

### Question 1.

It is frequently said that the native forest industry was not sustainable before the fires and post fires even less so. Do you have any comments on the future long-term sustainability of native forestry- public and private?

#### Answer:

Just because something is frequently said doesn't make it so. The contested nature of native forestry makes it susceptible to disinformation and fake news.

In NSW there are a group of ENGOS that have turned their anti-forestry agendas into businesses that seek to win people's hearts and minds. Every year vast sums of money are raised for the sole purpose of putting an end to native timber harvesting. The business models are based around a notion that NSW native forests are being damaged and destroyed, along with the animals that live in them, by an unscrupulous and uncaring industry. This triggers donations from outraged people who believe they can help the ENGOS to 'save the forests'.

Under the ENGOS business models it is not possible to reveal the truth as the outrage will cease. To keep the donations flowing the ENGOS are continuously looking for find new ways to discredit the industry and everything it does. This means increasingly sophisticated campaigns underpinned by carefully choreographed stories and articles. More recently the campaigns are being supported by a clique of academics and journalists which make the stories appear more credible. The most recent example - koalas will be extinct by 2050 and native forestry is a major threat!

The Inquiry should be mindful that it is the NSW Government, not the timber industry, that has control over the way native forests are harvested as well as the way they manage them. The industry's role is simply to make best use of the timber that is supplied to it. Three quarters of all native timber supply comes from State forests which are managed by the Forestry Corporation of NSW a state-owned corporation.

Harvesting undertaken by the Forestry Corporation is subject to an extremely strict set of operating rules (IFOAs) which have been developed by the NSW EPA and the NSW DPIE. The IFOAs make NSW native forestry the most heavily regulated forestry activity in the world.

The operating rules have been developed and refined over many decades to ensure impacts on the environment are temporary and minor. This message is rarely heard, however, as the professionals tasked with managing the forests are all public servants they are rarely permitted to defend or speak publicly about what they do. Without their voice the ENGOS campaigns of disinformation have been allowed to continue uncontested.

One aspect of native forestry which is rarely considered, in the debate about sustainability, is scale. Over the last three decades the area in which native forestry occurs has been dramatically reduced. Today only 12% of NSW public native forests are made available for timber production while 88% are set aside in formal and informal reserves. On private land approximately 5% of private native forests are the subject of an approved PNF Plan.

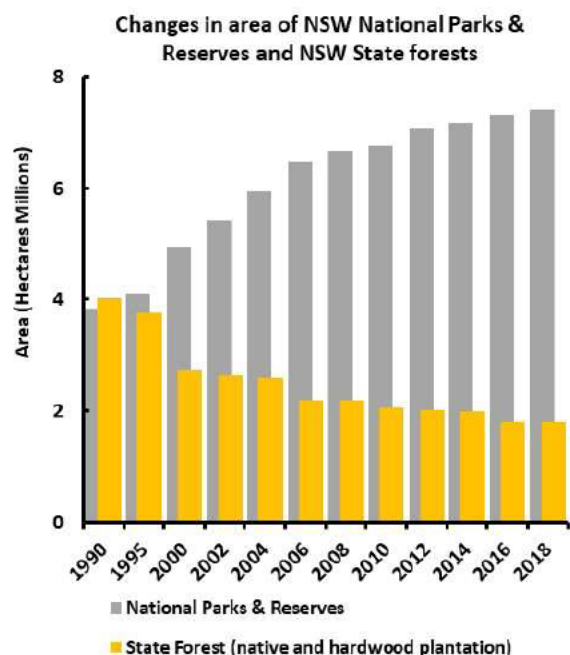


Figure 1 – Declining area of State forest and rising area of National Park (data source: NSW agency annual reports)

With less area being made available for timber production supply of sawlog has effectively halved (Figure 2). Although supply has been stable in recent years further decline is expected when the effect of the Black Summer fires is brought to account.

