

Submission  
No 189

**INQUIRY INTO LONG TERM SUSTAINABILITY AND  
FUTURE OF THE TIMBER AND FOREST PRODUCTS  
INDUSTRY**

**Organisation:** Environmental Defenders Office (EDO)

**Date Received:** 3 June 2021

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Environmental  
Defenders Office

**Submission to the inquiry into the long term  
sustainability and future of the timber and forest  
products industry**

**3 June 2021**

## **About EDO**

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

***Successful environmental outcomes using the law.*** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

***Broad environmental expertise.*** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

***Independent and accessible services.*** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

**[www.edo.org.au](http://www.edo.org.au)**

### **Submitted to:**

Legislative Council Portfolio Committee No. 4 - Industry  
NSW Parliament House  
Macquarie St  
Sydney NSW 2000

**By email:** [PortfolioCommittee4@parliament.nsw.gov.au](mailto:PortfolioCommittee4@parliament.nsw.gov.au)

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## INTRODUCTION

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the inquiry into the long term sustainability and future of the timber and forest products industry.

EDO is a community legal centre specialising in public interest environmental law. We have a long history of providing legal advice on forestry issues and advocating for law reform, with a focus on ensuring sound laws are in place to protect the environment, and that the community has the right to properly participate in environmental decision-making, oversight and enforcement.

We recognise that the terms of reference (**ToRs**) for this inquiry are broad, aimed at addressing a range of issues pertaining to the sustainability and future of the timber and forest products industry.

EDO, with input from our scientific program, is best placed to assist the inquiry by providing:

- **an overview of the environmental impacts of forestry operations**<sup>1</sup> (e.g. logging, harvesting of forest products, and associated activities) undertaken in native forests, and how **key environmental challenges** such as biodiversity loss and climate change, including more extreme weather events such as drought and bushfire, impact on our native forests and the use of native forests by the timber and forest products industry (ToR(b), ToR(g));
- **an outline of the legal framework regulating forestry operations in native forests; a summary of key concerns** with the legal framework, including: whether ecologically sustainable forestry management (**ESFM**) is being delivered; and, highlighting issues concerning transparency and data reporting (ToR(d), ToR(e), ToR(g)); and
- **opportunities for the future management of the native forest estate** and its use by the timber and forest products industry (ToR(f), ToR(i)).

While the timber and forest products industry operates both in native forests and timber plantations, this submission focuses on the industry's use of native forests rather than plantation forests (unless plantation forests are specifically mentioned).

Where possible, we avoid repeating earlier analysis and instead direct the committee to previous EDO reports or submissions, or those of other experts and stakeholders. We do not address issues outside of our areas of expertise, acknowledging that other information will be available to the committee, including through other stakeholders, on key issues such as the value chain and supply chain (ToR (a)), and projections for softwood and hardwood supply and demand (ToR (c)).

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<sup>1</sup> Section 3 of the *Forestry Act 2012* (NSW) defines forestry operation as:

**forestry operations** means—

- (a) logging operations, namely, the cutting and removal of timber from land for the purpose of timber production, or
- (b) the harvesting of forest products, or
- (c) ongoing forest management operations, namely, activities relating to the management of land for timber production such as thinning, burning and other silvicultural activities and bush fire hazard reduction, or
- (d) ancillary activities to enable or assist in the above operations such as the provision of roads, snig tracks, waterway crossings and temporary timber storage facilities.

Our submission is structured as follows:

1. **Key Recommendations**
2. **Environmental impacts and challenges:** Forest values, environmental impacts of forestry operations, the repercussions of the 2019-2020 bushfire season, and the effect of environmental challenges on the forestry industry
3. **Regulatory Framework:** Overview, previous analysis of the regulatory framework for forestry in NSW, recent improvements, ongoing concerns
4. **Future opportunities**
5. **Conclusion**

This inquiry provides an opportunity to shine a spotlight on the timber and forest products industry, examine whether the legal framework regulating forestry operations is delivering its intended outcomes, consider the impacts of the devastating 2019-2020 bushfire season on forests and forest ecosystems, and explore future opportunities for the management of the native forest estate and its use by the timber and forest products industry.

We are available to meet the Committee to discuss the current legal framework and opportunities for necessary law reform.

#### **1. Key Recommendations**

1. Forestry operations in NSW native forests should be suspended following the 2019-2020 bushfires in both fire-affected native forests and unburnt areas serving as species-recovery refugia pending the outcome of the Natural Resources Commission (**NRC**) post-bushfire advice.
2. The process by which the NRC prepares its independent, evidence-based advice on forestry operations under the Coastal Integrated Forest Operations Approval (**IFOA**) as the NSW public forest estate recovers from the 2019-20 bushfires should be transparent, and the NRC advice must be made public.
3. The current legal framework for regulating forestry operations in native forests on public and private land must be revised to better align with the principles of ecologically sustainable forest management (**ESFM**), including with respect to increased transparency and reporting, third party enforcement rights, and responding to environmental challenges such as climate change and biodiversity loss.
4. IFOAs, in particular the Coastal IFOA, should be revised and updated to take into account the impacts of the 2019-2020 bushfires.
5. The Government must finalise the Private Native Forestry (**PNF**) Review, including reporting the outcomes of the review and consultation on the Draft PNF Code. No changes should be made to the PNF Code until the PNF Review is finalised.

6. This Committee should examine the scientific, economic, and environmental evidence as to the viability and sustainability of the forestry and timber products industry continuing to undertake forestry operations in native forests.

## 2. Environmental impacts and challenges

### **Forest values**

The 2018 Australian State of the Forests report states:

*“Australia’s forests are recognised and valued for their diverse ecosystems and unique biodiversity; for their cultural heritage; for their provision of goods and services such as wood, carbon sequestration and storage, and soil and water protection; and for their aesthetic values and recreational opportunities. At the same time, Australia’s forests are subject to a range of pressures, including extreme weather events, drought and climate change; invasive weeds, pests and diseases; changed fire regimes; clearing for urban development, mining, infrastructure or agriculture; and the legacy of previous land-management practices”.*<sup>2</sup>

While the industry provides recognised benefits such as important wood resources and employment, particularly to regional communities, forestry operations have detrimental impacts on native forests, including impacts on threatened plants and animals, water and soil quality, and carbon emissions. These impacts, when compounded with other pressures such as climate change and declining biodiversity, and the devastation caused by the 2019-2020 bushfire season, put the health and sustainability of forests and the important ecosystems services that they provide at risk.

This inquiry must consider the industry in this context. Given the diverse values of forests, and in light of the significant pressures on forests, including from the industry, the community has a strong and legitimate interest in ensuring that the timber and forest products industry is able to contribute positive economic, social and environmental outcomes now, and for future generations.

### **Environmental impacts of forestry operations**

There is overwhelming scientific evidence that forestry operations have significant, detrimental impacts on the environment and biodiversity, including threatened plants and animals, water and soil quality, and carbon emissions.<sup>3</sup>

In particular, forestry operations result in:

- **Loss of carbon:** Forests sequester carbon, both within trees and in the soil. Removing trees releases carbon into the atmosphere – both in the short-term through the immediate

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<sup>2</sup> Australia Government, Department of Agriculture and Water Resources, *Australia’s State of the Forests Report 2018*, 2018, available at <https://www.agriculture.gov.au/abares/forestsaustralia/sofr/sofr-2018>

<sup>3</sup> See, for example, Bradford, A. ‘*Deforestation: Facts, Causes & Effects*’, Live Science, <https://www.livescience.com/27692-deforestation.html> accessed 18 May 2021; Calver, M. C., and Wardell-Johnson, G. (2004). *Sustained unsustainability? An evaluation of evidence for a history of overcutting in the jarrah forests of Western Australia and its consequences for fauna conservation*. In ‘Conservation of Australia’s Forest Fauna’. (Ed. D. Lunney.) pp. 94– 114. (Royal Zoological Society of New South Wales: Sydney.)

removal of trees, and in the long-term as soil organic carbon continues to decline as the roots and other material break down.<sup>4</sup>

- **Decline in biodiversity due to loss of habitat and changes in forest physiognomy:** Forestry operations can displace native animals and remove important wildlife habitat. For example, tree hollows, which provide habitat for wildlife, only form after many years in older, mature trees. It is understood that “*in forests managed for timber and firewood production, silvicultural practices have greatly reduced the density of hollow-bearing trees, especially where repeated harvesting events have occurred*”.<sup>5</sup> This has led to ‘Loss of Hollow-bearing Trees’ being listed as a Key Threatening Process in NSW under the *Biodiversity Conservation Act 2016* (NSW).<sup>6</sup> Research indicates that impacts from both logging and bushfires can affect forest physiognomy (i.e. the overall structure or physical appearance of a forest comprising e.g. its dominant species, height, canopy cover etc.) and this has led to a decline in populations of species, including, for example, birds, bats, and gliders.<sup>7</sup>
- **Increased erosion, sedimentation and impacts on water:** Forests play an important role in the water cycle. Removing vegetation causes soil disturbance and erosion, which can lead to increased sedimentation, potential contamination of water resources, increased water evaporation and impacts on watersheds, water supply and security.<sup>8</sup>
- **Increase in pests and weeds:** Disturbance and changes to forest physiognomy can increase pest and weedy species that benefit from a simplified forest ecosystem.
- **Increased bushfire risks:** Recent research indicates that logging and harvesting makes forests more vulnerable to bushfires.<sup>9</sup>

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<sup>4</sup> See, for example, Dean C, Wardell-Johnson GW & Kirkpatrick, JD. (2012). *Are there any circumstances in which harvesting primary wet-eucalypt forest will not add to the global carbon burden?* Agricultural and forest meteorology 161: 156 -169; Dean C & Wardell-Johnson G. (2010). *Old-growth forests, carbon and climate change: Functions and management for tall open-forests in two hotspots of temperate Australia.* Plant Biosystems 144 (1): 180-193; Dean, C., Kirkpatrick, J. B., and Friedland, A. J. (2017). *Conventional intensive harvesting promotes loss of organic carbon from the mineral soil.* Global Change Biology 23, 1–11. <https://onlinelibrary.wiley.com/doi/full/10.1111/gcb.13387>

<sup>5</sup> Department of Planning, Industry and Environment, *Loss of Hollow-bearing Trees – Profile*, available at <https://www.environment.nsw.gov.au/threatenedspeciesapp/profile.aspx?id=20079>

<sup>6</sup> Department of Planning, Industry and Environment, *Loss of Hollow-bearing Trees – Profile*, op. cit.

<sup>7</sup> See, for example, Lindenmayer, David, Elle Bowd, and Lachlan McBurney. (2021). *Long-term empirical studies highlight multiple drivers of temporal change in bird fauna in the wet forests of Victoria, south-eastern Australia.* Frontiers in Ecology and Evolution 9 (2021): 30; Law, Bradley, et al. (2019). *Long-term effects of repeated fuel-reduction burning and logging on bats in south-eastern Australia.* Austral Ecology 44.6 (2019): 1013-1024; Wilson, Nicholas, Ross Bradstock, and Michael Bedward. (2021). *Detecting the effects of logging and wildfire on forest fuel structure using terrestrial laser scanning (TLS).* Forest Ecology and Management 488 (2021): 119037; Stares, Mitchell G., et al. (2018). *Long-term effect of prescribed burning regimes and logging on coarse woody debris in South-Eastern Australia.* Forests 9.5 (2018): 242; Lindenmayer, David B., et al. (2020). *The response of arboreal marsupials to long-term changes in forest disturbance.* Animal Conservation (2020); McLean, Christopher M., et al. (2018). *The threatened status of the hollow dependent arboreal marsupial, the greater glider (Petauroides volans), can be explained by impacts from wildfire and selective logging.* Forest Ecology and Management 415 (2018): 19-25.

