a **timber licence** from the Forest Department.⁹

Timber licences are issued by forestry licensing officers. The following **standard conditions** apply to all timber licences:

- the licence holder must comply with any **agreement** that it has entered into with the landowner(s);

- the licence holder must prepare and comply with a **logging plan** (see below);
- the licence holder must comply with the logging **code of practice** (see below).

The licensing officer may specify additional **conditions** in the licence as they think fit, in accordance with good logging practice.¹⁰

Breaching the conditions of a timber licence is a serious **offence**, with a maximum penalty of 12 months prison and/or a \$10,000 fine.¹¹ The Conservator may **suspend or revoke** a timber licence if a violation of the licence conditions has occurred or is likely to occur.¹²

LOGGING PLAN

The holder of a timber licence must submit a **logging plan** to the forestry licensing officer for approval. The plan must comply with the requirements set out in the *Forest Decree* and the logging code of practice. The logging plan must address a range of issues, including:

- the amount of timber to be harvested;
- the minimum sizes of trees to be felled;
- buffer zones and other protected areas;
- layout of roads and skidding trails; and
- rehabilitation and reforestation plans.

It is an offence to commence logging operations without an approved logging plan.¹³

FOREST HARVESTING CODE OF PRACTICE

Unsustainable logging can result in a range of environmental and social impacts, including:

- loss of future timber supplies;
- loss of habitat for forest animals;
- loss of rare and valuable plants;
- soil erosion and water pollution; and
- downstream impacts on drinking water, coastal fisheries and coral reefs.

The *Forest Harvesting Code of Practice* seeks to promote sustainable logging practices by establishing legally binding standards for all forest harvesting operations.¹⁴

The code of practice sets out standards for the planning, harvesting and rehabilitation stages of each logging operation (**Table 1**). To request a copy of the code of practice, please contact the Forest Department.

Failure to comply with the code may result in revocation of the timber licence, 12 months prison and/or a \$10,000 fine.¹⁵

Pre-harvest field inspections must be conducted to identify any ecologically sensitive or culturally significant sites.
<p>Logging operations must leave buffer strips beside rivers and streams. No logging or clearing is allowed inside the buffer strip. The minimum size of the buffer varies, depending on the width of the stream:</p> <ul style="list-style-type: none"> • > 20m stream width: 30m buffer • 10-20m stream width: 20m buffer • 0-10m stream width: 10m buffer.
Trees and tree crowns must not be felled into rivers or streams.
Rare tree species, fruit trees, seed trees and tree species with value for non-timber forest products must not be felled.
Trees that are smaller than the minimum size limits set by the Forest Department must not be felled.
Logging roads, stream crossings, skid tracks and landings must be built in compliance with standards set out in the code of practice.
Roads, skid tracks, stream crossings and landings must be rehabilitated after harvesting.

Table 1. Selected operational standards from the *Forest Harvesting Code of Practice*.

ENVIRONMENTAL IMPACT ASSESSMENT

Logging and milling operations must not be commenced without environmental impact assessment (EIA) under the *Environment Management Act*. Commercial logging and milling operations require EIA approval from the Department of Environment.

For more information about EIA procedures, please refer to **Fact Sheet 1: Environmental Impact Assessment**.

PROTECTED SPECIES

The *Endangered and Protected Species Act* lists species that are in danger of extinction, including a number of highly valued timber species (e.g. *dakua*, *yasi*). It is an offence to possess, sell or export protected species. For more information about protected species, contact the Department of Environment.

FOREST CONSERVATION

There are a number of legal mechanisms available for protecting forests, including: nature reserves, protected catchment areas and conservation leases. The key features of these legal mechanisms are described below.

Nature Reserves

The Minister for Forests may declare **nature reserves**. It is an offence to log, clear, burn, build, plant, graze, hunt or fish in a nature reserve. Logging licences must not be issued in declared nature reserves.¹⁶ Mining leases can only be issued in nature reserves with the approval of the Conservator for Forests.¹⁷

If you want the Minister to declare a nature reserve, you should discuss the proposal with the Forest Department. It may be useful to submit a written proposal to the Conservator for Forests, highlighting the conservation values of the area and providing evidence of support from the landowners and the NLTB.