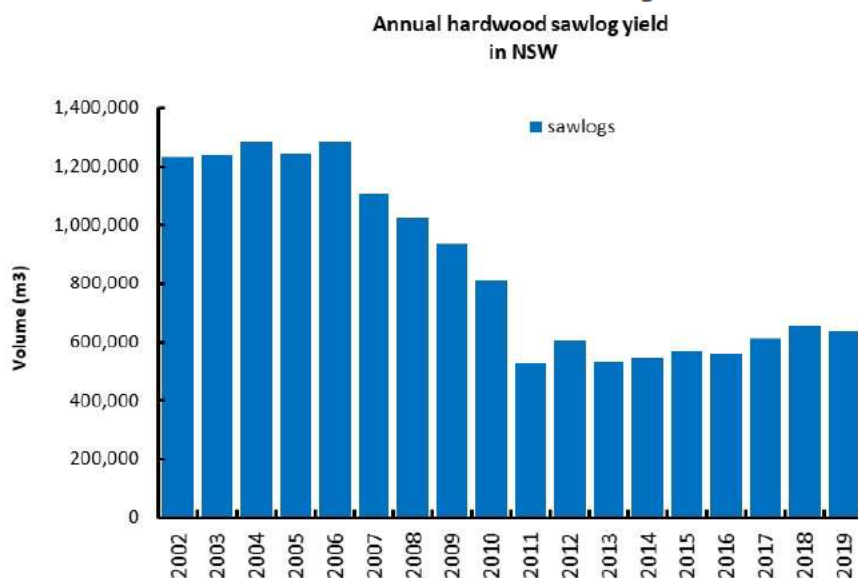


Figure 2 – Supply of NSW hardwood sawlog (data source: ABARES)

Since 2000, reduced supply combined with increased demand has seen a rapid escalation in imported timber (Figure 3). With no fat in the system the implications of past land-use

decisions are now impacting directly on the industry's ability to service the housing and construction sectors.

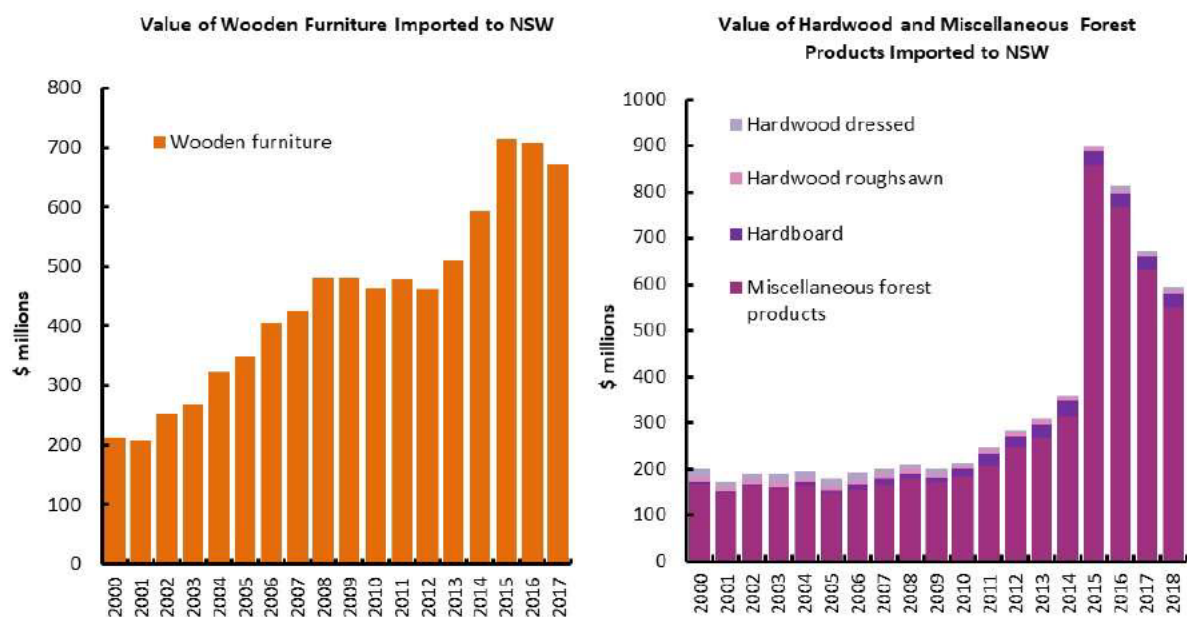


Figure 3 – Rise in NSW timber imports (data source: ABARES)

Today less than 0.1% per year of NSW native forests are subject to canopy disturbance by harvesting (Figure 4).

