



Representations on the implementation of the RFA's.



South East Forest Rescue 2009



Public Comment Submission on the Draft Report on Progress with Implementation of NSW Regional Forest Agreement(s).

Authors: Scott Daines, Scott Mackenzie, Lisa Stone and Tony Whan.

“The RFAs are widely perceived in the scientific community to have failed to deliver the intended protection for environmental, wilderness and heritage values that state and federal governments committed to when they signed the National Forest Policy in 1992”.[1]

South East Forest Rescue takes a firm stand on environmental protection of the native forest estate and expresses deep alarm at the welfare of forest-dependent threatened species and the cumulative impacts of industrial degradation of native forests that are exacerbating extinction rates and destroying soil, water, and carbon capacity. This assessment is of the ongoing operations of the RFA forestry management regime and is the result of personal monitoring since the *Forestry and National Park Estate Act 1998* (NSW) was witnessed being voted through the NSW Legislative Council by the Labour government and Coalition opposition of the day. That evening marked the point where the community lost the right to affect what happened to its native forest environment. SEFR's conclusions are based on extensive research and on-ground auditing and monitoring of the application of the RFA regime on unprotected native forest mainly in the Southern and Eden regions, but also the whole of New South Wales, Victoria, and Tasmania since the year 2000.

The Regional Forest Agreement 'negotiations' were flawed. Scientists became increasingly concerned when a political decision was made to further modify the RFA measures so that scientifically-based criteria were no longer independently applied as a first step in establishing an 'Ecological Bottom Line.' This was a crucial decision as it was very unlikely that any RFA would deliver Ecologically Sustainable Development, as the modified criteria allowed ecological values to be traded off against economic values.[2] The principles of ESD are now widely accepted after their introduction in 1992 through the signing of the Rio Declaration: the *Convention on Biological Diversity*. [3] Commonwealth, State and Local governments became bound by the *Intergovernmental Agreement on the Environment 1992*, [4] which contains the ratified principles. These principles are being systematically ignored by the RFA regime.

The RFA 'negotiations' were also flawed from a conflict dispute resolution perspective. When the level of compromise is not active, if the negotiations satisfy processes not outcomes, if the relevant stakeholders have not been identified accurately, if the stakeholders do not have authorisation to speak on behalf of others or make decisions, then the process is flawed.[5] This was the case with the RFA. The RFA process was a political attempt to quash conflict but as the Nature Conservation Council is not authorised to speak for anyone other than NCC and is not considered the 'peak environmental group' by anyone other than legislators thus the process was doomed to fail. Environmentalist's energies were diffused through the myriad of different committees, processes plus associated travel burdens and were often confounded by a lack of relevant data to make proper frank assessments. This settlement process bypassed the regulatory process in which the public interest, not represented by private parties, could be aired.

Environmental issues have a strong moral dimension. Environmental destruction and pollution is immoral and unethical. Mediation suggests that environmentalists should abandon their moral judgements and principles and acknowledge that the position of industrial polluters is as legitimate as their own.[6] The assumption that business and environmental interests are fundamentally compatible is erroneous. In denying there are any serious moral issues involved in the forestry dispute, the mediation of the dispute, involving moral principles or values, promotes a moral irresponsibility.[7]

...as between black and white, grey may sometimes seem an acceptable compromise, but there are circumstances in which it is entitled to work hard towards keeping things black and white.[8]

The process was presented as negotiation but the outcomes were finally determined and announced by the Government.

We call for the Independent Assessor of the review to have full and frank regard for the urgency of action on climate change and ending the rampant degradation of the native forest estate.

With Australia's existing plantations able to meet virtually all our wood needs, whether for domestic consumption or export, native forests are available for immediate climate change mitigation.[9]

We believe that current State management has gone beyond its scope as the public caretaker, has broken its pact with its citizens and is needing immediate reform. We suggest indigenous ownership of all public native forest, complete stop on private land deforestation, complete transfer of wood product's reliance to the plantation timber industry and the salvage recycled hardwood timber industry output, a single authority for national native forest stewardship modelled on the New Zealand example and an immediate nation-wide program of catchment remediation and native habitat reforestation. We assert that urgency is needed in the forest reform outlined.

We maintain that the pretence of implementing Ecologically Sustainable Forest Management has failed, is corrupt, and has not delivered on obligations. These unacceptable outcomes are at the expense of the current and future generations and are to the detriment of our unique flora and fauna. Currently on the South Coast of New South Wales thousands of hectares of native forests are being clearfelled every year. The Forestry Commission, trading as Forests NSW, descriptions for these practices vary from 'Australian Group Selection' to 'Modified Shelter Wood,'[10] yet they all amount to clearfelling or patch clearfelling on the ground. Old-growth, rainforest and mature age forests are being logged at an unsustainable rate. Eighty percent of trees felled are turned into woodchips, either at the Eden chipmill or at the various saw mills on the South Coast and then trucked down to the chipmill. To meet wood supply commitments, the native forest managed by Forests NSW is being cut faster than it is growing back.[11] FNSW have continuously logged over quota since the implementation of the RFAs. We believe this to be immoral and uneconomic.

We call for forestry operations in areas covered by RFAs to be subject to an independent environmental assessment that is scientifically sound and rigorous. The scientific processes in the RFAs were politically compromised. Established criteria for forest conservation were not fully applied. There are large areas of high-value conservation forest that would have been reserved if the original RFA criteria for forest conservation had been fully applied.[12]

We believe the Draft Report to be erroneous and limited in many material aspects and is indicative of how the RFA regime has performed thus far.

The *Regional Forest Agreement for Southern 2001* clause 38 states that:

within each five year period, a review of the performance of the Agreement will be undertaken.

And:

the mechanism for the review is to be determined by both parties before the end of the five year period and the review will be completed within three months.

We assert that the review reporting approach adopted is perverse, capricious, and lacking in material substance. If the scope or terms of reference are too narrow in a process, the process will be flawed and a successful outcome cannot be reached. This is further indication that the current RFA policy is irrational and must be subject to reform as a matter of urgency.

We discredit the Draft Report statement:

If a milestone was due during the first five years, but was completed by 30 June 2008, it is discussed as completed (e.g. even if it was completed after the first review period).[13]

This statement is erroneous and unsatisfactory in both timeline and content.

To tell deliberate lies while genuinely believing in them, to forget any fact that has become inconvenient, and then, when it becomes necessary again, to draw it back from oblivion for just so long as it is needed, to deny the existence of objective reality and all the while to take account of the reality which one denies—all this is indispensably necessary.[14]

We rate the extent to which milestones and obligations have been met, the results of monitoring of

sustainability indicators, and the performance of the Agreement as disingenuous and exceedingly below satisfactory. We assert that the performance of the Agreement in meeting its specific milestones has been an abject failure, consistently late, and professionally inadequate.

We rate the allegations of openness and transparency of the RFA regime as verging on the corrupt, if not *gross negligence*. We refer the Independent Assessor to the Freedom of Information court actions of Watt v Forestry Commission and Digwood v Forestry Commission.[15]

We determine there is a dis-connect within the RFA regime such that the native forest timber industry has exerted undue influence to ensure desirable outcomes for its shareholders at the expense of the current and future generations of the State. We believe this to be immoral.

We welcome the national park additions to date as a progressive step but consider that the world-class benchmark was set by New Zealand in 2002, and that Australia has been tardy and negligent in its attempts at meeting this world standard.

We believe the RFA process constitutes an abandonment by the Commonwealth of its responsibilities for forests. Under section 38 of the *Environment Protection Conservation and Biodiversity Act 1999* (Cth) the Commonwealth undertakes to refrain from exercising its environmental legislative powers for the duration of the Agreement (2023).

RFAs were endorsed by the Commonwealth on the basis that the States had conducted a thorough environmental assessment of their forests, which they had not. The data was either flawed or non-existent. Areas that fell under these RFAs were made exempt from the EPBC Act on the basis that environmental assessments had already been undertaken and that environmental considerations were contained in the RFAs, which they are not. As an example, in Victoria members of the Victorian government bureaucracy removed crucial chapters of a state government commissioned report *Ecological Survey Report No.46 - Flora and Fauna of the Eastern and Western Tyers Forest Blocks and Adjacent South-Eastern Slopes of Baw Baw National Park, Central Gippsland, Victoria* which recommended the protection of the Baw Baw plateau and escarpments. The removal of these chapters ensured that one of the worlds most significant ecosystems remained available for clear fell logging.[16]

We call for an immediate enactment of clause 8 of the RFAs, for which the grounds have been triggered, giving effect to ending the RFAs as the mode of native forest mismanagement.

Ecologically sustainable development

Before we proceed erroneous and mistaken definitions of ESD must be clarified. The definition of *ecologically sustainable development* had its origins in the report of the World Commission on Environment and Development, *Our Common Future*. [17] Development was defined as sustainable if:

“It meets the needs of the present without compromising the ability of future generations to meet their own needs.”

In the international community the term is *sustainable development*. In Australia Bob Hawke had need to place the word *ecological* in front of the phrase as developers believed they now had carte blanche to demolish the environment.[18] Thus the term is now defined in Australia as development that is *ecologically* sustainable.

The RFAs state that their purpose is to:

provide for the ecologically sustainable management and use of forested areas in the regions.[19]

The definition currently in place is contained within the *Protection of the Environment Administration Act* at s6(2):

Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent

environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and *ecological integrity*—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration.

There is much uncertainty on the effects of climate change but one of the certainties is that deforestation is one of the biggest causes.

The loss of natural forests around the world contributes more to global emissions each year than the transport sector. Curbing deforestation is a highly cost-effective way to reduce emissions; large scale international pilot programmes to explore the best ways to do this could get underway very quickly.[20]

The Stern Review goes on to state in Annex 7f:[21]

Deforestation is the single largest source of land-use change emissions, responsible for over 8 GtCO₂/yr in 2000.

Deforestation leads to emissions through the following processes:

The carbon stored within the trees or vegetation is released into the atmosphere as carbon dioxide, either directly if vegetation is burnt (i.e. slash and burn) or more slowly as the unburned organic matter decays. Between 1850 and 1990, live vegetation is estimated to have seen a net loss of 400 GtCO₂ (almost 20% of the total stored in vegetation in 1850).[22] Around 20% of this remains stored in forest products (for example, wood) and slash, but 80% was released into the atmosphere. The removal of vegetation and subsequent change in land-use also disturbs the soil, causing it to release its stored carbon into the atmosphere.[23] Between 1850 and 1990, there was a net release of around 130 GtCO₂ from soils.

Also a definition of CAR is in order. The original definition was:

Comprehensiveness: which refers to the extent to which a reserve system contains samples of the major forest ecosystem types in a region.

Adequacy: entails a suite of considerations that enable an evaluation of the extent to which the long term ecological viability of conservation values is ensured.

Representativeness: assesses the extent to which the variation and diversity within each major forest ecosystem is protected.[24]

There is an obvious definite disjunction between what the native forestry industry believe is ‘best practice’ and what independent scientists, academics and eighty percent of the community believe is sustainable. FNSW seem to be oblivious to the word ‘ecologically’.

Review of Milestones

In the light of the review being incredibly overdue it is erroneous that a milestone can be considered completed if it was reached after the due date of the first five yearly review. When milestones that were due five years ago are either not completed, or not attempted, an indication is given of the lack of will of legislators and their agencies, both past and present, to adhere to international and domestic obligations.

Milestone 1: Not Due. As this milestones deadline is fast approaching SEFR recommends that termination procedures under clause 8 be instigated forthwith. The option to extend the agreement, given what is now known about climate change, the environment, threatened species decline and the FNSW performance of the agreements, is without doubt a moot option.

Milestone 2: Late. As previously stated this milestone is overdue with no acknowledgement of the fact. To state that the review conclusion is completed is erroneous and a misrepresentation.

Milestone 3: Late/Not Done. This milestone is also very overdue. The Draft Report states this milestone should be completed “In time for the first five year review.” The ESFM reports available are for the years 1999-2000, 2000-2001 and 2001-2002. The statement that all reports up to 2005-2006 are completed is erroneous as evidenced by the DECC website.[25]

When undertaking forestry operations on State forests and Crown timber land in the Upper and Lower North East, Southern and Eden regions, Forests NSW and its contractors must comply with the licences and conditions in the IFOAs. Annual reports contain details of breaches and compliance with IFOAs for each region.

Annual Progress Reports

- * Progress Report - 1999-2000
- * Progress Report - 2000-2001 plus appendices
- * Progress Report - 2001-2002

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This is in breach of the FNPE Act. It is impossible to review the sustainability indicators without annual reports. The review conclusion stating this milestone is 'underway' is erroneous.

Milestone 4: Late. Although this milestone is not applicable until after the first review again this milestone is not completed and long overdue. Nowhere is it more apparent than in this milestone of the non-compliance with legislated requirements by FNSW, various legislators and the RFA regime.

Within each five year period, a review of the performance of the Agreement will be undertaken.[26]

The Commonwealth will table in the Commonwealth Parliament the signed Regional Forest Agreement and, when completed, the annual reports detailing achievement of the milestones for the first four years of the Agreement and the first five-yearly review on performance against milestones and commitments.[27]

The word 'will' in the Oxford Concise Dictionary is defined as:

- 1 (In the second and third persons, and often in the first; see 'shall') expressing the future tense in statements, commands or questions.

Section 9 of the *Interpretation Act 1987* (NSW) states:

In any Act or Instrument, the word 'shall', if used to impose a duty, indicates that the duty must be performed.[28]

Thus the RFA regime and FNSW have been operating outside the law since 2004.

Milestone 5: Late/Not Done. This milestone requires the parties to report annually on the achievement of the milestones for the first four years. Whilst some reports are available, none of them have been completed and tabled in time annually. The first report for Eden and the Upper and Lower North East were one year overdue. The next two reports for Eden and Upper and Lower North East were three and four years overdue respectively. The last two reports for those areas were four and five years overdue respectively. Southern Region reports are similarly late. Again there is no mention of this and to call the review conclusion complete is misleading to say the least.

Milestone 6: Late/Not Done. When RFA reports were tabled in the Senate in 2005 Senator Ridgeway stated:

Essentially what we have is four slim annual reports dated 2001 and 2002 covering New South Wales, Victoria, Western Australia and Tasmania. The considerable time lapse between the date of the reports and the tabling of the reports is of great concern, especially when this is a contentious issue and one that I believe all Australians are certainly interested in, and one that came up during the recent federal election campaign. I hope it is not indicative of the attention to detail that the government is exercising in the management of Australia's forests and forest reserves.[29]

To call this milestone completed is erroneous when the review period being focussed on is 1999 to 2006 yet the Annual reports end at 2004. Surely the 2005 and 2006 reports would need to be completed to support the assertion of completion.

Milestone 7: Late/Not Done. The inclusion of data from Eden is erroneous as this milestone is applicable to Upper and Lower North East and Southern regions. To state that this milestone has been completed is specious. The time lag between tabling of the Upper and Lower North East RFAs in the House of Representatives in 2000 and tabling in the Senate in 2005 is extraordinary. The Southern RFA was tabled in 2002, more than a year after signing in 2001. Again the Annual reports only extend to 2003 and 2004 thus the review conclusion cannot be deemed completed.

Milestone 8: Late/Not Done. The Draft Report states at page 30:

These reports are in the process of being tabled.

The progress of this milestone is appalling. The only reports tabled and available are for the years 1999-2000, 2000-2001 and 2001-2002. The last two reports were tabled up to five years late. The statement that "The reports for 2002/03 to 2005/06 have been prepared.." is erroneous. These reports have not been tabled and are not publicly available. SEFR has been informed every year that these reports are "about to be tabled." SEFR is happy to provide the numerous letters and emails asserting this fiction. Once again to state the "report completed and tabling underway" is a misrepresentation of the facts. These reports are

required by the FNPE Act and contain crucial information required for all the reviews currently underway.

Milestone 9: Completed. We have collated substantial evidence indicating that the Integrated Forestry Operations Approvals are inoperable, unenforceable, and systemically rorted with non-compliance.[30]

Milestone 10: Completed/Late. This milestone was completed almost a year late. As the IFOAs are being reviewed under another review process further specific submissions will be provided as due.

Milestone 11: Completed. We regret the paucity of detailed information proving that this money has been productively used. Insufficient transparency for this milestone signifies that the process is open to corruption. We call upon the Independent Assessor to fully disclose where all the money went. SEFR has strong evidence that logging contractors who were recipients of the program did not purchase machinery that the grants were earmarked for. Cocks Pulp received \$50,190 for Business Exit Assistance.[31] This company is still logging and hauling pulp to the Eden chipmill.

One logging contractor purchased a truck then sold the truck within the week of purchase. Some logging contractors took redundancy/retraining packages and are now back working.

Milestone 12: Completed. We request copies of all committee meeting minutes from November 2000.

Milestone 13: Late/Not Done. We note that “the near future”[32] from past experience usually is a long time frame. This milestone is having trouble fulfilling it’s obligations. We note accountability and transparency issues with this obligation.

Milestone 14: Completed/Late. We note Southern was almost three and a half years late on this milestone.

Milestone 15: Late/Not Done. That data collection could not be continued for the Tantawangalo Research Catchments seems incongruous given that this data is on water flow. SEFR would welcome research output from the Yambulla Research Catchments studies anytime when ready.

Milestone 16: Completed/Late. This report should be freely publicly available. It can only be obtained at cost through the Department of Primary Industries Forests internet site:

<http://www.dpi.nsw.gov.au/research/forestry>. Furthermore, the provision of information from DOPI and FNSW is dispositive to the ideas of transparency. For example, The Regional Forest Agreements and Forest Agreements require Forests NSW to establish long term wood supply agreements.

Ian Barnes Regional Manager, Southern Region stated:

“I am not aware of a document which describes these wood supply agreements.”[33]

Milestone 17: Completed Late. We maintain that this legislation is nefarious to the conservation and ecological health of the native forests under it’s domain. It is in breach of domestic and international obligations. We call for the *Regional Forest Agreement Act 2002* (Cth) to be repealed, the amendment 75 2 (B) of the EPBC Act to be repealed and part 3, section 38 of the EPBC Act to be reinstated.

Milestone 18: Late/Ongoing. We accept the massive workload imposed on National Parks and Wildlife Service/Department of Environment, Climate Change and Water to produce these plans of management for every national park, yet a more streamlined effective approach could be found, like the New Zealand model for instance.

Milestone 19: Not Done. The draft report says that details of current draft or final management plans can be viewed on the DECC website:

<http://www.environment.nsw.gov.au/parkmanagement/ParkAndFireManagementPlansByCategory.htm>

but when tried, this link failed.

Milestone 20: Completed/Late. In regard to the Southern region this report was late by three months but considering the lead time to produce the *State of the Parks Report* was only five months, for DECC to have completed the milestone in eight months is highly commendable, whereas the efforts by FNSW to meet reporting milestones are lamentable.

Milestone 21: Completed/Late. We oppose the notion that the CAR Reserve System is genuinely based on the principles of Comprehensiveness, Adequacy and Representativeness - the declining populations of forest-dependent threatened species does not support the Government’s argument. The output of the CAR was deeply biased towards industry objectives and as such is a flawed document.[34]

...serious flaws in the information and scientific process underpinning the RFAs undertaken to date have been identified.[35]

Most of the assessments conducted depended largely on the then existing incomplete information, outdated maps and not on localised, on the ground information about particular areas. As a result in many cases the

science underpinning the assessments was uncertain and based on ad hoc information.[36] Moreover, the assessments were not conducted based on ecological criteria but on state boundaries.[37] As a result, contiguous areas on various state borders were categorised as separate regions despite clear ecological connections.

