

IF A TREE FALLS

COMPLIANCE FAILURES IN THE PUBLIC FORESTS OF NEW SOUTH WALES

This report was prepared by the Environmental Defender's Office (NSW), on behalf of the Nature Conservation Council of NSW.



The **Environmental Defender's Office** (EDO) is a community legal centre with over 20 years experience specialising in public interest environmental and planning law.

www.edo.org.au



Founded in 1955, the **Nature Conservation Council of NSW** (NCC) is the peak environment organisation for NSW, representing more than 100 community environment groups across the state.

www.nccnsw.org.au

Preparation of this report would not have been possible without the tireless efforts of community members who have spent hundreds of hours in our public forests, identifying and documenting breaches of forestry and environmental regulations. In particular, the authors wish to recognise the work of Lisa Stone and Dailan Pugh, who have played a vital role in documenting the impacts of unlawful logging practices in our public forests.

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p5.	South East Forest Rescue
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[I]n my view, the number of convictions suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws.

Justice R A Pepper, NSW Land and Environment Court, 8 June 2011

Department of Environment, Climate Change and Water v Forestry Commission of NSW



Community audits have revealed a pattern of systemic non-compliance with environmental laws in our public native forests.





FOREWORD

The native forests of New South Wales are home to a remarkable diversity of native animals and plants, including many species now threatened with extinction.

Our forests provide us with clean air and fresh water, protect our soil and store enormous amounts of carbon. In May 2011, the Climate Commission found that protection of carbon rich native forests is one of our best opportunities for rapidly reducing Australia's contribution to climate change.¹

Given the diverse natural values of our forests, the community has a strong and legitimate interest in ensuring that the management of our native forests is both lawful and sustainable. In recent years, community audits have revealed a pattern of systemic non-compliance with environmental laws in our public native forests.

The extent of non-compliance was highlighted in a recent Land and Environment Court judgement, in which the court found that Forests NSW had manifested 'a reckless attitude towards compliance with its environmental obligations'.²

This report, prepared by the Environmental Defender's Office at the request of the Nature Conservation Council of NSW, represents a compelling call to action for the NSW Government.

It is time to restore law and order to our public native forests.

Pepe Clarke
Chief Executive Officer
Nature Conservation Council of NSW

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EXECUTIVE SUMMARY


The Environmental Defender's Office (EDO) is a community legal centre with over 20 years experience specialising in public interest environmental and planning law. There is evidence of systemic breaches of forestry regulations throughout all of NSW's public forest. Nature Conservation Council of New South Wales has requested the EDO to prepare this report as a result of growing concern in the community about these breaches and the implications for biodiversity and the environment.

The large tracts of forests in NSW managed under the *Regional Forest Agreement for the Eden Region* (1999) (Eden RFA), the *Regional Forest Agreement for North East NSW* (2000) (NE RFA), and the *Regional Forest Agreement for Southern NSW* (2001) (Southern RFA) are home to many threatened species and ecological communities and contain much of our precious biodiversity. For this reason, it is essential that those forests are managed in a manner that is consistent with Ecologically Sustainable Forest Management (ESFM).

The legal and regulatory framework for the management of public owned native forests includes specific prescriptions designed to reduce impacts on biodiversity while allowing logging to take place in a more sustainable way.

Setting aside the issues of whether or not native forests should be available for harvesting at all and the adequacy of logging prescriptions, it is clear that breaches of forestry regulations are systemic and occurring across the state to such a degree that flora and fauna species are being impacted as a result of those breaches. It is clear that native forests are not being managed in a way that complies with the principles of ESFM and the conservation of biodiversity.

This report addresses the state of NSW's public-owned native forests and the flora and fauna species that inhabit them, the regulatory framework for the management of those forests and the widespread breaches of forestry regulation that our clients are reporting to us from across the state. The report makes a number of recommendations to address the inadequacies of the current regulatory system.

An aerial photograph of a vast, dense forest with a thick canopy of green trees. The perspective is from directly above, showing the intricate patterns of the forest floor and the uniformity of the green color.

70% of native forests in Australia have been degraded by unsustainable logging.³

CHAPTER 1 | STATE OF NSW'S NATIVE FORESTS

In NSW native forests comprise 26.2 million hectares, which is over 30% of our total land area.⁴ There are 2.4 million hectares of State forests, of which 2.1 million is native forests.⁵

Forests NSW states that 1.3 million hectares of its forests are available for harvesting, with the remaining areas of State forest in conservation and flora reserves or otherwise subject to exclusions from harvesting.⁶

Figures for native forests protected in NSW's terrestrial reserve system differ but a reasonable estimate is approximately 4 million hectares. Six and a half million hectares of native forests comprises open eucalypt forests in private ownership, which exceeds the combined areas of both the public native forest estate and native forest reserves.⁷

This report does not canvass private native forestry, which is subject to an entirely different regulatory regime to native logging in public forests. Noting the growing significance of private native forestry and recognising that there are also significant compliance issues relating to these forests, the EDO will prepare a subsequent report on private native forestry compliance.

There are at least 150 different forest types that occur naturally within NSW and most of these are represented in the State forest reserve.⁸ Native forests of significance for biodiversity and conservation (among other values) are in State ownership and available for logging.