Only the Minister for Forests may remove or modify a nature reserve. The Minister may only remove or modify a nature reserve on the recommendation of the Forestry Board.¹⁸

Protected Catchment Areas

The Minister for Water may declare any area to be a **water catchment area**. It is an offence to commit any act which causes pollution of water within a declared catchment area. The maximum penalty for this offence is \$100.¹⁹ Logging licences must not be issued in a declared water catchment area. Mining leases can only be issued in a declared water catchment area with the approval of the Commissioner for Water Supply.²⁰

The Minister must publish notice of his/her intention to declare a protected catchment area in the Gazette. The notice must describe the proposed catchment area, and allow at least two months for any owner, lessee or licensee of the area to object in writing to the proposed declaration. The Minister must consider any such objections before making a decision about declaration of the area.²¹

If you want the Minister to declare a water catchment area, you should discuss the proposal with the Ministry of Public Works and Utilities. It may be useful to submit a written proposal to the Minister, highlighting the conservation values of the area and providing evidence of support from the landowners and the NLTB.

Only the Minister for Water may remove or modify a declared catchment area.

Conservation Leases

Native land **leases** can be used to conserve forest areas if there is a lessee who is willing to pay to conserve a particular area.²² Lease conditions are negotiated by NLTB on behalf of landowners. Lease payments are based on standard payment criteria.

If landowners have identified a lessee who is willing to enter into a conservation lease over part of their land, the *turaga ni mataqali* and the lessee should discuss the proposal with NLTB, highlighting the conservation values of the area, and providing evidence of support from the landowners.

If the lessee fails to make lease payments, or breaches the conditions of the lease, NLTB may terminate the lease.

MONITORING AND ENFORCEMENT

Forestry officers and police are responsible for enforcing forestry laws. Forestry officers have powers of entry, seizure and arrest.²³ Courts may impose penalties (including fines and prison sentences) and make compensation and forfeiture orders.²⁴

Members of the public, including resource owners, can improve law enforcement by monitoring logging operations and **reporting breaches** of forestry regulations, including breaches of the logging code of practice.

If you believe that forestry laws have been breached, **report** the incident to the police and the Forest Department, providing as much detail as possible, including:

- description of the incident
- location of the incident
- time and date of the incident
- name and contact details of the offender
- registration number of any vehicle(s)
- names and contact details of witnesses
- photographs, video or physical evidence.

For more information about reporting breaches, refer to **Fact Sheet 6: Responding to Breaches of Environmental Law**.

USEFUL CONTACTS

Environmental Law Association
15 Ma'afu Street, Suva
Tel: 330 0122

Forest Department
Takayawa Building, Toorak, Suva
Tel: 330 1611

Department of Environment
19 MacGregor Road. Suva
Tel: 331 1699

iTaukei Land Trust Board
TTF Building, 87 Queen Elizabeth Drive, Suva
Tel: 310 0909

ENDNOTES

- ¹ Native Land Trust (Forest) Regulations, r.3.
- ² Native Land Trust Act, s.26.
- ³ Crown Lands Act, ss.10, 32.
- ⁴ Penal Code, s.280.
- ⁵ Penal Code, s.280, Larceny of trees.
- ⁶ Forest Decree, ss.29-31.
- ⁷ Forest Decree, s.7(2).
- ⁸ Forest Decree, s.7(1).
- ⁹ Native Land (Forest) Regulations, r.17. Forest Decree, s.21(1).
- ¹⁰ Forest Decree, s.8.
- ¹¹ Forest Decree, s.13(1).
- ¹² Forest Decree, s.28 (1).
- ¹³ Forest Decree, s.19.
- ¹⁴ Forest Decree, ss.14, 28.
- ¹⁵ As at 1 March 2010, the *Forest Harvesting Code of Practice* was not yet in force, as the Forest Department was still using the earlier *National Logging Code of Practice*. To check which code applies to a logging operation, contact the Forest Department and/or check the conditions of the licence.
- ¹⁶ Forest Decree, s.28 (1).
- ¹⁷ Forest Decree, ss.6-9.
- ¹⁸ Mining Act, s.11.
- ¹⁹ Forest Decree 1992, s.6(2).
- ²⁰ Water Supply Act (Cap 144), ss.4, 24.
- ²¹ Mining Act, s.11.
- ²² Water Supply Act, s.4.
- ²³ Native Lands Trust Act, s.10.
- ²⁴ Forest Decree, ss.34-36.

DISCLAIMER: This fact sheet provides general information about the law, and is no substitute for legal advice relating to your particular situation. ELA accepts no responsibility for any loss resulting from reliance on the information provided in this fact sheet.

Law current as at 1 March 2010.
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