We particularly welcome the post-RFA additions of Monga and Upper Deua into the national parks estate, though it is a pyrrhic victory, as evidenced by the later use of the buffer-on-buffer IFOA amendments as they are currently being interpreted on the ground.[38]

Milestone 22: Done. We ask for output from the studies on the effectiveness of the Threat Abatement Plan. This plan cannot have proved effective at removing foxes due to the fact that the 1080 baiting program is continuing until 2010.[39] The effect on non-target native species is of concern.

Non-target animals can also be at risk if they consume poisoned animals or their carcasses.

Among native mammals, unadapted wombats, macropods, possums and some rodents can be killed by herbivore baits. Birds may also be killed by 1080 baiting. Scavenging species such as magpies and crows have been recorded as occasional casualties, together with some introduced species (sparrow, starlings, doves and pigeons). There are also reports from the early 1990s of crimson rosella (a highly sensitive species) being killed by carrot baits laid for rabbits.[40] Most rodent species that have been tested in Australia and elsewhere are highly sensitive to 1080 poison.[41]

There is some concern over the effects on Tiger Quoll populations. While Kortner et al state one of the nine deaths of tiger quolls in the study could be directly attributed to 1080 poisoning,[42] the research by Belcher suggests there is grounds for concern.

one population in southern NSW declined dramatically, coinciding with 1080 baiting for wild dogs.

Population declines were found to correlate with 1080 poison baiting programmes.[43]

Sensitivity of selected native Australian species to 1080[44]

| Species | Weight kg. | Sensitivity | Baits required |
|------------------|------------|-------------|----------------|
| Magpie | 0.3 | 1 | 1.3 |
| Wedge-tail eagle | 4 | 1 | 15.2 |
| Eastern Quoll | 1 | 3.1 | 3.5 |

Sensitivity: the higher the number the more sensitive a species to the poison '1080'.

Baits required: the average number of baits consumed where death is likely.

Milestone 23: Late/Not Done. The *Threatened Species Legislation Amendment Act 2004* (NSW) has enabled DECC to turn a blind eye to the full extent of the species decline throughout the state. Conversely it has enabled Forests NSW to view the IFOA Licence Conditions as able to be broken with impunity at a significant cumulative detriment to the forest-dependent threatened species of the state, as long as it was 'an accident,' which is reportedly seventy eight percent of the time.

The NSW RFAs provide for environmental protection in respect of forestry operations through management prescriptions and the CAR reserve system.[45]

This statement is erroneous. The environment in the areas covered under the NSW RFAs is in drastic decline as evidenced by the ever growing list of threatened species, the lack of water in all rivers where logging is occurring in their catchments and the closure of oyster farmers business due to siltation.

...it can be estimated that the annual sediment export from the catchment in an undisturbed condition would be of the order of 1,056 tonnes/year, and 2,640 tonnes/year for the existing catchment logging land use scenario.[46]

Milestone 24: Late/Lacking Credibility. The Gulaga Blockade in 2006 is a prime example of words without deeds. The initial consultative process on the logging operation was flawed. When Forests NSW were publicly served with an Eviction Notice signed by the traditional owners of the area, FNSW disregarded the notice completely and used police enforcement to clear the area so that logging of the remnant native forest of compartment 3046 of Gulaga Mountain could continue. It is the intent of FNSW to log compartment 3047 this financial year. We are aware that many indigenous people of the area do not agree with the proposal and do not condone the logging being inflicted upon the remaining native forest of the state.

Aboriginal people that we have spoken with are not impressed with what is happening to their bush on the south coast. The Yorta Yorta Nation have consistently been strongly opposed to logging of the Murray River red gums country.

Milestone 25: Completed.

Milestone 26: Ongoing/Late. Evidence collated by SEFR clearly demonstrates that the EMS of Forests NSW has not improved its practices or shown responsible forest custodianship. In the Eden region it has taken almost ten years to instigate the production of a clear and concise set of identification rules for Rocky Outcrops for use and implementation in the field. We note that the EMS Manual was not even thoroughly checked for typographical errors before release, for example on page two the word 'environmental' is misspelt. We request copies of the information that would have been available had the first two hotlinks on page three worked:

<http://www.visualvault.com/visualvault/viewfile.aspx?DIID=3f3102eb-c5d0-49d9-9f77-8a51e5ab2c6f>

<http://www.visualvault.com/visualvault/viewfile.aspx?DIID=5fa1f989-d699-4d19-9aa3-ba079b745fef>

We protest that all these documents are not available for public scrutiny and therefore any claims of accountability by the RFAs are simply not credible. The most ironic of these examples is Example 2, page five of the EMS: the 'Communications Strategy' hotlink, is not publicly available. More examples ensue in the EMS. We assert there has been no genuine attempt by the RFAs to perform to the expectations of their obligations. We note page fourteen of the EMS[47] describes a Forest Health Strategy assessment in preparation, these documents were needed when the EMS was released. On page eleven the EMS states that:

Monitoring of disturbance regimes is carried out through the Landscape Biodiversity Monitoring program, piloting in Western Region as of August 2008, and research.

The monitoring and research output should be publicly available now.

Milestone 27: Late/Unsatisfactory. If this milestone was to be met for the first five yearly review in 2003 for Eden and Upper and Lower North East, and 2006 for Southern then the milestone is late having only been completed for this long overdue review.

The fire management regime practised by FNSW is below standard. For example in 2005-06 seven percent of State forest was burned in wildfire and 38,008 hectares were burned as 'hazard reduction' for a total expenditure of over eight and a half million dollars.[48] This is a waste of taxpayers money given the concerns citizens are expressing over climate change.

An example of these 'mitigation measures' is the incident of 27 August 2009. A 'fuel management' fire that was started by FNSW in compartments west of Gulaga Mountain, jumped containment lines and 'got away' burning out of control up the mountain and continued burning down the eastern flank threatening the two Tilba villages.[49] Previously communities had called for no burns on the mountain and requested FNSW to extinguish this fire. This fire had been burning for two weeks. FNSW ignored community concerns and the severe drought weather conditions. Homes were threatened, sacred sites burnt, rainforest decimated and threatened species like the Long Nosed Potoroo in extreme danger if not exterminated.

The Rural Fire Service states:

In southern NSW (generally from the Illawarra south) bush fire hazard reduction burning is typically conducted in autumn. Burning in spring (after fuels have dried out sufficiently following winter rainfall) is usually avoided because there is potential for re-ignition in summer when rainfall is lowest and conditions are hot and dry. Spring burning in the south should only be carried out by, or with the assistance of, very experienced burning crews and should be avoided in years of below average rainfall.[50]

The other factor on the South Coast is the high wind season which is in August through to October. They also state:

These conditions will take into account environmental factors such as:

- a) the presence of threatened species or endangered ecological communities;
- b) the risk of soil erosion or mass movement;
- c) fire history and minimum fire frequency intervals for specific vegetation types;
- d) the location of water bodies and waterside vegetation; and
- e) the effect of smoke on the local community.

The conditions may include measures to protect biodiversity by limiting the frequency of burns, or excluding fire from specific areas. Failure to comply with the conditions will result in fines if damage is done to the environment.[51]

This is not an isolated incident. There have been numerous instances of fires ‘getting away’ from FNSW and burning out of control.

There is a perception among forest fire management that prescribed burning is simply lighting fires to burn-off the undergrowth and that this can be carried out with only a basic understanding of fire behaviour...Indeed where burning off has been carried out this way the results have been less than favourable and has resulted in injury and death. In the eastern states prescribed burning is largely carried out using rules of thumb based on a MacArthur’s original burning guide for dry eucalypt forests produced in the 1960s. (MacArthur 1962)[52]

FNSW administrative breaches can result in damaging consequences. For instance Forests NSW “Southern Region Burning Proposals 2007” contains Burning Plan Number 07BAN3053 (the one that ‘got away’) further stating that the area’s last burn was in 1996, yet on the adjoining Burning Plan Number 07BAN3048 parts of the area are mapped as last burned in 2000, 2001 and 2005. These areas have been heavily logged which leaves incredibly high amounts of tree heads, leaves, tree butts and bark. For example post logging fuel loads are said to be fifty to one hundred and fifty tonnes per hectare of logging slash and ten to twenty tonnes per hectare in between tree heads.[53]

FNSW states it is committed to the RFA ESFM practices and will ensure that FNSW will:

Minimise adverse impacts on the environment; Minimise the risk of escape causing wild fire; and Monitor the impacts on the environment.[54]

SEFR would contend that FNSW has not performed it’s duty to these principles.

Clearfelling and burning, which is likened by forest industries as akin to the natural disturbance of a high intensity bush fire, causes even-aged forest regrowth, and has been shown to be detrimental to those organisms that rely on successional growth.[55] This is especially true for those organisms that rely on the retention of tree hollows.[56]

Although fire may be a natural disturbance, periodical prescribed burning can alter both long and short-term ecological processes, and irreversibly affect ecosystem diversity and productivity. In particular, prescribed burning may affect natural succession, organic production and decomposition, nutrient and water circulation, and soil development.[57] Further, to use ‘grazing’ as a mitigation measure is ingenious.[58] The development of cows that eat sticks and leaf litter must be a world first.

The change in species composition of ecosystems due to the preferential grazing of palatable species is only one effect from grazing. Cloven-hoofed animals have contributed to soil compaction and general degradation of ecological processes by causing the loss of leaf litter and the associated loss of soil micro-organisms and available carbon, reduced soil water infiltration rates and an increase in soil erosion.[59] These effects are particularly pronounced in temperate woodlands.[60]

Milestone 28: Completed. We note that data on the effectiveness of the programs is generally lacking.

Milestone 29: Completed. We note that data on the effectiveness of the programs is generally lacking.

Milestone 30: Late/Not Done. We contend that this milestone has not been taken seriously by the RFA regime. Non-compliance is situation normal. Auditing reporting on a public level might be provided in the Forestry Approvals and IFOA reports but because these documents are either not tabled or consistently late they are effectively not in the public domain. There have been no reports for the Southern region at all.

Milestone 31: Late/Not Done. We determine that the auditing mechanisms of the RFAs are not credible, lack the necessary comprehensiveness, are underfunded and understaffed, systematically abused, lack objective independence, are overly reliant of self-auditing processes, have not utilised, or been excessively weak in the enforcement of non-compliance and have not resulted in demonstrably improved practices.

For example DECC condoned breaching the TSL conditions saying:

Forests NSW did acknowledge that whilst some of the trees marked for retention did not strictly meet the requirements of hollow-bearing, an adequate number were retained across the landscape when unmarked trees were included in the count.[61]

We contend that non-compliance is par for the course during forestry operations. It is obvious from the public statistics on page sixty four to sixty seven that warning letters are regularly issued but the issues of non-compliance are taken no further. It is evident that the Department Of Fisheries compliance role has been relegated to rubberstamping with only one reporting anomaly non-compliance for the whole period

the statistics cover. We state the RFA regime has seriously dropped the ball on operating within it's legal framework. To deem this milestone completed at page sixty seven is a blatant untruth. There have been no prosecutions of breaches in the Southern and Eden regions since the RFAs were implemented. The 'accounting report for breaches and audit results' in the Draft Report is erroneous. Table 4.2 Audit results in the lower North East Region 2002/03 notes there were no complaints for breaches of the EPL and no Clean-up notices issued. SEFR has documents and correspondence between the Black Bulga Range Action Group and the EPA during that year regarding several complaints of non-compliance issues which resulted in the issuing of a Clean-up notice.[62]

EPL Breaches from 2000 to 2006 [63]

During 1999–2000, State Forests identified 2,039 (875) breaches of pollution control licence (PCL) conditions for the whole estate. Breaches included incorrect felling of trees into filter strips, machine encroachment in filter strips, excessive rutting and inadequate slashing of extraction tracks.[64]

2000

| EPL Condition No | Brief description of condition | No. of Times Breached |
|------------------|---|-----------------------|
| Sch 4, Con 18 | Tree felled into filter strip | 353 |
| Sch 4, Con 41 | Snig track exceeded 25 degree in land classified as IHL 2 or 3 | 2 |
| Sch 4, Con 22 | Machine operator not complying with operating condition for buffers | 3 |
| Sch 4, Con 20 | Machine entered filter strip | 5 |
| Total | n/a | 363 |

In 2000-01 the number of checks were 3,424 and FNSW identified 1,538 breaches. There were five fines issued by the EPA for breaches of water regulation.[65]

2002

| EPL Condition No. | Brief description of Condition | No. of Times Breached |
|--------------------|---|-----------------------|
| Sch. 4, Con 17 | Tree felled from within filter strip | 1 |
| Sch. 4, Con 18 | Tree/Part of tree into filter strip | 463 |
| Sch. 4, Con 19 | Tree/Part of tree removed from filter strip | 1 |
| Sch. 4, Con 20 | Machinery entered filter strip | 4 |
| Sch. 4, Con 41 | Grade of snig track exceeded 25 degrees | 1 |
| Sch. 4, Con 70/1/2 | Inadequate snig track drainage | 1 |
| Sch. 5, Con 9 | Inadequate road drainage spacing | 1 |
| Total | n/a | 472 |

The number of checks conducted was 3,431. State Forests identified 1,242 breaches made by internal and external contractors. Sixty-six per cent of these breaches related to accidental felling of trees into filter strips or other exclusions relating to drainage features. Other breaches include damage to habitat or trees to be retained for future habitat. The Environment Protection Authority issued four fines for breaches of water regulation.[66]

2003

| EPL Condition No. | Brief description | Full description of Bread | No. Times Breached |
|-------------------|---|---|--------------------|
| Sch. 4, Con 18 | Trees must not be felled into filter strips | Trees felled into filterstrips and determined by State Forests to be negligent or poorly judged | 65 |
| Sch. 4, Con 19 | Trees/Parts of trees felled into filterstrips must not be removed | Instances where trees or parts thereof that were felled into filterstrips were removed | 4 |
| Sch. 4, Con 20 | Machinery must not enter filterstrips | Machinery entered filter strip | 3 |
| Sch. 4, Con 18 | Trees must not be felled into filterstrips | Trees felled into filterstrips and Determined by State Forests to be Negligent or poorly judged | 8 |
| Total | n/a | n/a | 80 |

2004

| EPL Condition No. | Brief description | Full description of Breach | No. Times Breached |
|--------------------------|---|---|---------------------------|
| Sch. 4, Cond. 18 | Trees must not be felled into filter strips | Trees felled into filterstrips and determined by State Forests to be negligent or poorly judged | 96 |
| Sch. 4, Cond. 19 | Trees/Parts of trees felled into filterstrips must not be removed | Instances where trees or parts thereof that were felled into filterstrips were removed | 2 |
| Sch. 4, Cond. 20 | Machinery must not enter filterstrips | Machinery entered filter strip | 1 |
| Sch. 4, Cond. 70 | Requirement to construct snig track drainage | Failure to construct snig track drainage structures or retain groundcover where required to do so | 1 |
| Sch. 5, Cond. 22 | Wet weather restriction | Haulage on natural surface roads must cease when there is runoff from the road surface | 1 |
| Sch. 4, Cond. 20 | Machinery must not enter filter strips | Falling machine was backed into filter strip to allow positioning to fall adjacent tree | 1 |
| Sch. 4, Cond. 18 | Trees must not be felled into filter strips | Trees felled into filterstrips and determined by State Forests to be negligent or poorly judged | 6 |
| Total | n/a | n/a | 108 |

Forests NSW completed 3,558 reviews (3,701 in 2004-05), covering items of compliance and identified 565 breaches (1,615) for the whole estate.[67]

2005

| EPL Condition | Brief Description of Condition | Full Description of Breach | No. Times Breached |
|----------------------|---|--|---------------------------|
| Sch. 4, Cond. 6 | Filter strips must be retained along all drainage lines | Section of 1 st order stream boundary left unmarked | 1 |
| Sch. 4, Cond. 18 | Trees must not be felled into filter strips | Trees felled into filter strips and determined by FNSW to be negligent or poorly judge | 15 |
| Sch. 4, Cond. 20 | Machinery must not enter filter strips | Harvester and dozer entered unmapped drainage line | 2 |
| Sch. 4, Cond. 20C | Trees within protection zones must not be felled | Tree felled 8m from 1 st order drainage line | 1 |
| Total | n/a | n/a | 19 |

2006

| EPL Cond. | Brief Description | Full Description of Breach | No. |
|------------------|--|---|------------|
| Sch. 4, Cond. 18 | Trees must not be felled into filter strips | Trees felled into filter strips and determined by FNSW to be negligent or poorly judged | 12 |
| Sch. 4, Cond. 20 | Machinery must not enter filter strips | Harvester and dozer entered unmapped drainage line | 1 |
| Sch. 5, Cond. 37 | Roads must be drained between 5m & 30 m of drainage feature crossings | Rubber flap and mitre drain at drainage feature crossing ineffective | 1 |
| Sch. 5, Cond. 52 | Soil stabilisation must be undertaken to all disturbed areas within 20m of crossings | Fill batter of crossing unstable and depositing some sediment into filter strip | 1 |
| Sch. 4, Cond. 70 | Drainage of snig tracks | Snig track drainage doesn't meet EPL conditions | 4 |
| Total | n/a | n/a | 19 |

Thus there have been 701 breaches of the EPL in this period in the Southern region. These figures are provided by FNSW and as such can be viewed in light of the history of FNSW provision of data.

The Commission was unable to provide all the information that was required to confirm the valuation.[68]

We were unable to confirm the assumptions used were statistically reliable.[69]

Conversely the Draft Report states there were 322 breaches for these periods. There is a dramatic difference. The RFA Progress Report 2003-04 states 44 EPL/TSL breaches and 592 FNSW breaches. The EPL Annual Reports for that year state 108 breaches, the Non-compliance register states 212 breaches.