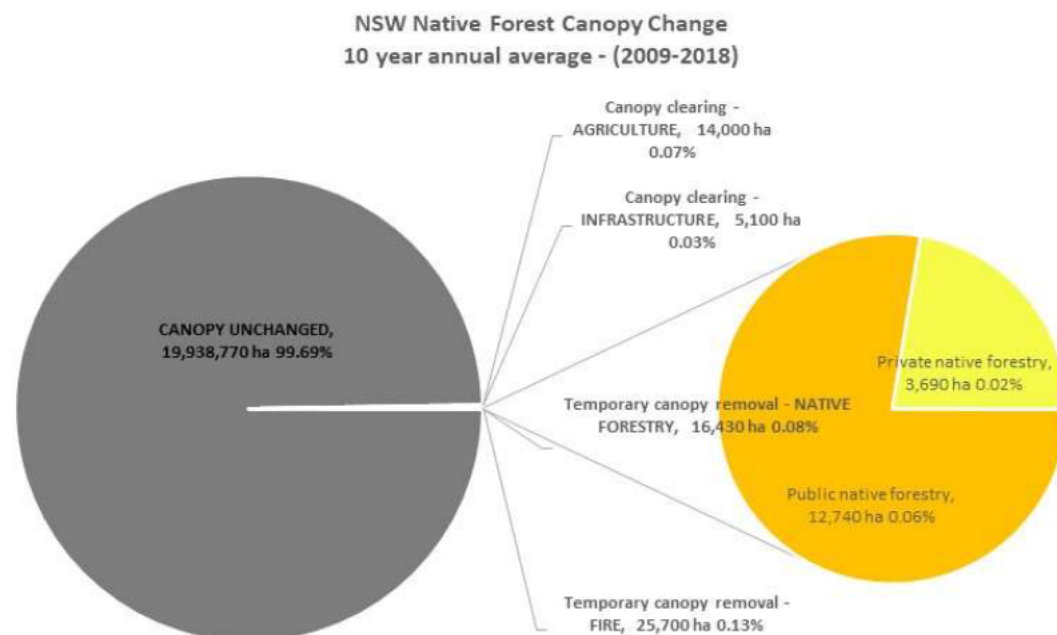
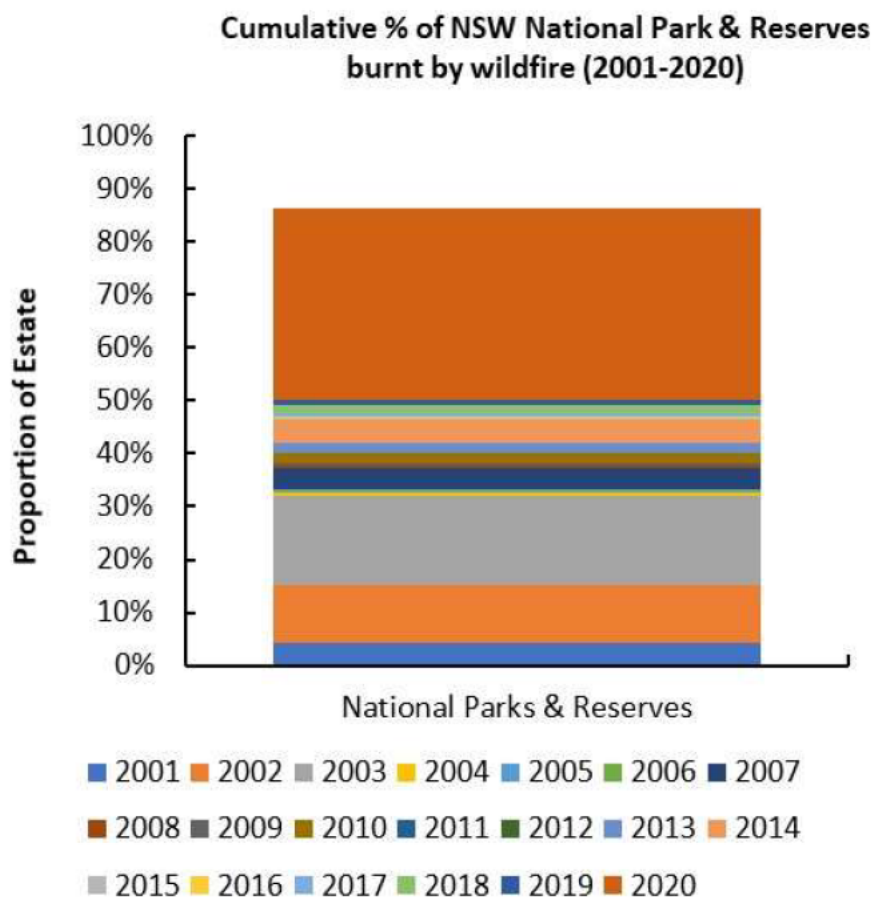