<sup>8</sup> See, for example, ‘*Deforestation: Facts, Causes & Effects*’, Live Science, op. cit.

<sup>9</sup> See, for example Lindenmayer, David B., et al. (2020). *Recent Australian wildfires made worse by logging and associated forest management.* Nature ecology & evolution 4.7 (2020): 898-900. See also Zylstra, P., Wardell-Johnson, G., Watson, J., and Ward, M. *Native forest logging makes bushfires worse – and to say otherwise ignores the facts* (20 May 2021) The Conversation, available at <https://theconversation.com/native-forest-logging-makes-bushfires-worse-and-to-say-otherwise-ignores-the-facts-161177>. This article responds to research published earlier the same month as reported here: <https://theconversation.com/new-research-finds-native-forest-logging-did-not-worsen-the-black-summer-bushfires-160600>.

## **Repercussions of the 2019-2020 bushfire season**

Concerns that forestry operations in native forests are not being carried out in a way that is consistent with the principles of ESFM (see discussion below) have been heightened following the 2019-2020 bushfires.

The bushfire season of 2019-2020 was unprecedented in terms of scale, intensity and duration in Australian bushfire history. Around the country 33 lives were lost,<sup>10</sup> an estimated 417 people died due to smoke inhalation,<sup>11</sup> more than 3,000 homes burnt down,<sup>12</sup> and other property and infrastructure was impacted or destroyed. The bushfires also had a devastating impact on our natural environment. Significant ecosystems and landscapes were decimated, including World Heritage-listed National Parks,<sup>13</sup> ancient rainforests<sup>14</sup> and even waterways,<sup>15</sup> following post-fire flooding. An estimated 950 million tonnes of greenhouse gases were emitted.<sup>16</sup> While it is difficult to estimate the exact number of native animals impacted by the fires, some experts originally predicted it could be as many as 800 million in NSW and one billion nationally,<sup>17</sup> with more recent analyses suggesting as many as three billion.<sup>18</sup> In NSW, bushfires burnt over 5.5 million hectares of land, including 38% of the NSW national park estate and 42% of NSW state forest.<sup>19</sup> 293 threatened animals and 680 threatened plants have sightings recorded in the fire ground.<sup>20</sup>

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<sup>10</sup> Parliament of Australia, 2020, *2019–20 Australian bushfires—frequently asked questions: a quick guide*, available at [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp1920/Quick\\_Guides/AustralianBushfires](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1920/Quick_Guides/AustralianBushfires)

<sup>11</sup> Arriagada, N.B, et al, 2020, *Unprecedented smoke-related health burden associated with the 2019–20 bushfires in eastern Australia*. *Med J Aust* 2020; 213 (6): 282-283. Available at <https://www.mja.com.au/journal/2020/213/6/unprecedented-smoke-related-health-burden-associated-2019-20-bushfires-eastern>

<sup>12</sup> AFAC (Australasian Fire and Emergency Service Authorities Council), *Cumulative Seasonal Summary*, AFAC National Resource Sharing Centre, 28 February 2020. Accessed at <https://twitter.com/AFACnews/status/1233262259612213248/photo/1>.

<sup>13</sup> See, for example, Department of Agriculture, Water and the Environment, *Greater Blue Mountains Area State of Conservation update - April 2020*, 2020, available at <http://www.environment.gov.au/system/files/resources/2073fd28-88e8-42f6-8b2a-20a811f7a279/files/greater-blue-mountains-area-state-conservation-update-april-2020.pdf>

<sup>14</sup> See, for example, Queensland Government, *Altered fire regimes pressure on the Gondwana Rainforests*, 2020, available at <https://www.stateoftheenvironment.des.qld.gov.au/heritage/world/altered-fire-regimes-pressure-on-the-gondwana-rainforests-of-australia>

<sup>15</sup> NSW Government, *Bushfire impacts on water quality*, February 2020, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/water/20p2093-bushfire-impacts-on-water-quality.pdf>

<sup>16</sup> DISER, *Estimating greenhouse gas emissions from bushfires in Australia's temperate forests: focus on 2019-20*, 2020, Australian Government, available at <https://www.industry.gov.au/data-and-publications/estimating-greenhouse-gas-emissions-from-bushfires-in-australias-temperate-forests-focus-on-2019-20>

<sup>17</sup> Professor Chris Dickman, Faculty of Science, University of Sydney. For an explanation of Professor Dickman's estimates see <https://www.sydney.edu.au/news-opinion/news/2020/01/08/australian-bushfires-more-than-one-billion-animals-impacted.html>

<sup>18</sup> WWF-Australia, *Impacts of the Unprecedented 2019-20 Bushfires On Australian Animals*, November 2020, available at [https://www.wwf.org.au/ArticleDocuments/353/WWF\\_Impacts-of-the-unprecedented-2019-2020-bushfires-on-Australian-animals.pdf.aspx](https://www.wwf.org.au/ArticleDocuments/353/WWF_Impacts-of-the-unprecedented-2019-2020-bushfires-on-Australian-animals.pdf.aspx)

<sup>19</sup> Department of Planning, Industry and Environment, *NSW Wildlife and Conservation Bushfire Recovery Medium-term response plan*, 2021, available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Fire/nsw-wildlife-and-conservation-bushfire-recovery-medium-term-response-plan-200478.pdf>

<sup>20</sup> Department of Planning, Industry and Environment, *NSW Fire and the Environment 2019–20 Summary Biodiversity and landscape data and analyses to understand the effects of the fire events*, March 2020, available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Fire/fire-and-the-environment-2019-20-summary-200108.pdf>

The NSW Government's *NSW Wildlife and Conservation Bushfire Recovery - Medium-term response plan* states:

*“Biodiversity in New South Wales is still experiencing the impacts of the bushfires even as the next bushfire season begins. Many species and communities will take years to recover, particularly those not adapted to fire or impacted by prolonged drought or other threatening processes”*.<sup>21</sup>

The devastation caused by the 2019-2020 bushfire season has had direct and immediate impacts on the timber and forest products industry. For example, the fire impacts meant that the Forestry Corporation of NSW (**FCNSW**) was temporarily unable to conduct harvesting in some areas, because fire impacts left it unable to comply with some of the usual Coastal Integrated Forest Operations Approval (**Coastal IFOA**) conditions. This precipitated requests by FCNSW that the NSW Environment Protection Authority (**EPA**) issue Site Specific Operating Conditions (**SSOCs**) - which the EPA issued for 17 areas across the coastal region. More troublesome however is that in the most part, the Coastal IFOA has *not* been responsive to bushfire impacts and that the SSOC mechanism is not designed to enable such responsiveness. We discuss this further below.

In the longer term, protecting intact and unburnt areas, as well as lightly burnt areas,<sup>22</sup> of high conservation value forest is critical, particularly while burnt areas recover. These remaining areas are essential for providing habitat and refuges for wildlife; providing future climate change refugia; delivering important ecosystem services, assisting impacted ecosystems and landscapes to recover; building resilience and ensuring our remaining natural areas thrive. For example, as part of its Bushfire Response Framework, WWF-Australia, working with its Eminent Scientists Group, has identified six priority areas for habitat protection and restoration in Queensland, New South Wales and Victoria following the 2019-2020 bushfires.<sup>23</sup> The priority areas, covering nearly 5.8 million hectares, warrant enhanced legal protection due to their significance for threatened species and ecosystems as a result of the bushfires. Areas within these priority landscapes include native forests where forestry operations are undertaken.

This puts a question mark over whether forestry operations should be allowed to continue on a ‘business-as-usual’ basis under current regulations, or whether changes need to be put in place that appropriately respond to the altered landscape. This is particularly the case where some species-specific prescriptions may no longer provide appropriate protection for species.

An independent review commissioned by the EPA issued in September 2020 found that “*the normal CIFOA in the context of the 2019/20 wildfires will not deliver ecologically sustainable management as required under the objectives of the Forestry Act 2012 and is likely to cause a significant impact*

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<sup>21</sup> Department of Planning, Industry and Environment, *NSW Wildlife and Conservation Bushfire Recovery Medium-term response plan*, 2021, op. cit.

<sup>22</sup> The importance of protecting lightly burnt and some moderately burnt areas from forestry operations post-bushfires was highlighted in the following report: Smith, Dr A. *Review of CIFOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestry/review-of-cifoa-mitigation-conditions-for-timber-harvesting-in-burnt-landscapes.pdf?la=en&hash=6360E080DB80E7BEF935A1A4A6BDDAB46BBFD0A7>

<sup>23</sup> WWF Australia, *Defending the Unburnt*, April 2021, available at <https://www.wwf.org.au/what-we-do/2-billion-trees/protecting-the-unburnt-six#gs.ud2uij>

under the *NSW Biodiversity Conservation Act 2016* and the *Commonwealth Environmental Protection and Biodiversity Conservation Act 1999*.<sup>24</sup> Further, the EPA's stated position as at September 2020 was that returning to operating under the Coastal IFOA alone across the state was not tenable bearing in mind the objective of ESFM.<sup>25</sup>

**Forestry operations cannot continue under current rules in devastated native forests if there will be further severe implications for NSW biodiversity, and if operations cannot be carried out consistent with the principles of ESFM.**

Further, one of the key themes of the *NSW Wildlife and Conservation Bushfire Recovery - Medium-term response plan* is to protect ecological refuge areas. Identified actions for achieving this are limited to: identifying and mapping refuge areas and integrating maps into fire, pest and weed planning, and implementing adaptation measures to protect critical climate change refuge.

However, it is not guaranteed that these actions will properly protect forest ecosystems, support long term bushfire recovery and future resilience to a changing climate, and deliver the intended outcome of protecting ecological refuge areas.

It would be consistent with the overarching aim of supporting bushfire recovery and protecting ecological refuge areas to rethink how native forests are managed and conserved following the 2019-2020 bushfires, including how forests are used by the timber and forest products industry.

***The effect of environmental challenges on the forestry industry***

It is not just the devastation of the 2019-2020 bushfire season that needs to be taken into account when considering the future management of native forests and their use by the timber and forest products industry. Ongoing and intensifying environmental challenges must also be considered, including declining biodiversity and climate change.

- ***Declining biodiversity***

Biodiversity in NSW is in decline, to the point that we are now facing an extinction crisis. The NSW State of the Environment 2018 report states:

*“The number of species considered at risk of extinction continues to rise. There are currently 1,025 species and 112 ecological communities listed as threatened under NSW legislation, including 77 species that are presumed extinct. In the three years to December 2017 the number of listings of threatened species increased by 26, or 3%, to 1,025. There are also 57 populations and 112 ecological communities listed as threatened. A total of 46 key threatening processes have been listed as causing these threats – 38 mainly terrestrial threats and 8 aquatic threats. The main threats to listed species in NSW are habitat loss due*

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<sup>24</sup> Smith, Dr A. *Review of CFIOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, op.cit.