Summary of South Coast Non-compliance register for 2002-2006

Disciplinary Action Taken

| Breach | Licence Condition | No. of Breaches | Accider | error | Verbal | Written | Other | None |
|--|-------------------|-----------------|------------|------------|-----------|-----------|-----------|--------------|
| Tree/Part of tree over filter/stream exclusion zone | 5.7g 5.7a11 | 874 115 | 703 81 | 171 34 | 9 5 | 9 9 | 16 5 | 840 96 |
| Tree/part of tree over exclusion zone – rare forest ecosystem | 5.5a | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| Tree/part of tree over exclusion zone – Rocky Outcrops | 5.11a | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Tree/part of tree over exclusion zone – Ridge/Headwater Habitat | 5.8f | 11 | 7 | 4 | 0 | 0 | 0 | 11 |
| Tree/part of tree over exclusion zone – Rainforest | 5.4f | 21 | 14 | 7 | 1 | 0 | 0 | 20 |
| Tree/part of tree over exclusion zone – Subterranean Roost | 5.14.2 | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| Tree felled into stream exclusion zone | 5.7.1A 11 | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Removal of Tree/Part of tree from filter/stream exclusion zone | 5.7.14J | 1 | 0 | 1 | 1 | 0 | 0 | 0 |
| Excessive logging debris against retained tree | 5.6g11 | 27 | 20 | 7 | 7 | 0 | 0 | 20 |
| Damage to retained tree | 5.6g | 63 | 56 | 7 | 1 | 0 | 1 | 61 |
| Damage to and debris under retained tree | 5.6.A.G(1+11) | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Machine entry into filter strip/stream exclusion zone | 5.7h 5.7.1a111 | 9 | 1 | 8 | 2 | 1 | 1 | 5 |
| Machine entry into exclusion zone – Owl Habitat | 6.4.2 | 1 | 0 | 1 | 0 | 1 | 0 | 0 |
| Machine entry into exclusion zone – Yellow Belly Glider Den Site | 6.13 | 1 | 0 | 1 | 0 | 1 | 0 | 0 |
| Machine entry into exclusion zone – Flying Fox exclusion | 5.14.4 5.14.5 | 1 1 | 1 1 | 0 | 0 | 0 | 0 | 1 1 |
| Filter strips and protection zones not correctly or completely marked for 1 st order stream | 5.7a | 1 | 0 | 1 | 1 | 0 | 0 | 0 |
| Total | n/a | 1,134 | 890 | 244 | 27 | 21 | 23 | 1,063 |

Non-Compliance statistics by year

| Year | No. of Breaches | Percentage |
|------|-----------------|------------|
| 2002 | 485 | 43% |
| 2003 | 369 | 33% |
| 2004 | 212 | 19% |
| 2005 | 57 | 5% |
| 2006 | 11 | <1% |

The telling feature of these statistics is that ninety three percent of the time no action is taken against the non-compliance breach and the action that is taken is cursory. The general decline in statistical information on the occurrence of breaches is either due to vastly improved performance in the field, or a decrease in collection and auditing. The evidence in recently logged compartments suggests the latter.[70] Some examples given for non-compliance from the Register are:

* Two trees pushed into Rocky Outcrop/Tiger Quoll buffer prior to treemarking in the field.

- * Operator was parking machine(977 Track Loader) out of sight for weekend in filter strip.
- * Push out dead stag for safety reasons. Stag broke up falling across line 20m F.S.
- * Enter a stream exclusion zone with dozer whilst pushing a tree off the 1st order stream boundary.
- * Contractor has attempted to remove debris from 1 tree but placed another 2 more trees with debris around base near filter unable to remove without putting machine over buffer.
- * Tractor driver pulled two heads out of 15m filter.
- * Skidder was stuck facing downhill. Winch rope was too short to reach anything. Owing to safety risk of skidder rolling over it could not be turned before the line. Driver was left with no option but to drive over line to turn with safety.

These excuses are not only grossly inadequate they highlight the lack of care by the logging contractors and, in accepting these excuses, the lack of genuine will on the part of the State Forest Officers to regulate. This has a compounding effect in that DECC cannot do any enforcement of worth on State Forest Officers or regional managers. This is graphic evidence of why the RFA regime is a failure. When threatened species and their habitats are in danger through industrial logging practices and being negligently managed by belligerent bureaucracies there currently is no protection for them. The only protection the RFA has provided is for Nippon Paper Group, trading in Australia as South East Fibre Exports, Boral, Blue Ridge Timbers and through the filter on effect, a handful of logging magnates.[71] These businesses have been guaranteed product for twenty years and guaranteed exemption from legislation and regulation.

Interestingly on page 172 of the Draft Report it states:

No significant non-compliances of the TSL were found.[72]

Milestone 32: Completed. We have assessed the document and request to see copies of all follow-up reports, reviews, and studies arising from this document. We note there was one reference to climate change in the entire document. We note that a new paradigm has evolved since the 1998 document, and that sections of the document are still in draft form. The search called for at 5.2.3 page 11 seems to be unavailable. This information is needed for educated forestry operations therefore, yet again, FNSW is operating in the dark.

Milestone 33: Completed Late. We note the page could not be viewed because of a fault with the link to supporting information on page 69.

Milestone 34: Late. We note the review of the *Plantations and Reafforestation Act 1999* (NSW) was expedited most efficiently, unlike the F&NPE Act.

Milestone 35: Late/Still Waiting. We note this milestone's lateness given it was intended to be completed for this current review.

Milestone 36: Late. The ESFM plans for lands under the *Forestry Act 1916* (NSW) were not completed and published by December 2001.[73] Eden, Upper and Lower North East,[74] Southern[75] and Tumut became available to the public in 2005,[76] Hume, Riverina, Monaro, Macquarie, Western, Upper and Lower North East in 2008.[77]

Milestone 37: Late. There is no evidence to suggest that these maps have been kept up-to-date and publicly available. The definition of 'Land for Further Assessment' is opaque. The lack of information suggests a type of numbers laundering due to the varying figure for hectares in every FNSW annual report.

Milestone 38: Completed. This milestone has been reported as completed yet any reports, analysis, data from these trials/demonstration areas has not been produced and made available to substantiate this claim.

Milestone 39: Late. These documents are for purchase only, they should be freely available to the public.

Milestone 40: Late. We have reviewed these documents and note their brevity. The objectives are not being met. Recent evidence from South Brooman Compartment 62 plainly shows that the Rainforest Identification protocols are in no way being adhered to. Documented evidence suggests rainforest breaches are systemic in daily logging practices.

Milestone 41: Late/Not Done. We highlight this milestone as a prime example of how poorly the RFAs have performed in relation to the achievement of it's milestones. After ten years FNSW is still considering a process for reporting. We assert this to be wilful negligence.[78]

We contend that there is no genuine attempt to implement and enforce the ESFM principles in any diligent manner.

The five principles of ESFM are:

1. Maintain or increase the full suite of forest values for present and future generations across the NSW native forest estate;

Clear felling, under whatever guise put forward by FNSW spin doctors, the demise of species and the water shortages are all a breach of the principles of intergenerational equity. Australia has an obligation under international law to ensure that human rights are protected.[79] These obligations arise through *Australia's ratification of various international human rights instruments like the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Australia has agreed to 'respect, protect and fulfil' these rights.[80] Principle human rights* which are subject to degradation as a result of climate change are the right to life,[81] the highest standard of physical and mental health[82] and the right to water.[83] The Australian Human Rights commission in its submission to the *Environment Protection and Biodiversity Conservation Act* review stated that the Act:

requires formal and direct linkages to the *Water Act 2007* as a matter of urgency.[84]

Deforestation and degradation is one of the biggest causes of climate change.[85] Water quality and availability has been dramatically reduced by logging of most catchment areas.[86]

Article 2 of the *International Covenant on Civil and Political Rights* (1976) states at (3):

Each State Party to the present Covenant undertakes:

1. To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
2. To ensure that the competent authorities shall enforce such remedies when granted.

And at (5):

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

The RFA regime is breaching these treaties by fact of section 40 of the RFA and by industrial logging practices.

Australia has obligations for forestry operations under international environment law. Section 1.4 (c) of the *Southern Region Forest Agreement 2002* states:

Note the obligations on the Commonwealth of Australia arising from the *Intergovernmental Working Group in Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (Montreal Process)*, the *Convention on Biological Diversity*, *Agenda 21* and the *Kyoto Protocol on Climate Change*.

Conversely *Agenda 21* states:

- 11.1. There are major weaknesses in the policies, methods and mechanisms adopted to support and develop the multiple ecological, economic, social and cultural roles of trees, forests and forest lands...More effective measures and approaches are often required at the national level to improve and harmonize ..legislative measures and instruments...participation of the general public, especially women and indigenous people.

There is no participation of the public in any decision making processes.

In the *Vienna Convention on the Law of Treaties 1969* Article 18 states:

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:

- (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty.

A material breach of a treaty is:

- (a) a repudiation of the treaty not sanctioned by the present Convention; or
- (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

Therefore by exempting civil litigation from preventing the destruction of NSW state forests, for not enforcing the legislative requirements for compliance, for wilfully contributing to climate change and for the destruction of forests Australia is not only in breach of it's domestic obligations, it's in breach of it's international obligations.

2. Ensure public participation, access to information, accountability and transparency in the delivery of

ESFM;

For FNSW record of adhering to this principle see Watt v Forestry Commission and Digwood v Forestry Commission.

There is no environmental democracy and no consultation in areas covered by the RFAs. Individuals or communities call a meeting, the community objects, Forests NSW log regardless. The rights of public participation is limited to making submissions to the state and federal governments if the various pieces of legislation come up for review.

Agenda 21 states:

23.2. One of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making... This includes the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those which potentially affect the communities in which they live and work.[87]

Forests NSW are exempt from preparing EIS in RFA areas and there is no assessment of the impacts of logging on native forest ecosystems.

3. Ensure legislation, policies, institutional framework, codes, standards and practices related to forest management require and provide incentives for ecologically sustainable management of the native forest estate;

In contrast the FNPE Act and subordinate legislation provide incentives for unlawfulness without fear of capture. When penalties are low, and the possibilities of being found out are light, people take risks.[88] Regulatory systems rely upon the enforcement of statutory requirements.

When there is no enforcement contraventions go unpunished and the incentive for compliance is nil.[89] 'Sustainable use' means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.[90] Despite the rhetoric on 'sustainable forestry' the RFAs have not been effective in protecting forest species and habitats and they do not comply with the principles of ecologically sustainable development and the conservation of biodiversity.[91]

4. Apply precautionary principles for prevention of environmental degradation;

The Precautionary Principle is based on German and Swedish environmental laws and policies. The relationship between economic development and environmental degradation was first placed on the international agenda in 1972, at the UN Conference on the Human Environment, held in Stockholm. After the Conference, Governments set up the United Nations Environment Programme (UNEP), which today continues to act as a global catalyst for action to protect the environment.

By 1983, when the UN set up the World Commission on Environment and Development, environmental degradation, which had been seen as a side effect of industrial wealth with only limited impact, was understood to be a matter of survival for developing nations. Led by Gro Harlem Brundtland of Norway, the Commission put forward the concept of sustainable development as an alternative approach to one *simply based on economic growth. This gave rise to the Ministerial Declaration of the Second International Conference on the Protection of the North Sea 1987.*

After considering the 1987 Brundtland report, the UN General Assembly called for the UN Conference on Environment and Development (UNCED). The primary goals of the Summit were to come to an understanding that would prevent the continued deterioration of the environment, and to lay a foundation for a global partnership between the developing and the more industrialized countries, based on mutual needs and common interests, that would ensure a healthy future for the planet.

The Precautionary Principle is Principle 15;

Where there are threats of serious or irreversible environmental damage full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment.

As McClellan CJ stated:

Thus, the inherent uncertainty or bias in the scientific method combined with (generally speaking) a perennial lack of resources and a consequential lack of data to assist scientists, leads inevitably to the conclusion that there is likely to be an incomplete understanding of the full extent of the environmental impacts of any particular act or

activity proposed. That prospect, supported by empirical observations gathered world-wide, led to the development of the precautionary principle as a commonsense approach to avoid or minimise serious or irreversible harm to the Environment.[92]

In other words, if you are unsure of the consequences or effects your actions will have in respect to environmental ecosystem damage, then do not act. The precautionary principle should have been triggered prior to the RFA process beginning in 1998.

5. Apply best available knowledge and adaptive management processes;

It is absurd to allege that these principles are at the helm of native forest management, given what we have seen of day-to-day forestry operations. One of the biggest myths is that FNSW replant after logging native forests. This is very far from the truth. Once logged and burned[93] the forests may take decades to regenerate or they might not regrow at all, and at any rate replanting is not sufficient to offset the biodiversity losses created by clearing because of lags in species becoming established and differences in species composition. Forests are altered inexorably. The public are subsidising the logging of native forests, which hold and remove vast amounts of carbon, so they can be woodchipped and sent to Japan. This is certainly not sustainable.[94]

The government has not ensured the adoption of Ecologically Sustainable Forest Management[95] practices, environmental safeguards have not improved and DECC has not ensured the maintenance of existing regulatory controls.

Milestone 42: Late/Not Done.

Milestone 43: Not Done. There has been no review of legislation. Page 76 sums up the progress of this milestone. This aspect of native forest management is the least transparent.

Milestone 44: Late/Not Done. Target of 180,000 cu not achieved.

Milestone 45: Late/Not Done. Target of 10,000 ha not achieved.

Milestone 46: Completed.

Milestone 47: Completed.

Milestone 48: Late/Not Done. The 'FRAMES' industry modelling system used to derive volumes substantially over-estimated available timber volumes. To achieve the unsustainable volumes sought for the first twenty years, the system has had to dramatically over-cut for twenty years and thus result in much decreased volumes available thereafter. This is clearly reflected in the industry modelling, which shows a volume reduction of almost fifty percent after 2008.

For example, in the southern NSW Eden Region, in 2008, FNSW was over quota by 1,311 cu metres and have been over quota for each of the previous nine years by a total of 18,000 cu metres.

Notably, in 2003 the NSW Government re-issued timber supply contracts, without conducting the promised timber review, for a further twenty years (thus extending the contracts out to 2023).

Therefore, timber supplies have been committed outside the twenty year timeframe of the RFAs, without a wood supply review or any required RFA review. These contracts have been extended well past the point at which timber supplies will fall in 2018.

Milestone 49: Late/Not Done. No data and no documentation. Yet again FNSW are operating in the dark.

Milestone 50: Late/Not Done. We are incredulous at the erroneous audacity of the claim that this review of the FRAMES systems and processes 'also meets the milestone as it applies to the Southern region.' One aspect is applicable:

The robustness of wood supply estimates...are commonly evaluated by conducting large numbers of scenario analyses rather than by consideration of statistical measures. This is especially important when the option of an early heavy cut is preferred to an even flow scenario, since a characteristic of wood supply modelling is the increase in the immediate short-term availability of timber due to an expectation of future growth. This is known as the allowable cut effect. In essence, the additional future volume as a direct result of growth allows for a higher level of cut in the short-term. If the level of cut is set at a high level...in the short-term and growth is less than expected, then over-cutting will occur and the predicted long-term cut will not be sustainable.[96]

Milestone 51: Not Done. It was made known by the NSW Auditor-General that this milestone has not been

acted on:

Forests NSW does not routinely compare harvesting results to its yield estimates...

However we consider these reviews necessary to test the validity of FNSW's estimates.[97] No tangible efforts have been made by the RFAs to ensure sustainability or to produce any reporting showing that efforts are being made. FNSW are operating in the gloom of uncertainty. For the Upper and Lower North East region the Auditor-General stated:

To meet wood supply commitments, the native forest managed by Forests NSW on the north coast is being cut faster than it is growing back.[98]

We believe this to be true for the Southern region if ever real data becomes available.

Milestone 52: Late/Not Done. We note the report mentioned for Southern was not completed by June 2009. We have been informed that it may not be ready until mid 2010. This report should be completed for the Independent Assessor.

Milestone 53: Late/Not Done. SEFR were informed by Michael Davies that this report would be ready by June 2010.

It is my understanding that the review of the sustainable yield for the Southern Region was expected to be completed by June 2009 but is still being done. Forests have indicated it will take time to check the review and are unlikely to publish the results and methods of calculating the sustainable yield (covered by Milestone 54 in the RFA review report) before mid-2010.[99]

Milestone 54: Late/Not Done. We note that work was obliged to be finished by 31 December 2006.

Milestone 55: Late/Not Done. As the second five year review for Eden is now due we assert that this milestone is indeed due and required for the Eden Region. This is yet another example of wilful ignorance which is no excuse in the eyes of the law.

Milestone 56: Completed. We find that this milestone was completed ahead of schedule, with amazing rapidity, however we view the meeting of this milestone as non-transparent. The new agreements have no review clause and we note the lack of information on what public consultation went into making this decision. We call for full documentation regarding the 2005 wood supply agreements changes to volumes and commitment period to be publicly available at no charge and note again Ian Barnes reply when asked for information on these wood supply agreements.

Milestone 57: Late. We call for public availability of these documents.

Milestone 58: Late/Not Done. We note serious accountability problems with this milestone and the flawed FRAMES programme.

Milestone 59: Not Required Yet. We note that 2010 is fast approaching and that the peer review on developments so far suggested substantial revision, which makes it seem the milestone will fail to be achieved. Compartment 62 South Brooman was logged in 2002-2003 and again in 2009. There is no available data of the mark up of retention trees, both habitat and recruitment trees, and many trees that may have been retained have now been logged. Indeed currently there is no available data on past history of retention trees and their location thus previously retained trees are constantly available for logging.

| | |
|------------------------------------|----|
| Milestone Tally: Completed: | 12 |
| Completed Late: | 7 |
| Not Required Yet: | 3 |
| Late: | 12 |
| Late/Not Done: | 25 |

Therefore, in percentage totals: Late/Late/Not Done: 63%.
Completed/Completed Late: 32%.

This analysis sheds light on the RFAs and clearly shows that FNSW, regulators and legislators have failed in the performance of meeting their legislated obligations.

Last year we noted some areas of non compliance with RFA milestones. The Commission advised that it is addressing areas of non compliance.[100]

In 2001 the Auditor-General stated:

The audit of State Forests' financial report for the year ended 30 June 2000 resulted in the issue of a qualified Independent Audit Report. The qualification stated:

Non-compliance with Public Finance and Audit (General) Regulation 1995

Within native forests and hardwood plantations, the value of land, roads and bridges, and growing stock has not been separately disclosed. These disclosures do not comply with the requirements of the Public Finance and Audit (General) Regulation 1995 and Treasurer's Direction. The values of the asset classes requiring separate disclosure have not been determined. The same situation existed in the prior year.[101]

SEFR contend this is indicative of FNSW reporting inter alia.

The Results of Monitoring of Sustainability Indicators

We call for copies of the 2005 review documentation cited on page 98. We have reviewed the State of the Forest Reports and regard the quality of reporting as substandard. Basic facts such as the land area of NSW changing between the 2003 and 2008 report where it shrank by 96,000 hectares.[102]

We note the draft report is constrained in its reporting to limited data, which becomes unavailable after 2004. This puts this whole report behind the state of play by up to five years.

Criterion 1: Biodiversity:

The numbers of threatened species, threatened populations and ecological communities increased significantly over the reporting period. Page 100 gives a telling description of the effect of the RFA regime. The Intergovernmental Agreement 1992 states that:

The parties agree that policy, legislative and administrative frameworks should provide for:

(iv)consultation with affected individuals, groups and organisations;

(v)consideration of all significant impacts;

(vi)mechanisms to resolve conflict and disputes over issues which arise during the process;

(vii)consideration of any international or national implications.[103]

The number of threatened and endangered species has risen dramatically since the RFAs were signed and many threatened and endangered flora and fauna species are at extreme risk from current logging operations. The Reserve system gazetted to date, along with the off-reserve protection measures of the IFOAs, are neither comprehensive, representative, or adequate to meet the needs of threatened species survival. The Scientific Committee's figure for NSW species, populations or ecological communities threatened with extinction in 2009 is 1035.[104] This figure, when compared to the 1998 figure of 868[105] is the most indicative of the RFAs effect on our environment.[106]

A new report by Professor Richard Kingsford, Professor Brendan Mackey and a think tank of thirteen eminent scientists has stated:

Loss and degradation of habitat is the largest single threat to land species, including 80 percent of threatened species.[107]

As we can see the greatest threats to Australia's biodiversity are caused by broad-scale land clearing and forestry operations including establishment of plantations and fire management practices,[108] yet these industrial forestry practices continue to remain exempt from legislation.