The *New South Wales State of the Environment Report 2009* (SoE Report) provides a snap shot of the State's flora and fauna as at 2009, noting that many of these species inhabit NSW's state forests. The SoE Report states that a general pattern of decline in biodiversity over the longer term is evident in changes to the extent and abundance of

many native vertebrate species. At the same time, many resilient species have maintained their distributions, while a small number of adaptable species have flourished. In the past decade the distribution of many birds has declined and the prospects for sustainability of many species are at risk. Predictably, the sustainability of most of the threatened species assessed is also at risk.⁹

The main threats to native vertebrate fauna are invasive species and habitat loss. The main threats to vegetation communities and native flora are the clearing of native vegetation and incursion of invasive species, particularly exotic weeds and herbivores. The SoE Report notes that most species are not currently monitored systematically and a broader program to monitor a representative sample of species is needed for groups other than birds, in order to reliably detect changes in their status and trends.¹⁰

The loss and degradation of habitat has been compounded by the introduction of pests and weeds, diseases, the impacts of altered fire regimes and pollution that alone, or in combination, affect individual species and ecosystems.

The major pressures on species diversity in NSW include: clearing, fragmentation and disturbance of native vegetation; land degradation; invasive species; overgrazing by cattle, sheep and invasive herbivores; changes to fire regimes; changes to water flows; introduction of exotic diseases; overfishing and fishing bycatch; and, climate change.¹¹

Forestry activities including logging have the potential to contribute to a number of these pressures. Clearing and disturbance of native vegetation is the threat affecting the greatest number of threatened species (87%), followed by the introduction of invasive species (70%).¹²

While the production of wood products produced from native forests across Australia has declined over the last decade by 10%,¹³ there is evidence that logging remains a key threat to biodiversity. Kingsford et al have identified the loss and degradation of habitat as the first of the six major threatening processes driving biodiversity decline in Oceania, threatening more terrestrial species than any other process.¹⁴ About 70% of Australia's remaining forests are ecologically degraded from logging,¹⁵ and this includes NSW forests.

For example, more than 400 species of native mammals, birds, reptiles and amphibians – one-fifth of animals in these groups in Australia – live in the south-east of NSW, and 69 of these populations are endangered and vulnerable in the area covered by the Eden and Southern RFAs. These include the Tiger Quoll, Southern Brown Bandicoot, Broad-headed Snake, Sooty Owl, Glossy-black Cockatoo, Yellow-bellied Glider, Green and Golden Bell Frog and Regent Honeyeater. The Koala, Longfooted Potoroo, Sooty Owl and possibly the Barking Owl are on the verge of extinction in the Eden region as a result of logging practices there.

Commentators note that there are discrepancies between Forests NSW and the information available from the National Parks and Wildlife Service (NPWS) regarding data on the numbers of threatened species in particular areas. More thorough research of the flora and fauna in RFA areas is clearly needed, as well as more research and monitoring of the impacts of logging practices on biodiversity and threatened species. In areas logged too heavily or frequently complex forest communities, over time, become transformed into predominantly single-species, similar aged regrowth forests. Such logging practices have a major impact on biodiversity and habitat, totally destroying the complexity of ecosystems, removing major elements and altering the basis of soils and microclimates. Little is known about the effects on invertebrates, but many observations of birds and mammals indicate a

drastic reduction in the number of species present in these altered forests.

Logging practices are also likely to be having a serious impact on the hydrology of forest ecosystems and water quality in some areas, resulting in downhill movement of disturbed soils, muddying of watercourses, silting of lakes and dams, death of scale fish and shellfish and increase water supply costs from filtration and chlorinating. Logging results in forests dominated by perpetually young trees that have much higher transpiration rates than mature forests, three times as high. High transpiration rates in immature forests starve the soil, streams, lakes and other vegetation of their "normal" water supply for up to 150 years. There is evidence that logging is having a severe impact in the Eden and Southern areas on water flows in rivers and tributaries,¹⁶ and also in the North-East.¹⁷

These logging practices are clearly not sustainable and are not consistent with ecologically sustainable development nor Ecologically Sustainable Forest Management (ESFM) (discussed below).

Barriers to third party enforcement must be removed in the context of systemic breaches of forestry regulations and the failure of the relevant agencies to adequately enforce breaches of forestry regulations.



CHAPTER 2 | LEGAL FRAMEWORK

2.1 Regional Forestry Agreements

Three Regional Forest Agreements (RFAs) for the Eden, North East and Southern regions provide the overarching context for State forests in NSW. These agreements were signed in 1999, 2000 and 2001, respectively, between the governments of NSW and the Commonwealth to provide certainty for the forestry industry and to enable the Commonwealth to cease its involvement in forestry issues. As such, the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) specifically provides that forestry operations undertaken in accordance with an RFA are not subject to Part 3 of that Act.¹⁸

A fundamental element of the RFA process was the selection of certain forests to be reserved in accordance with the Comprehensive, Adequate and Representative (CAR) Reserve System criteria,¹⁹ with remaining State forests to be available for timber harvesting consistent with the principles of Ecologically Sustainable Forest Management (ESFM). The key elements for achieving ESFM as set out in each of the RFAs are:

- the establishment of a CAR Reserve System;
- the development of internationally competitive forest products industries;
- integrated, complementary and strategic forest management systems capable of responding to new information.

The NSW RFAs intend to provide for environmental protection of native forests and biodiversity primarily through the CAR reserve system.²⁰ While acknowledging that the CAR reserve system has gone some way toward protecting biodiversity in NSW, many commentators consider the reserve system to

be inadequate.²¹ Inadequacies with the reserve system makes compliance with forestry management prescriptions designed to protect biodiversity within those State forests available for harvesting even more important.

