



## Inquiry Question on Notice - Prosecutions

### Long term sustainability and future of the timber and forest products industry - Hearing 1 Dec 2021

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#### Question on Notice:

**Mr JUSTIN FIELD:** At this stage, your annual report pointed to the fact that there were 10 prosecutions, I think, underway at the moment with regards to forestry operations in New South Wales. Are they prosecutions against Forestry Corporation?

**Ms MACKEY:** Yes, they are.

**Mr JUSTIN FIELD:** Can you provide any more information to the Committee about the prosecutions, the nature of them and what particular forests we are talking about here?

**Ms MACKEY:** There are 10 charges across three forests. They relate to Wild Cattle Creek State Forest—and that was the incident that prompted us to issue a stop work order in 2020. That prosecution relates to the felling of a—I am going to get the terminology correct—giant tree. So that is that one. Then there are two other prosecutions: one in relation to Dampier State Forest and the other in relation to Tomerong State Forest. I do not have the details of those two at hand but I am happy to provide that to the Committee.

**Mr JUSTIN FIELD:** Okay. Are there other investigations underway, particularly with regards to South Brooman and Mogo, where I know stop work orders were issued last year?

**Ms MACKEY:** My colleague David Fowler can probably help. We are just going to pull up the current list.

**Mr FOWLER:** So currently under investigation—we have activity in the Conglomerate State Forest, Wild Cattle Creek, South Brooman, Mogo, Lower Bucca, Yambulla and another investigation in South Brooman

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**Mr JUSTIN FIELD:** Reporting is something that we have raised in the discussion here today. We have had discussions before about reporting on biomass provided to the currently exempt electricity generators on the North Coast. Will those regulations, when they are finalised, have clear reporting requirements so that the community and government agencies can understand where the feedstock is actually coming from for these projects?

**Ms MACKEY:** We have certainly heard loud and clear that people want greater transparency around where the product is coming from. We are certainly looking at that as one of the issues as we update the guidelines.

As you are aware, we did seek to release and be as transparent as possible around that operator in the far north of the State; however, the NSW Civil and Administrative Tribunal determined that we were unable to release all of the information that we sought to.

**Mr JUSTIN FIELD:** Unable or were not required to? You are not restricted from providing that information, though, under the contracts or agreements with the user?

**Ms MACKEY:** I could get you the detail on notice, but the decision was around us not being able to release it on the grounds of being commercial-in-confidence.

**Mr JUSTIN FIELD:** But you were collecting it. The EPA knows where it is coming from; correct?

**Ms MACKEY:** We sought it from that particular operator.

**Mr JUSTIN FIELD:** Would I be wrong in saying they possibly were not complying with their conditions at the time? Might that be the other way to put it?

**Ms MACKEY:** We have done a complete audit of that particular operator around all aspects of their operation and we worked through with them areas of noncompliance to get them into the compliance space.

**Mr JUSTIN FIELD:** I meant to ask before, Ms Mackey, what is the status of those 10 prosecutions at the moment?

**Ms MACKEY:** I am aware on the Wild Cattle Creek ones, I believe that Forestry Corporation has pleaded guilty, so we are scheduled for a hearing, I believe—I thought it was imminent—very early December. On the other two I would have to get you an update.

#### Answer:

As at 14/12/21, there are 10 EPA prosecutions on foot against Forestry Corporation of NSW in respect of three locations (Dampier State Forest, Wild Cattle Creek State Forest and Tomerong State Forest). The nature and status of each is:

- Dampier: alleged offences against the *Forestry Act* in relation to activities in exclusion zones and other areas. The matter is listed for a hearing on sentence in the Land and Environment Court on 16 and 17 December 2021.
- Wild Cattle Creek: alleged offences against the *Biodiversity Conservation Act 2016* for licence breaches regarding tree felling. The matter is listed for a sentencing hearing in the Land and Environment Court on 5-6 April 2022.
- Tomerong: alleged offences *Forestry Act* in relation to searching for threatened flora. Not guilty pleas entered and the matter is listed for directions before the Land and Environment Court on 17 December 2021.

Current investigation matters as at 14/12/21 relate to Conglomerate State Forest, Wild Cattle Creek State Forest, South Brooman State Forest, Mogo State Forest, Lower Bucca State Forest, Yambulla State Forest, Norwood Western Land Lease and Woodmount Western Land Lease.