The Expert Panel[109] stressed that the persistence and perpetuation of hollow bearing trees is imperative for the survival of forest fauna. A discussion of the conservation measures in place to maintain these hollow bearing trees highlighted the following points:

1. Tree mortality is high; the ratio of one recruit tree to one hollow bearing tree is unlikely to maintain the targeted number of hollow bearing trees in Net Harvest Areas in the mid to long term. This is particularly the case in the regrowth zones. Modelling is required to define a more appropriate ratio of recruits to hollow bearing trees.
2. The rotation time between harvesting events within a compartment requires revision. Current rotation intervals are too short to allow recruitment trees to form hollows. Additionally, hollow bearing trees retained from the previous harvesting event are not permanently marked therefore could be removed in the next rotation.
3. Guidelines or criteria should be developed for the selection of recruitment and hollow bearing trees. Trees with the potential to develop a broad range of hollow types should be targeted for selection. Suppressed trees should not be selected as recruit trees.
4. Prescriptions for the retention and recruitment of hollow bearing trees in the Net Harvest Area should be rewritten

to emphasise not only maintaining these features during a single cutting cycle but managing them to persist in the landscape.

5. Specific prescriptions should be developed for hotspots, defined as areas of high species richness. A sliding scale, where incremental increases in species diversity are matched by increases in prescription strength, was suggested. SEFR's observations, from on-ground monitoring ten years later, see little change to the prescriptions; the habitat to recruitment ratio is still one to one; the regrowth zone is weaker, because only the hollow-bearing trees present (up to a maximum of ten per two hectares) are retained - if ten are not present then consequently less recruitment trees are retained; there are no stipulations in any harvest plans to retain previously retained trees and rotation times have shortened. For example compartment 62 of South Brooman State Forest[110] has had 'Timber Stand Improvement' twice and been logged nine times since 1954, which is virtually every six years.

Habitat and recruitment tree selection is getting more parlous by the year. Many suppressed recruitment and very small habitat trees (often with no visible hollows) are always found when auditing logged areas, though strangely the stumps are invariably of the largest size class. The sliding scale idea was put in place in Eden yet the solid data on exact amounts of each habitat class that has been logged since 1999 seems non-existent and the volume of "high" class habitat is not reported on.

FNSW have been informed on the extent of threatened species in their region yet could only find fifteen percent of these species in the Eden region and thirteen percent in the Lower North East in the pre-harvest fauna surveys.[111]

To obtain data for surveys FNSW officers conduct 'nocturnal surveys.' SFOs have often been observed shining their torch on the ground.

A case in point is three years prior to logging Compartment 3046 FNSW conducted a nocturnal call playback and spotlight survey and South East Forest Rescue observed the following breaches and inadequacies during this survey.

8.8.5 Nocturnal Call Playback

Nocturnal call playback must target the following species: Masked Owl, Sooty Owl, Barking Owl, Powerful Owl, Squirrel Glider and Yellow-bellied Glider. Nocturnal call playback surveys must be conducted as follows:

c) At each call playback site, an initial listening period of 10 minutes should be undertaken, then each target species call must be played for five minutes followed by at least a two minute listening period. After the last call at least 10 minutes must be spent listening. Calls must be played from a good quality portable tape cassette or CD player and amplified through a nine volt megaphone, or equivalent or better.[112]

SEFR met the SFOs at 6.30pm on the Tilba-Punkalla Rd and after introductions drove a few hundred metres to the call playback site. There were to be calls from the following species: Koala, Masked Owl, Sooty Owl, Barking Owl, Powerful Owl and Yellow-bellied Glider. The time required for this at seven minutes per species (five minute playback and two minute listen) is forty two minutes. On top of this is the initial ten minute listening period and a final ten minute listening period. This makes the total time for the playback survey to be sixty two minutes. The time was 6.45 when the equipment was set up and SEFR were given instructions on what to do. It was 7.30pm when the parties got back into the cars to drive to the spotlight survey area.

The total time for the call playback was forty five minutes, which is in breach of the above condition.

Also of concern is the position and timing of the call playback. The Tilba-Punkalla Rd is a back road to Narooma and the access to many properties. A motorbike drove along the road about ten minutes before the start of the survey and a car came past during the second call. To do this survey at this time, at that position, with this level of disturbance seems that the survey was set up to fail from the start. This also needs investigation as it is not in the spirit of the IFOA.

The sound from the amplification gear was very distorted and several of the calls were not representative of the species in question, whether that was from the bad sound quality or bad taping of the call is unclear.

Condition g) states:

Survey season: anytime of the year, preferably in Spring, Summer and Autumn.

While this condition says "preferably" the SFOs told SEFR that they had to wait until spring to undertake some frog and bat surveys.

These breaches undermine the limited scope for protection of threatened species by the IFOA.[113]

This survey stood as the data on threatened species for the compartment's logging operations three years

later.

The lack of care for threatened and endangered species is nowhere more apparent than in the ESFM report which states:

Any change to the number of species recorded on the estate are likely to reflect research and survey effort rather than true species richness of forest areas.[114]

Scientists advocate an approach based on maintaining ecosystem structure and function, and therefore ultimately protecting more species.[115] Protecting key functional species and diversity within functional groups is a key way to do this thereby enhancing ecosystem resilience, so that they are able to maintain their functions and processes. It is not enough to merely record species, the impact of the logging must be recorded. We note with great concern that species such as *Macrozamia communis* (Burrawangs), *Dicksonia youngiae*, and *D. antarctica* (Soft Tree Ferns), *Cyathea australis* and *C. cunninghamii* (Rough Tree fern) and *Xanthorrhoea* (Grass Trees) which are extremely slow growing, most of these plants have been alive long before white settlement. They grow up to one cm of trunk per year, and when young will take up to ten years to start forming a trunk. Research shows that only between two to thirteen percent of Tree Ferns regenerate after logging and never regrow on snig tracks or log dumps. Tree ferns, which play a vital role in maintaining the moisture of the forest floor and providing protection for the growth of other forest plants, are mostly eliminated by logging. [116]

There are no prescriptions for these flora even though they are protected under NSW legislation.

Forest type by area:

No data given for the Southern Region. We have previously sought from DAFF and DECC, the guardians of the RFA, updated information regarding changes to the extent of forest type in the CAR, but none were available. We request this information be publicly available at no cost.

The CAR definition is contained in the introduction of this submission. The statement stating the system was established in accordance with the JANIS, on page 100 of the Draft Report, is erroneous for a number of reasons, mainly due to the lack of willingness by legislators to promote ecology over economy.

If there was coherent forest policy the document trail would be less onerous. The DAFF website only contains the CAR ESFM from 1998. The DECC website contains three reports, 1999-2000, 2000-2001, in which there is no mention of the Southern region. The most up to date report available is the 2001-2002. It was required that there be a 2001-2002 ESFM report for the Southern region. The 2002-2003 ESFM reports for Upper and Lower North East, Eden and Southern regions are still allegedly waiting to be tabled in 2009.[117]

As the Draft Report states:

Changes to the extent of forest type on state forests are reported through data obtained from the forest management zoning (FMZ) system. This zoning is based on the nationally agreed JANIS reserve criteria which give effect to the CAR reserve. The system defines a number of zones and specifies what activities are permissible within each zone. The extent of reservation of different forest vegetation communities is a measure of the degree of protection of biological diversity at the species and ecosystem levels. The modelled forest type extents listed in the RFAs are used as the baseline to measure changes to the extent of forest types. The *State of the Parks 2004* report and ESFM annual reports provide further detail on the extent and management of forest ecosystems *in each region*.

This information is vital for proper assessment, yet it is being left aside in Southern, and is lacking to the extent that the regionally produced 'harvesting plans' are not providing any information of how many hectares of each forest type yield association is within the net harvest areas. The information given in the recent Wandera Harvest Plan only gives basic statements such as "stands of multi-aged regrowth with patches of maturing stands...forest stands of mixed age." [118] This implies that previously undisturbed forest is being logged under this plan. This counteracts the National Forest Policy Statement (1992) and the need to preserve old-growth forest.

The ESFM Monitoring Report for 2001/02 tells us that:

any change to the extent of forest ecosystem types can only be presented separately for each tenure, and cannot accurately identify change to the extent of forest ecosystem types across the whole public forest estate. Forest ecosystem type data are currently derived from different data sets for the national park estate and State forests and

therefore cannot be directly compared.
This confounding effect needs to be emended.

Area of forest type by growth stage:

All observations made to date of forestry operations under the RFAs have shown that logging old-growth is a high priority, indeed it is generally recognised that the FNSW achievement of finalising the removal of unprotected old-growth is less than four years away. We call for information showing the effect on forest type by area and growth stage (under FNSW RN17 classification) on the State forest estate to be made publicly available. The meaning of 'un-assigned' Requires clarification.

We note the lack of informative data on what type of forest is used as classification and again assert that classification by growth stage is not classifying by forest type.

Unfortunately, RFAs have developed and utilised relatively simple forest ecosystem classifications - note that in my professional estimation even classifications with 100-150 types are inadequate to assess Comprehensiveness.[119]

Fragmentation:

There is nothing good reported here, fragmentation has increased but conveniently no data exists to show this. Scientifically, habitat corridors need to be one hundred to two hundred and fifty metres wide to be beneficial, the current forty to eighty metres is not adequate.

Fauna experts consulted during the Response to Disturbance Project have recommended that corridors and riparian buffers be expanded to 200 m for yellow-bellied gliders, 1 km along major rivers for owls, 240 m for fishing bats and golden tipped bats, and 1km (with low-intensity logging) between catchments for stuttering frogs.[120]

Roads bring more people into an area which results in fragmentation of the landscape, but they also have much broader and wide ranging effects. At the landscape scale, roads disrupt ecosystem processes and, at both a fine and coarse scale, cause a loss of biodiversity.[121]

Fragmentation of the landscape and the consequent habitat loss is the major threat to biodiversity.[122]

It has been suggested that fragmentation within a forest will force the inhabitants of the logged forest patch into the surrounding forest, thereby causing dysfunctional behaviour due to higher than normal densities.[123] This phenomenon is reduced when the remaining forest is large and intact.

Listing forest-dwelling species:

To say that the reporting on this criteria depends on the reporting of SFOs prior to logging does not instil confidence. There is no data given from the Southern Region at all. At table 5.8 the data seems to be CRA data which is blatantly untrue. There is without doubt greater glider and squirrel glider habitat within State forests in the Southern region. To base decisions on this type of erroneous data would be unjustifiable.

Status of threatened forest-dwelling species:

We note that during the review reporting period there was a recognised increase in threatened species, endangered populations, endangered ecological communities, and key threatening processes, which is material evidence on the failure of the RFAs. Key Threatening Processes such as the removal of dead trees and the loss of hollow-bearing trees occur on a daily basis on the State forest estate, with impunity.

Species extent and abundance:

We determine that it is clear current RFA mechanisms are not functioning positively. There has been no action on Key Threatening Process abatement. We note on page 114 a reference to the Southern Brown Bandicoot for which the Eden IFOA initially stipulated a two hundred hectare exclusion zone for SBB records, but in Nadgee State Forest compartment 62, the SBBs have been given no exclusion zone (see Operational Plan approved 30/06/09). We call for documentation and a complete reference list for the documents mentioned under 'Monitoring Plans' page 114. SEFR can find no documentation to substantiate the claim that the monitoring plans mentioned on page 115 exist. We assert that the IFOA is a flawed document and the conditions it holds are therefore flawed, it is worded so that carte blanche non-compliance can be explained away as an accident, and is seriously undermining threatened species extent and abundance.

| Status | 2000 | 2003 | 2006 |
|--------------------|------|------|------|
| Extinct | 77 | 79 | 75 |
| Endangered | 379 | 396 | 441 |
| Vulnerable | 367 | 386 | 392 |
| Populations | 17 | 28 | 36 |

To merely list a threatened species, to ‘take note’ of a species and its location is not considering the impacts of logging on that species or its habitat, nor is that in any way affording protection to these species. These species have been legislated into extinction and FNSW, the regulatory agency DECC, the State governments and the Commonwealth are all liable under domestic and international obligations. Climate change will dramatically increase other threats to species in the region, through increased spread of invasive species, increased fire frequency and severity, increased spread of forest dieback, and reduced stream flows. The cumulative impact of all these threats compounded by industrial logging operations operating under an exemption to the EPBC Act and the RFAs, have resulted in a major impact on threatened species.

Criterion 2: Productive capacity of forest ecosystems:

We state the white elephant in the room is the regeneration of native forest after industrial logging. The meaning of the statement that there is a hundred percent regeneration target set at page 117 for harvested native forest is obscure. The research and data that the forest does regrow after industrial logging and burning is inadequate. The data we have received was cursory to say the least, and even what little forest was surveyed did not equal one hundred percent regenerated. From the period 2001 to 2006 the number of surveys for the Southern region was twenty one covering a total of 2,176 hectares.[124] There is no information provided by FNSW or the RFA regime on the effectiveness of regeneration.

The vascular floristics about a decade after harvesting operations differed significantly from the floristics of similarly aged forest regenerating after wildfire. In clear-felled areas, weed and sedge species occurred more frequently than on wildfire sites and *Acacia dealbata* was much more abundant, whereas resprouting shrubs, tree ferns and most ground-fern species were more abundant in wildfire regeneration sites.

The low survival rate of resprouting species reported in an increasing number of studies suggests that soil disturbance is likely to be a major contributor to differences.[125]

We call for full disclosure of actual results of this monitoring.

Land available for timber production

We note the data states a two percent loss of harvestable native forest area during the period.

Total growing stock on timber production land

We note that there was no data provided and no information given for this indicator. This is questionable. This is not surprising given the last three Auditor-General’s opinions found in Forests NSW annual reports.

Removal of wood products compared with sustainable volume

We determine that the data given does not describe accurately the relationship to forest cut versus sustainable volume, due to the lack of independent sustainable yield review data. Merely reporting on to what extent wood supply commitment volumes are being met does not address questions of sustainability. Without knowledge of volume and regeneration rates the assurance that wood supply agreements can be met without degrading the ability of the forest to maintain supply in perpetuity is an erroneous assertion. The Southern RFA is one part of a complex puzzle revolving around the sustainable volume of various timber products that can be logged in one year. In solving this puzzle reference must first be made to RFA clause 2, which defines sustainable yield as:

the long term estimated wood yield from forests that can be maintained from a given region in perpetuity under a given management strategy and suite of sustainable use objectives.[126]

It is this term that is common to the documents and the intent which they were written, for not only Southern but all regions. It is the basis for the volumes specified in RFA clause 76, 80 and the *Forest Agreement* (FA) 3.1. Another term that is important is “committed volume.”

The FA states at 3.1:

A sustainable timber supply arrangement is to be implemented for native forests where the annual committed high quality large (HQL) log volumes are a minimum of 48 500 m³. [127]

In the FA/IFOA reports the definition is:

Committed volume – the volume of timber that may be harvested under the terms of the Forest Agreements an IFOA's.

RFA clause 34 states the FA/IFOA will implement the obligations of the RFA. Two obligations, RFA clause 47 (d) and (g), are to complete Regional ESFM Plans (FA 2.2.1), and using enhanced FRAMES to review sustainable yield by 1/12/06 (also RFA 106.7, clause 8,17, FA 3.5 and ESFM plan). The first obligation has been completed but no review of sustainable yield has occurred and therefore must remain unchanged.

Timber volumes provided for in RFA clause 76, according to RFA clause 85 is:

to be on a non-declining even-flow Sustainable Yield basis for the period modelled by FRAMES (being 180 years).

FA 3.1 states:

that the long term sustainability strategy is based on a one hundred year even flow supply of HQL logs at the above levels. The strategy adopted was based on one hundred years even flow but modelled over two hundred years. The volume of 48,500m³ is the committed minimum. The sustainable yield was calculated to be 42,000m³. Logging 48,500m³ a year causes a decline in yield around the fifty year period. This was to be smoothed over by silviculture investment, land purchases, plantations and therefore sustainable yield would be increased to the committed volume of 48,500m³.

The intent of committed volumes is reinforced by RFA clause 75 which states the committed volumes are for:

the quantities of timber, Woodchips or Unprocessed Wood products sourced from the Southern region in accordance with this Agreement.

Further, RFA clause 73 states:

...any changes to the State forest area...will not lead to a net deterioration in the capacity to supply wood...in terms of the volumes as specified in this Agreement and in terms of species and quality.

While RFA clause 82 states that supply of other forest products will be in accordance with current and future market demands, this must be taken in context with sustainable yield. Committed volume is already above sustainable yield thus there can be no increased volumes on the basis of market demand without throwing sustainable yield out the window.

Pulp is defined as being subservient to logging of High Quality Logs. This is the intent of RFA clause 83 as the volumes referred in RFA clause 80, 81 and 82 are to be as a by-product of harvesting for the volumes specified in RFA clause 76. These volumes also include the volumes obtained from thinnings which means that the total pulp was 31,617t over the RFA volume. The same intent is also apparent in FA 3.2. Again timber products are related to the committed volumes and also to sustainable yield.

The Southern region ESFM plan discusses FRAMES and the average sustainable annual volume of 42,070m³.

The average annual supply for high quality logs is reduced to 42,070 cubic metres to ensure ecological sustainability of harvesting operations.[128]

and committed volume of 48,500m³:

The *Regional Forest Agreement for Southern NSW* provides for term and wood supply agreement commitments of high quality large logs to industry on an annual basis totalling 48,500 cubic metres in South Coast Sub-region.[129]

In calculating the average sustainable yield of HQL, FRAMES also produced volume figures for HQS, LQ and Pulp. These are the average sustainable yield figures expected when harvesting the HQL volume. For the twenty year period covered by the RFA period the pulp volumes range between 45, 173t and 75,460t. This is well below the contracted and committed volume of 97,000t. The volume specified in RFA clause 80 is the maximum volume allowed.

The Parties note that for the South Coast Sub Region, arrangements for pulp grade timber/pulpwood include an amount of 97,000 tonnes per annum, being a quantity which reflects the maximum supply levels contracted at the date of this Agreement.

If there is no maximum figure markets can keep demanding more ad-indefinitum, this is impossible when

constrained by sustainable yield. The only way volumes can be increased is by logging more area, or by logging more intensively. Both of these outcomes will have an effect on sustainable yield.

Volumes of HQL over the past five years from South Coast sub region have consistently been lower than the committed volume of 48,500m³, ranging from 2,000m³ to 11,000m³ under. In 2006-07 HQLs volumes were 43,240m³. Pulp volumes should also have stayed relatively constant at around the 2002/03 and 2003/04 volumes of approximately 60,000t, yet the figure was 128,617t.

The IFOA clause 5 (2)(a) allows for a limited deviation to the committed volume of HQL but there are no such clauses for pulp volumes to allow for over or undercut, as pulp is subservient to the HQL volume and the maximum volume of 97,000t allows for that variation in HQL volume. For example FRAMES maximum pulp volume in first twenty years is $75,460t \times 1.25 = 94,325t$. [130]

The quality of the forest logged will have an effect on volumes but this is flattened out in both FRAMES and the real world by dispersing operations around the region.

An analysis of compartments logged in the past five years shows that the quality of forest has remained relatively constant and therefore volumes should also have stayed relatively constant.

