Submission No 41

INQUIRY INTO PROVISIONS OF THE FORESTRY LEGISLATION AMENDMENT BILL 2018

Organisation: South East Timber Association

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SOUTH EAST TIMBER ASSOCIATION SUBMISSION May 2018

The South East Timber Association (SETA) was formed in 1988 to represent the interests of people working in harvesting operations in native forests and plantations, on public and private land, in South East NSW and East Gippsland.
SETA members are strongly committed to ensuring public forests are available for a range of commercial and recreational activities and expect land management practices will maintain environmental values in the long term.
SETA expects the government to commit to ensuring forest and related policies strike an appropriate balance between social, environmental and economic outcomes, while minimising adverse impacts of policy changes on regional communities.

Amendment of Local Land Services Act 2013

Comment

Section 60N (1) (e). Defining clearing to be: *the carrying out of a forestry operation authorised under Part 5B (Private native forestry)* is inconsistent with sustainable forest management, including harvesting, regeneration and thinning as these operations do not result in permanent clearing of the harvested areas.

Recommendation: **It is recommended that 60N (1) (e) be amended to read *that the carrying out of a forestry operation authorised under Part 5B is not clearing (Private native forestry).***

It is also recommended that amendments to be made to Section 60 O, 60 S and 60 ZF of the Bill and consequential amendments be made to remove *Forestry Operations* from the definition of clearing in the *Local Land Services Act 2013* (LLS Act) and the *Forestry Act 2012.*

Section 60ZR and 60 ZT- The evolution of Australia's ecology prior to European arrival was intimately linked to management by Aboriginal people. Aboriginal management was characterised by the regular use of fire across the broad landscape and consequently many species evolved to take advantage of the disturbance resulting from frequent relatively low intensity fires.

The current regulatory frameworks for our parks and reserves result in a "do not disturb" management regime, often to the detriment of disturbance dependent species. This "do not disturb" mantra has increasingly become a feature of the state forest regulatory framework driven by NSW regulatory agencies.

Private native forests are the last substantial areas of native forests not yet tied up in green tape. It is essential that opportunity for active and adaptive management not be unnecessarily constrained in private native forests.

Recommendation: **It is recommended that section 60ZR be amended to include:**

60ZR Objects of Part

- *(c) to recognise and accept differences between private and publicly owned native forests in relation to land-use priorities; land-use emphasis; protocols; codes; and standards.*
- *(d) to ensure the rights to carry out mixed-use primary production on private land remains unfettered.*

60ZT Responsibility for preparation and making of codes

It is recommended that the current 60ZT (5) and (6) be deleted and replaced with:

- *(5) A private native forestry code of practice is not obliged to apply or adopt protocols, codes, standards or other instruments that are in force on public land.*
- *(6) A private native forestry code of practice is to encourage private landholders to actively manage their native forests and paddock trees to optimise their productivity, health and value.*

Then add clause (7) below and renumber the existing clauses (7) and (8) to (8) and (9).

- *(7) A private native forestry code of practice is to encourage the management of private native forest resources for long term generation timber supply and income generation.*

These clauses, combined with the overarching environmental protections will ensure healthy and biodiverse private native forests.

Comment – Division 4: enforcement and other provisions

Section 60ZZA Offence of contravening requirements of plan or code of practice. While the maximum penalty framework is consistent with penalties applying under section 60N of the LLS Act and the *Protection of the Environment Operations Act 1997* (PEO Act), the fines are inconsistent with the penalties applying under other relevant legislation which would be used as for enforcement of breaches of plans and codes. It is poor governance and unconscionable to have maximum penalties set at a higher level in the LLS Act than would apply for offences under the Biodiversity Conservation Act 2016 (BC Act) maximum fine $1,650,000 and the *Fisheries Management Act 1994* (FM Act), 2000 penalty units or about $240,000.

Recommendation: It is recommended that a lower penalty regime be put in place that reflects penalties applying in the Biodiversity Conservation and Fisheries Management Acts.