2.2 Forest Agreements

The *Forestry and National Park Estate Act 1998* (NSW) (FNPE Act) implements the NSW RFAs and is the primary piece of legislation that regulates forestry activities.²²

The FNPE Act requires Forest Agreements (as distinct from RFAs) to be prepared in respect of each of the RFA regions.²³ There are four Forest Agreements in operation, for the Upper North East, Lower North East, Eden and the Southern Regions.²⁴

The Forest Agreements are to set out the principles and strategic framework for the cooperative management of forests by the relevant government agencies, including the Office of Environment and Heritage, the Department of Primary Industries and Forests NSW.²⁵ The Forest Agreements mirror the terms of the RFAs in many respects and are intended to be one mechanism with which to implement the RFAs.²⁶

The Forest Agreements require forestry activities to be carried out in a manner consistent with ESFM, while they also purport to require the implementation of sustainable timber supply arrangements for native forests with specific annual volumes (as required by the RFAs). We note that there is a fundamental conflict between these two requirements of both the RFAs and Forest Agreements, because an adaptive management approach that responds to the needs of biodiversity cannot be fully implemented as long as specific volumes of timber are required to be harvested from State forests.

2.3 Integrated forestry operations approvals

The FNPE Act also established Integrated Forestry Operations Approvals (IFOA).²⁷

Forestry operations carried out on land where there is an applicable IFOA are regulated by the terms of that approval and also the applicable Forest Agreement.²⁸

IFOAs describe the types of activities and operations permitted on the land to which they relate. Their main purpose is to provide more detailed requirements and to integrate the regulatory regimes for environmental planning and assessment, protection of the environment and threatened species conservation.²⁹

Forestry operations the subject of an IFOA are excluded from the environmental assessment and approval requirements under Parts 4 or 5 of the *Environmental Planning and Assessment Act 1979*.³⁰

Most IFOAs contain the terms of licences granted under the *Threatened Species Conservation Act 1995* (TS licences), *Protection of the Environment Operations Act 1997* (PEO licences) and *Fisheries Management Act 1994* (fisheries licences).

IFOAs are issued subject to conditions.³¹ IFOAs can be granted for up to 20 years.³² The Ministers, acting jointly, can amend, suspend or revoke an IFOA at any time.³³

There are currently six IFOAs in force, as follows:

- IFOA for the Upper North East Region;
- IFOA for the Lower North East Region;
- IFOA for the Southern Region;
- IFOA for the Eden Region;
- IFOA for the Riverine Red Gum;
- IFOA for the Brigalow.³⁴

Where an IFOA incorporates the terms of another environmental licence, the licence has the effect of a licence granted under the relevant Act, (for example, a pollution offence

or threatened species offence can still be committed), except that:

- the licence cannot be varied or revoked; and
- the public is prohibited from bringing legal proceedings to enforce the licences in the Land and Environment Court.³⁵

Enforcement of a licence rests with the Office of Environment and Heritage or the Department of Primary Industries.³⁶ These departments must notify the Ministers of any breach of a licence.³⁷

2.4 Enforcement of breaches

The principle effect of an IFOA is to exempt the forestry operation it covers from the provisions of the *Environmental Planning and Assessment Act 1979*³⁸ and to shield it from civil enforcement by the public.³⁹

In particular, once an IFOA is in place, it has the following effect:

- Part 5 of the EPA Act ceases to apply to the forestry operations, (i.e. an environmental impact statement cannot be required for the operation);⁴⁰
- forestry operations cannot be prohibited or restricted under a local environmental plan or state environmental planning policy;⁴¹
- development consent cannot be required for the operation;⁴²
- Part 3A of the EPA Act ceases to apply, so that the operation cannot be declared to be a “major project”;⁴³
- stop work orders and interim protection orders to protect threatened species and native flora and fauna cannot be used to stop forestry operations;⁴⁴ and
- the public cannot bring civil enforcement proceedings to restrain a breach of the IFOA.⁴⁵

If an IFOA incorporates the terms of another environmental approval then the government agency which is usually responsible for the enforcement of that licence must notify the Ministers of any breach of the licence, and may prosecute any breach.⁴⁶

Section 40 of the FNPE Act excludes the public (third parties) from bringing legal proceedings in the Land and Environment Court to enforce an IFOA, a licence which it incorporates, or any environmental laws affecting the forestry operation.⁴⁷

While there is a possibility that common law standing may provide alternative means for third parties to bring proceedings to remedy breaches of forestry regulations, this is untested as no such proceedings have been brought.

The EDO considers that section 40 is a significant obstacle to third party enforcement and must be removed in the context of systemic breaches of forestry regulations and the failure of the relevant agencies to adequately enforce breaches of forestry regulations.

2.5 Offences and penalties

A breach of a licence under an IFOA is an offence under the relevant legislation governing that licence. For example, a breach of a threatened species licence annexed to an IFOA is an offence under the *National Parks and Wildlife Act 1974* (NPW Act).⁴⁸

A key issue is the very low maximum penalties available under the NPW Act for a breach of IFOA licences. Low penalties for forestry offences provide a disincentive to the prosecutor to bring proceedings and an inadequate deterrent to the offender.

In a recent Land and Environment Court prosecution against Forests NSW, Justice Pepper observed that the penalty for a breach of s175 of the *National Parks and Wildlife Act 1974* is “exceedingly low”, but that “any increase in the penalty is a matter for Parliament”.

Section 175 of the NPW Act creates an offence for any person breaching a condition of a licence contained in the IFOA. The maximum penalties for this offence under sections 175, 175A and 175B is \$22,000 in the case of an individual, directors or managers of a corporation, or a corporation, respectively.

By contrast, the penalties for environmental offences under other NSW legislation are tougher and higher in terms of fines and imprisonment terms for offenders of environmental crimes.

For example, section 123 of the *Protection of the Environment Operations Act 1997* (NSW) provides that any person who pollutes waters is liable for up to \$1,000,000 for a corporation and \$250,000 for an individual. In the case of a continuing offence, the maximum penalty is \$120,000 per day for a corporation and \$60,000 per day.