Figure 4 – Area and % of NSW native forest subject to annual native timber harvesting (data source: EES)

Given this fact, together with thousands of operating rules, one might expect that the arguments about the industry being unsustainable would be diminishing. Unfortunately, this is not the case.

Those ENGOs opposed to native forestry will always be so as their business models are based on promoting forestry's decline. No matter how many concessions are made these groups along with their supporters, will always claim that the industry is unsustainable. While the government accepts this argument and continues to make political mileage from the conversion of State forests to National Park, the battle for the forests will continue.

For the timber industry the Black Summer fires were a clear demonstration that the lock it up and leave approach to native forest conservation has not worked. Regrettably there has been no public acknowledgement of such despite the glaring evidence (Figure 5).



*Figure 5- Wildfires which mostly begin in National Parks are the single greatest threat to forest sustainability (data source: EES reports)*

To ensure the long-term sustainability of the forests, both public and private, limited public resources need to be distributed more evenly and active and adaptive management embraced. Regrettably, this still appears to be a long way off despite evidence to support this.

## Question 2.

Many statements have been made about the forest industries being part of the cause of the decline of koala in New South Wales. Do you have any comments on this?

### Answer:

All of the statements made about the forest industries being part of the cause of the decline of koala in New South Wales are anecdotal and not based on evidence. All the formal research undertaken to date on the effects of timber harvesting on koalas has shown that there are no long-term adverse effects.

In NSW the koala is being used by the ENGOs as a political tool to support their call for more national parks. Claiming tree harvesting is promoting the decline of koalas is simply a strategy designed to achieve this aim.

In the hinterland of the NSW north coast, where native forestry is most widely practiced, koalas are common and widespread. Some native species do not favour disturbance, the koala however is not one of them. Its irruptive traits provide it with a natural capacity to reproduce rapidly when conditions are suitable, typically following disturbance events.

The most recent released report (Sep 2021) by the NSW Natural Resources Commission (NRC) *Research program Koala response to harvesting in NSW north coast state forests* has come to the same conclusion. Under this study acoustic surveys were used to assess koala detection rates and density at three treatment sites on State forests where selective harvesting occurred, and control sites on National Parks where harvesting did not occur. Key findings announced by Professor Hugh Durrant-Whyte, the Natural Resource Commissioner and NSW Chief Scientist, were as follows:

- Koala density was higher than anticipated in the surveyed forests and was not reduced by selective harvesting.
- The IFOA conditions and protocols did not adversely impact koala density
- GPS-collared koalas at intensively harvested sites were found to be using the full range of the available habitats five to 10 years post-harvest, including regenerating forest.

There is of course disruption in the short term after harvest and that is why feed species trees are retained on harvest sites to support koalas along with substantial areas of conservation reserves inside these working forest areas.