For the year 2004/05 the area logged is 3,533 hectares. Pulp volume was 64,048. [131] In 2005/06 we see that the logged area dropped to 3,544 hectares for similar HQL volume but pulp volume increased to 94,087t. The only way for this to happen is by logging more intensively, which will affect the remaining stand condition and ultimately sustainable yield. In the year 2006/07 pulp increases to 107,367t and the area logged reaches its highest figure of 4,739 hectares. As stated above there has been no noticeable difference in forest quality and so the only explanation is that pulp operations are the driving force in the region not HQL as is meant. At this rate of logging it brings the rotation time down to twenty one and a half years, which is unsustainable.

The pulp volume in RFA clause 80 is a maximum volume until there has been a recalculation of sustainable yield showing that this can be increased. The volumes for the various timber products in the RFA and FA are the only volumes allowed unless the agreements are amended. Both of these have not occurred and so there must be a breach of the RFA and FA by Forests NSW.

There is no justification for the sharp rise in pulp volumes over the past two years other than trees are being felled specifically for pulp, at a substantial loss to the taxpayer, to subsidise the profits of SEFE.

An investigation of the IFOA clause 24 annual reports for 2001-2007 and FA/IFOA implementation reports 1999/00 and 2001/02 has found that the volumes of HQL logs harvested has been in breach of the RFA, FA and IFOA. The volumes have consistently been in excess of the sustainable yield calculated for the Eden region.

The sustainable timber supply strategy is contained in FA 3.1. This section states the volume from the Eden region will be 23,000m³ with a further 1,000m³ from Ingebyra State Forest and 1,000m³ from alternative South Coast region areas. The important part of this is the specific Eden region volume of 23,000m³. It then goes on to say that any increases to these volumes must be sustainable with FRAMES. The FA clause 3.5 discusses the timber resource assessment processes needed to refine FRAMES to enable the review of sustainable yield.

Timber supplies are discussed in RFA clause 72 and 73. Clause 72 refers to the FA for the sustainable strategy for timber supply. Clause 73 has a volume of 25,000m³ to be supplied to sawmills in the region. This is not the volume that is to come from the Eden region. The volume to come from the Eden region is defined in FA 3.1.

RFA clause 76 states timber volumes will be reviewed in accordance with this agreement and consistent with RFA clause 46(f) and then attachment 11. Both of these refer to an upgraded FRAMES and a recalculation of sustainable yield which has not occurred.

IFOA clause 5(2)(a) has the figure of 23,000m³ of HQL. While IFOA clause 5(3) states the quantities in 5(2)(a) do not impose any limitation but simply reflect contracts at the time of signing this has to be taken in context with FA 3.1 and sustainable yield. If this is not the case then calculating the sustainable yield is pointless, as any increases above this would mean forestry operations are not in accordance with the principles of ESFM.

IFOA clause 24 (reported yearly) [132]

FA/IFOA report (reported financial yearly) [133]

| Year | Volume | Year | Volume |
|------|--------|-------|--------|
| 2001 | 23 726 | 99/00 | 23 700 |
| 2002 | 25 154 | 00/01 | 27 056 |
| 2003 | 16 806 | n/a | 25 300 |
| 2004 | 26 513 | n/a | n/a |
| 2005 | 23 126 | n/a | n/a |
| 2006 | 24 708 | n/a | n/a |
| 2007 | 25 261 | n/a | n/a |

Therefore the derived figures for 2000 are: 25 378

And 2001 are: 26 178[134]

There is some concern with the differing volumes for the year 2001 between the two reports. The difference is too great to be attributed to the averaging of the years. Either the IFOA clause 24 report or the FA/IFOA report must be incorrect. There must be some accountability from Forests NSW for reporting wrong figures. Incorrect figures aside, it can be seen that in all the years the volume of HQL is above the 23,000m3 that is allowed under the RFA/FA/IFOA.

The IFOA's for UNE, LNE and Southern all allow for a variation in the volumes of over twenty five percent each year and over five percent over a five year period. There is no such provision in the Eden IFOA, however FA clause 3.3 allows for the continuation of arrangements to allow the carrying forward of under and over cut. Forests NSW have over cut for eight years running. Allowing for the same prescription as the other IFOA's for variation, and the smaller 2001 volume, it can be seen that Forests NSW are in breach for every five year period.

Five year volume (23,000 x 5 + 5% = 120,750m3)

| Period | Volume(m3) |
|---------|------------|
| 2000-04 | 127 577 |
| 2001-05 | 125 325 |
| 2002-06 | 126 307 |
| 2003-07 | 126 4141 |

Over the eight years the volume logged should have been 184,000m3. The actual volume logged has been 200,672m3 which is a difference of 16,672m3 or nine percent over. This figure equates to nearly a whole years supply of HQL.

The RFA, FA and IFOA have not been amended over the years. There has also been no recalculation of sustainable yield over this time. Therefore Forests NSW are in breach of these agreements and are contrary to the principals of ESFM.

Volume of logs

There no data given for this indicator. To assert and not to provide the research or data to prove an assertion is misrepresentation. The actual volume of pulp removed in the Southern region for the period 2002 to 2007 is equal to twelve percent above the allowable cut.[135] This is above the five percent allowed in IFOA clause 5(a). In essence FNSW must stay within the five percent range. The volumes are tied to the HQLs, as explained above in 'Removal of wood products compared with sustainable volume,' yet it is reported in Appendix 4 that in the Southern region the ratio started at 100:101 in 2001 and jumped to 100:140 in 2006.

HQL to Pulp Ratio

| Year | HQL | PULP | % greater |
|------|--------|----------|-----------|
| 2001 | 96,500 | 97,000 | 1 |
| 2002 | 62,329 | 65,484 | 5 |
| 2003 | 70,021 | 78,291 | 12 |
| 2004 | 53,369 | 64,049 | 20 |
| 2005 | 60,673 | 109,447 | 80 |
| 2006 | 62,272 | 1150,700 | 140 |

This is based on data provided by FNSW who have proved to be erroneous in the past. From our data we know these figures to be much higher.

Each year ABARE[136] collect relatively comprehensive statistics on log removal and woodchip export rates. The 2007/2008 statistics were:

Total Hectares of native State forest in NSW - 1,980,000

Native forest woodchips exported - 687,400 tonnes

Native Forest Area Logged - 57,631 hectares

This equals twelve tonnes of woodchips per hectare.

Even FNSW Annual Reports provide figures on volumes:

Native Saw logs removed - 616,387 m3

Pulp- 500,007 tonnes[137]

We would suggest that aggregated overall generic NSW figures are provided to obscure actual figures of RFA regions, as is differing reporting methods.

31 (1) From 1 July 2002, SFNSW is to progressively record the following information relating to logging operations in the Southern Region:

(e) where harvesting has been completed, the area that has been logged together with the total area of the relevant net harvestable areas.

ABARE Total NSW Volume figures ('000m3)

| 2000/01 | 2001/02 | 2002/03 | 2003/04 | 2004/05 | 2005/06 | 2006/07 |
|---------|---------|---------|---------|---------|---------|---------|
| 4,452 | 4,810 | 5,340 | 5,346 | 5,551 | 5,652 | 5,792 |

Value of harvested logs

This section in the Draft Report is yet another example of no data given and no monitoring undergone.

ABARE collect a large amount of data on the value of logs harvested.

The Auditor-General stated:

The Commission made various assumptions relating to the valuation of native forests. We were unable to confirm the assumptions used were statistically reliable. The auditor's report for 2007 was similarly qualified.[138]

Removal of products from forest ecosystems

We were not aware that "possums" mentioned on page 125 of the Draft Report, had a sustainable level of harvesting, there seems to be no data to support this. We also note with concern that the level of firewood removal from the Southern Region is significantly greater than other RFA areas. There is no evidence of studies/reports that have been undergone to review whether this level of removal is sustainable.

We note that:

forestry activities that remove flowering and/or mature trees are a continuous threat to the floral resources accessed by beekeepers.[139]

The four year study undertaken by Law et al amounts to one page in a report on honeybees. It states:

This project has shown that current logging practices in NSW halve the nectar resource.[140]

Established plantations

We consider that this is the core business of FNSW and does operate in the public interest. To further advance the plantation sector and retire the native forest sector is the only true and credible option for the achievement of ecologically sustainable forest management.

Effective regeneration of harvested forest

We determine the reporting on this indicator to be inadequate and dubious. It is not enough to merely state something, there is no data to support the statements. FNSW do not replant native forest. Once logged and burned the forests may take decades to regenerate or they might not regrow at all and they are altered inexorably.[141] If FNSW ever did replant then replanting is not sufficient to offset the biodiversity losses created by clearing because of lags in species becoming established and sustained differences in species composition.

The one hundred percent regeneration rate for Southern in 2005-06 is incredible given that there were no regeneration surveys undertaken in the Tumut subregion in that period. There is no data given showing how much area was assessed, except:

In 2005-06 there were no regeneration surveys in the UNE or Eden regions.[142]

Information from FNSW concerning Southern Region regeneration assessments for the period 2001-02 to 2005-06 stated that a total of 2019 hectares had been surveyed in the southern sub-region, and only 167 hectares in the Tumut sub-region.[143] The analysis reports that “are available” on this clause 52 data are unavailable. The assessment report completed by 31 December 2006 is ‘unavailable.’ We call for comprehensive information to be available showing the full extent of regeneration surveying efforts and the results thereof.

We find comparisons with other reporting incongruous in relation to effective regeneration. For example, in the State of the Forests Report 2008 in Table 37 on page 67 we see that in 2005-06 NSW had 3,870 hectares effectively regenerated; in the Draft Report on page 129 there were no regeneration surveys in Upper North East and Eden Regions; noted above Tumut also had zero surveys for the year; which means that 3,438 hectares must have been assessed solely in the Lower North East region that year. This seems like an incredible focus of regeneration surveying for the year 2005-06.

We call for deep scrutiny by the Independent Assessor on what exactly is reported as “effective regeneration”.

Criterion 3: Ecosystem health and vitality

Logging contractors and FNSW are the biggest and most common ‘negative agents. The ecosystem health and vitality of a native forest becomes severely affected once logged and burnt.

Commercially logged forests have substantially lower carbon stocks and reduced biodiversity than intact natural forests, and studies have shown carbon stocks to be 40 to 60 per cent lower depending on the intensity of logging.[144]

We note that the data shows ongoing areas treated and expenditure on feral animals, but does not indicate what quantities are present, or what quantities have been exterminated, and therefore does not show how effective this program is.

We find that Table 5.18 on page 132 of the Draft Report states that in 2004-05 in Southern 877,734 hectares of Forests NSW forest estate were treated for introduced predators, but earlier on page 101 we were told on Table 5.1 that in the same year in the same region there were only 205,545 hectares of forest estate managed by Forests NSW. We note the lack of independent scientific assessments examining the effectiveness of the RFA feral animal and weeds program. An example of weeds control in the Southern region can be found in compartment 516 of Buckenboursa State Forest, an area of unprotected wilderness west of Batemans Bay, where logging machinery introduced Scotch Thistle to the environment. Lantana around Gulaga Mountain in State Forest compartments has not lessened in extent yet \$575,965 was spent by FNSW on weed management during the period 2002-2006.

We note that hundreds of thousands of dollars was spent in the Southern region but again there is no data on what outcomes or effects this spending had on noxious weeds.

We note the whole of this criterion manages to evade mention of climate change, whereas it was stated in the State of the Forest Report 2008 that climate change will have a profound effect on forests.

Post fire recovery and research

The roll out of RFA’s throughout the state’s forested zones was the first step to increasing fire risk for NSW.

One of the major planning constraints associated with thinning is *the higher level of fuel present after the operations*. It is not considered feasible in Tasmania to carry out fuel reduction burns in thinned coupes because of the high fuel loads and the sensitivity of the retained trees to fire. The location of thinned coupes amongst conventionally logged coupes is problematic, as it is not recommended that any regeneration burn take place within two kilometres of areas with high levels of flash fuel within two years of harvest (Cheney 1988).

And:

Tree crowns (heads), bark, and other harvest residue make up the fuel load. The climate on the floor of the forest is altered by thinning, with higher wind speeds and temperature, lower humidity, and lower moisture content in the fuel itself. Understorey vegetation characteristics change because of these changes to the microclimate, especially increased light. Bracken ferns and cutting grass may grow vigorously, each having a far higher flammability than the replaced woody species (Cheney and Gould 1991).

Strangely this is from the Forestry Commissions own data but is only now coming to light and certainly was not mentioned in 1998, when the RFA's were signed.

Native forests can take decades to recover from FNSW mismanaged 'post harvest burns.'

Criterion 4: Soil and water resources

“This criterion is concerned with the most fundamental resources of a forest environment: soil and water.”[145]

As reported, in the State of the Forests Report 2008, NSW has about 200,000 hectares managed specifically for water supply. This equates to 0.24% of the land area of the state, or 0.76% of the NSW native forest area[146].

Many studies have shown that microbial biomass decreases following forest harvesting, and that these changes occurred before measurable changes in soil organic matter quantity were found. The decline of microbial C and N following tree removal ranged between twenty seven percent and sixty four percent. When bacterial and fungal biomass were determined separately, it was found that fungal biomass declined more sharply than bacteria. The often rapid decrease in fungal biomass may be explained by a reduction in ectomycorrhizal fungi, which decline sharply once the root system of cut stems can no longer support them.

Conventional practices in intensive forest use such as short rotations, use of heavy machinery, harrowing and high intensity burning of slash can be viewed as detrimental to soil health. After burning, the organic content of forest soils can be transformed into ash and mineralised nutrients. This may result in an intense pulse of nutrients that can change the soil pH and can easily be leached, leaving a nutrient and humus poor soil, with a significantly different structure from the original condition.[147]

Research by the CSIRO states:

Timber harvesting and its associated activities cause drastic changes in soil physical structures and hydraulic properties. In situ changes of surface soil hydraulic properties using a newly developed disc permeameter are assessed. Five forest sites, two radiata pine forests near Oberon and three native eucalypt forests near Eden NSW, were investigated for the impact of timber harvesting on soil structure and hydraulic properties. On most sites, there was an increase in soil bulk density and a declining trend in sorptivity and hydraulic conductivity associated with logging. Changes in hydraulic properties suggest that the logging and associated activities had resulted in soil compaction, attributable mainly to redistribution of soil pore sizes and with a decrease mostly in pores greater than 3mm in diameter. This reduction in macroporosity suggests a reduction in aeration and a change of water retention characteristics.[148]

Usually the majority of forestry operation non-compliances reported are on Environment Protection Licence breaches. Judging by the Audit results given on page 64 to 67 of the Draft Report the majority, fifty seven percent, of non-compliance is on EPLs and how they rate to soil and water protection practices.

We note that one CRA report stated that:

all impacts of logging were significant at only buffer widths of less than 30 metres.[149]

Currently all unmapped, first and second order streams have less than thirty metre buffers, which suggests that current logging adjacent to these streams is having a significant impact. This report went on to say that the methodology used for the EPLs is not scientifically defensible. Even more recent research found in the State of the Forests Report 2008 suggests that twenty metre buffers need to be retained to generally reduce

turbidity levels.[150]

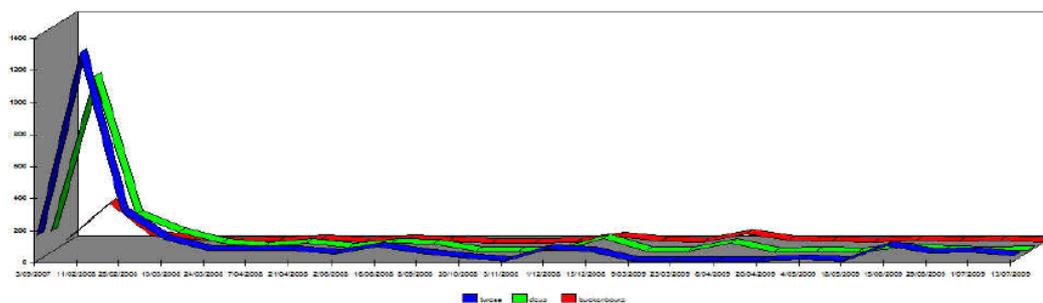
Forestry machinery compacts soil, preventing absorption of rainwater. When it rains the run-off carries a lot more sediment into streams. Movement of this machinery and other vehicles along forest roads raises a large volume of dust (30 -90 tonnes per year for every hectare of unsealed road, compared to 0.3 tonnes for unsealed roads in undisturbed forests). Erosion is the largest contributor to turbid water in Australia. A study of the Eurobodalla catchments in NSW showed that approximately 905 tonnes of sediment were transported through the river in one four-day storm. This is compared with thirteen tonnes for the previous six-month period.[151] Significant sediment loads have also been identified as coming from the 50,000 kilometres of unsealed roads within state forests and reserves.[152] Suspended sediment loads in inland waters caused by gully erosion and degraded flow paths, can have significant impacts such as siltation of river channels, infilling of wetlands, reduced light penetration inhibiting photosynthesis, and loss of habitat and spawning sites for gravel-bed dependent fish.[153]

Water costs have soared since the CRA analysis was done. The price per kilolitre in the Eurobodalla in 2000 was \$0.80.[154] It is currently \$1.95 per kilolitre and \$2.95 for consumption of over one hundred fifty kilolitres. When forests are logged, the amount of water flowing in creeks and rivers, after a short initial increase, can decrease by up to fifty percent. It may even cease to flow in dry periods. Regrowth needs much more water to grow than mature trees.

In 1999 it was estimated that the cost of water lost by the logging of 2000 hectares of native forests in the Eurobodalla catchments in one year to be over ten million dollars. This amount is compounded each year that these catchment forests continue to be logged.[155] Therefore there is a need to independently reassess the economic costs of the RFA as it applies to water quantity and security.

The severity of the prolonged drought and inclement climate change conditions is readily portrayed by the flow recordings of the three rivers, the Tuross, Deua, and Buckenboursa, in the Eurobodalla shire. The Shire's water supply depends upon these rivers. Logging in these catchments is continuing to compound the negative effects of this form of land use on catchment hydrology. Since the last minor flood peak in February 2008 these rivers have been extremely low. Similarly the Bega River is now a road for four wheel drive vehicles.

Eurobodalla Rivers water flow 2007-2009 (ML/day)[156]



Criterion 5: Maintaining the forest global carbon pool

The Government's land-use policy frame is fundamentally erroneous. Native forests, the less efficient resource for forestry industry competitiveness, are tagged for wood production with lost opportunities for the job they do best: carbon storage. Plantations, the less efficient and less reliable resource for carbon storage, are tagged for carbon

storage with lost opportunities for the job they do best: wood supply.[157]

Conditions placed on logging native forests to ameliorate impacts as a result of the RFAs are increasingly inadequate as climate change escalates. Forest authorities' accounting and information systems fail to assess the true value of carbon and water resources that are stored in native forests. There is no reporting on total native forest ecosystem biomass, the figures provided are for plantations only. The value of these stored resources in native forests far exceed the royalties received from logging operations, even when carbon is conservatively valued at a price of twenty dollars a tonne.