Breaches of the *Environmental Planning and Assessment Act 1979*, including unlawful development, attract a maximum penalty of \$1,100,000 and a further maximum daily penalty of \$110,000.

Section 12 of the *Native Vegetation Act 2003* (NSW) provides that any person who clears native vegetation or authorises the clearing not in accordance with a development consent or a property vegetation plan is liable for a fine of up to \$1,100,000 and up to \$110,000 per day.

Maximum penalties for offences under key NSW and federal environment statutes are summarised in **Appendix 2**. The penalty for breaching a threatened species condition in the IFOA licence is between one-fifth and one-tenth of the level of penalties for offences of other environmental laws.



‘...retained trees must be protected and, in particular, logging debris must not be allowed to accumulate within 5 metres of retained trees.’

CHAPTER 3 | MANAGEMENT OF FORESTRY OPERATIONS

3.1. Forests NSW responsibilities

Forests NSW are responsible for managing and administering forestry operations. In exercising its functions it is subject to the requirements of the FNPE Act, Forest Agreements, IFOAs and attached licences.

Prior to commencing logging operations Forests NSW must prepare a Plan of Operations of prospective forest compartments scheduled to be logged.

It must prepare a Harvesting or Operational Plan, including a Harvesting Plan Operational Map which shows forestry zones and landscape features, the location of any exclusion, buffer and protections zones, threatened species and ecological communities, rocky outcrops, among other things. Forests NSW is also required to keep a record of sites significant to the Aboriginal community, and to consult with the Aboriginal community.

Forests NSW employs its own experts to undertake the required desktop and site surveys and assessments, and to prepare forestry compartments that are scheduled to be logged.

The main requirements of the threatened species licences are as follows:

- an adequately trained person must conduct a thorough search for, record and appropriately mark certain threatened and protected species features during or before the marking-up of a compartment;
- Forests NSW must plan and conduct surveys in the most appropriate survey season for the flora or fauna species being surveyed, surveys must be completed by persons suitably experienced, and specified data must be recorded;
- harvesting operations are prohibited in areas which have not been subject to compartment mark up surveys;
- marking-up must be conducted at least 100 metres in advance of harvesting operations, road construction and road re-opening operations so relevant exclusion and buffer zones can be implemented prior to harvesting, road construction and road reopening occurring;
- in compartments that contain preferred forest types for Koala, marking up must be conducted at least 300 metres in advance of harvesting operations and there are very specific requirements for Koala surveying for animals and scats;
- specified exclusion zones must be applied around bird nest and roost sites for certain threatened species;
- specified exclusion zones must be applied around bat roost trees and other bat habitat features, and all flying fox camps;
- species-specific conditions must be observed for a large number of specified threatened species of frogs, snakes, birds including a number of owls, bats and forest-dwelling animals such as gliders, quolls and koalas;
- if Forests NSW becomes aware of a record of a species that requires site-specific conditions, or if the species is recorded during forestry activities within 100 metres of the compartment, Forests NSW must notify National Parks and Wildlife Service (NPWS) and it must not commence forestry activities until NPWS has developed suitable conditions;
- exclusion zones must be retained around specified flora species;

- most forestry activities are prohibited within areas of High Conservation Value Old Growth Forest and Rainforest;
- a minimum number of hollow-bearing trees must be retained per hectare of logged forest;
- a minimum number of recruitment trees (that show a potential for development into hollow-bearing trees) must be retained per hectare of logged forest;
- a minimum number of stags must be retained per hectare of logged forest;
- retained trees must be protected and, in particular, logging debris must not be allowed to accumulate within 5 metres of retained trees;
- protection zones must be retained along part of the length of all streams;
- exclusion zones must be retained along wetlands;
- exclusion zones must be implemented around rocky outcrops of a certain size and cliffs;
- there are specific requirements for road and snig track construction;
- Forests NSW Regional Managers are required to keep a register of every incident of non-compliance with licence conditions;



Logged wetland area, Yabba State Forest. D.Pugh.