Amendment of Forestry Act 2012

Comment

Section 68A Recovery by land manager of fees and other amounts.

There is no justification in the explanatory notes as to why the Forestry Corporation of NSW requires special powers beyond the financial laws used by millions of other Australian businesses.

Recommendation: **It is recommended that unless good reasons can be demonstrated for this provision, Section 68A be deleted from the Bill.**

Comment

Schedule 2 Division 2A Enforcement and other provisions

Section 69SA proposes the same maximum penalty regime as that applying to the PEO Act and 60N of the LLS Act. However, the explanatory note on page 4 outlines various details.

Schedule 2 [25], [26], [30] and [32] *make the necessary amendments so that integrated forestry operations approvals will no longer contain separate deemed licences to harm animals, plants or fish or to pollute waters so that a single set of forestry rules can be made for public forestry operations that cover those matters and also administrative conditions of approvals. The relevant legislation that regulates harm to animals, plants or fish or preventing the pollution of waters will contain the relevant defence for the Forestry Corporation if forestry operations are conducted in accordance with the terms of the approvals (see section 2.8 of the Biodiversity Conservation Act 2016 and the amendments made by* ***Schedule 3.4 and 3.11****). The current separate enforcement regimes in relation to those deemed licences will be replaced by a single enforcement regime under the Biodiversity Conservation Act 2016.*

Recommendation: It is recommended that the penalty regime be aligned with the *Biodiversity Conservation Act 2016*, which specifies a maximum penalty of $1,650,000, rather than $5 million.

Comment

Biodiversity Conservation Regulation 2017 – Offences under Part 5 B of Local Land Services Act 2013.

Section 60ZZA, allows for Penalty Infringement Notices of $15,000 for corporations and $5,000 for individuals.

Offences under Part 5 B of Forestry Act 2012

Section 69SA, allows for Penalty Infringement Notices of $15,000 for corporations and $5,000 for individuals.

Given the experience of South East Timber Association (SETA) members with EPA investigator/enforcement officers in recent years, SETA is deeply concerned at the massive increase in the fines that can be issued by the EPA through infringement notices.

For example, an Official Caution issued in August 2017 contained:

- Allegations that had no supporting evidence;
- Allegations that were "puffed up" using licence conditions out of context;
- Allegations that took a recommendation as a "Must Do," rather than an advisory condition;
- Allegations that were exaggerated in one case and lacking evidence in the other; and
- Twenty of the 22 allegations were readily fixable, if they had been brought to the attention of the contractor by the auditing staff.

After almost 10 months, the affected business is slowly forcing procedural fairness from the EPA, with 16 allegations being dropped so far.

Over 11 years after the Integrated Forestry Approvals packaged commenced, the EPA began to enforce a different interpretation of the definition of a Cliff, contained in the Threatened Species Licence. This ultimately lead to action against the Forestry Corporation of NSW in the NSW Land and Environment Court (LEC).

During late 2017, EPA investigators undertook recorded interviews with SETA members over alleged failure to apply appropriate buffers around "Cliff" features. In February 2018, the LEC dismissed the EPA case, ruling against the EPA reinterpretation of the Cliff definition. The ruling confirmed that what the EPA alleged were cliffs, were actually boulders.

During another interview, an EPA investigating officer demanded personal information from a harvesting machine operator, despite having no legal basis to do so. Despite an objection, the officer insisted he must have the information and the operator acquiesced to the demand.

Recommendation: Given the above circumstances, it is recommended that the current penalty infringement notice amounts remain in place until the EPA can demonstrate that all staff:

- **Can demonstrate a sound working knowledge of the new IFOA documents;**
- **Can demonstrate a sound understanding of the EPA Code of Ethics and Conduct; and**
- **Can demonstrate a sound working knowledge of the extent of their powers under the various legislative instruments they enforce.**

Authorised by the South East Timber Association Management Committee

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