## Inquiry Question on Notice – Biomass – Eligible Waste Fuels Guidelines applying to native forest biomaterials burning for electricity

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#### Question on Notice – Page 28:

**Mr JUSTIN FIELD:** Ms Mackey, I would like to talk about biomass. We are talking about the future of the timber industry. The Department of Primary Industries (Regional NSW) was here this morning. They see an opportunity here for biomass to improve the economics of the timber sector generally, whether it be on public or private land. There is this proposal in the Hunter Valley to change the Redbank Power Station from being a coal tailings-fired power station to a biomass power station, with the majority of that biomass to be supplied through native forest biomaterials. I know that you are well aware of that. A Department of Primary Industries official, Dr Annette Cowie, provided evidence to the Land and Environment Court proceedings and provided expert testimony about the proposal. She quite explicitly countered some of the information provided by the EPA in their submission to the project. I just wanted to get some clarity around how the Eligible Waste Fuels Guidelines apply to native forest biomaterials with regard to the burning of them for electricity, because it seems it is contentious.

**Ms MACKEY:** What I think is not contentious is that it is very clear that the EPA is the legally responsible authority for determining these things. So, despite any credentials of somebody who might be appearing in the Land and Environment Court, regardless of their day-to-day employment, unless they work for the EPA that is not their role. I have already previously said that we do not agree that it was appropriate for someone who is not from the EPA to purport to indicate where the EPA should sit on any particular issue. In terms of the details, I am probably going to hand over to Mr Fowler in regard to that.

**Mr FOWLER:** So, really, under the current provisions, obviously the legislation does not allow logging of native forests to produce wood for the purpose of electricity generation wholly and solely, and the waste hierarchy effectively applies also in that a higher order alternative use is considered before use of that material in electricity generation. Really, it is around using material that is not fit for an alternate purpose or a higher order purpose.

**Mr JUSTIN FIELD:** That is the key point: How do we determine the higher order process? Because it is pretty clear from both the evidence provided this morning and from Dr Cowie's evidence that the suggestion from the DPI is that using that material for electricity production, where it is offsetting other fossil fuels for electricity production, is a higher order use. Who sets the higher order use provisions? Are they set down in regulations? Is it subjective? How do you weigh it up?

**Mr FOWLER:** That is very much set out in guidelines that we develop and we are currently in the process of updating those to give that clarity around that hierarchy and that higher order use, so those thresholds will be clear.

**Ms MACKEY:** And we do expect those to be finalised in a matter of weeks.

**Mr JUSTIN FIELD:** At the moment would it be fair to say they are not quite clear?

**Ms MACKEY:** I think what we are really conscious of in this space is, with emerging technologies and the movement of renewable energies into the space, it has certainly raised a number of questions, which is why we are going through the process of updating the guidelines.

**Mr JUSTIN FIELD:** There is concern that this could be a real pull factor for ongoing logging of forests. Even though it is not the primary use, it can create an economic incentive both on public land and private land. We heard this morning that the Forestry Corporation is currently in negotiations with possible buyers of this material. We have the DPI *North Coast Residues* report forecasting the availability of a certain amount, Forestry Corporation negotiating with contractors, and EPA reviewing the regulatory framework and suggesting this might not be the higher order use. From our perspective, trying to understand the future of this industry and how it is going to operate and considering the implications of this report, how do we do that? Who holds sway here?

**Ms MACKEY:** Certainly, when the guidelines are finalised I think that will be helpful for the Committee in terms of providing that clarity, given the emergence of different approaches. We also, together with the Department of Planning, meet with proponents of these types of proposals to work through in quite a lot of detail, before anything is submitted, around the technology being proposed and consider a range of issues such as whether or not the feedstock available in the locality meets the current guidelines and whether or not it will meet the guidelines into the future. I think with that particular proposal in Redbank, we have asked for additional information on more than one occasion to try and ascertain where the intention is in terms of feedstock within the local vicinity, where that would be coming from, not just once it got started but certainly in the out years.

**Mr JUSTIN FIELD:** Reporting is something that we have raised in the discussion here today. We have had discussions before about reporting on biomass provided to the currently exempt electricity generators on the North Coast. Will those regulations, when they are finalised, have clear reporting requirements so that the community and government agencies can understand where the feedstock is actually coming from for these projects?

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**Ms MACKEY:** I could get you the detail on notice, but the decision was around us not being able to release it on the grounds of being commercial-in-confidence.

**Answer:**

The detail of the NSW Civil and Administrative Tribunal's decision is available at North Coast Environment Council v Environment Protection Authority [2021] NSWCATAD 29.