Brendan Mackey et al states:

Forest protection is an essential component of a comprehensive approach to mitigating the climate change problem for a number of key reasons. These include: For every hectare of natural forest that is logged or degraded, there is a net loss of carbon from the terrestrial carbon reservoir and a net increase of carbon in the atmospheric carbon reservoir. The resulting increase in atmospheric carbon dioxide exacerbates climate change.[158]

And

The remaining intact natural forests constitute a significant standing stock of carbon that should be protected from carbon emitting land-use activities. There is substantial potential for carbon sequestration in forest areas that have been logged if they are allowed to re-grow undisturbed by further intensive human land-use activities. Our analysis shows that in the 14.5 million ha of eucalypt forests in south-eastern Australia, the effect of retaining the current carbon stock (equivalent to 25.5 Gt [159] CO₂ (carbon dioxide)) is equivalent to avoided emissions of 460 Mt[160] CO₂ yr-for the next 100 years. Allowing logged forests to realize their sequestration potential to store 7.5 Gt CO₂ is equivalent to avoiding emissions of 136 Mt CO₂ yr-1 for the next 100 years. This is equal to 24 per cent of the 2005 Australian net greenhouse gas emissions across all sectors; which were 559 Mt CO₂ in that year.[161]

The report goes on to state:

We can no longer afford to ignore emissions caused by deforestation and forest degradation from every biome (that is, we need to consider boreal, tropical and temperate forests) and in every nation (whether economically developing or developed). We need to take a fresh look at forests through a carbon and climate change lens, and reconsider how they are valued and what we are doing to them.[162]

Deforestation in 2006 created over seventeen percent of NSW greenhouse gas emissions.[163] Ending native forest logging would assist in reducing the greenhouse gas emissions of the state.

The clearing of native forests and woodlands and their degradation - mainly through logging - generates a conservatively estimated 18 per cent of Australia's annual greenhouse gas emissions.[164]

Professor Peter Wood and Professor Judith Ajani indicate that at CO₂ prices of just ten to fifteen dollars per tonne, which is less than the Garnaut Review's recommended starting price for carbon pollution permits, hardwood plantation owners will receive more money from growing carbon than wood.[165] Australia is very fortunate. By letting previously logged native forests regrow to their natural carbon carrying capacity, the ANU scientists estimate that they would soak up around 7500 million tonnes of CO₂-e over the coming one hundred to two hundred years.[166]

Criterion 6: Socio-economic benefits

The task was made difficult by the limited time frame and the need to commence and undertake studies without knowledge of the options that would arise from the negotiation process.[167]

The only economic benefits of logging is to the chipmill and logging contractors. FNSW is currently running fourteen million dollars in the red.

I can only see this loss increasing as Forests NSW continues to look for new sources of hardwood timber and the costs of harvest and haulage increase. This will be very difficult to manage.[168]

We are told by the draft report that:

Estimated figures provided by Forests NSW for the total direct and indirect employment in the forest sector across all regions totalled 6676 equivalent full-time (EFT) positions for 2005-06. The largest employment sector is primary processing, which makes up 67% of its total employment across all NSW FA regions. Harvesting and haulage accounts for 16% and growing and managing of forests accounts for 8% of employment.

We note these figure do not delineate between native and plantation sectors. We ask that further detailed reporting be done to allow the public and the Independent Assessor to understand the true socio-economic

It should be obvious for FNSW to recognise that there is no socio-economic benefit in logging native forests when consideration of FNSW employee numbers show a drop of 2,183 employees over the period 2002 to 2008.[169] The winners are businesses such as Boral, SEFE and Blue Ridge Hardwoods whose profit driven shareholder reward systems need to consume the environment to perpetuate, the losers are the community who have had their forests plundered at a loss. FNSW state it will maximise it's contribution to the social well being of the communities, yet in FNSW Annual reports its shown that FNSW did not make any grants to non-Government community organisations during 2005-06, 2006-07 and again in 2007-08.[170] We expect the text will remain unchanged in the 2009 Annual report due at the end of the financial year, though still unavailable.

The present system of RFA forest management is uneconomical as the supposed income is generated by the depletion of capital assets.

Jobs

The total employment in the forestry sector in NSW[171] in 2006 was:

| | |
|-------------------------------|-------------|
| 841311 Forestry worker | 404 |
| 841312 Logging Assistant | 120 |
| 721112 Logging Plant Operator | 227 |
| 841313 Tree Faller | 203 |
| 234113 Foresters | 358 |
| Total | 1312 |

The total figures for forestry workers in ABS is 1,695.

The total FNSW staff was 1,069 which is broken down into 538 managerial and 531 other.[172]

These figures are not broken down into plantation versus native forest, they are aggregated.

South Coast employment figures

| Place of employment | Employees |
|----------------------------|------------------|
| Blue Ridge | 55 |
| Boral Nowra | 55 |
| Boral Batemans Bay | 17 |
| Boral Narooma | 20 |
| South East Fibre Exports | 75 |
| Eden logging workers | 52 |
| Sthn logging workers | 44 |
| Log truck drivers | 55 |
| TOTAL | 373 |

Criterion 7: Legal, institutional and economic frameworks

Foresters have eagerly endorsed part of Principle 1 of the UN *Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*[173] which states:

- (a) States have, in accordance with the Charter of the United Nations and the principles of international law, *the sovereign right to exploit their own resources* pursuant to their own environmental policies...

But the Principle goes on to state:

- And have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

The strict statutory obligations of the *Environment Planning and Assessment Act 1979 (NSW)*, the *Protection of Environment Operations Act 1997 (NSW)*, the *Threatened Species and Conservation Act 1995 (NSW)* and the *Environment Protection Biodiversity and Conservation Act 1999 (Cth)* are such that, arguably, anyone contemplating illegal activities against native flora, fauna or the environment does so at their peril.[174] Not so the Forestry Commission, trading as Forests NSW, for areas covered under the *Integrated Forestry Operations Approvals and Regional Forest Agreements*.

Forestry operations are bound by the *Protection of the Environment Operations Act 1997* and are licensed under Section 55.

Under the IFOA these licences provide that State Forests must comply with Section 120 of the POEO Act: *Except* as may be expressly provided in any condition of this licence.[175]

Under clause 29(3A) and (3B) FNSW can turn the EPLs on and off depending on whether they want to log unmapped drainage lines with immunity.

Despite numerous legitimate breaches referred to DECC there has been no prosecutions for breaches of the EPLs on the South Coast since the signing of the RFAs,[176] and in fact there has only been one prosecution in the whole of NSW. The output to date of regulatory enforcement actions in no way reflects the rate of non-compliance. On ground assessment evidence suggests that non-compliance rates are now running at four per hectare of forest logged, that is, over ten percent of all areas logged are in breach. As reported in the Draft Report breaches can run up to ninety one per audit.[177]

There are several international agreements and domestic policy documents that are legally and morally binding on the Commonwealth.

The Rio Declaration, *Convention on Biological Diversity*, 1992 at Article 8(c) states:

Each Contracting Party shall, as far as possible and as appropriate:

Regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas with a view to ensuring their conservation and sustainable use;

and

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.[178]

Commonwealth, State and Local governments are governed by the obligations of the *Intergovernmental Agreement on the Environment 1992* [179] which states:

The parties consider that the adoption of sound environmental practices and procedures, as a basis for ecologically sustainable development, will benefit both the Australian people and environment, and the international community and environment. This requires the effective integration of economic and environmental considerations in decision-making processes, in order to improve community well-being and to benefit future generations.[180]

The Montreal Process[181] at Criteria 7 states:

Legal, institutional and policy framework for forest conservation and sustainable management

7.1 *Extent to which the legal framework (laws, regulations, guidelines) supports the conservation and sustainable management of forests, including the extent to which it:*

Clarifies property rights, provides for appropriate land tenure arrangements, recognizes customary and traditional rights of indigenous people, and provides means of resolving property disputes by due process;

Provides opportunities for public participation in public policy and decision-making related to forests and public access to information; Provides for the management of forests to conserve special environmental, cultural, social and/or scientific values.[182]

Criteria 7.2 states:

7.2 *Extent to which the institutional framework supports the conservation and sustainable management of forests, including the capacity to:*

Provide for public involvement activities and public education, awareness and extension programs, and make available forest-related information;

7.5.d Enhancement of ability to predict impacts of human intervention on forests;

7.5.e Ability to predict impacts on forests of possible climate change.[183]

And at 7.2e: Enforce laws, regulations and guidelines.[184]

Commonwealth Legislation

The Regional Forest Agreements Act 2002 (Cth) removes RFA areas from the scope of the *Export Control Act 1982* and other associated regulations. Operators are not required to obtain a yearly licence to export woodchips and there are no limits on the amount of woodchips which can be removed.[185] The significance of this is that currently over eighty percent of NSW native forest is turned into woodchips. The RFA Act also reinforces those provisions of an RFA agreement which require the Commonwealth to compensate a State.[186] Under an RFA when the Commonwealth takes any action to protect

environmental or heritage values in native forests, which prevents or limits the use of land for any forestry operations, compensation is required.

Section 6 removes forestry operations conducted on land covered by an RFA from being subject to the environmental impact assessment provisions in the EPBC Act. This means that no environmental impact assessment under Commonwealth legislation is required.[187]

The Environment Protection and Biodiversity Conservation Act 1999 (Cth).[188]

This effects public participation in environmental law enforcement in a number of ways. The Act states that Part 3 does not apply to forestry operations. Part 3 contains requirements for environmental approvals of activities with a significant impact on: a declared World Heritage property, a National Heritage place, a declared Ramsar wetland, a listed migratory species, and actions on listed threatened species or endangered communities are prohibited without approval. It also contains the offences and penalties for breaches of these sections.

The *Amendment Act 2006* reduced rights of the public to participate in decision making processes under the EPBC Act. The public cannot request an emergency listing on the National Heritage list and there is no longer a right to appeal to the Administrative Appeals Tribunal against various decisions by the Minister under Part 13A or s303CC(5), s303FN, s303FO and s303FP.[189]

Although the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* states individuals or groups do not have standing to apply for a review unless they have a private right affected,[190] the definition for ‘person aggrieved’ has been broadened under the EPBC. If the person or group that has been, for the two years prior to the offence, protecting, conserving or researching the environment, and is recognised by the public and governments as the protector of those environmental interests, they can establish standing.[191]

For a very comprehensive and insightful critique on issues of Indigenous cultural heritage see the Australian Network of Environmental Defenders Offices “Submission to the Independent EPBC Act Review” (2009) available on the Commonwealth Department of Environments website.[192]

The greatest threats to Australia’s biodiversity are caused by broad-scale land clearing and forestry operations including establishment of plantations and fire management practices,[193] yet these industrial forestry practices continue to remain exempt from legislation because of the RFA regime.

Section 117 of the *Commonwealth of Australia Constitution Act (The Constitution)* states:

A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

If citizens are entitled to ‘their day in court’ under common law equity and being disallowed this right by discriminatory legislation that is State-centric, then the NSW legislation is unconstitutional.

NSW State Legislation

The Forestry and National Park Estate Act 1998 (NSW).

There are many exemptions to civil litigation under the FNPE Act. The Act states at s36 that if logging or roading is in an area covered under the IFOAs that Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply,[194] an environmental planning instrument under the EPA Act cannot ‘prohibit, require development consent for or otherwise restrict forestry operations’ and in (5): this applies to an environmental planning instrument made before or after the commencement of this section.

Forestry operations cannot be declared to be a project under Part 3A of the EPA Act, an order under Division 2A of Part 6 of the EPA Act does not have effect, any approval of forestry operations that is in force under Division 4 of Part 5 of the EPA Act has no effect during any period that Part 5 of that Act does not apply to the forestry operations, and any development consent for forestry operations that is in force under Part 4 of the EPA Act has no effect during any period that development consent under Part 4 of that Act is not required for the forestry operations.[195]

Stop work orders and interim protection orders of the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995* [196] do not apply. An order under section 124 of the *Local Government Act 1993* does not have effect.[197] At s39 an area in which forestry operations authorised by an IFOA may be carried out cannot be proposed or identified as, or declared to be, a wilderness area under

the *Wilderness Act 1987* or the *National Parks and Wildlife Act 1974*.

At s 40 proceedings may not be brought if the breach is:

a breach of the FNPE Act (including a breach of any forest agreement), a breach of an IFOA (including a breach of the terms of any licence provided by the approval), a breach of an Act or law that arises because any defence provided by any such licence is not available as a result of a breach of the licence, the Act that includes the statutory provision (including a breach of an instrument made under that Act) if the breach relates to forestry operations to which an IFOA applies.[198]

Section 40 also exempts the Act from:

a provision of an Act that gives any person a right to institute proceedings in a court to remedy or restrain a breach (or a threatened or apprehended breach) of the Act or an instrument made under the Act, whether or not any right of the person has been or may be infringed by or as a consequence of that breach.

When the legislation was introduced by the government the community was given assurances that:

The agencies which currently have enforcement and compliance powers will continue to have those powers and continue to use them to ensure that the licences are adhered to.[199]

Despite numerous legitimate breaches referred to the Department of Environment and Climate Change by various communities, there has not been a prosecution for breaches of any regulation on the South Coast since the FNPE Act was introduced contrary to Section 2 of the *Interpretation Act 1987 (NSW)* which states:

In any Act or Instrument, the word 'shall', if used to impose a duty, indicates that the duty must be performed.

A contravention of the terms of a relevant licence makes the person carrying out the forestry operations liable for offences for which the licence provides a defence (eg. damage to critical habitat of threatened species under the NP&W Act 1974; offence of polluting waters under the POEO Act 1997).[200]

Remedies of threatened or apprehended breaches since the date of assent.[201]

| EDEN | 19992000 | 20002001 | 20012002 | 20022003 | 20032004 | 20042005 | 20052006 | 20062007 | 20072008 | 20082009 | TOTAL |
|---------------------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------------------------------|-------|
| Audits | 5 | 3 | 7 | 3 | 3 | 4 | 1 | 2 | 3 | 4 | 35 |
| Breaches | 57 | 34 | 39 | 24 | 33 | 17 | 91 | 104 | 108 | 79(2 ongoing | 586 |
| Warning Letter | 3 | 3 | 3 | 2 | 3 | 3 | 1 | 2 | 3 | 1(2 ongoing | 24 |
| Remedial Works (per site) | 17 | 17 | 5 | 2 | 13 | 5 | 8 | 8 | 4 | 0 | 79 |
| Clean-up Action | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| PINS | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 ongoing investigations ongoing) | 0 |
| Prosecutions | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| SOUTHERN | 20012002 | 20022003 | 20032004 | 20042005 | 20052006 | 20062007 | 20072008 | 2008-2009 | TOTAL |
|--------------------------|----------|----------|----------|----------|----------|----------|----------|------------------------------|-------|
| Audits | 1 | 6 | 4 | 2 | 2 | 6 | 3 | 4 | 28 |
| Breaches | 3 | 196 | 35 | 1 | 107 | 1 | 115 | 27(2 investigations Ongoing) | 485 |
| Warning Letter | 1 | 1 | 2 | 0 | 2 | 1 | 3 | 2(2 investigations Ongoing) | 485 |
| Remedial Works(per site) | 2 | 4 | 7 | 1 | 14 | 1 | 6 | 0 | 35 |
| Clean-up Action | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| PINS | 0 | 1 | 0 | 0 | 0 | 1 | 0 | (2 investigations Ongoing) | 2 |
| Prosecutions | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

A much oft favoured quote by Forests NSW and DECC EPRG is found in the EPA *Prosecution Guidelines*:

It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution.[202]

In fact the full quote from Sir Hartley Shawcross goes on to say:

Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute “wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required *in the public interest.*”

Sheahan J held in *EPA v Forestry Commission (1997)* that:

The Forestry Commission, although gaining a profit from its activities, carries out a function in the public interest, and the public looks to the public body involved in the industry to set some standard.

Mr Justice Sheahan also held that:

The forestry industry must be persuaded to adopt preventative measures because the potential for harm to the environment is great, and is a public concern reflected in the relevant legislation.[203]

Section 25b of the FNPE Act states the purpose of the IFOAs are:

...for the protection of the environment and for threatened species conservation.

It was a condition under the FNPE Act that DECC ‘continue to enforce the conditions’ of the Act.

The protection of native forests and the mitigation of climate change impacts is definitely in the public interest.

Recent responses to forest auditing breaches have resulted in an apparent unenforceability and lack of compliance with the FNPE Act.

“...there is some difficulty in making a determination on the suitability of trees selected for retention after a harvesting event.”[204]

This situation is wholly due to the IFOA being riddled with grey-wording, myriad loopholes and allowances the forestry industry has white-anted into the prescriptions, making conservation bottom priority and Department of Primary Industries output high priority. The promised maintenance of the enforcement of the FNPE Act has not materialised and has been budgeted to redundancy status.

In Mogo State Forest DECC took no further enforcement action against Forests NSW for a breach when told by Forests NSW that:

Forests NSW did acknowledge that whilst some of the trees marked for retention did not strictly meet the requirements of hollow-bearing, an adequate number were retained across the landscape when unmarked trees were included in the count. [205]

There is no clause in the Southern Region IFOA allowing unmarked trees to be used in habitat tree retention counts.

The NSW Scientific Committee made a determination in 2007 that:

the loss of hollow-bearing trees is a key threatening process.

During forestry operations thousands of hollow-bearing trees per week are routinely destroyed.

Representations have been made to the Minister recommending changes to forestry operation’s prescriptions to ameliorate this environmental impact but no change has been made to on-ground forestry activities to prevent this on-going loss.[206]

DECC EPRG are currently resorting to sending Forests NSW officers to investigate breaches. Therefore, it should come as no surprise, that when the perpetrator of the crime is sent to report on the crime the result is no evidence of the crime.

Even though the RFAs are not law, they are merely agreements, Forests NSW still must comply with it’s obligations under the RFAs in order to get an exemption from the EPA Act and TSC Act’s requirements.

In *Brown v Forestry Tasmania* Marshall J ruled that as Forestry Tasmania had not complied with the RFA it was not exempt from the EPBC Act[207] and even though the case was overturned on appeal, the judgment still stands. If the Federal Court decision was brought down in NSW at this time, then all NSW forestry operations would have to cease. Forests NSW does not adhere to the current prescriptions, which are inadequate, and on the ground there is little or no adherence to these prescriptions by logging contractors.

As Dr. Gerry Bates so aptly stated:

When penalties are low, and the possibilities of being found out are light, people take risks.[208]

Regulatory systems rely upon the enforcement of statutory requirements. When there is no enforcement contraventions go unpunished and the incentive for compliance is nil.[209] The government has not ensured the adoption of Ecologically Sustainable Forest Management practices,[210] environmental safeguards have not improved and DECC has not ensured the maintenance of existing regulatory controls.

National Parks and Wildlife Act 1974 (NSW).

Forests NSW buffer zones on sites of significance are very small at ten metres only. If sites are damaged or destroyed there is no enforcement of section 37 subsection (1) that states Stop work orders and interim protection orders of the NPW Act can be applied.[211] Forests NSW state any destruction was an unfortunate accident.

An article by Ridge and Seiver concerning the Sandon Point Development[212] sums up community feeling on this Act:[213]

The central fault with the NPWA cultural heritage provisions is that an Aboriginal community cannot prevent an activity that is likely to result in the destruction of their heritage. The agency responsible for administering the NPWA retains all ownership rights, including the right to consent to destruction of their property, Aboriginal heritage. The NPWA does not protect Aboriginal heritage, it merely regulates its destruction.

Therefore the legislation enables the listing of sites but does not protect them.[214] See the Gulaga Mountain blockade as an example.[215]

Threatened Species Conservation Act 1995 (NSW).

Forests NSW hold licences granted by the Director General of National Parks and Wildlife. The licence holder must comply with conditions and requirements of the licence. The person carrying out the forestry operations is liable for an offence under the NPW Act.[216] The licence holder is not authorised to harm endangered populations or communities, pick plants that are part of those communities, damage critical habitat or damage the habitat of endangered populations or communities.