3.2. Oversight of logging contractors

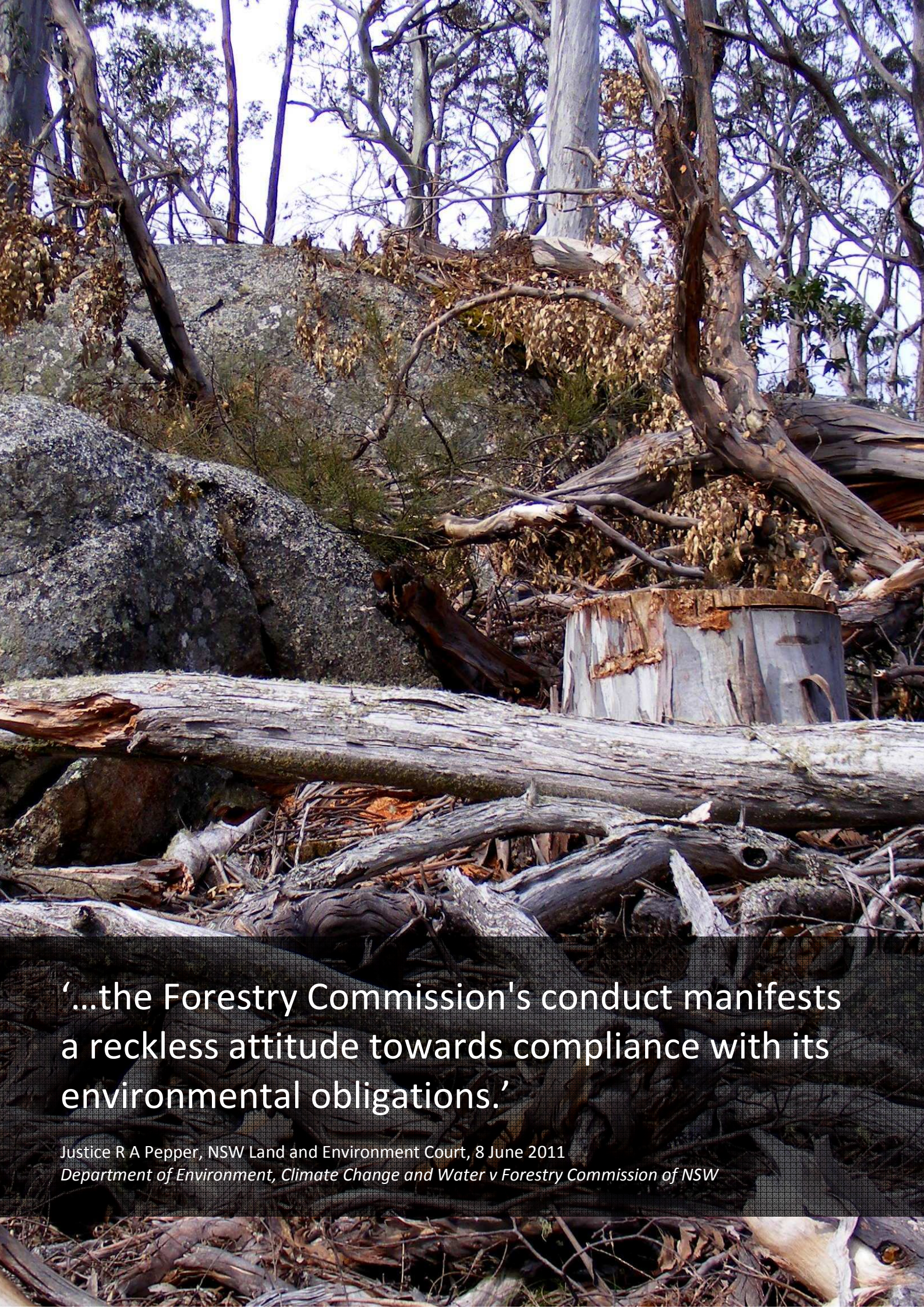
While Forests NSW is responsible for the management and administration of forestry operations, a large number of contractors carry out the day-to-day logging operations and road and snig track works.

It is clear that logging contractors are required to comply with IFOAs and the attached licences. The FNPE Act requires that forestry operations must be carried out in accordance with any applicable IFOA.⁴⁹

The IFOA's themselves require Forests NSW to expressly require, as a condition of any licence, permit or other authority authorising the carrying out of forestry operations, that the licence holder comply with the terms of the IFOA.⁵⁰

The threatened species licences also contain specific requirements that Forests NSW ensure all employees, contractors, sub-contractors, agents and licensees engaged in any aspect of forestry activities understand the conditions of the licences.

Forests NSW must ensure that a Forests NSW employee is present at each compartment while harvesting operations are occurring under the threatened species licence for the purposes of ensuring compliance with the licence, for at least the equivalent of one full working day per week per harvesting operation.⁵¹



'...the Forestry Commission's conduct manifests a reckless attitude towards compliance with its environmental obligations.'

Justice R A Pepper, NSW Land and Environment Court, 8 June 2011
Department of Environment, Climate Change and Water v Forestry Commission of NSW

CHAPTER 4 | REPORTED BREACHES OF FORESTRY LAWS

Community groups across the state have reported hundreds of breaches of the IFOAs and the annexed TS and PEO licences in the last year alone. A selection of these breaches is discussed below. The breach reports demonstrate systemic failings by Forest NSW's to comply with the regulatory requirements outlined above.

4.1 Failure to mark up exclusion zone boundaries and habitat features

The TS licences require the marking of exclusion zones boundaries, hollow-bearing habitat trees and recruitment habitat trees prior to logging commencing.

An audit compiled by Dailan Pugh for the North East Forest Alliance (NEFA) reveals systemic breaches in Doubleduke State Forest (SF), compartment 146. Forests NSW was found to have failed to mark exclusion zone boundaries in breach of clause 5.1(f) of the TS Licence, failed to mark up hollow bearing habitat trees and recruitment trees in breach of clause 5.6(g)(iii), and failed to mark up Yellow-bellied Glider feed trees in breach of clause 6.17(g)(iv).⁵² Of particular concern was the failure to mark up the exclusion zone boundary for the *Sub-tropical Coastal Floodplain Forest* endangered ecological community on either the Harvest Plan Operational Map or on the ground, in breach of clauses 3(a), 5.1(a)(i), 5.1(a)(ii) and 5.1(a)(iii) of the TS Licence.⁵³ A clearly identifiable Yellow-bellied Glider sap-feed tree within the endangered ecological community had not been marked, nor had the required 15 feed trees within 100 metres in breach of clause 6.17(g) of the TS Licence.⁵⁴

Another audit compiled by Dailan Pugh for NEFA in Girard SF reveals systemic breaches of mark up requirements. In many localities, particularly away from roads, exclusion boundaries had not been marked for streams and the Stuttering Frog threatened species, contrary to clause 5.1 of the TS Licence.⁵⁵ There was a frequent failure to mark up exclusion zones, habitat and feed trees, and targeted features contrary to clause 5.2.1(a)

which requires a trained person to search for nests, dens, scats and critical habitat features for a range of threatened species.⁵⁶

Breaches of the requirement to mark up habitat and recruitment trees are recorded widely in the southern forests of NSW evidencing a systemic failure by Forests NSW in this regard. Almost every breach report prepared by South East Forest Rescue (SEFR) identifies a failure to mark up hollow-bearing and recruitment trees, in breach of clause 5.6 of the Eden IFOA TS Licence.⁵⁷