As a disturbance event native forest harvesting is infrequent and small scale. As mentioned above in any one year less than 0.1% of the native forest canopy is removed by timber harvesting and then every harvested area is regenerated (regrown) under NSW law.

Unlike the permanent tree clearing that occurs for building new roads or suburbs, forestry is not land clearing or deforestation and supports good long-term outcomes for koalas.



About the research: With support from a panel of experts in koala ecology and forest science, the Natural Resource Commission selected eminent scientific researchers from the

Australian National University, Western Sydney University and the Department of Primary Industries Forest Science Unit to undertake a three year program of research work. The researchers investigated koala movement, occupancy, density, diet and the nutritional quality of koala habitat on state forests. The research program independently overseen by the NSW Natural Resources Commission was commissioned to inform the NSW government's Koala Strategy.

Where koalas are genuinely threatened is where their habitat is being permanently removed (i.e. peri-urban expansion) and in forests that are being repeatedly subject to high intensity wildfire (i.e. in some bushfire prone national parks).

### Question 3.

**Do you have any comment on why the government continues to include forestry operations and plantations clearing in the land use change statistics termed as land clearing when the Biodiversity Review Panel in 2014 recommended that they be removed on the basis that forestry is regenerated or replaced therefore not a land use change?**

#### **Answer:**

Statistics on clearing are compiled annually by the EES agency that sits with the Department of Planning, Industry and Environment.

Reporting of clearing by EES is based upon canopy changes in woody vegetation. The changes are picked up using mainly remote satellite assessment techniques and the causes are grouped into classes, namely, Agriculture, Infrastructure, Fire and Forestry. Forestry is further grouped into subclasses, namely, native forestry (public and private) and plantation forestry (public and private).

Under NSW vegetation law any manmade disturbance to native vegetation is treated as clearing, whether it be breaking a branch off a shrub or permanently clearing 1000 hectares to create a new residential suburb.

The problem is not so much that EES is monitoring and classifying canopy removal in accordance with the legislation, it is the way that it reports it.

EES makes no effort to distinguish between temporary canopy removal and genuine clearing which is intended to be permanent. By lumping all the statistics together EES are misleading the public, giving them the false impression that more land-use change is occurring than is the case. Elements of media that are anti-forestry then generate headlines from this reporting that land clearing is out of control.

The other issue we have with EES is that it is only monitoring and reporting on canopy loss. Canopy gains arising from new forests (natural regeneration and new plantations) should be

reported as they are significant in terms of area. They also contribute to carbon capture and storage. By not reporting canopy gains, EES is only revealing half the story (the negative half). We suspect that the bias which EES applies to its reporting is likely to be due to the way it is funded. If the perception is that the environment is being impacted, it is more likely that government will direct funds to EES to counter the impact (i.e., more investment in new National Parks).

#### Question 4.

**Do the wood supply agreements (WSA) owned and operated by Boral contain preference clauses which are not found in any other wood supply agreements with any other native forest timber sawmiller in New South Wales?**

#### **Answer:**

There are several or were several WSA held by Boral as the ultimate beneficiary owner disclosed on the website of Forest Corporation of NSW.

No other Common Agreement Holder has anything like this in their WSAs. The Common Agreement Holders are in direct commercial competition with the commercial entity holding these WSAs set out below. There has now been 17 years of commercial advantage and it continues.

#### **WSA 1**

Davis & Herbert Forestry Pty Limited commenced 1 January 2004 and concluding 31 December 2020. The WSA was for an annual supply of sawlogs up to 37,703m<sup>3</sup>. This WSA had no species preference clauses.

#### **WSA 2**

Allen Taylor & Company Limited had a Type WSA dated December 2004. This WSA was assigned from Fenning Timbers (Aust) Pty Limited to Allen Taylor & Company Limited in November 2004. The WSA was issued in January 1997 and was to conclude on 31 December 2018. It would appear that on the date of the assignment a fresh WSA was issued to Allen Taylor & Company Limited commencing 30 November 2004 and concluding 31 December 2023. The Deed of Assignment and the WSA dated December 2004 were in the same Forestry Corporation NSW folder on their website. There was no copy of the Fenning Timbers WSA that was assigned.

