



New South Wales

# Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation 2020

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

MATTHEW KEAN, MP  
Minister for Energy and Environment

## Explanatory note

The object of this Regulation is to provide a limited exception to the prohibition on burning native forest bio-material to generate electricity. The exception is only available in respect of premises to which an environment protection licence that authorises the carrying out of scheduled activities (within the meaning of the Protection of the Environment Operations Act 1997) applies and that the EPA has nominated for the purposes of the exception. The exception is also limited to native forest bio-material obtained from certain sources, including trees cleared in accordance with development consent or any other approval under the *Environmental Planning and Assessment Act 1979*, trees removed or lopped by a roads authority in accordance with the *Roads Act 1993* and land lawfully cleared as part of recovery or clean-up works in a natural disaster area.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 and Schedule 2 (the general regulation-making power).

## **Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation 2020**

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Protection of the Environment Operations Act 1997

### **1 Name of Regulation**

This Regulation is the *Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation 2020*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1      **Amendment of Protection of the Environment Operations (General) Regulation 2009**

### Clause 97A

Insert after clause 97—

#### **97A    Exception to prohibition on burning native forest bio-material to generate electricity**

- (1) An occupier of premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is not guilty of an offence under clause 97 if—
  - (a) a licence authorises the carrying out of scheduled activities in or on those premises, and
  - (b) the premises are nominated by the EPA, by notice published in the Gazette, for the purposes of this clause, and
  - (c) the native forest bio-material was obtained from—
    - (i) trees cleared from land in accordance with—
      - (A) development consent or any other approval under the *Environmental Planning and Assessment Act 1979*, or
      - (B) any authority or other approval issued by another State or Territory that corresponds or is similar to any development consent or other approval under that Act, or
    - (ii) the clearing of trees that is declared to be exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
    - (iii) trees or other vegetation removed or lopped by a roads authority in accordance with section 88 of the *Roads Act 1993*, or
    - (iv) land lawfully cleared as part of recovery or clean-up works in an area declared to be a natural disaster area for the purposes of any disaster recovery funding arrangements administered jointly by the Commonwealth and the States and Territories, and
  - (d) the native forest bio-material does not comprise timber suitable for milling or other higher value use.
- (2) The EPA may, by notice published in the Gazette, vary or revoke a nomination referred to in subclause (1)(b).
- (3) In this clause—

**higher value use** includes the use of timber as mulch or wood chips for the purposes of—

  - (a) erosion and sediment control, or
  - (b) landscaping the land from which the timber was obtained.