4.2 Failure to complete koala surveying

The audit undertaken by Dailan Pugh for NEFA in Girard SF reveals systemic breaches in relation to requirements to protect koalas and their habitat. Where the compartments audited contained sizable areas categorised as preferred habitat for koala, requiring marking up at least 300 metres in advance of logging, some areas had not been marked up prior to logging contrary to TS Licence clause 5.2.2(a). This failure to mark up and also to locate scats where koala were found evidences a failure to search for koala scats in advance of logging, contrary to clause 5.2.2(b) of the TS Licence.⁵⁸

In the south the same breaches are apparent and SEFR has reported on a number of occasions that Forests NSW has not adequately surveyed for koala.⁵⁹



Koala (*Phascolarctos cinereus*)

4.3 Failure to observe outcrop exclusion zones

SEFR has reported systemic breaches of the requirement to observe rocky outcrop exclusion zones in clause 5.11 of the Eden IFOA TS Licence. Last year in Tantawangalo SF, Compartments 2432 and 2434 in September 2010, and Compartment 2433 in April 2010, Forests NSW failed to mark up exclusion zones around rocky outcrops larger than 0.1 hectare and 0.5 hectares prior to logging, and logged within those rocky outcrops. In Mumbulla SF, compartment 2133, logging took place within areas containing rocky outcrops and cliffs in breach of the TS Licence in April/May 2010. In October and November 2008 Forests NSW failed to mark up rocky outcrop and cliff exclusions zones and these areas were logged in breach of the TS Licence requirements and in Glenbog SF, Compartments 2314 and 2315.⁶⁰



Rocky outcrop, Glenbog State Forest. South East Forest Rescue.

4.4 Failure to retain recruitment and habitat trees

The TS licences require habitat trees to be marked up prior to logging and retained. The audit compiled by Dailan Pugh for NEFA in Doubleduke SF, compartment 146, reveals systemic breaches of the requirement to retain recruitment hollow-bearing trees in breach of clause 5.6(d)(ii) of the TS Licence.⁶¹ Similarly, the Pugh audit undertaken in Girard SF reports that the required numbers of habitat trees had not been retained and that the marking of habitat trees was as low as 1 tree per 1.2 hectares, where 10 hollow-bearing habitat trees per 2 hectares is required to be retained pursuant to clause 5.6(a)(i) of the TS Licence.⁶² Pugh also records systemic failure to retain recruitment trees in a

healthy condition in breach of clauses 5.6(b)(i) and (ii).⁶³

In the southern forests of NSW, SEFR have also reported breaches of the requirement to retain recruitment and habitat trees, such as in Mogo SF; compartment 160 in October 2010. The systemic breaches of the requirement to mark up recruitment and habitat trees recorded by SEFR and NEFA indicate that it is likely that there is a widespread failure to retain the required number of such trees.

It has been brought to our attention that there is a view that the particular requirement contained in condition 5.6 of the TS Licence to retain 10 trees per 2 hectares is open to various interpretations, including that the requirement allows for an averaging of the number of trees retained throughout an entire net harvestable area. We do not agree that such an interpretation of the prescription is open. We are of the view that both a literal and a purposive interpretation when applied to the condition leads to the same result, namely that 10 trees per actual 2 hectare area within the net harvestable area are required to be retained. It would be nonsense to say that the prescription allows for example out of a 20 hectare harvestable area 30 hollow bearing trees to be retained in an area of 5 hectares of the 20 hectares. Such an interpretation in our view is incorrect. The purpose of the prescription is clearly to retain habitat for hollow dependent species within the public forest estate. The purpose of requiring the particular amount of trees per 2 hectares is to retain as much of a spread as possible to facilitate the viability or the survival of hollow dependant species.



Felled habitat tree, Mogo State Forest. South East Forest Rescue.

4.5 Logging within stream exclusion zones

Significant breaches of stream protection requirements were recorded by North East Forest Alliance in Girard SF, Compartments 44, 45, 46, 54 and 56. As well as breaches of the TS Licence requirements to apply 30 metre exclusions zones on streams within 200 metres of Stuttering Frog records (clause 6.3(a), breaches of the Fisheries Licence and EP Licence were also recorded. Stream exclusions and buffer zones were not marked up, stream crossings had caused significant disturbance to stream beds and banks, altering natural flows and initiating siltation, and heavy sediment loads were noted in some creeks, contrary to clause 7 and 8 of the Fisheries Licence. There was no apparent attempt to reshape or stabilise stream crossings. Regarding EP Licence requirements, systemic breaches of the requirement to observe a 5 metre buffer alongside drainage depressions are reported (EP Licence, clause 15).⁶⁴



Felling into creek exclusion zone, Grange State Forest.

The audit compiled by Pugh for NEFA in Doubleduke SF, compartment 146, reports that two creek crossings of a road had been poorly constructed, without implementing soil stabilisation measures, resulting in significant sediment pollution into both streams in breach of clauses J45, J46, J52, 8.4.1(a), 8.4.2(b) and 8.4.3(b) of the EP Licence.⁶⁵

4.6 Piling of debris around habitat trees

It is clear that there is a systemic failure in all State forests to ensure that logging debris does not accumulate within 5 metres of retained trees; breaches of this TS Licence requirement are recorded in almost every breach report. See examples throughout the Pugh's NEFA reports and in the SEFR reports.