The December 2004 WSA had a timber species preference clause. The clause is numbered 15.10.

*15.10 Forests NSW recognises the importance, to the operation of the sawmill at the Delivery Site, of consistency in species, diameter and length of delivered Timber. The Company also recognises the difficulties associated with supplying a delivered log*

*mix that does not vary to reflect the inherent variability of the forest from which it is harvested. Subject always to Forests NSW's sole discretion to determine from time to time the location of Contract Harvesting operations necessary to supply Timber under this Agreement, in accordance with Forests NSW's opinion of good forest management, and the imitations that flow from the exercise of that discretion, Forests NSW will use it best endeavours to deliver Timber:*

*15.10.1 which complies, an on annual basis , with the following requirements regarding volume by major species:*

Species	Maximum or Minimum	Percentage of total volume of the Allocations
E. obliqua	Maximum	40%
E. viminalis	Maximum	40%
E. laevopinea	Minimum	2%
E. fastigata	Maximum	15%

*15.10.2 which complies, an annual basis, with a requirement of a minimum 40% of the total volume of the Allocations by preferred lengths (124 decimetres (dm) 118dm, 112dm, 100dm, 94dm, 62d, 59dm, 50dm, 47dm)*

### WSA 3

A WSA between and Allen Taylor & Co Limited (Taylors) and Duncan Holdings Limited (Duncans) dated 26 August 2003 advised these companies are part of the Timber Division, an administrative division of Boral Limited. (Duncans is a wholly owned subsidiary of Taylors). There was an earlier agreement entered on 5 March 1999. The Agreement extended the earlier agreement to 21 December 2023. The timber would have a reduced allocation but the Bas Allocation review would not impact on the new Agreement.

The December 2004 WSA had a timber species preference clause. The clause is numbered 15.9 and is in similar terms to the clause 15.10 above (set out on pages 19 – 20 of Submission 222 to the Inquiry)

*15.9 State Forests recognises the importance, to the operation of the sawmill at the Delivery Site, of consistency in species, diameter and length of delivered Timber. The Companies also recognise the difficulties associated with supplying a delivered log mix that does not vary to reflect the inherent variability of the forest from which it is harvested. Subject always to State Forests' sole discretion to determine from time to time the location of Contract Harvesting operations necessary to supply Timber under this Agreement, in accordance with State Forests' opinion of good forest management, and the imitations that flow from the exercise of that discretion, State Forests' will use it best endeavours to deliver Timber:*



15.9.1 which complies, on an annual basis, with the following requirements regarding volume by major species:

Species	Maximum or Minimum	Percentage of Base Allocation
Blackbutt	Minimum	60%
Spotted Gum	Minimum	5%
Tallowwood	Minimum	3%
Brush Box	Minimum	2%
Blue Gum	Minimum	3%
New England Hardwood (including E. viminalis, E. fastigata, E. andrewsii, E. carneronii, E. obliqua, E. laevopinea, E. radiata, E. deanii, E. albens, E. dunnii)	Maximum	12%

15.9.2 which complies, on an annual basis with the following requirement regarding volume by diameter:

Diameter Centre Diameter Under Bark	Maximum or Minimum	Percentage of base Allocation
40-49 centimetres	Maximum	55%
50-59 centimetres	Minimum	15%
60+ centimetres	Minimum	10%

15.9.3 which complies on an annual basis with the following requirements regarding volume by preferred lengths (124 decimetres (dm), 188 dm, 112dm, 100 dm, 94dm, 62dm, 59dm, 50dm and 47dm):

Major Species	Maximum or Minimum	Percentage of Major Species Volume per Year in Preferred Lengths
Blackbutt	Minimum	50%
New England Hardwood (including E. viminalis, E. fastigata, E. andrewsii, E. carneronii, E. obliqua, E. laevopinea, E. radiata, E. deanii, E. albens, E. dunnii)	Minimum	40%

Common names for botanical species names in WSA 1 and WSA 2.