As is standard with forestry operations there is a loophole:

it may be a defence to a prosecution for an offence if the accused proves that the offence was authorised to be done, and was done in accordance with a general licence or was the subject of a certificate issued under s95 (2) of the TSC Act.[217]

The damage caused by the forestry worker's interpretation of the IFOA *Threatened Species Licence* prescriptions is systemic and across the board.[218] Despite numerous legitimate breaches referred to the Department of Environment and Climate Change by various communities, there has not been a prosecution for breaches of the *Threatened Species Licence* since the signing of the RFAs.[219] Garth Riddell sums up the TSC Act succinctly:

After 10 years in operation the TSC Act has not met its primary objectives. Although it has made a small contribution to the conservation of biological diversity and the promotion of ecologically sustainable development, it has not gone far enough. The Act's protections are procedural rather than substantive, its provisions are placatory rather than effective and its operation has been hampered by a lack of funding, lack of will and widespread misunderstanding of the concepts underlying it.[220]

It should come as no surprise that the FNPE Act and its subordinate regulations were enacted to further the interests of the Forestry Commission, Harris Daishowa,[221] the Construction Forestry Mining and Energy Union, National Association of Forest Industries[222], the logging and haulage contractors, the police and the state.

Sometimes legislation arises to further the interests of one group or another, against other interest groups and sometimes the entire society.[223]

An indication that this was the case is the reaction of the Commonwealth when the Queensland government refused to sign the Queensland RFAs and proposed instead a transition to hardwood plantations.[224] The Commonwealth Minister for Forestry, Wilson Tuckey, wrote personally to the thirty sawmills that would be affected, within three working days of the Queensland government's proposal announcement, opposing the proposal, couched in a concern for jobs.

Our fundamental view is that a SE Queensland RFA must provide for a continued, viable native timber industry...[it must fall] within the parameters of ...our requirement for real jobs protection and growth.[225]

This statement was proved erroneous when more jobs were created as part of the plantation sector proposal than under the status quo of the RFA proposal.

The legislation exemptions were put in place because the EIS processes were costly, time consuming and became increasingly more difficult for the Forestry Commission to comply with. Protests were also very

expensive and time consuming for the police and the State.[226] The labour government attempted to deal with the conflict by imposing restrictions on civil litigation but:

Since the contradictions remain the same and the legislation is merely an overlay it is likely to give rise to further conflicts at a later date.[227]

This theory has become reality. The removal of third-party rights from the FNPE Act has resulted in the court systems being burdened with forestry related cases of misdemeanours, such as 'Pedestrian Obstructs Driver' (\$53 fine), for sometimes periods of more than two years. The cost to the State in policing terms is extraordinary: \$12,757 for one day in Bega,[228] and \$288,000 total (\$46,971 in overtime) for a seventeen week blockade.[229] There is no data on how much the private security firm was paid. The last Supreme Court action resulted in Forests NSW having to pay over \$30,000 in costs.[230] The conflict has not disappeared[231] and the fact that the police force are used to enforce the breaches of the FNPE Act is a democratic anomaly.

Although the Forestry Commission is effectively immune from civil litigation in *Brodie v Singleton Shire Council (2001)* CLR512 the High Court held that immunity did not work effectively in delivering justice and was: dictated by the caprices of the unprincipled exceptions and qualifications.[232] The Court abolished the immunity and dealt with the liability of the highway authority so as "to place the common law of Australia on a principled basis." Therefore it seems there is no obstacle to the Commonwealth government overriding the State[233] apart from political will. The amount of money in compensation and redundancy packages to logging contractors is paltry compared to other buyout packages in previous years.

If the equity maxims that 'equity will not suffer a wrong to be without a remedy' and that 'equity looks on that as done which ought to be done'[234] then the exemptions, in all of the legislation above, are inequitable.

"The grasping man who is concerned with goods, and the unfair man who commits unjust acts are unjust, unfair and unequal,"[235] and "The equitable man is the man who chooses and does such acts and is no stickler for his rights but tends to take less than his share, and this state of character is equity, which is a sort of justice,"[236] and "The law bids us to do both the acts of a brave man (not to desert our post), a good tempered man (not to strike another), and those of a temperate man (not to commit adultery) and the rightly framed law does this rightly." [237]

The legislation exemptions are not 'rightly framed' and are classic examples of 'flawed legislation.' [238] They are in breach of international obligations on the environment and human rights, they are inequitable, unjust and unfair. Their only purpose is to serve the greedy at the expense of community.

The grounds for judicial review are defined as breaches if a breach of the rules of natural justice occurred, that procedures that were required by law to be observed were not observed, that decisions were made that were induced or affected by fraud, that the decisions were otherwise contrary to law or the decisions were made under an improper exercise of power. Improper exercises of power are defined as:

- (a) taking an irrelevant consideration into account in the exercise of a power;
- (b) failing to take a relevant consideration into account in the exercise of a power;
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
- (d) an exercise of a discretionary power in bad faith;
- (e) an exercise of a personal discretionary power at the direction or behest of another person;
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (j) any other exercise of a power in a way that constitutes abuse of the power.[239]

Thus the regulators are in breach of the law, both domestic and international as they have breached the standards expected for judicial review.

SEFR would contend that the majority of these non-compliance breaches are of a very serious nature and have severe effects on the environment. DECC has decided that these non-compliance breaches are so insignificant so as to not warrant prosecution. If the reason for legislation is enforcement of regulations it follows thus that there is no reason to have licence conditions and the RFAs if there is no enforcement and

therefore the RFAs should be terminated forthwith.

This is what we know and this is what we don't know we don't know

It is somehow wrong to despoil the environment, to act in ways that waste natural resources and wildlife, and to gratify pleasures of the moment at the expense of living creatures who are no threat to us.[240]

Millions upon millions of taxpayer dollars were funnelled into consultants and workshops to produce a plethora of reports aiming to provide an 'up-to-date snapshot' of the whole issue of native forest conservation and timber production. The timeframe for the CRA's meant that comprehensiveness became a misnomer and the quality of the reports produced left much to be desired from a scientific and social point of view. Besides the fact that all reports begin with a disclaimer that the information therein cannot be relied upon as factual, the key conclusion from the bulk of the reports was that there was not enough scientific knowledge available about forests. For example:

The modelling project has highlighted some significant areas or species where there still exist gaps in quality data. As discussed throughout the report, a large number of the priority fauna species were lacking enough valid systematic records to enable presence-absence modelling. Although there were generally more presence-only records for each, some species still had insufficient records for valid modelling of any type. Such species tended to be those that are cryptic or difficult to survey. The lack of flora records was even more evident, which resulted in limited modelling. In the future, it is recommended that further effort is put into systematic targeted surveying of these priority species to enable better presence-absence modelling.[241]

And:

The previous report concluded that the methodology for estimating the effects of logging management on catchment water yield provided a reasonable "best guess" that was unlikely to be much improved even with the expenditure of considerable effort. This statement applies equally well to this study. Within the limitations of current data availability the methodology represents the current best understanding of the different factors that influence water quantity and quality from forested catchments. However, the absolute magnitude of the estimates are subject to considerable uncertainty."[242]

It is notable that this latter report makes no mention of climate change, even though nine years earlier the Intergovernmental Panel on Climate Change completed its report on the greenhouse effect.

The effects and rate of human-induced climate change have increased dramatically since the RFAs were signed in 1998. Climate change was not considered at all during the Comprehensive Regional Assessment (CRA) process. Further, the significant carbon and water storage aspects of native forests have been inadequately or not addressed at all.

Numerous nationally-listed species in NSW are increasingly threatened by climate change, including species such as the Spotted-tailed Quoll, but the exemptions to the EPBC Act leaves things frozen in time, stopped at 1998, when climate change was not considered.

Climate change will dramatically increase other threats to species in the region, through increased spread of invasive species, increased fire frequency and severity, increased spread of forest dieback, and reduced stream flows. The cumulative impact of all these threats, plus industrial logging operations operating under an exemption to the EPBC Act and the RFAs, have resulted in a major impact on nationally-listed species.

Conditions placed on logging to ameliorate impacts as a result of the RFAs are increasingly inadequate as climate change escalates. Forest authorities' accounting and information systems fail to assess the true value of carbon and water resources that are stored in native forests. The value of these stored resources far exceed the royalties received from logging operations, even when carbon is conservatively valued at a price of twenty dollars a tonne. The RFAs are the result of a flawed and scientifically unsound process that privileged economic concerns over the environment.

Young people from four hundred and fifty nations gathered in Bonn for the UN Talks on Climate Change. Their declaration states:

World leaders and negotiators of the climate deal, our survival is in your hands. We trust that you will take immediate action to stop deforestation, and industrial logging of the world's biodiverse forests. We are depending on you to protect our forests and provide us with a healthy, ecologically sustainable, low carbon future.

They called for:

1. Immediately end deforestation, industrial scale logging in primary forests, the conversion of forests to monoculture tree crops, plantations;
2. Protection of the world's biodiverse forests including primary forests in developed countries (e.g. Australia, Canada and Russia) and tropical forests in developing countries;
3. Respect for the rights of women, Indigenous peoples and local communities and allow them to lead healthy and sustainable lives whilst stopping deforestation and industrial logging of primary forests in their country, and;
4. Do not allow developed countries to use forest protection and the avoiding deforestation and industrial scale logging of primary forests in other countries as an offset mechanism for their own emissions.

Galaxy Research conducted a Poll in July. The question was:

The Australian National University has found that Australia's native forests contain a large amount of carbon that would be protected by ending forest clearance. In your opinion, do you agree or disagree that the Rudd government should stop the logging of native forests?[243]

The results were:

Strongly Agree:43%

Agree: 35%

Total Agree: 78%

Disagree: 11%

Strongly Disagree: 3%

Total Disagree:14%

Don't know/refused: 8%

Given what we now know, and all that we still have yet to learn, about native forest eco-systems and about the effects of climate change, the non-enactment of the precautionary principle verges on the criminal.

Conclusion

The disclaimer at the beginning of the document entitled the Draft Report is apt:

While every reasonable effort has been made to ensure that this document is correct at the time of printing, the State of NSW and the Commonwealth of Australia, its agents and employees, do not assume any responsibility and shall have no liability, consequential or otherwise, of any kind, arising from the use of or reliance on any of the information contained in this document.

SEFR asserts that 'reasonable effort' for establishment of fact has not been taken by the drafters of this document. All criteria in the Draft Report, inter alia, are lacking in up-to-date verifiable scientific data, or in fact any data, to support any of the claims.

Our conclusions based on the reading of this Draft report are:

1. That the RFAs did not consider the critical issues of climate change or water and are therefore inadequate instruments to determine forest management.
2. The Regional Forest Agreements are severely inadequate to protect forest species and forest habitats. The conservation targets of almost all nationally-listed fauna species and many nationally-listed flora species were not achieved through the RFAs and substantial additional conservation action is still required to meet minimum benchmarks. Using the NSW Government's own conservation analysis and data produced during the Comprehensive Regional Assessment, it is evident that only one of the twenty nationally-listed forest fauna species met their conservation targets after the RFAs and many nationally-listed flora species have fallen dramatically short of their targets. The number of threatened and endangered species has risen since the RFAs were signed and

many threatened and endangered flora and fauna species are at extreme risk from current logging operations. Current logging practices do not adequately protect Australia's native flora and fauna.

3. In the south east of NSW, covered by the Eden and Southern RFAs, the annual net areas logged have rapidly increased and yields have fallen. In other words, the industry is having to log ever greater areas to maintain the same levels of production. This is not sustainable. Demonstrably unsustainable timber volumes were committed for twenty years, and these even extend beyond the term of the RFAs. The 'FRAMES' industry modelling system used to derive these volumes substantially over-estimated available timber volumes. Consequently, after the twenty year period of the RFAs, there will be a dramatic short-fall in timber. Royalties in South East NSW are now less, in real terms than they were fifteen years ago and Forests NSW is making less in royalty revenue than it expends in managing woodchipping operations.

The industrial logging practices in Australia's native forests by the Forestry Commission trading as Forests NSW under the Regional Forest Agreements is unsustainable, economically, culturally and environmentally. The outcomes of the RFAs are not sustainable, even from a timber perspective.

4. Private lands were not assessed as part of the RFAs, but they are being logged by FNSW with very weak regulation at an alarming rate under an EPBC Act exemption. Current prescriptions and legislation to protect native forests on private land are extremely inadequate.

5. Other authorities' catchment planning agencies have almost unanimously concluded that forests are more valuable left standing in catchments than sold as timber.

6. The almost complete consensus of public opinion is the requirement to leave the land in a better state than it was found and to eliminate or drastically reduce all native forest logging immediately. In concurrence with the Stern Report and the Mackey Report, action to avoid further deforestation should be an urgent priority. Accordingly, if no action is taken, the health of native forests and therefore the Australian public will be severely detrimentally affected.

7. The RFAs have not been properly implemented, review timeframes have not been met and key components have not been conducted. The conditions on logging under legislative regimes, on which the RFAs rely to deliver 'ecologically sustainable management', are inadequate, frequently breached and very poorly enforced. In addition, third party appeal rights have been removed in NSW and there is no avenue for the community to enforce the law directly, despite the transparent failure of the NSW Government to enforce it properly itself.

There was a need to monitor post-approval of harvest plans to assess the actual impact of operations, and to have ensured that conditions of approval were complied with. Insufficient resources were directed towards non-compliance activities and, as a result, there was no systematic monitoring of logging operations. There should have been vigorous processes for the monitoring of all operations and this should have been supported by appropriate funding. This should have been implemented and regulated by an independent authority.

Government owned and managed native forest logging practices have resulted in illegal logging, destruction of old-growth trees in special protection zones and multiple breaches of procedure. There should be no exemption for RFA forestry operations which are demonstrably unsustainable, for which key agreements relating to sustainability reviews have been ignored and/or wood supply contracts signed outside the timeframe of the RFAs.

SEFR do not support exclusions for particular activities or areas, unless there is genuine duplication of assessment requirements, and it is guaranteed that best practice assessment will occur. This is not the case under the RFAs.

8. We call for a judicial inquiry into the nature, extent and effect of any unlawful or otherwise inappropriate logging or workplace practice including any practice or conduct relating to, but not limited to;

(i) *the Forestry Act 1916, the Forestry and National Park Estate Act 1998, the Integrated Forestry Operations Approvals, the Regional Forest Agreements* or other laws relating to forestry.

(ii) fraud, corruption, collusion, anti-competitive behaviour, coercion, violence, false and misleading statements.

The nature, extent and effect of any unlawful or otherwise inappropriate practice or conduct relating to;

(i) failure to disclose or properly account for practices and financial transactions.
(ii) inappropriate management, use or operation of industry funds for redundancy or any inappropriate use of funds, given that Forests NSW native forest sector is currently running at over fourteen million dollars in the red. In 2001 the Auditor-General raised concerns over the liquidity situation of FNSW further stating:

the situation needs to be monitored closely by the Board of the Forestry Commission and the Government.[244]

The inquiry should inquire into whether any practice or conduct that might have constituted a breach of the law should be referred to the relevant Commonwealth or State agency.[245]

9. If FNSW can prove it has adhered to the RFAs and IFOAs management obligations then the RFAs must be inadequate and flawed instruments with which to protect the environment and the communities interests. If, on the other hand, the RFAs are found to be delivering positive environmental outcomes then FNSW must be found to be mismanaging the native forest estate to a serious degree.

10. Forests NSW as the agency of the RFAs has shown itself to be a complete economic and environmental failure ergo the RFAs are not “durable,” the obligations and commitments that they contain are not ensuring effective conservation and therefore the RFAs are a complete failure.

11. The RFA regime has effectively postponed inevitable environmental protection measures for ten years. As a matter of urgency these measures can no longer remain in limbo. There are significant economic, environmental and social benefits to support ending native forest logging and to ensure a swift transition of logging operations into the existing plantation estate.

The legislators have not enacted the legislation, the regulators have not regulated and the workers are not complying, thus we call for clause 8 of the RFAs to be triggered immediately, giving effect to ending the RFAs as the mode of native forest management.

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- [75] See http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0011/266195/esfm-southcoast-southern.pdf (for others change end region in URL)
- [76] See http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0004/266188/esfm-eden.pdf
- [77] See http://www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/266189/esfm-hume.pdf
- [78] See our submission comments at Milestone 8.
- [79] UN Office of the High Commissioner for Human Rights, “What are Human Rights?” (2008).
- [80] UN Committee on Economic, Social and Cultural Rights, *General Comment No 9 – the Domestic Application of the Covenant (1998)* UN Doc E/C.12/1998/24, UN Human Rights Committee, *General Comment No 31 – Nature of the General Legal Obligation imposed on State Parties to the Covenant (2004)* UN Doc CCPR/C/21/Rev.1/Add.13, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3 - On the Nature of State Parties' Obligations (1990)* UN Doc, E/1991/23, annex III.
- [81] The right to life is contained in Article 6 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976). . Australia ratified the ICCPR on 13 August 1980 and the CRC on 17 December 1990.
- [82] Article 3 of the *Universal Declaration of Human Rights*, GA Resolution 217A(III), UN Doc A/810 at 71 (1948).