4.7 Breaches of reporting requirements under FNPE Act

Under the FNPE Act there are requirements for review of the Forest Agreements and IFOAs. Section 20 requires a five-yearly review of Forest Agreements and IFOAs and section 21(1) requires an annual report on each Forest Agreement which is required to report on ESFM in the region and compliance with any IFOA. The forest agreement progress reports have been prepared only up to the 2006-2007 period. Therefore, no reporting on whether ESFM targets are being met has been completed for the past three to four years. This is of particular concern given that the 5-year lifespan of many ESFM plans has expired. It is also inconsistent with the requirements set out in para 2.10.1 of the Eden Forest Agreement.

We also note that the forest agreement progress reports contain information gaps and are, therefore, not an adequate substitute for comprehensive reporting on whether the ESFM plan targets are being met. For example, the Forest Agreement report for 2006-7 states that data was not available on the number of pre-harvest (threatened species) surveys undertaken in Southern and Eden in 2006-7, at [19]. That report also states at [21] that, with respect to Indicator 1.3: Management measures in place to maintain species extent and abundance for Eden, no new data was available on this indicator for the 2006-7 reporting period.

CASE STUDY: DESTRUCTION OF SMOKY MOUSE HABITAT



Department of Environment, Climate Change and Water v Forestry Commission of New South Wales [2011] NSWLEC 102

In June 2011, the Department of Environment, Climate Change and Water prosecuted Forests NSW for undertaking bush fire hazard reduction burning in a Smoky Mouse exclusion zone in contravention of its Threatened Species Licence in Nullica State Forest in southern NSW. Forests NSW was fined \$5,600, and was ordered to pay DECCW's legal costs of \$19,000 as well as to implement a three year monitoring program of the threatened mouse.

In delivering her sentence, Justice Pepper of the Land and Environment Court stated that: "the number of convictions suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws".

In her concluding remarks about Forest NSW's prior criminality, her Honour stated: "Given the number of offences the Forestry Commission has been convicted of and in light of the additional enforcement notices issued against it, I find that the Forestry Commission's conduct does manifest a reckless attitude towards compliance with its environmental obligations".

Her Honour observed that the penalty for a breach of s175 of the *National Parks and Wildlife Act 1974* is "exceedingly low", but that "any increase in the penalty is a matter for Parliament".

Image: Smoky Mouse (*Pseudomys fumeus*).
Credit: Barry Baker ANTPhoto.com.au.



It is not possible to conclude that Forests NSW is operating in a manner that is consistent with ecologically sustainable forest management.



CHAPTER 5 | DISCUSSION AND FINDINGS

It is clear that there are systemic problems with Forest NSW's compliance with the regulatory requirements established to safeguard biodiversity in forests subject to logging and other forestry activities.

The breaches reported in the breach reports undertaken by NSW conservation organisations are numerous and wide ranging, such that it is not possible to conclude that Forests NSW is operating in a manner that is consistent with ESFM.

Logging of threatened vegetation communities and old growth is likely to seriously threaten the viability of those vegetation communities in the long term. Breaches of the various exclusions zones for streams and threatened species, and the failure to retain habitat and recruitment trees, reduce the quality and quantity of habitat for fauna species, including a number of threatened species already in danger of becoming extinct if their habitat is not secure.



Rainforest logging, Grange State Forest.

As discussed above, clearing and disturbance of native vegetation is the key threat affecting the greatest number of threatened species and this threat exists in State forests subject to logging and other forestry activities. Where logging prescriptions are breached, the risk to native flora and fauna species is heightened.

There appears to be a widespread failure by Forests NSW to mark up exclusion zones and

habitat trees before logging commences. Procedures need to be tightened to ensure that no logging or other forestry activities are commenced before mark up is completed as required by the TS Licences.



Yabbra State Forest. Photo Credit: Dailan Pugh.

Current procedures appear to be inadequate in terms of due diligence. There is anecdotal evidence that often contractors do not know of their responsibilities under the IFOA and licences, and Forests NSW have not emphasised the importance of compliance. Therefore, pressure is placed upon contractors who may not know of the specific requirements of the IFOAs and licences. It appears that all too often Forests NSW oversight of contractors is carried out too late. Monitoring of contractors is not thorough leaving a wide margin for substantial error.

It is arguable that the failure to adequately oversee logging contractors is a significant failing. Contractors should not be charged alone with the responsibility to extract timber volumes whilst managing forests for biodiversity conservation in our public forests.

There should be a concerted effort to improve the oversight of contractors because the type of damage that can result from error may in some circumstances be catastrophic for biodiversity. The interpretation of harvest plans requires the exercise of judgment and in some cases a degree of discretion this should not be left to independent contractors.

A large part of the problem is the lack of consequences that result from breaches. Statistics for the years 2000 to 2006 show that, although there are large numbers of incidents of non-compliance each year, the regulatory mechanisms used by the Office of Environment and Heritage are predominantly soft tools, including providing feedback and warning letters, and sometimes requiring remedial work to be undertaken.⁶⁶ Where a prosecution is successful, the penalty available for breaches is very low (see Case Study: Destruction of Smoky Mouse Habitat).

However, remedial work cannot repair the irreversible damage done when threatened flora species are cleared and habitat trees are removed and destroyed forever. Prosecutions for breaches of the IFOA licences are extremely rare and only a handful have been finalised.