E. obliquamessmate	stringybark, brown top stringybark or Tasmanian oak
E. viminalis	Manna gum, white or ribbon gum
E. laevopinea	Silver top stringybark
E. fastigata	Brown barrel or cur-tail (stringybark)
E. andrewsii,	New England blackbutt
E. carneronii,	
E. radiata	Narrow-leaved peppermint
E. deanii,	Mountain blue gum, round- leaved gum,
E. albens,	White box
E. dunnii	Dunn's white gum or white gum

Industry awareness of these species preference clauses and species minimisation clauses.

The details of this WSA were not disclosed to the industry. The existence of substantially different terms of the WSA only became known in 2010 when the Agreement was the subject of litigation in the Supreme Court of New South Wales (Case No 2010/291263). The actual terms were not known, only that terms had to be available to run an action that was not available to the Common Agreement Holders. (Common Agreement Holders are the balance of holders on the North Coast.)

The actual terms of the Agreement were only seen by the Common Agreement Holders in early 2014 after the Nature Conservation Council of New South Wales received copies of the WSAs in September 2012 as a result of a GIPA (FOI). That action then caused the text of all wood supply agreements to be placed on the State Forests website some considerable time later. (WSA 2 and WSA 3 appear to have been removed from this website).

In those proceedings Taylors and Duncans were plaintiffs (Boral) with the defendants being FCNSW and the State of New South Wales.

In the summons that was filed, it was stated that the dispute concerned the WSA between Taylors and Duncans and the defendants. Further, it was contended that FCNSW failed to supply timber in the manner required by the WSA and that that failure occurred when FCNSW was supplying timber "of the quantity, size and species required by the agreement to third parties in circumstances where it had no contractual right to do so. In the summons it is

stated that that FCNSW supplied specified quantities of timber to the plaintiffs in the period 2005 – 2010 and that this was less than the amount required to be supplied: see paras 12 and 16. In addition, it was alleged that there was a failure to supply the plaintiffs 15,000 m<sup>3</sup> of timber from the New South Wales South Coast, and that there had been an excessive supply of small diameter timber (paras 23 to 25), and a breach of the best endeavours obligation to supply a minimum species claim (paras 26 to 36). Finally, there were also claims that there had been a failure to determine delivery charges that were fair, reasonable and competitive (paras 37 to 44).

The impact of these changes to the Taylor's WSA and the Duncan's WSA, was to give Taylor and Duncan (and Boral) a major market advantage over its competitors. These advantages provided Boral or their companies:

- with base quantities of preferred species timber;
- with the ability to specify preferred lengths and diameters of hardwood logs to be supplied;
- with minimum volumes of supply of timber from specified zones which were non-preferred species (New England hardwood);
- with a longer contractual term than was offered to other timber companies; and
- with a significant portion of hardwood timber supply from the North Coast region of New South Wales.

The increase in the contractual term to 2023 was given to the balance of the WSA holders (Common Agreement Holders) in 2004 but without the species preference clause.

In 2014, WSA 3 was the subject of a variation. The Variation Deed is dated 19 June 2014. The amendments to the Coastal WSA (the name given to the WSA3) are set out in Schedule 2.

(Summary details of the Variation are set out in Timber NSW's Submission 222 to the Inquiry on pages 30 – 31).

#### **Question 5.**

**Do any of the preference clauses provide Boral with a competitive edge and ensure that less marketable species are sent to other sawmillers?**

#### **Answer:**

Yes, in the details above see:

- WSA 2 – clause 15.10.1

- WSA 3 – clause 15.9.1 ensures a maximum of New England hardwood which are the less marketable species. Indeed, when Blackbutt, Spotted Gum Tallowwood Brush Box and Blue Gum have reduced in yield from the forests, Boral received their contractual quantities and Common Agreement Holders received more New England Hardwood species as their WSAs are specific quantum only and not species.

The main commercial species is blackbutt then followed by spotted gum and tallowwood.