<sup>25</sup> Letter from the NSW EPA to FCNSW, dated 22 September 2020, available here: <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/forestry/letter-of-response-to-regional-nsw-and-forestry-corporation---22-september-2020.pdf?la=en&hash=3F169E7F230BCF36076591AACCF246C8DCB0EC96>.

*to the clearing and degradation of native vegetation and the spread of invasive pests and weeds. The capacity of species to adapt to these pressures is further constrained by climate change”.*<sup>26</sup>

The 2019-2020 bushfire impacts have only exacerbated this situation. Post-bushfire analysis undertaken by the NSW Department of Planning, Industry and Environment indicates that:

- 293 threatened animal species have sightings recorded in the fire ground.
- All 413 records of the yellow-bellied glider endangered population on Bago Plateau are within the fire ground and more than 55% of records are in areas where the canopy has been partially or fully affected;
- four other species or populations have more than 80% of their records within the fire ground:
  - the critically endangered long-nosed potoroo (97% of records, although fire severity has yet to be assessed in these areas),
  - the endangered frog *Philora pughii* (85% of records),
  - the greater glider endangered population in Eurobodalla (81% of records and more than 25% of records in areas where the canopy has been fully affected),
  - the endangered Hastings River mouse (84% of records);
- and 99 species have more than 10% of their records within the fire ground.<sup>27</sup>

The same analysis indicates 680 threatened plant species have sightings recorded in the fire ground, and specifically that 61 of these threatened species have more than 80% of their records within the fire ground. This includes 19 with more than 30% of records in areas where the canopy has been fully affected and 37 species have 50–80% of records within the fire ground.<sup>28</sup>

- **Climate change**

Australia’s climate has warmed by about 1.4 °C since 1910 and the best available science tells us that average temperatures are projected to rise further.<sup>29</sup> Australia is already experiencing the impacts of climate change, which include the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased rainfall in the north, and the long-term increase in extreme fire weather. Extreme heat days, longer dry spells, and harsher fire weather will increasingly become the norm.<sup>30</sup>

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<sup>26</sup> State of NSW and the Environment Protection Authority, *NSW State of the Environment Report 2018*, available at [www.soe.epa.nsw.gov.au](http://www.soe.epa.nsw.gov.au)

<sup>27</sup> Department of Planning, Industry and Environment, *NSW Fire and the Environment 2019–20 Summary - Biodiversity and landscape data and analyses to understand the effects of the fire events*, March 2020, available at <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Parks-reserves-and-protected-areas/Fire/fire-and-the-environment-2019-20-summary-200108.pdf>

<sup>28</sup> Department of Planning, Industry and Environment, *NSW Fire and the Environment 2019–20 Summary - Biodiversity and landscape data and analyses to understand the effects of the fire events*, March 2020, op. cit.

<sup>29</sup> See Commonwealth Scientific and Industrial Research Organisation (CSIRO) [National Climate Statement, Australia’s Changing Climate](https://www.climatechangeinaustralia.gov.au/en/changing-climate/national-climate-statement/), available at [www.climatechangeinaustralia.gov.au/en/changing-climate/national-climate-statement/](https://www.climatechangeinaustralia.gov.au/en/changing-climate/national-climate-statement/); see also NSW Department of Planning, Industry and Environment, *AdaptNSW*, <https://climatechange.environment.nsw.gov.au/>

<sup>30</sup> The impacts of a warming climate on Australia are set out in more details in Bureau of Meteorology and CSIRO, *State of the Climate 2020* (2020), [www.bom.gov.au/state-of-the-climate](http://www.bom.gov.au/state-of-the-climate)

The Intergovernmental Panel on Climate Change (IPCC) is highly confident that:

*“Without additional mitigation efforts beyond those in place today, and even with adaptation, warming by the end of the 21st century will lead to high to very high risk of severe, widespread, and irreversible impacts globally...”*<sup>31</sup>

Predicted impacts for NSW include:

- longer and more intense bushfire seasons;
- accelerated biodiversity loss;
- increased irreversible soil erosion, affecting food security and water quality;
- up to 10 additional days above 40 °C each year in northern NSW by 2030, rising to 33 additional days by 2070; and
- increased crop failure, human and animal deaths.<sup>32</sup>

Logging of native forests interacts with the climate in a number of ways:

- Logging increases bushfire risk and severity, exacerbating already increased bushfire risks due to climate change. Scientific research undertaken following the 2019-2020 bushfire season has looked specifically at the role logging and forest management played in recent Australian bushfires and found that *“there is compelling evidence that Australia’s historical and contemporary logging regimes have made many Australian forests more fire prone and contributed to increased fire severity and flammability”*.<sup>33</sup>
- Forests sequester carbon, both within trees and in the soil. Removing trees, including through timber harvesting, releases carbon into the atmosphere – both in the short-term through the immediate removal of trees, and in the long-term as soil organic carbon continues to decline as the roots and other material break down.<sup>34</sup>

**The future management of native forests, and ongoing use of native forests by the timber and forests products industry, must be considered within the context of ongoing and intensifying environmental challenges including declining biodiversity and climate change.**

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<sup>31</sup> Intergovernmental Panel on Climate Change (IPCC) *Climate Change 2014: Synthesis Report*. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)] (2014) p 17, <http://www.ipcc.ch/report/ar5/syr/>

<sup>32</sup> See for example NSW Department of Planning, Industry and Environment, *Impacts of Climate Change AdaptNSW*: <http://climatechange.environment.nsw.gov.au/impacts-of-climate-change>; See also CSIRO, *New climate change projections for Australia* (27 January 2015), <http://www.csiro.au/en/News/News-releases/2015/New-climate-change-projections-for-Australia>

<sup>33</sup> Lindenmayer, D.B., Kooyman, R.M., Taylor, C. et al. *Recent Australian wildfires made worse by logging and associated forest management*. *Nat Ecol Evol* 4, 898–900 (2020). <https://doi.org/10.1038/s41559-020-1195-5>. See also Zylstra, P., Wardell-Johnson, G., Watson, J., and Ward, M. *Native forest logging makes bushfires worse – and to say otherwise ignores the facts* (20 May 2021) *The Conversation*, available at <https://theconversation.com/native-forest-logging-makes-bushfires-worse-and-to-say-otherwise-ignores-the-facts-161177>

<sup>34</sup> See, for example, Dean C, Wardell-Johnson GW & Kirkpatrick, JD. (2012). *Are there any circumstances in which harvesting primary wet-eucalypt forest will not add to the global carbon burden?* *Agricultural and forest meteorology* 161: 156 -169; Dean C & Wardell-Johnson G. (2010). *Old-growth forests, carbon and climate change: Functions and management for tall open-forests in two hotspots of temperate Australia*. *Plant Biosystems* 144 (1): 180-193; Dean, C., Kirkpatrick, J. B., and Friedland, A. J. (2017). *Conventional intensive harvesting promotes loss of organic carbon from the mineral soil*. *Global Change Biology* 23, 1–11. <https://onlinelibrary.wiley.com/doi/full/10.1111/gcb.13387>

### 3. Regulatory Framework

#### Overview

For the purpose of this submission, we focus on the regulation of the timber and forest products industry as a user of native forests. We have not examined in detail the regulation of timber plantations and we have not looked into the regulation of the processing and sale of timber products (e.g. the *Illegal Logging Prohibition Act 2012* (Cth)).

Forestry operations undertaken in native forests occur on both public and private land in NSW under two different regulatory frameworks:

- Forestry operations undertaken on public (Crown) land (e.g. State forests) are primarily regulated under the *Forestry Act 2012* (NSW) (**Forestry Act**) and Integrated Forest Operation Approvals (**IFOAs**).
  - An IFOA is a single forestry approval given under the Forestry Act that authorises forestry operations in State forests or other Crown timber lands. It sets out the conditions subject to which those forestry operations are to be carried out. This can include conditions that otherwise may be imposed under biodiversity conservation licences (*Biodiversity Conservation Act 2016* (NSW)), environment protection licences (*Protection of the Environment Operations Act 1997* (NSW)), and licences to harm a threatened species of fish or its habitat (Part 7A of the *Fisheries Management Act 1994* (NSW)). There are four IFOAs in NSW: Brigalow Nandewar, South-Western Cypress, Riverina Red Gum, and Coastal (the Coastal IFOA covers the areas of Upper North East, Lower North East, Southern and Eden - these four coastal areas were previously in separate IFOAs, but in 2018 were remade into a single coastal IFOA).
  - The Forestry Act establishes FCNSW as a State-owned corporation. FCNSW is responsible for forestry in State forests and on land it owns.
- Forestry operations undertaken on private land are regulated by the Private Native Forestry (**PNF**) provisions found in Part 5B of the *Local Land Services Act 2013*.

Forestry operations carried out in native forests (on both public and private land) are underpinned by the principles of ecologically sustainable forestry management (**ESFM**).<sup>35</sup> ESFM is an internationally recognised set of principles that aim to maintain and monitor the broad range of social, economic and environmental values of forests.<sup>36</sup> The principles of ESFM are derived from the

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<sup>35</sup> See Part 10 of the *Forestry Act 2012*. One of the two identified purposes of Part 5A of the Forestry Act is to “[authorise] the carrying out of ... forestry operations in accordance with the principles of ecologically sustainable forest management”. The Coastal IFOA itself contains general and specific objectives, including an 'overall objective' of authorising the carrying out of forestry operations “in accordance with the principles of ecologically sustainable forest management” (Coastal IFOA Condition 14). The Coastal IFOA adopts the definition of ESFM as described in Part 5B of the *Forestry Act* and the NSW RFAs for each region (Coastal IFOA Protocol 39). Part 60ZR of the *Local Land Services Act 2013* provides that one of the objects of Part 5B of that Act is “to authorise the carrying out of private native forestry in accordance with principles of ecologically sustainable forest management”.

<sup>36</sup> Section 69L(2) of the *Forestry Act 2012* (NSW) provides the following principles of ecologically sustainable forest management:

Montreal Criteria.<sup>37</sup> ESFM adopts a triple bottom line approach to maintaining a broad range of social, economic and environmental values of forests.

The *Regional Forest Agreements Act 2002* (Cth) (**RFA Act**) and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) are also relevant to forestry operations undertaken on land (both public and private) that is covered by a 'Regional Forest Agreement' (**RFA**). RFAs are intergovernmental agreements between a state government and the Federal government. When forestry operations are conducted in accordance with an RFA, Part 3 of the EPBC Act, which requires approval to be obtained before certain 'actions' are carried out, does not apply.<sup>38</sup>

There are three RFAs in NSW: Eden, North East, and Southern.<sup>39</sup> The NSW RFAs were first made between 1999-2001 with 20-year terms. In late 2018, each of the NSW RFAs were varied to extend

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- a) maintaining forest values for future and present generations, including:
    - i) forest biological diversity, and
    - ii) the productive capacity and sustainability of forest ecosystems, and
    - iii) the health and vitality of native forest ecosystems, and
    - iv) soil and water quality, and
    - v) the contribution of native forests to global geochemical cycles, and
    - vi) the long term social and economic benefits of native forests, and
    - vii) natural heritage values,
  - b) ensuring public participation, provision of information, accountability and transparency in relation to the carrying out of forestry operations,
  - c) providing incentives for voluntary compliance, capacity building and adoption of best-practice standards,
  - d) applying best-available knowledge and adaptive management processes to deliver best-practice forest management,
  - e) applying the precautionary principle (as referred to in section 6 (2) (a) of the *Protection of the Environment Administration Act 1991*) in preventing environmental harm.