- [83] See Articles 11 and 12 ICESCR, Article 14, paragraph 2(h) CEDAW, Article 28, paragraph 2(a) CRPD and Article 24, paragraph 2(c) CRC.
- [84] See the Australian Human Rights Commission “Independent Review of the EPBC Act,” 30 January 2009.
- [85] Professor Ross Garnaut, *Garnaut Climate Change Review*, 2008.
- [86] Professor Brendan Mackey, “Green Carbon Report,” Dec 2008, Wild Country Research and Policy Hut, ANU.
- [87] Agenda 21 also states at 23.2: Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures. <http://www.un.org/esa/dsd/agenda21/index.shtml> For an example of FNSW unwillingness to inform the public see *Watt v Forests NSW* [2007] NSWADT 197. The royalty rate is \$6.90/tonne for pulp logs from the Sthn Region & \$16/tonne for Eden.
- [88] Dr. Gerry Bates, Lecture on Fundamentals of Environmental Law, ANU, 16 July, 2009.
- [89] Andrew Macintosh, “Why the Environment Protection and Biodiversity Conservation Act’s referral, assessment and approval process is failing to achieve its environmental objectives” (2004) 21 EPLJ 288 pg302.
- [90] Convention on Biological Diversity (Rio de Janeiro, 5 June 1992) Entry into force generally and for Australia: 29 December 1993 *AUSTRALIAN TREATY SERIES 1993* No. 32
- [91] Ibid.
- [92] In *BGP Properties Pty Limited v Lake Macquarie City Council* [2004] NSWLEC 399 citing *Trenorden J et al in Conservation Council of South Australia v Development Assessment Committee and Tuna Boat Owners Association (No 2)* [1999] SAERDC 86
- [93] FNSW proposed to burn 23,263 hectares just in the Southern sub-region, FNSW Southern Region Burning Proposals 2007.
- [94] See SEFR submission assessments at Criteria 1 and 2 of this document.
- [95] The *Southern Region Forest Agreement 2002*, Environmental Management Systems 2.1. “The EMS shall be the mechanism by which SFNSW will implement commitments and obligations under the NSW *forest agreements* and RFAs and effectively contribute to Australia’s international obligations under the Montreal process.” ESFM ‘initiatives’ are in s2.11.
- [96] FNSW, A Review of Wood Resources on the North Coast of New South Wales, September (2004) p12.
- [97] Performance Audit In Brief, NSW Auditor-Generals Report to Parliament, April 2009 p2.
- [98] Performance Audit “Sustaining Native Forest Operations,” Auditor-General’s Report, 2009. It was also stated “reviews of yield estimates for the southern region, due in 2004 for Eden and 2006 for Tumut and the south coast, have not been completed.”
- [99] Michael Davies, Department of Environment and Climate Change, Environment Protection and Regulation Group, Crown Forestry Policy and Regulation Section (ex-Resource and Conservation Unit) 14/7/09.
- [100] Auditor-Generals Report, Vol 1, 2009. http://www.audit.nsw.gov.au/publications/reports/financial/2009/vol1/pdfs/31_0173_forestry_commission_of_new_south_wales.pdf
- [101] The Auditor-Generals Report to Parliament, Vol 1, 2001. <http://www.audit.nsw.gov.au/publications/reports/financial/2001/vol1/173Forestry.PDF>
- [102] NSW State of the Forests Report, 2003 and Ibid, 2008.
- [103] IGA 1992 sch 2 (3).
- [104] For 2008 figures See <http://www.threatenedspecies.environment.nsw.gov.au/index.aspx>
- [105] For 2000 and 2003 figures See http://www.environment.nsw.gov.au/soe/soe2003/chapter6/chp_6.3.htm#6.3.69 and for 2006 figures http://www.environment.nsw.gov.au/soe/soe2006/chapter6/chp_6.3.htm#6.3.71
- [106] See <http://www.threatenedspecies.environment.nsw.gov.au/index.aspx> Two examples illustrate this point: Firstly, in relation to the endangered Hasting River Mouse, the conditions contained in the Integrated Forestry Operations Approval for this species have recently been weakened for certain core areas for the Hasting River Mouse at the behest of the Forests NSW to increase access for logging. Secondly, in relation to the endangered Spotted-tailed Quoll, FNSW were found illegally logging a Spotted-tailed Quoll exclusion zone in Forestland State Forest in Upper and Lower North East NSW. They admitted the fact, but claimed it was a ‘mistake’.

- [107] Major Conservation Policy Issues for Biodiversity in Oceania (p 834-840) R. T. KINGSFORD, J. E. M. WATSON, C. J. LUNDQUIST, O. VENTER, L. HUGHES, E. L. JOHNSTON, J. ATHERTON, M. GAWEL, D. A. KEITH, B. G. MACKEY, C. MORLEY, H. P. POSSINGHAM, B. RAYNOR, H. F. RECHER, K. A. WILSON Published Online: Jul 13 2009 5:36PM <http://www3.interscience.wiley.com/journal/118487636/home?CRETRY=1&SRETRY=0>
- [108] See The National Strategy for the Conservation of Australia's Biological Diversity (1996).
- [109] from "REVIEW OF PROTECTIVE MEASURES AND FOREST PRACTICES – BIODIVERSITY WORKSHOP SOUTHERN REGION", Ecologically Sustainable Forest Management Group, July 1999, Project No. NA45/ESFM p176-177.
- [110] Southern Region – Compartment 62, South Brooman State Forest, Bateman's Bay Management Area, Harvest Plan approved 8/5/09.
- [111] NSW Government 2006 ESFM "Criteria and Indicators monitoring Report- 2001/2002: Upper North East, Lower North East and Eden Regions." A Supplementary Report to the NSW Forest Agreements Implementation Report. Forestry and Rural industry Policy, NSW Dept of Natural Resources, Parramatta, p25.
- [112] Ibid 8.8.5.
- [113] Letter from SEFR to Doug Mills N.P.W.S. Southern Directorate, Threatened Species Unit. 23/8/04.
- [114] NSW Government 2006.ESFM "Criteria and Indicators monitoring Report- 2001/2002: Upper North East, Lower North East and Eden Regions." A Supplementary Report to the NSW Forest Agreements Implementation Report. Forestry and Rural industry Policy, NSW Dept of Natural Resources, Parramatta, p37.
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- [117] See <http://www.environment.nsw.gov.au/forestagreements/monitoring.htm>
- [118] See Site Specific Harvesting Plan, Southern Region -Cpts 584, 585, and 586 Wandera State Forest, Batemans Bay Management Area, approved 1/5/08, FNSW.
- [119] Mackey B., "Regional Forest Agreements -Business as Usual in the Southern Region" *National Parks Journal*, Vol. 43 (no. 6), December 1999.
- [120] From CRA Report "DRAFT ASSESSMENT OF FOREST MANAGEMENT PRACTICES FOR THE EDEN RFA," (1997) CSIRO FORESTRY AND FORESTRY PRODUCTS AND ANDREW SMITH, SETSCAN AND PAT O'SHAUGHNESSY & ASSOCIATES, ne27esfm, ISBN 0-642-28398-2 p48
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- [123] Hagan, J. M., Vander Haegen, M., and Mckinley, P. S. (1996). The early development of forest fragmentation effects on birds. *Conservation Biology*, 10, 188-202.
- [124] Southern IFOA Clause 52 Assessment of Regeneration Report 20/6/07, FNSW Batemans Bay. This 'report' is a thin five line by five column table.
- [125] Ough K., "Regeneration of Wet Forest flora a decade after clear-felling or wildfire - is there a difference?" *Australian Journal of Botany* 49(5) 645 - 664. Full text doi:10.1071/BT99053 <http://www.publish.csiro.au/paper/BT99053.htm>
- [126] REGIONAL FOREST AGREEMENT for SOUTHERN NEW SOUTH WALES between THE COMMONWEALTH OF AUSTRALIA & THE STATE OF NEW SOUTH WALES April 2001.
- [127] The *Southern Region Forest Agreement 2002*.
- [128] ESFM Southern Region (2005) p36.
- [129] Ibid

- [130] FRAMES data graph, HQL Run, CRA data. Letter to DECC from Daines.
- [131] Report to Conform to IFOA Condition 31(Southern) Annual Report on logging operations by financial year 2004-05 Southern RFA area.
- [132] Obtained from the IFOA clause 24 annual reports for the years 2001 to 2007.
- [133] See the FA/IFOA implementation reports 1999/2002.
- [134] These figures are obtained by adding 1999/00 and 2000/01 and dividing by two.
- [135] the Draft Report Appendix 4, p227.
- [136] Australian Bureau of Agricultural and Resource Economics, "Australian forest and wood products statistics" March and June quarters 2008, Project 317, ISSN 1449-1850. Interestingly ,but not unusually, FNSW figures do not match ABARE's.
- [137] FNSW Seeing Report 2007/2008.
- [138] The Auditor-Generals Report to Parliament, vol 1, 2009. http://www.audit.nsw.gov.au/publications/reports/financial/2009/vol1/pdfs/31_0173_forestry_commission_of_new_south_wales.pdf
- [139] see <http://www.aph.gov.au/house/committee/pir/honeybee/report/chapter%203.pdf> "*More Than Honey: the future of the Australian honey bee and pollination industries.*" p 48.
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- [142] The Interim Draft Report p129.
- [143] D. Tuan, "Southern IFOA Clause 52 Assessment of Regeneration", FNSW Batemans Bay Office, 20/6/07.
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- [149] from CRA report "Water quality and quantity for the UNE, LNE and Southern RFA regions" (1998) Project NA61/ESFM, p 54. [150] SOFR 2008 p109.
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- [153] See Monitoring and Evaluation Trials, New South Wales Region, Southern Catchment, Phase 1 Report, (2004) National Land & Water Resources Audit, <http://lwa.gov.au/files/products/national-land-and-water-resources-audit/er050846/er050846.pdf> and also NSW Diffuse Source Water Strategy, DECC 2009/085, ISBN 978174122 961 5. <http://www.environment.nsw.gov.au/resources/water/09085dswp.pdf>
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- [162] Ibid pg 13.
- [163] Department of Climate Change 2008 *Australia’s National Greenhouse Accounts 2006 State and Territory Greenhouse Gas emissions* p.17. The figure is 17.2%.
- [164] Blakers M. (2008), Comments on Garnaut Climate Change Review: Issues Paper 1 Land-use – Agriculture and Forestry.
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- [167] Draft Interim Assessment report, ‘SOCIO-ECONOMIC ASSESSMENT FRAMEWORK’ http://www.racac.nsw.gov.au/reports/iap/chapter2/ch2_700.htm Ch 2.7.
- [168] The Auditor-General, Mr Peter Achterstraat, MEDIA RELEASE, AUDITOR-GENERAL’S REPORT, Sustaining Native Forest Operations, 29/4/2009, <http://www.audit.nsw.gov.au>
- [169] The NSW Forest Agreements Implementation Report (2001/2002) published in 2006, p69 and FNSW Annual report 2007-08, p88.
- [170] FNSW Annual Reports; 2005-06 p59, 2006-07 p69, 2007-08 p81.
- [171] Australian Bureau of Statistics, Cat. No. 2068.0 - 2006 Census Tables, “2006 Census of Population and Housing NSW” Occupation by Sex- Alternative View. Occupation was coded to the 2006 ANZS Classification of Occupations. This has replaced the 1996 Australian Standard Classification of Occupations(ASCO) 2nd Edition. <http://www.censusdata.abs.gov.au>
- [172] FNSW Annual report 2007-08.
- [173] (Rio de Janeiro, 3-14 June 1992) A/CONF.151/26 (Vol. III) emphasis added.
- [174] Andrew Macintosh, “Why the Environment Protection and Biodiversity Conservation Act’s referral, assessment and approval process is failing to achieve its environmental objectives” (2004) 21 EPLJ 288.
- [175] Southern Region IFOA at Appendix A 5.(emphasis added).
- [176] See Title page of SEFR submission.
- [177] “A Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements,” (2009). Resource and Conservation Unit, NSW Department of Environment and Climate Change NSW, Sydney, p175.
- [178] The Rio Declaration, *Convention on Biological Diversity*, Rio de Janeiro, 5 June 1992, Entry into force for Australia: 29 December 1993. Australian Treaty Series 1993 No 32.
- [179] *National Environment Protection Council (New South Wales) Act 1995 (NSW), Schedule 1. InterGovernmental Agreement on the Environment 1992.*
- [180] For an in-depth analysis on intergenerational equity see Dr Laura Horn, “Climate change litigation actions for future generations” (2008) 25 EPLJ 115.

[181] Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests “*The Montreal Process*” Third Edition, December 2007, www.rinya.maff.go.jp/mpci/

[182] Ibid a) c) d) e).

[183] This author has had many conversation with FNSW officers who truly believe there is no such thing as climate change.

[184] The Montreal Process also states at 7.4 Capacity to measure and monitor changes in the conservation and sustainable management of forests, including: 7.4.a Availability and extent of up-to-date data, statistics and other information important to measuring or describing indicators associated with criteria 1-7; 7.4.b Scope, frequency and statistical reliability of forest inventories, assessments, monitoring and other relevant information; 7.5.b Development of methodologies to measure and integrate environmental and social costs and benefits into markets and public policies, and to reflect forest-related resource depletion or replenishment in national accounting systems; All of which FNSW have broken.

[185] Note: The *Export Control Act 1982* regulates the export of “prescribed goods”. In 2008 SEFE exported 977,074 tonnes of green wood and recorded a record profit of \$10,907,529.

[186] See s8 of the *Regional Forest Agreements Act 2002* (Cth).

[187] RFA Act 2002 s6 (4).

[188] For discussion on the effectiveness of the EPBC Act in protecting the environment see “Swirls in the stream of Australian environmental law: Debate on the EPBC Act” Chris McGrath (2006) 23 EPLJ 165 and Macintosh A and Wilkinson D , “EPBC Act – The Case for Reform” (2005) 10 (1) AJNRLP 139. Section 38 is the corresponding section to s36 in the *Forestry and National Park Estate Act 1998* (NSW).

[189] See s303GJ of the EPBC Act.

[190] A person or organisation with a ‘mere emotional or intellectual concern’ or belief affected by the administrative action did not have standing to seek review. See for example, *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, and *North Coast Environmental Council Inc v Minister for Resources* (1994) 55 FCR 492.

[191] For definition of person or group aggrieved see the EPBC Act s487.

[192] ANEDO submission on the EPBCA, (2009), <http://www.environment.gov.au/epbc/review/submissions/pubs/189-australian-network-of-environmental-defenders.pdf>.

[193] See The National Strategy for the Conservation of Australia’s Biological Diversity (1996).

[194] FNPE Act 1998 (NSW) s 36 (1).

[195] Ibid s36 (2), (2A), (3), (4).

[196] NPW Act Section 37 Part 6A. TSC Act Division 1 of Part 7 (FNPE Act 1998 s37).

[197] FNPE Act s 38.

[198] Ibid s40 (2)(a), (b) (c), & (d). At 40 (1) The FNPE Act as also exempt from s 219, s252 and s253 of the POEO Act 1997.

[199] Minister Yeadon, *NSW Legislative Assembly Hansard*, 12 November 1998.

[200] note on p21, FNPE Act 1998.

[201] Provided by Ian Cranwell, DECC, 2009 on his last day in office.

[202] [13380]EPA *Prosecution Guidelines* at 3: Sir Hartley Shawcross QC, UK Attorney General and former Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951, emphasis added.

[203] *EPA v Forestry Commission of NSW* [1997] NSWLEC 96, Sheahan J.

[204] Letter: DECC to South East Forest Rescue(SEFR), 12/2/08.

[205] Letter: DECC to T. Whan (SEFR) 16/2/09.

[206] This also applies to the Key Threatening Process of removal of dead standing trees.

[207] See *Brown v Forestry Tasmania and Others* [2006] FCA 1729, Marshall J.

[208] Dr. Gerry Bates, Lecture on Fundamentals of Environmental Law, ANU, 16 July, 2009.

[209] Andrew Macintosh, “Why the Environment Protection and Biodiversity Conservation Act’s referral, assessment and approval process is failing to achieve its environmental objectives” (2004) 21 EPLJ 288 pg302.

[210] The *Southern Region Forest Agreement 2002*, Environmental Management Systems 2.1. “The EMS shall be the mechanism by which SFNSW will implement commitments and obligations under the NSW *forest agreements* and RFAs and effectively contribute to Australia’s international obligations under the Montreal process.” ESFM ‘initiatives’ are in s2.11.

[211] FNPE Act 1998 (NSW) s37 (2) states: However that does not prevent the making of an order for the purpose of protecting any Aboriginal relic or place.

[212] For an overview see *Minister for Planning v Walker* [2008] NSWCA 224.

[213] Ridge, K. & Seiver, A. 2005, ‘Carriage: An Elders Journey through the Courts’, *Indigenous Law Bulletin* 10.

[214] For a very comprehensive overview of legislation effect on sites see Aliza Taubman “Protecting Aboriginal Sacred Sites: the Aftermath of the Hindmarsh Island Dispute,”(2002) EPLJ 19No 2.

[215] Uncle Guboo Ted Thomas, (Aboriginal elder and traditional owner) “Mumbulla Mountain; an Anthropological and Archaeological Investigation” Brian J Egloff, Aboriginal & Historical Resources, NPWS, 1979.

[216] Section 118A, NPW Act 1974.

[217] Ibid 3 (a) & 3 (a1).

[218] For example: The conditions contained in the integrated forestry operations approval for the Hasting River Mouse have been weakened for certain core areas for the Mouse at the behest of Forests NSW to increase access for logging. In relation to the endangered Spotted-tailed Quoll, Forests NSW were found illegally logging a Spotted-tailed Quoll exclusion zone in Forestland State Forest in Upper and Lower North East NSW. Forests NSW admitted the fact, but claimed it was a ‘mistake.’ The Southern Brown Bandicoots original prescription was an exclusion zone of 200 hectares around each record of the species but in the latest harvest plan from Nadgee State Forest there is no prescription (FNSW Harvest Plan for Compartments 80/81 2009). FNSW is currently logging grey-headed flying fox habitat with immunity (Cpt 62 Sth Brooman, NSW).

[219] Ian Cranwell statistics. N36.

[220] Garth Riddell, “A crumbling wall: The Threatened Species Conservation Act 10 years on” (2005) 22 EPLJ 446.

[221] Now Nippon Paper Group trading as South East Fibre Exports. There was a great piece of graffiti on the rear of a log truck, “I’m too young to Dieshowa”

[222] NAFI is the very well funded lobbying body of the woodchip industry, based in Canberra.

[223] See W. Chambliss & R. Seidman, “Law, Order and Power,” 1982, Addison-Wesley Pub. Co., 1982 77-78.

[224] Brown A.J., “Beyond Public Native Forest Logging: National Forest Policy and Regional Forest Agreements after Sth East Queensland,” EPLJ 18 No. 2.

[225] Media Release, W Tuckey MP, “Report does not support QLD RFA proposal,” REF AFFA99/130TU, 30 Nov 1999. The minister was in direct conflict with the QLD Timber Board.

[226] For an extensive history of native forest logging and the RFA process see Dr. J. Ajani, “The Forest Wars,” Melbourne University Press, 2007.

[227] S. Bottomely & S. Parker, ‘Law in Context,’ 1997, Federation Press, p81.

[228] Reply to question from Sylvia Hale MLC to the Minister for Police David Campbell in Budget Estimates Questions Q.19 Bodalla State Forest Logging, NSW Parliamentary Hansard.

[229] Id. FNSW also paid a private security company (2 men & a dog) to guard the machines from 5pm-7am weekdays and 24 hourly on weekends.

[230] See *Barnes v Mackenzie* [2008] NSWSC 455.

[231] There have been 68 blockades and protests that the police have been called to since the RFAs were signed.

[232] *Brodie v Singleton Shire Council (2001)* CLR512 at [544].

[233] See *New South Wales v Commonwealth* (2006) 81 ALJR 34; 156 IR 1.

[234] Cook, Creyke, Geddes and Hamer, *Laying Down the Law* 7th ed. (2009) LexisNexis Butterworths Aust. [2.10] p19.

[235] Aristotle, “The Nicomachean Ethics” Book V in *Society, Law and Morality*, Frederick A Olaf son (ed.) (1961) Prentice-Hall Inc. NJ. p26.

[236] Ibid at p 34.

[237] Ibid at p27.

[238] Sax JL, *Defending the Environment*, Vintage Books, 1971, Ch 6 pp 155-156.

[239] See the *Administrative Decisions Judicial review Act 1977* (Cth) s5 (2).

[240] A. D'Amato, "What Obligation Does Our Generation Owe the Next? An Approach to Global Environmental Responsibility"(1990) *American Journal of International Law* 190.

[241] "Modelling Areas of Habitat Significance for Vertebrate Fauna and Vascular Flora in the Southern CRA Region," project number NS 09/EH February 2000 NSW NPWS.

[242] ESFM PROJECT: "WATER QUALITY AND QUANTITY FOR THE SOUTHERN RFA REGION" project number NA 61/ESFM November 1999 Sinclair Knight Merz.

[243] Galaxy Research, Sample: 1100 Australians, 24-26 July, 2009
<http://www.galaxyresearch.com.au/index.php?page=galaxy-omnibus>

[244] Auditor-Generals report to Parliament, Vol 1, 2001.
<http://www.audit.nsw.gov.au/publications/reports/financial/2001/vol1/173Forestry.PDF>

[245] A reference to practice or conduct includes acts or omissions.