FCNSW has data for timber supplied to each WSA holder. This data is confidential. This data shows the changing species compositions for all the Common Agreement Holders with a decrease in the preferred species to receipt of more New England hardwood. It is easy to see how FCNSW tries to handle complaints from saw millers. The larger the entity and the louder and the more often complaints are made about supply, then FCNSW will redirect the 'good' timber. At the end of an annual delivery schedule, FCNSW will try and deliver the 'good' timber, so the averages look to be fair.

However, a saw mill does not operate on 'fits and starts' in supply. It works on an estimated averaging supply which was how the timber supply worked before 2004. With 2014 Variation, the problem of irregular and erratic supply of the 'good' timber became a consistent problem.

This issue was such a major problem in the early 2010's that the Common Agreement Holders complained to the Coalition (in Opposition) and indicated it required investigation. The timber industry would see the 'good' timber flowing into the Boral saw mills and they knew that they should be receiving a similar supply but were not. The Opposition Coalition promised to review and solve the issue if elected to government in 2011 and this resulted in the 2014 Variation which made the problem worse.

The associated issue of timber supply is the distance or haulage cost that FCNSW charges. The analysed data and reported data is that haulage costs have been increasing due to timber being sourced further afield. Whilst this in part has to be

with less forests able to be accessed and selective harvesting been undertaken further afield, it is also about the supply of non-preferred species. These timbers would have been sent to the mills in the New England area. These mills were established to take this timber. Ironically this is where Fennings, Duncans and Taylors originated. The mills on the North Coast designed to take the preferred species had to handle timber for which their businesses were not designed.

Currently there are two issues occurring - distance and the type of timber not previously delivered and is now. To survive commercially in these circumstances, means that timber that cannot be used is traded between saw mills whilst the 'good' timber dwindles.

In effect, selective harvesting to meet a quota of species, removes an orderly selective harvesting programme based on sound forest management. When the 2004 WSA's were entered into following the MOU with the then Government, it is industry knowledge that the then Government had a report delivered that advised that species preference clauses were the antithesis of good silviculture practices and forest management. The report was ignored. Removal of preference species clauses from a WSA adds to sustainability in the short term, medium term and long term. It is a sound basis for native forest management.



Question 6.

The 2014 variation to the Boral contract was supposed to even out the supply of particular species such as blackbutt on the North Coast. What impact has that variation had on the rest of the North Coast industry?

Answer:

The 2014 Variation did not even out blackbutt supply. Instead it gave greatly improved commercial advantage to what was provided in the 2003 WSA.

'Base Allocation' is the quantity of Timber specified in Schedule 2 of the WSA being in 2003 165,00 cubic metres of Quota Quality Logs. Also referred to as 'company's allocation'.

2003	2014
No minimum share of total north coast blackbutt supply given	Minimum share of total north coast blackbutt supply set at 85%.
Obligation to supply 60% of the WSA allocation of blackbutt	Minimum supply of blackbutt set at 58,000m3
No guarantee minimum share of total Big Four species (Spotted Gum, Brush Box, Tallowwood and Sydney Blue Gum.	Guaranteed minimum share of total supply of Big Four species set at 49%.
FCNSW obliged to supply 13% of the company's allocation from the Big Four Species.	Minimum annual supply of Big Four species set at 24,000m3 which equates to 20.7% of the company's base allocation.
Spotted Gum obliged to be supplied was 5% of the Base Allocation.	Minimum annual supply of Spotted Gum set at 8,000m3 which equates to 7% of the company's base allocation.
Brush Box obliged to be supplied was 2% of the Base Allocation.	Minimum annual supply of Brush Box set at 2,000m3 which equates to 1.7% of the company's base allocation.
Tallowwood obliged to be supplied was 2% of the Base Allocation.	Minimum annual supply of Tallowwood set at 4,000m3 which equates to 3.4% of the company's base allocation.
Sydney Blue Gum obliged to be supplied was 3% of the Base Allocation.	Minimum annual supply of Tallowwood set at 4,000m3 which equates to 3.4% of the company's base allocation.
FCNSW entitled to supply up to 12% of the company's allocation as New England Hardwood.	Maximum supply of non-preferred New England Hardwood species set at 6,000 m3 which equates to 5.2% of the company's base allocation.