The same meaning is adopted by section 60ZQ of the *Local Land Services Act 2013* (NSW) for the purpose of PNF.

<sup>37</sup> The Montréal Process, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests, Fifth Edition, September 2015 outlines seven criterion for the sustainable management of forests, namely

Criterion 1: Conservation of biological diversity

Criterion 2: Maintenance of productive capacity of forest ecosystems

Criterion 3: Maintenance of forest ecosystem health and vitality

Criterion 4: Conservation and maintenance of soil and water resources

Criterion 5: Maintenance of forest contribution to global carbon cycles

Criterion 6: Maintenance and enhancement of long-term multiple socio-economic benefits to meet the needs of societies

Criterion 7: Legal, institutional and economic framework for forest conservation and sustainable management

[www.montrealprocess.org/The\\_Montreal\\_Process/Criteria\\_and\\_Indicators/index.shtml](http://www.montrealprocess.org/The_Montreal_Process/Criteria_and_Indicators/index.shtml)

<sup>38</sup> See RFA Act s 6(4); EPBC Act s 38(1). We note the recent decision of the Federal Court in *VicForests v Friends of Leadbeater's Possum Inc* [2021] FCAFC 66. The Friends of Leadbeater's Possum have indicated an intention to appeal that decision to the High Court. There is also ongoing uncertainty arising from the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020. See EDO's submission to that inquiry here:

<https://www.edo.org.au/wp-content/uploads/2021/04/210319-EPBC-RFA-Amendment-Bill-Inquiry-EDO-submission.pdf>. The interaction between the RFA Act and the EPBC Act was also considered by the Samuel 10-year review of the EPBC Act, and Recommendation 15 of the Final Report of the Independent Review of the EPBC Act (<https://epbcactreview.environment.gov.au/resources/final-report>) provided that:

- a) The Commonwealth should immediately require, as a condition of any accredited arrangement, States to ensure that RFAs are consistent with the National Environmental Standards.
- b) In the second tranche of reform, the EPBC Act should be amended to replace the RFA 'exemption' with a requirement for accreditation against the National Environmental Standards, with the mandatory oversight of the Environment Assurance Commissioner.

<sup>39</sup> See further <https://www.dpi.nsw.gov.au/forestry/regional-framework>

their life by a further 20 years, with provision for 5-year automatic rollover provisions (such that the varied RFAs could potentially last indefinitely).

The RFAs establish what is known as the ‘comprehensive, representative and adequate reserve system’ (**CAR Reserve System**), comprising areas that are in some way reserved or protected from forestry operations (ranging from dedicated reserves to prescriptions that apply to forestry operations under an IFOA). ‘Ecologically sustainable management’ also underpins the RFAs. Section 4 of the RFA Act defines an RFA as an agreement that (among other things) ‘provides for the ecologically sustainable management and use of forested areas in the region or regions’ and is an agreement that was entered into having regard to assessments of (among other things) the principles of ESFM. Development of the RFAs was guided by the National Forest Policy Statement.<sup>40</sup>

Timber plantations are regulated separately under the *Plantations and Reafforestation Act 1999* (NSW) and *Plantations and Reafforestation (Code) Regulation 2001* (NSW). A Review of NSW Plantations and Reafforestation Legislation has been announced and a public consultation period will run for eight weeks until Sunday 27 June 2021.<sup>41</sup> This submission does not address Plantations and Reafforestation Legislation, but we suggest that this committee follow the current review to understand key issues relating to the regulation of timber plantations.

### ***Previous analysis of the regulatory framework for forestry in NSW***

Based on our experience working with clients and other stakeholders, we are aware that there are significant concerns amongst the community and environment groups that the regulation of forestry operations in NSW is poorly done, and inconsistent with ESFM.

Many of these concerns have been raised previously. For example, we refer the Committee to the following:

- In 2011, EDO, together with the Nature Conservation Council of NSW, published a joint report, *If a tree falls: Compliance failures in the public forests of New South Wales*.<sup>42</sup> That report found that:

*“... (i) it is clear that breaches of forestry regulations are systemic and occurring across the state to such a degree that flora and fauna species are being impacted as a result of those breaches. It is clear that native forests are not being managed in a way that complies with the principles of ESFM and the conservation of biodiversity”.*

- In 2013, EDO offices in Tasmania, Victoria and NSW published a joint report, *One Stop Chop: How Regional Forest Agreements streamline environmental destruction*.<sup>43</sup> That report

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<sup>40</sup> The management of Australia's forests is guided by the 1992 *National Forest Policy Statement* (NFPS). Further information on the NFPS is available at <https://www.agriculture.gov.au/forestry/policies/forest-policy-statement>

<sup>41</sup> See <https://www.dpi.nsw.gov.au/forestry/review>

<sup>42</sup> Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia, available at [http://d3n8a8pro7vnm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728when\\_a\\_tree\\_falls.pdf?1380667654](http://d3n8a8pro7vnm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728when_a_tree_falls.pdf?1380667654)

<sup>43</sup> Feehely, J., Hammond-Deakin, N. and Millner, F. (2013) *One Stop Chop: How Regional Forest Agreements streamline environmental destruction*, Lawyers for Forests, Melbourne Australia, available at [https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/One\\_Stop\\_Chop.pdf](https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/One_Stop_Chop.pdf)

identified that protection of forests' biodiversity and threatened species would be of a higher standard if regulated directly under the EPBC Act rather than under the RFA regime.

- A 2014/15 inquiry by the NSW Legislative Council into the performance of the NSW Environment Protection Authority shone a spotlight on the regulation of the forestry industry, looking specifically at the example of the FCNSW's logging operations in Royal Camp State Forest near Casino in northern NSW. The Committee recognised "*the need for a clearer and more efficient regulatory system*" for forestry operations and recommended that "*the NSW Government allocate significant additional funds to the Environment Protection Authority to further train staff and to facilitate the appointment of additional personnel to the Forestry Division*".<sup>44</sup>
- EDO engaged in the review and remake of the NSW Coastal IFOA and NSW RFA. During those processes we raised a number of concerns with forestry operations in NSW, including that:
  - There is a lack of monitoring and data on environmental outcomes and trends from past forestry practices under 20 years of the existing IFOAs; and
  - Given this lack of evidence, the then draft IFOA settings failed to adopt a sufficiently precautionary approach to serious or irreversible risks of continued decline or extinction of threatened species and forest ecosystem function.<sup>45</sup>
- In March 2020, Environmental Justice Australia examined the operation of RFAs following the 2019-2020 bushfires and concluded that "*(t)he fires, particularly through their impacts on the CAR reserves, have destroyed the policy foundations of the RFA system, rendering it untenable*".<sup>46</sup>
- In September 2020 an independent report commissioned by the EPA carried out by Dr Andrew Smith looked into whether the Coastal IFOA, both with and as a separate consideration, without Site Specific Operating Conditions (**SSOCs**) of the type that have been issued by the EPA, provide adequate mitigation for ecological and environmental impacts from timber harvesting in areas impacted by the 2019-2020 bushfires. Dr Smith's review found that "*the normal CIFOA in the context of the 2019/20 wildfires will not deliver ecologically sustainable management as required under the objectives of the Forestry Act 2012 and is likely to cause a significant impact under the NSW Biodiversity Conservation Act 2016 and the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999*". Dr Smith also found that "*special conditions in SSOCs for the burnt areas are inadequate to mitigate fire and logging impacts*". Dr Smith recommended implementing

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<sup>44</sup> NSW Parliament, Legislative Council General Purpose Standing Committee No. 5, *Inquiry into the performance of the NSW Environment Protection Authority*, Final Report, available at

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=1991>

<sup>45</sup> EDO NSW, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018, available at [www.edonsw.org.au/draft\\_coastal\\_ifoa](http://www.edonsw.org.au/draft_coastal_ifoa)

<sup>46</sup> Environmental Justice Australia, *No longer tenable - Bushfires and Regional Forest Agreements*, March 2020, available at [www.envirojustice.org.au/no-longer-tenable-bushfires-and-regional-forest-agreements/](http://www.envirojustice.org.au/no-longer-tenable-bushfires-and-regional-forest-agreements/)

new standards that take into account the impacts of both wildfire and timber harvesting at regional and landscape scales across all public tenures.<sup>47</sup>

- In October 2020, EDO raised concerns about the use of SSOCs to allow forestry operations to be undertaken in impacted areas following the 2019-2020 bushfires.<sup>48</sup>

### **Recent improvements**

We recognise recent efforts to address some of the concerns surrounding the regulation of the forestry operations in NSW. For example:

- The monitoring and enforcement powers of the NSW EPA have been strengthened, and penalties have been increased. For example, in 2018 offences and penalties for breaching a requirement imposed by an IFOA were introduced, as well as powers for the Environment Protection Authority to monitor and enforce compliance with the requirements of IFOAs.<sup>49</sup>
- The EPA has a renewed focus on forestry compliance and enforcement, particularly after the 2019-2020 bushfire season.<sup>50</sup>
- The NSW Natural Resources Commission has been commissioned to undertake a Forest Monitoring and Improvement Program (**FMIP**). The FMIP is a state-wide monitoring, evaluation, reporting and improvement program designed to assist the adaptive management of forests.<sup>51</sup>

### **Ongoing concerns**

Despite these recent improvements, ongoing concerns about the impacts of the timber and forest products industry on native forests and failures of the regulatory framework persist. These concerns relate to:

- Policy settings underpinning the Coastal IFOA
- Specific prescriptions
- Transparency and consistency in the application of the Coastal IFOA rules
- Reporting and transparency requirements
- Third party oversight
- The ability for the Coastal IFOA to adequately respond to bushfires
- The rules around Private Native Forestry (**PNF**)
- Regional Forest Agreements
- The economics of native forest logging

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<sup>47</sup> Smith, Dr A. *Review of CFIOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, op.cit.

<sup>48</sup> See EDO, *Is Logging in NSW After the Fires Ecologically Sustainable? Expert Reports Cast Further Doubt*, available at [www.edo.org.au/2020/10/22/is-logging-in-nsw-after-the-fires-ecologically-sustainable-expert-reports-cast-further-doubt/](http://www.edo.org.au/2020/10/22/is-logging-in-nsw-after-the-fires-ecologically-sustainable-expert-reports-cast-further-doubt/)

<sup>49</sup> See, for example, changes to the *Forestry Act 2012*, made by the *Forestry Legislation Amendment Act 2018*

<sup>50</sup> The NSW EPA's Annual Report 2019-20 indicates that "proactive compliance of native forestry after the 2019-20 bushfires was a major focus for EPA officers", see <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/whoweare/20p2666-epa-annual-report-2019-20.pdf>

<sup>51</sup> For more information, see <https://www.nrc.nsw.gov.au/fmip>

- Responsibilities of industry directors

These concerns are outlined in more detail below.

- ***Policy settings underpinning the Coastal IFOA***

EDO raised a number of concerns about the policy settings underpinning the making of the Coastal IFOA in 2018 (in which four existing IFOAs were made into a new Coastal IFOA).<sup>52</sup> Many of these concerns were not addressed in the final Coastal IFOA, for example:

- The Coastal IFOA remake was underpinned by two original policy aims: to maintain both environmental values and wood supply levels. Yet despite *expert* findings that environmental standards and wood supply levels were in fundamental conflict,<sup>53</sup> there was no reconsideration of the overarching policy aim of ‘no net reduction in wood supply’. This unresolved conflict creates pressure at the policy and operational levels, with tensions arising between ensuring that wood supply commitments are met whilst also seeking to achieve ESFM.
- The Coastal IFOA remake did not properly recognise the diverse environmental, social and economic values of NSW coastal forest resources including the value of ‘ecosystem services’.
- The Coastal IFOA remake lacked regional ecosystem assessments to determine the status and capacity of threatened species and forest ecosystems, and to determine the adequacy of the protected area network to provide refuge and habitat amidst increasing threats and pressures.
- The Coastal IFOA remake failed to effectively integrate the principles of ESFM into operational planning and management.
- Some policy settings appeared to be in direct conflict with the principles of ESFM, for example provisions relating to intensive harvesting.
- There was no clear Government policy response to prepare for the impacts of climate change and fire regimes on the State’s forest ecosystems or wood supply despite these risks being highlighted by the Natural Resources Commission<sup>54</sup> and the review of the NSW Regional Forest Agreement.<sup>55</sup>

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<sup>52</sup> See Environmental Defenders Office, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018, available at <https://www.edo.org.au/publication/draft-coastal-integrated-forestry-operations-approval/>

<sup>53</sup> NSW Natural Resources Commission (NRC), *Advice on Coastal Integrated Forestry Operations Approval remake*, November 2016, available at [https://www.nrc.nsw.gov.au/\\_media\\_downloads/240607/Coastal%20IFOA%20-%20Advice%20-%20November%202016.pdf?downloadable=1](https://www.nrc.nsw.gov.au/_media_downloads/240607/Coastal%20IFOA%20-%20Advice%20-%20November%202016.pdf?downloadable=1)

<sup>54</sup> NSW Natural Resources Commission (NRC), *Advice on Coastal Integrated Forestry Operations Approval remake*, November 2016, op. cit.

<sup>55</sup> Ewan Waller, *Independent review of the report on progress with the implementation of the New South Wales Regional Forest Agreements for the second and third five-yearly reviews 2004 – 2014*, April 2018, available at <https://www.agriculture.gov.au/sites/default/files/sitecollectiondocuments/forestry/rfa/independent-review-nsw-rfa-5-yearly-review-2004-14.pdf>

- **Specific prescriptions**

EDO and other stakeholders raised concerns about specific prescriptions in the draft Coastal IFOA being inadequate – for example, prescriptions relating to harvesting practices and limits; wildlife habitat, tree retention and threatened species protections (e.g. wildlife habitat clumps and tree retention clumps, north coast koala protections, hollow bearing tree protections and giant tree protections); and landscape protections (e.g. buffer zones, rainforest protections).<sup>56</sup> Many of these concerns were not addressed in the final Coastal IFOA.

Further, current prescriptions were established before the 2019-2020 bushfire season and do not anticipate or incorporate responsiveness to such large-scale events. Given the significant impacts of the bushfires, existing prescriptions should be reviewed and revised to account for the impacts of the 2019-2020 bushfires and to ensure that protections adequately protect impacted landscapes and wildlife.

- **Transparency and consistency in the application of the Coastal IFOA rules**

For consistent and predictable outcomes, including compliance and enforcement action by the regulator, the Coastal IFOA must be drafted so that the conditions and constraints on forestry operations are clear. This is not always the case.

By way of example, clause 31.4 of the Coastal IFOA Protocols provides that harvesting operations “*must not be conducted for the primary purpose of producing low quality logs (including salvage and firewood), pulpwood logs or heads and offcuts*”. There are operations currently underway or approved where the FCNSW harvest plans state that the vast majority of the timber product to be removed will be low quality product (e.g. predominantly pulpwood) – in one case, 96% pulpwood products. We can presume that FCNSW considers that these operations comply with the Coastal IFOA conditions and protocols. There is certainly a compelling argument that an operation that extracts 96% low quality products by volume appears to be for the primary purpose of harvesting low quality products. However, there is no express guidance in the Coastal IFOA as to how primary purpose is determined. Our work on this issue to date has confirmed our concerns that the intent and application of this constraint in the Coastal IFOA protocols requires clarification.

- **Reporting and transparency requirements**

NSW forests are a public natural asset with many important values - environmental, cultural, social and economic – and therefore good management of those forests is in the public interest. For this reason, it is important that forest management decisions and forestry operations are conducted transparently. Transparency will improve public confidence and is also likely to improve governance itself – for example, by improving accountability.

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<sup>56</sup> See, for example, Environmental Defenders Office, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018, available at <https://www.edo.org.au/publication/draft-coastal-integrated-forestry-operations-approval/>

Effective transparency and accountability in this context should include:

- Ensuring commercial information relevant to the management of native forests, such as wood supply agreements and timber allocations is publicly accessible.
- Appropriate monitoring and reporting on forestry operations and environmental impacts, to assist in understanding whether environmental outcomes are being met.
- Reporting on compliance and enforcement activities.

As a government entity, FCNSW operates under an open access to information policy and proactively releases as much information as possible, except where it is contrary to the public interest.<sup>57</sup> According to the FCNSW's website,<sup>58</sup> its open access information includes:

- FCNSW Annual Reports
- Documents tabled in Parliament by or on behalf of the FCNSW
- Auditor General's Performance Audit of Native Forest and Hardwood Plantation Operations
- Policy documents
- Disclosure log of access applications
- Register of contracts (including Wood Supply Agreements (**WSAs**))
- Register of Government Tenders
- Record of open access information not disclosed
- Properties disposed of by the FCNSW (which can be found in the FCNSW's annual reports)

FCNSW also releases additional information on its website, including publications (such as factsheets and reports) and operational plans for native forests.<sup>59</sup>

However, we note that not all WSAs are available in full. It is unclear why FCNSW discloses some WSAs in full but not others.

There are various reporting requirements established under the IFOAs. Our concerns with how reporting requirements under the Coastal IFOA operate in practice, include the following:

- Condition 32.1 requires FCNSW to prepare and submit to the EPA a 12-month annual plan for the subsequent financial year in the approved form in accordance with Protocol 2. With respect to harvest volumes, the annual plan is only required to indicate whether the estimated total volume (combined products) per hectare to be removed from each compartment or tract is High, Medium or Low (see Coastal IFOA, Protocol 2.2). Further, the fine details of the operation are left to the operational plans (i.e. the harvest plans/harvest and haul plans). These plans are only required to be released two business days prior to operations commencing.<sup>60</sup>
- Condition 33.1 requires FCNSW to submit an annual return to the EPA at the end of each reporting period.

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<sup>57</sup> See, generally, <https://www.forestrycorporation.com.au/about/right-to-information>

<sup>58</sup> <https://www.forestrycorporation.com.au/about/right-to-information>

<sup>59</sup> <https://www.forestrycorporation.com.au/about/right-to-information>

<sup>60</sup> See Coastal IFOA Protocol 4 for the content requirement of operational plans.

- Condition 34.1 requires FCNSW to provide to the EPA an annual timber and biomaterial report within 90 days after the end of each financial year. This report must include volume information for various products produced and sold. Although the biomaterial reports are required to include information about the total net harvest area of compartments (including by harvesting type<sup>61</sup> and volumes harvested according to product type), there is no requirement to report on the size of the logs harvested or the breakdown of species harvested, both of which are relevant to understanding how supply is tracking in the forest.
- As noted above, in relation to operational plans (also known as ‘harvest plans’ or ‘harvest and haul plans’), FCNSW is only required to release these to the public and to the EPA two business days prior to commencing operations (see Coastal IFOA, Condition 53.5). From a practical perspective, this gives the EPA and, in particular, the general public very limited time to review an operational plan and respond if the plan raises concerns. We are concerned that this may constrain the EPA’s ability to properly enforce the Coastal IFOA rules: receiving operational plans as late as two business days before an operation begins leaves very little time for the EPA to properly consider whether proposed operations are compliant with the Coastal IFOA and to determine and implement a suitable regulatory response.
- The Coastal IFOA sets out content requirements of operational plans (i.e., “harvest and haul plans”). This includes reporting on pre-harvesting flora and fauna surveys and habitat searches.<sup>62</sup> However, as far as we are aware, the Coastal IFOA does not establish any requirement for FCNSW to conduct post-harvesting surveys. Post-harvest surveys may improve our understanding of whether the existing prescriptions are effective in protecting threatened species and achieving ESFM. They could also incorporate data collection requirements that may enhance the transparency of harvesting operations and assist the regulator in its compliance role.

Another barrier to information transparency is the FCNSW practice of requiring individuals to obtain a login and password in order to access basic information such as operational plans. It is not clear why this is necessary or justifiable, noting the requirement that FCNSW make such information available to the public.

While information can sometimes be accessed via freedom of information (**FOI**) laws, the process is cumbersome which means information is often not available to third parties within practically useful timeframes. For example:

- As noted earlier, in NSW, FCNSW only needs to release operational plans/harvest plans two business days prior to commencing operations. If an operational plan raises concerns among the community that there may be a contravention of the Coastal IFOA (e.g. because the pre-harvest surveys are non-compliant), the community will likely need to seek further information from the EPA and/or FCNSW through the FOI process. By the time such FOI

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<sup>61</sup> i.e. Selective harvesting, intensive harvesting or alternate coupe harvesting: Coastal IFOA Protocol 2.4(1)(a)(i).

<sup>62</sup> Coastal IFOA Protocol 4.2(2)(c).

applications are processed and documents released, the operations are likely to be substantially or wholly completed.

- We are aware of at least one known instance where the ‘commercial in confidence’ exemption was used to refuse access to documents. When that refusal decision was appealed, the Administrative Decisions Tribunal (**ADT**) determined that there was public interest in releasing certain information.<sup>63</sup>

In one other example, in 2016, environment groups in NSW raised concerns that the public had not been properly informed about timber buy-back commitments and wood supply agreement negotiations.<sup>64</sup> It was revealed that an extension of wood contracts was not disclosed to the public. The lack of transparency is a reflection of the fact that there are no public notification or consultation requirements in the wood supply agreement negotiation process.

**We recommend that this committee interrogates the extent to which harvesting and supply information is publicly accessible (not just in terms of it being publicly available, but also in terms of being readily understood by the public), and makes recommendations for improving transparency and accountability with respect to this type of information.**

Additionally, one of the key criticisms of both the former IFOAs and the RFAs prior to their variation in late 2018 has been the lack of data and information available to determine whether ESFM is being achieved. As noted above, there is a public interest in understanding whether strategic environmental outcomes and detailed targets for the forest estate are being achieved – including the overarching objective of ESFM.

For example, the 2010 10-year IFOA review noted that “(C)onservation stakeholders expressed concern that there was a lack of information available on native forest growth rates, regeneration and other criteria to determine whether ESFM was being achieved”.<sup>65</sup> These

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<sup>63</sup> See *Nature Conservation Council of NSW v Department of Trade & Investment, Regional Infrastructure & Services and Anor* [2012] NSWADT 195. In this instance, the Nature Conservation Council of NSW (NCC) sought access to a range of documents from the former Forests NSW (a division within the former Department of Trade and Investment) under the *Government Information (Public Access) Act 2009* (NSW). The documents sought included the contracts between Forests NSW and sawmill companies for the supply of timber. The Department of Trade and Investment agreed to release the contracts, but with certain information removed, including the resource allocation and/or description, the resource price and terms of the agreements. The reasons given for refusing access to this information related to the commercial nature of the information. NCC appealed to the Administrative Decisions Tribunal (ADT) against this decision. The ADT determined that the public interest in favour of releasing the details of the contracts outweighed any commercial interests in keeping them secret. While the Tribunal accepted that there might be some risk of the commercial interests of the sawmills being affected, it observed that “there is considerable doubt in regard to the extent of those risks”. Rather, the Tribunal accepted that there were strong public interest considerations in favour of release including: a) a clear public interest in an agency that is dealing with public assets being accountable for the manner in which it contracts to sell those assets; b) to further public policy development around the management of the publicly owned hardwood forest estate in NSW; and c) to encourage community engagement with Government about sustainability. The Tribunal ordered the release of the contracts within 30 days. The decision recognised the community’s right to access detailed information about the NSW Government’s management of State forests and plantations.

<sup>64</sup> Echo, *Timber inquiry call as ‘secret’ contract extension revealed*, 19 April 2016, available at <https://www.echo.net.au/2016/04/timber-inquiry-call-as-secret-contract-extension-revealed/>

<sup>65</sup> NSW Government, *Outcomes from the Review of the NSW Forest Agreements and the Integrated Forestry Operations Approvals*, 2010, available at [https://www.epa.nsw.gov.au/~/\\_media/EPA/Corporate%20Site/resources/forestagreements/FAIFOARReviewOutcomesReport.ashx](https://www.epa.nsw.gov.au/~/_media/EPA/Corporate%20Site/resources/forestagreements/FAIFOARReviewOutcomesReport.ashx)

concerns were echoed during the recent remake of the Coastal IFOA and second and third five-yearly reviews of the RFAs.<sup>66</sup>

The NSW Government has commissioned the Natural Resources Commission to establish and deliver a Forest Monitoring and Improvement Program (**FMIP**). The FMIP is intended to improve the evidence base for decision makers across forest tenures. It includes a component that meets the monitoring and reporting requirements of the Coastal IFOA.

The Coastal FMIP is intended to answer four overarching questions, related to:

- effectiveness monitoring – are the Coastal IFOA conditions effectively meeting its objectives and outcomes?
- trend monitoring – is the Coastal IFOA having a neutral, positive or negative impact on landscape-scale environmental values or wood supply?
- compliance monitoring – are non-compliances compromising the outcomes or the ability to monitor the effectiveness of the Coastal IFOA conditions?
- adaptive management – can Coastal IFOA conditions, forestry operations, forestry management or monitoring be improved to better meet objectives and outcomes?<sup>67</sup>

This program is still in its early stages, but it is hoped that it will help the public and decision makers understand whether strategic environmental outcomes and detailed targets are being met. In the interim, it would be open to this committee to make recommendations on how the Coastal FMIP could be improved, or what other mechanisms could be put in place to better monitor and report on whether strategic environmental outcomes and detailed targets are being met.

More recently, the Minister for Planning and Public Spaces has issued the NRC with terms of reference requesting independent, evidence-based advice on forestry operations under the Coastal IFOA in the aftermath of the 2019-2020 bushfires (**NRC post-bushfire advice**). EDO is concerned that the Minister has directed the NRC to provide this advice in confidence and to consult with relevant agencies and subject matter experts only.<sup>68</sup> Our position is that this advice, which concerns the proper and sustainable management of a public asset, should be made publicly available.

With respect to PNF, current legislative requirements for monitoring and reporting are limited. Current provisions simply state that the EPA has the function of monitoring the carrying out of forestry operations.<sup>69</sup> Concerningly, recent reports suggest that the EPA is unable to properly carry out those functions due to lack of information and data following the transition of private

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<sup>66</sup> See, for example, EDO, *Submission on the Draft Coastal Integrated Forestry Operations Approval*, July 2018, available at <https://www.edo.org.au/publication/draft-coastal-integrated-forestry-operations-approval/>; EDO *Submission on A Report of Progress with Implementation of NSW Regional Forest Agreements: Second & Third five-yearly reviews July 2004 – June 2014 (Progress Report)*, April 2018, available at [https://www.edo.org.au/wp-content/uploads/2020/01/180223\\_RFA\\_Review\\_2004-2010\\_submission\\_EDO\\_NSW\\_letter\\_FINAL.pdf](https://www.edo.org.au/wp-content/uploads/2020/01/180223_RFA_Review_2004-2010_submission_EDO_NSW_letter_FINAL.pdf)

<sup>67</sup> See NSW Government, *Coastal Integrated Forestry Operations Approval Approved Monitoring Program 2019-2024*, March 2020, available at <https://www.nrc.nsw.gov.au/Forest%20MER%20-%20Coastal%20IFOA%20-%20Approved%20Program%202019-2024%20v2.pdf?downloadable=1>

<sup>68</sup> See <https://www.nrc.nsw.gov.au/ifo>

<sup>69</sup> Section 60ZZB of the LLS Act

native forestry (PNF) approvals to the Local Land Services.<sup>70</sup> It is unacceptable for the environmental regulator to lack the capacity to carry out its functions.

A formal process for monitoring PNF operations is required. This should include an assessment of the cumulative impacts of PNF on environmental assets over time. Current PNF codes do require landowners to report on forestry operations, including the volume of timber harvested. This process should be formalised in legislation and reports should be required to be made public.

- **Third party oversight**

Almost all environmental and planning legislation in NSW, including for other public resource industries such as mining, includes ‘open standing’ for any person to seek redress in a Court for a breach of the law (known as third party civil enforcement). This has been a hallmark of access to justice in NSW for the last four decades. However this is not the case for the *Forestry Act 2012*.

Third party enforcement rights provide a safety valve for community concern, are a key anti-corruption safeguard, and serve to reinforce the rule of law. However, the right to take forestry breaches on public land to Court was removed from the people of NSW in 1998: s 69ZA of the *Forestry Act* expressly excludes third party civil enforcement proceedings for a breach of an IFOA, such that enforcement is placed solely in the hands of the regulator and Minister.

Third party civil enforcement is a necessary feature of any good regulatory design.<sup>71</sup> A 2013 Productivity Commission report into Major Project development assessment process found that “*there is a public interest in allowing third parties to bring judicial review applications, as it allows the legality of the process to be enforced, providing an important ‘safety valve’ in the system*”.<sup>72</sup> The same report found that “*the effects of major projects can be felt beyond neighbouring landowners (chapter 3), which implies that broader standing is warranted*”.<sup>73</sup> In this same vein, the effects of forestry operations can impact broadly on society (due to its impacts on a public asset and on biodiversity, climate etc.) and therefore broad standing to enforce the rules around forestry is warranted. Any concerns that ‘open-standing’ provisions open the floodgates to litigation are unfounded. When considering the open-standing provisions of the EPBC Act in the recent 10-year review, Prof. Graeme Samuel found that evidence from other jurisdictions indicates that open-standing arrangements do not lead to excessive numbers of legal challenges and that courts already have the capacity to deal with baseless or vexatious litigation.<sup>74</sup>

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<sup>70</sup> Sydney Morning Herald, ‘Black hole’: EPA sought nod to spy on timber plans after being left in the dark, 23 May 2021, available at <https://www.smh.com.au/environment/conservation/black-hole-epa-sought-nod-to-spy-on-timber-plans-after-being-left-in-the-dark-20210520-p57to2.html>

<sup>71</sup> See for example, N. Gunningham and D. Sinclair, ‘Designing Smart Regulation’, 1999, OECD, available at <https://www.oecd.org/environment/outreach/33947759.pdf>

<sup>72</sup> Productivity Commission *Major Project Development Assessment Processes*, 2013, Research Report, Canberra, available at <https://www.pc.gov.au/inquiries/completed/major-projects/report/major-projects.pdf>

<sup>73</sup> Productivity Commission *Major Project Development Assessment Processes*, 2013, Research Report, Canberra, op.cit.

<sup>74</sup> Samuel, G, *Independent Review of the EPBC Act – Final Report*, Department of Agriculture, Water and the Environment, Canberra, October 2020, available at <https://epbcactreview.environment.gov.au/resources/final-report>

Open-standing provisions that would allow the community to bring proceedings to enforce forestry laws would provide an additional level of oversight and accountability and should be reinstated to bring forestry legislation in line with other environmental and planning laws in NSW.

- ***The ability for the Coastal IFOA to adequately respond to bushfires***

The Coastal IFOA has been unable to adequately respond to the fundamental changes to the landscape wrought by the 2019-2020 bushfires. For example:

- For areas that were *not burned*, the Coastal IFOA permits logging to continue ‘business as usual’. This is because the Coastal IFOA conditions do not anticipate the potential impacts of bushfires – and therefore cannot properly respond to their impacts. There is no requirement to pause forestry operations in order to undertake a ‘stock-take’ of the forest estate post-bushfires or to appropriately adjust forestry rules in response to the bushfires.
- The Coastal IFOA permits FCNSW to seek ‘site specific operating conditions’ (**SSOCs**) if it is unable to comply with the ordinary conditions at a particular site. For areas of forest that *were burned*, the fire impacts meant that FCNSW was temporarily unable to conduct harvesting in some areas – but only because it was unable to comply with a small number of the usual Coastal IFOA conditions, in particular the mitigation of erosion risks. In these cases, FCNSW made use of this mechanism and requested that the EPA issue SSOCs. The EPA agreed to issue SSOCs for 17 State forests across coastal NSW. While these SSOCs do provide some additional protections, ultimately, they have permitted logging in the immediate aftermath of the fires where it may otherwise have been temporarily prohibited. On this point, we note in particular:
  - Importantly, there has been a marked lack of transparency on how the Coastal IFOA has or has not directly constrained post bushfire logging operations and the decision to issue SSOCs. Community members were forced to make freedom of information applications to try to understand the basis on which post-bushfire operating conditions were sought by FCNSW and how their form was ultimately determined. This information is critical for the community to assess how effectively (or otherwise) the Coastal IFOA responded to these bushfire events and, in turn, in particular in the face of a changing climate, whether the Coastal IFOA is fit for purpose.
  - Also notable is that SSOCs can only be issued on request by FCNSW. They cannot be issued unilaterally by the EPA in response to concerns that harvesting operations will have unacceptable environmental impacts.
- An EPA briefing note obtained under the GIPA Act says:

*“The Coastal IFOA, which permits FCNSW to carry out forestry operations subject to conditions, does not address the permissibility of these operations in the context of catastrophic bushfires. Specifically, it does not set environmental controls to mitigate*

*the likely impacts on native species, critical habitat, soils and streams of logging operations in fire affected forest.*<sup>75</sup>

Further:

*“The Coastal IFOA is not designed to mitigate the environmental impacts of logging in landscapes that have been impacted by extensive and severe fires.”*

Another EPA briefing note obtained under the GIPA Act notes that “*(i)n the longer-term amendments to the Coastal IFOA are proposed*”.<sup>76</sup>

- In September 2020, a report commissioned by the EPA was published by Dr Andrew Smith. Among other things, that report reached the following conclusions:
  - *“the normal CIFOA in the context of the 2019-2020 wildfires will not deliver ecologically sustainable management as required under the objectives of the Forestry Act 2012 and is likely to cause a significant impact under the NSW Biodiversity Conservation Act 2016 and the Commonwealth Environmental Protection and Biodiversity Conservation Act 1999”*
  - *“special conditions in SSOCs for the burnt areas are inadequate to mitigate fire and logging impacts, primarily because their time frame (12 months) of application is too short”*<sup>77</sup>
- There is ongoing uncertainty about logging operations post-bushfires. The SSOCs were issued with a 12 month life and have now begun to expire. FCNSW has now recommenced forestry operations in some areas against the advice of the EPA.<sup>78</sup> The NRC has been commissioned to provide evidence-based advice on forestry operations under the coastal IFOA as the NSW public forest estate recovers from the 2019-20 bushfires, but as outlined above this advice will be provided to Government in confidence.

**This demonstrates that the Coastal IFOA framework cannot adequately respond to major events like the 2019-2020 bushfires** and, further, that this was recognised by the regulator in the immediate aftermath of the fires. This is unsatisfactory, particularly given the predicted increase in frequency of such events as an impact of climate change.

- ***The rules around Private Native Forestry (PNF)***

Prior to 2016-17 land management and biodiversity conservation reforms, PNF was regulated under Part 5 of the *Native Vegetation Regulation 2013*. However, when the *Native Vegetation Act 2005* was slated for repeal, an Independent Biodiversity Legislation Review Panel

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<sup>75</sup> NSW EPA briefing note, *Coastal IFOA – Approval of site specific operating conditions for Mogo and South Brooman State Forests*, dated 7 February 2020.

<sup>76</sup> NSW EPA briefing note, *Coastal IFOA – Approval of site specific operating conditions for north coast State forests*, dated 3 March 2020.

<sup>77</sup> Smith, Dr A. *Review of CIFOA Mitigation Conditions for Timber Harvesting in Burnt Landscapes - A Report to the NSW Environment Protection Authority*, September 2020, op.cit.

<sup>78</sup> See ABC, *Forestry Corporation to resume logging for first time since bushfires, against EPA advice*, 18 February 2021, <https://www.abc.net.au/news/2021-02-18/forestry-to-resume-logging-in-new-areas-on-nsw-south-coast/13166718>

recommended that regulatory arrangements for timber harvesting on private land be reviewed in a separate process.<sup>79</sup>

When the *Native Vegetation Act 2005* was repealed in 2017, a new Part 5C was inserted into the *Forestry Act 2012* to regulate PNF (these provisions commenced on 25 August 2017).

Subsequently, further changes were made to the regulation of PNF:

- On 30 April 2018, the Local Land Services (**LLS**) assumed responsibility for approvals and advisory services for PNF. The NSW Environment Protection Authority (**EPA**) maintains responsibility for compliance and enforcement of PNF.
- On 9 November 2018, new provisions relating to PNF commenced under Part 5B of the *Local Land Services Act 2013* (**LLS Act 2013**) and Part 5C of the *Forestry Act 2012* was repealed.
- The most notable changes to PNF through this period include:
  - Transfer of responsibility for PNF management from the Minister for the Environment to the Minister for Lands and Forestry<sup>3</sup> (noting that the EPA maintains a compliance and enforcement role);
  - The introduction of specific objects for PNF, including the carrying out of PNF in accordance with the principles of ecologically sustainable forest management (**ESFM**);
  - More detailed requirements relating to the making of PNF Codes of Practice, including the requirement to have regard to specific objects and principles of ESFM, and requirements for public consultation on draft Codes; and
  - Increased penalties for causing significant harm to the environment (e.g. breaches of PNF provisions), in line with other environmental legislation.

Notwithstanding these changes, the NSW Government commenced a comprehensive review into PNF in late 2018, consistent with the Independent Panel's recommendation. To date the PNF Review has involved public consultation on terms of reference and separate public consultation on a draft new PNF Code. The PNF Review is yet to deliver a final report and

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<sup>79</sup> In 2014 an Independent Biodiversity Legislation Review Panel made wide-ranging recommendations for land management and biodiversity conservation reforms. This led to the repeal of the *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001*, and the animal and plant provisions of the *National Parks and Wildlife Act 1974* and the introduction of the *Biodiversity Conservation Act 2016* and Part 5A of the *Local Land Services Act 2013*. As PNF was also regulated under the *Native Vegetation Act 2003*, the Panel recommended that a review of PNF be undertaken separately - see Recommendation 7:

- “Review regulatory arrangements for timber harvesting on private land as part of a separate process that:
- a. does not regulate the harvesting of native timber on private land as a form of land use change
  - b. considers options for regulating sustainable forestry operations based on their scale and intensity rather than tenure, including options for permitting low-intensity operations on private land without the need for approval and a focus on outcomes rather than process
  - c. considers a range of options for improving the environmental performance of haulage and harvest contractors operating on private and public land, including licensing and minimum standards”.

changes to the PNF have not yet been finalised. As part of the process, EDO has raised concerns about proposed changes to the regulation of PNF.<sup>80</sup>

Further, despite the PNF Review remaining unfinished, the NSW Government has announced ad hoc changes to the PNF Code following a well-publicised political stoush over the Koala SEPP. These ad hoc changes, which include removing the prohibition on carrying out PNF in core koala habitat and removing requirements in Local Environment Plans for development consent for PNF, have not been proposed as part of the PNF Review and are not evidence-based.<sup>81</sup>

**This inquiry should recommend that no changes to the PNF regulatory framework be made until the Government has finalised the PNF Review, including publicly releasing a final report of the PNF Review and responding to submissions made to the draft PNF Code.**

- **Regional Forest Agreements**

EDO has significant concerns with the ongoing operation of the RFAs, and in particular, the roll-over of RFAs in Tasmania, Western Australia, Victoria and NSW, in the absence of evidence that they are achieving the required environmental outcomes. These concerns are exacerbated by the continuation of the RFAs in the aftermath of the 2019-20 bushfires, without pausing to properly assess the impacts of those bushfires. In these circumstances, the roll-over and ongoing operation of the RFAs is at odds with parallel work being undertaken by the Commonwealth to identify priority species that have been impacted by those fires (including those that are directly impacted by RFA forestry operations), and priority actions in response. EDO strongly agrees with recent analysis that concludes the current RFAs are no longer tenable.<sup>82</sup>

- **Economics of native forest logging**

From an economic perspective, analysis undertaken prior to the 2019-2020 bushfires indicates that native forest logging on public land does not stack up. While EDO does not have direct expertise in this area, we direct the committee to the following examples:

- Research from The Australia Institute has found that:
  - *“economic data over two decades show that native forest logging requires substantial public funding to operate”<sup>83</sup> and that “(n)ative forest logging by the Forestry Corporation of NSW generated losses of \$79m over the last seven years (as of 2016) - discontinuing the practice could deliver significant benefits to the state of NSW”.*<sup>84</sup>

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<sup>80</sup> EDO, *Submission to Private Native Forestry Review 2018*, January 2019, available at <https://www.edo.org.au/publication/private-native-forestry-review/>

<sup>81</sup> See EDO, *New Koala SEPP Commences in NSW – But Worse is Yet to Come*, 8 April 2021, available at <https://www.edo.org.au/2021/04/08/new-koala-sepp-commences-in-nsw-but-worse-is-yet-to-come/>

<sup>82</sup> See Environmental Justice Australia, *No longer tenable: Bushfires and Regional Forest Agreements*, March 2020, available at: <https://www.envirojustice.org.au/wp-content/uploads/2020/03/EJA-report-No-longer-tenable-1.pdf>

<sup>83</sup> Sanger, J et. al., *The opportunity for Australia’s native forests*, February 2020, The Australia Institute, available at [https://australiainstitute.org.au/wp-content/uploads/2020/12/P879-Forests-Open-Letter-Supplementary-Brief-Web\\_0.pdf](https://australiainstitute.org.au/wp-content/uploads/2020/12/P879-Forests-Open-Letter-Supplementary-Brief-Web_0.pdf)

<sup>84</sup> Campbell, R. and McKeon, R. *Money doesn’t grow on trees The financial and economic losses of native forestry in NSW*, March 2016, The Australia Institute, available at <https://australiainstitute.org.au/wp-content/uploads/2020/12/P209-Money-doesnt-grow-on-trees-NSW-Forestry-Final-Final.pdf>

- “(e)mployment in the Australian forestry and logging sector is small, and in decline” and that “(j)obs in fire and conservation management are likely to be viable employment alternatives for native forest logging workers”.<sup>85</sup>
  - “(n)ative forest logging could end in NSW with minimal economic disruption and potentially substantial savings for NSW taxpayers”.<sup>86</sup>
- In approximately March 2021, FCNSW publicly released its Sustainable Yield Review for the NSW Coastal Hardwood Forests in response to the 2019-2020 bushfires. The review models a reduction in wood supply over the next approximately 10-15 years across all regions, ranging from a 4% reduction in the North East Region to a 30% reduction in the South Coast Region. At least three points of note can be highlighted in relation to this report:
- We would anticipate that the modelled reduction in wood supply would only accentuate the issues identified by The Australia Institute.
  - The Sustainable Yield review is only preliminary as FCNSW has had access to limited data in the period immediately following the fires. The yields may yet be revised further down as the models are updated as further data becomes available.
  - A Sustainable Yield review applies the existing forestry prescriptions in order to model a *resource extraction rate* that is sustainable in terms of future resource extraction. It does not incorporate a full analysis of ecological sustainability – for example, considering whether the existing prescriptions need to be adjusted to ensure region-wide ecological sustainability.
- **Responsibilities of industry directors**

While issues raised in this submission can and should be considered by this inquiry, and by the Government and Parliament, directors within the industry must also consider their legal responsibilities with respect to issues facing the industry. These issues include the key environmental challenges of bushfire risk and impacts, climate change and biodiversity decline, and also the financial consequences that may flow from continuing to undertake forestry operations without due consideration of these key challenges. For example, there is a growing understanding of the law concerning directors’ duties and climate change.<sup>87</sup> This may have relevance to the forestry industry - noting the interactions between climate change and native forest logging adverted to earlier in this submission. EDO is examining this issue.

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<sup>85</sup> Sanger, J et. al., *The opportunity for Australia’s native forests*, February 2020, The Australia Institute, op.cit.

<sup>86</sup> Campbell, R. and McKeon, R. *Money doesn’t grow on trees The financial and economic losses of native forestry in NSW*, March 2016, The Australia Institute, available at <https://australiainstitute.org.au/wp-content/uploads/2020/12/P209-Money-doesnt-grow-on-trees-NSW-Forestry-Final-Final.pdf>

<sup>87</sup> See, for example, Hutley SC, Noel Mr and Sebastian Hartford Davis, *Climate Change and Directors Duties*, Memorandum of Opinion, October 2016, The Centre for Policy Development and The Future Business Council, available at <https://cpd.org.au/2016/10/directorsduties/> and Hutley SC, Noel Mr and Sebastian Hartford Davis, *Climate Change and Directors Duties*, Supplementary Memorandum of Opinion, March 2019, The Centre for Policy Development and The Future Business Council, available at <https://cpd.org.au/2019/03/directors-duties-2019/>

#### 4. Future opportunities

The NSW Forestry Industry Roadmap<sup>88</sup> developed in 2016 is now out-of-date. Identified short-term and medium-term actions were flagged for completion within the first two years of the plan, and many actions are completed or in progress. More significantly, external factors have changed in the five years since the Roadmap was developed, including devastating impacts from the 2019-2020 bushfire season.

The issues raised in this submission, and other issues expected to come to light through this inquiry, are key considerations when considering the future of the industry.

A new or revised outlook for the timber and forest products industry is needed, which must:

- learn from the various reviews undertaken as actions under the Roadmap;
- take into account the impacts of the 2019-2020 bushfire season and the need to protect unburnt and lightly burnt areas, and let damaged areas recover and restore;
- reflect the community's strong and legitimate interest in ensuring that the future management of our native forests is sustainable; and
- ensure that regional communities that rely on the native forests timber industry as a source of employment are supported as the industry changes.

This inquiry provides a critical opportunity to examine the scientific, economic, environmental evidence as to the viability and sustainability of the industry, including with respect to the industry's use of native forests.

#### ***Case studies from other jurisdictions***

- ***Victoria***

Since the 1980s the amount of available native timber supply in Victoria has been in decline.<sup>89</sup> In the last 10 years the availability of native timber has reduced by a further 50% due to bushfires, unsustainable yields, and the closure of mills in Gippsland.<sup>90</sup> A 2017 Victorian Parliamentary Report, *Inquiry into VicForests operations*, recommended that there be an increase in plantation forestry and timber following a decline in the overall job numbers in the native forest sector.<sup>91</sup>

In response to the reduction in the availability of native timber to harvest, there have also been several judicial and governmental decisions based around trying to balance a profitable timber industry and achieve conservation objectives. This has been paramount in the past five years

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<sup>88</sup> See <https://www.dpi.nsw.gov.au/forestry/industry-roadmap>

<sup>89</sup> Victorian Government, *Victorian Forestry Plan* website, <https://djpr.vic.gov.au/forestry/forestry-plan>

<sup>90</sup> *Ibid.*

<sup>91</sup> Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into VicForests Operations* (Parliamentary Paper No. 325, October 2017), available at <https://www.parliament.vic.gov.au/918-eic-lc/inquiry-into-vicforest-operations>

after several injunctions have been brought against VicForests in the Victorian Supreme Court to restrict proposed logging, particularly in the Central Highlands and East Gippsland, Victoria.<sup>92</sup>

in November 2019, the Andrews Government in Victoria announced that logging of native forest hard wood would be phased out in Victoria by 2030.<sup>93</sup> The announcement was accompanied by a commitment to deliver a \$120 million package to assist workers, including money for training programs, employment assistance and top-ups to redundancy payments. The framework for the transition is broadly set out in the *Victorian Forestry Plan*<sup>94</sup>. Key elements include:

- **Timber supply commitments:** Under the Plan total harvest levels will be maintained at around current levels to 2024, then reduce by around 25% in 2025, and a further 25% from 2026 to 2030.<sup>95</sup>
- **Business and communities:** The \$120 million package is intended to provide support to businesses and communities affected by the Plan and the phase out of native forest logging. Various grants, vouchers and training will be available as outlined in the Plan. This includes Business Transition Support Vouchers - up to \$25,000 per business to engage appropriate professional services to develop a business response plan; Plant and Equipment Redundancy Payment - up to \$250,000 per business for items that have economic value but are unable to be sold; Victorian Timber Innovation Fund - grants for innovation that supports their transition from native timber to plantation fibre and transformative industry investments; Mill Site Rehabilitation - up to \$75,000 for the safe retirement and repurposing of mill sites; and Worker Transition Services and Coordination including Workers in Transition Scheme.<sup>96</sup>
- **Environment:** Under the Plan, 90,000 hectares of Victoria's remaining old growth forest located outside of formal reserves and protection areas would be protected immediately, and to protect threatened species, including the Greater Glider – alongside the Leadbeater's Possum, a further 96,000 hectares of forest across Victoria is now exempt from timber harvesting.<sup>97</sup>

It is our understanding that no legislative changes have yet been enacted to give effect to the policy commitments set out in the *Victorian Forestry Plan*. For example, the Office of the Conservation Regulator in Victoria advises that:

*“Until the policy commitments of the Victorian Forestry Plan become law we will:*

- *Develop a guideline for consistent identification and protection of old growth forests.*

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<sup>92</sup> See, for example, *Environment East Gippsland Inc v VicForests* [2020] VSC 335, *Kinglake Friends of the Forrest Inc. v Vicforests* [2020] VSC 394, *Wildlife of the Central Highlands Inc v VicForests* [2020] VSC 10, *WOTCH v VicForests (No 2)* [2020] VSC 99, *MyEnvironment Inc v VicForests* [2012] VSC 91.

<sup>93</sup> See, for example, The Guardian, *Native forest logging to be phased out by 2030 as Victoria plans timber transition*, 7 November 2019, <https://www.theguardian.com/australia-news/2019/nov/07/native-forest-logging-to-be-phased-out-by-2030-as-victoria-plans-timber-transition>

<sup>94</sup> See *Victorian Forestry Plan*, <https://djpr.vic.gov.au/forestry/forestry-plan>

<sup>95</sup> VicForests, Media Release - *VicForests to support native timber sector transformation*, available at <https://www.vicforests.com.au/about/transformation>, accessed 18 May 2021

<sup>96</sup> *Victorian Forestry Plan*, op.cit.

<sup>97</sup> See <https://djpr.vic.gov.au/forestry/forestry-plan>

- *Develop a guideline for application of modified harvesting rules for the Greater Glider.*
- *Use the best available information to direct surveying to areas with high likelihood of important forest values, including old growth forests and Greater Gliders*
- *Ensure that the most up-to-date results of the Forest Protection Survey Program are provided to VicForests and made available online.*

*Once measures from the Victorian Forestry Plan become law, we will regulate compliance through its established procedure for preventing harm, monitoring compliance and enforcing the law”.*<sup>98</sup>

- **New Zealand**

In New Zealand the logging of public native forests has been phased out through a series of decisions over a number of decades.<sup>99</sup> Timber logging of some species is still allowed in private native forests.<sup>100</sup> The planting of trees for timber production throughout the 1920s, 1930s and 1960s developed New Zealand’s plantation industry. There are currently 2.1 million hectares of plantation forest in New Zealand - 1.7 million hectares is productive and the remainder is in reserves and unplanted areas near bodies of water, and infrastructure.<sup>101</sup>

### **Opportunities for NSW**

In 2017/18, the National Parks Association of NSW put forwards its proposal for transitioning out of native forest logging in NSW. *Forests For All: Case for Change* puts forward an alternate approach to the management of public native forests in NSW.<sup>102</sup> The proposal seeks an end to industrialised logging in public native forests and a transition towards the use of public native forests for conservation, recreation and nature-based tourism.

Research indicates that timber plantations can provide a viable alternative to native forest logging in Australia,<sup>103</sup> and can retain employment within the industry (noting that alternative employment in forestry management including in fire management, conservation or tourism has also been identified). Our submission does not address the legal framework regulating the plantations in NSW. We note that a review of Plantations and Reafforestation Legislation was recently announced and that public submissions into the review can be made until 27 June. Information gleaned from that review may be of benefit to this committee.

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<sup>98</sup> See <https://www.vic.gov.au/timber-harvesting>

<sup>99</sup> See, for example, Nancy Swarbrick, 'Logging native forests', *Te Ara - the Encyclopedia of New Zealand*, available at <http://www.TeAra.govt.nz/en/logging-native-forests>; see also Kerr, Gary & Stewart, Glenn. (2013). *The Native Forests of New Zealand*, available at [https://www.researchgate.net/publication/258373372\\_The\\_Native\\_Forests\\_of\\_New\\_Zealand](https://www.researchgate.net/publication/258373372_The_Native_Forests_of_New_Zealand)

<sup>100</sup> See <https://www.mpi.govt.nz/forestry/native-indigenous-forests/>

<sup>101</sup> See <https://www.mpi.govt.nz/forestry/new-zealand-forests-forest-industry/>

<sup>102</sup> National Parks Association of NSW, *Forests For All: Case for Change*, May 2018, available at <https://npansw.org.au/wp-content/uploads/2018/06/Forests-For-All-Case-For-Change.pdf>

<sup>103</sup> Sanger, J et. al., *The opportunity for Australia’s native forests*, February 2020, The Australia Institute, op. cit.

## 5. Conclusion

In summary, our submission highlights the following:

- Forestry operations have significant, detrimental impacts on the environment and biodiversity, including threatened plants and animals, water and soil quality, and carbon emissions. These impacts have been exacerbated by the 2019-2020 bushfires.
- The 2019-2020 bushfires were unprecedented in terms of scale, intensity and extent and have put significant pressure on our native forests ecosystems and the timber and forest products industry, as a user of native forests.
- In addition, ongoing and intensifying environmental challenges – including climate change and declining biodiversity– will exacerbate impacts of forestry operations on native forests ecosystems in NSW.
- Environmental stakeholders have expressed concern that that the existing regulatory framework – in particular the Coastal IFOA and the NSW RFAs – is not consistent with the principles of ESFM.
- The current regulatory framework is also inadequate for responding to major events such as the 2019-2020 bushfires. Extreme weather events such as this are predicted to occur more frequently into the future.
- There is growing evidence that logging of public native forests may be no longer tenable, for both economic and environmental reasons, and particularly following the ecological and wood supply impacts of the 2019-2020 bushfire season.
- This inquiry provides a critical opportunity to examine the scientific, economic and environmental evidence as to the viability and sustainability of the industry continuing to undertake forestry operations in native forests. From a legal perspective, the failings of the current regulatory regime mean the overarching goal of ESFM is not being achieved and is unlikely to be achievable under the current framework.

### **We recommend that:**

1. Forestry operations in NSW native forests should be suspended following the 2019-2020 bushfires in both fire-affected native forests and unburnt areas serving as species-recovery refugia pending the outcome of the NRC post-bushfire advice.
2. The process by which the NRC prepares its independent, evidence-based advice on forestry operations under the coastal IFOA as the NSW public forest estate recovers from the 2019-20 bushfires should be transparent, and the NRC advice must be made public.
3. The current legal framework for regulating forestry operations in native forests on public and private land must be revised to better align with the principles of ESFM, including with respect to increased transparency and reporting, third party enforcement rights, and responding to environmental challenges such as climate change and biodiversity loss.

4. IFOAs, in particular the Coastal IFOA, should be revised and updated to take into account the impacts of the 2019-2020 bushfires.
5. The Government must finalise the PNF Review, including reporting the outcomes of the review and consultation on the Draft PNF Code. No changes should be made to the PNF Code until the PNF Review is finalised.
6. This Committee should examine the scientific, economic, and environmental evidence as to the viability and sustainability of the forestry and timber products industry continuing to undertake forestry operations in native forests.