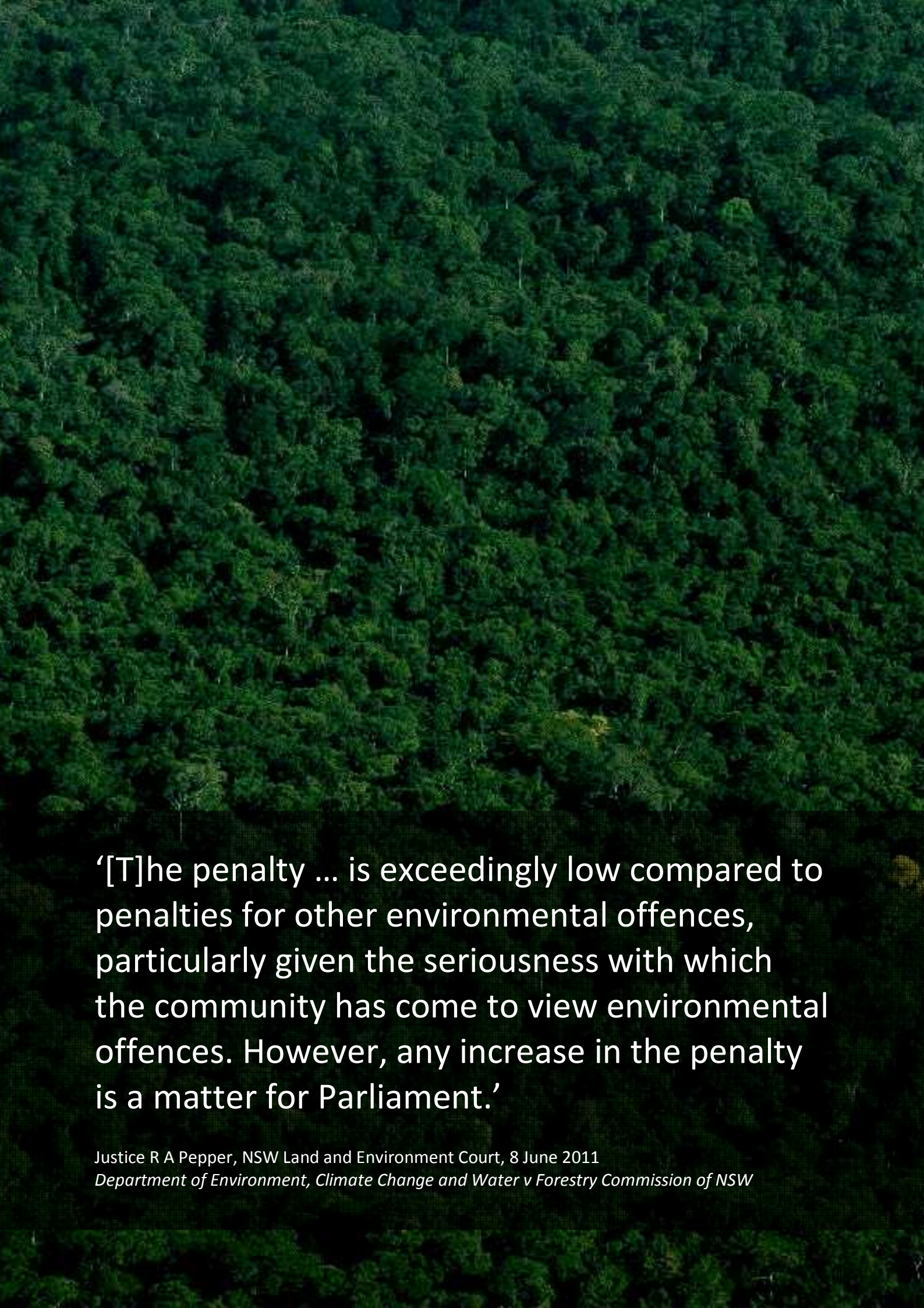
There were no prosecutions reported for the other regions between 2000 and 2006. As discussed above, the FNPE Act takes away the right for third parties to bring proceedings to remedy breaches, resulting in a very low probability that Forests NSW or its contractors will face prosecution.

Forests NSW's compliance problems may be a consequence of the complexity of the regulations or enforcement resourcing constraints. However, we note that Forests NSW does have a compliance budget; it spent \$5.4 million in the year 2009 on harvesting supervision and environmental compliance in native forests.⁶⁷ One can only surmise that either the budget allocated is inadequate, or that reoccurring breaches are evidence of flawed procedures. Forests NSW needs to review where this money is being spent and review its compliance procedures.

The current regulatory system of logging NSW public forests is entirely premised upon ESFM occurring outside of the forest reserve system on public land in accordance with IFOAs and particular licence prescriptions. In effect this premise provided the policy justification to 'turn off' many of the hallmarks of an adequate environmental regulatory system, namely applicable case by case environmental assessment and approval processes (both national and state) and third party enforcement mechanisms.

In light of the evidence of systemic breaches and the amount of time that the forestry regulatory system has been privileged outside of a typical environmental regulatory regime, and factoring that biodiversity continues to decline at rapid rates there is a strong case that the regulatory regime ought to be brought back into line with more typical regulatory regimes.

In this regard we note particularly, that many nationally listed threatened species and other matters of national environmental significance are likely to be significantly impacted by some logging operations. As such there is currently no consideration of what this means for Australia's national and international obligations regarding biodiversity conservation.

An aerial photograph of a vast, dense forest with a thick canopy of green trees. The perspective is from directly above, showing the intricate patterns of the foliage.

‘[T]he penalty ... is exceedingly low compared to penalties for other environmental offences, particularly given the seriousness with which the community has come to view environmental offences. However, any increase in the penalty is a matter for Parliament.’

Justice R A Pepper, NSW Land and Environment Court, 8 June 2011
Department of Environment, Climate Change and Water v Forestry Commission of NSW

RECOMMENDATIONS

Recommendation 1

That maximum penalties and enforcement mechanisms available under relevant legislation be reviewed and strengthened, in line with modern environmental legislation. Based on existing state and federal legislation, penalties of up to \$1.1 million and terms of imprisonment would be appropriate.

Recommendation 2

That section 40 of the *Forestry and National Park Estate Act 1998* (NSW) be removed from the Act or be otherwise amended to allow third parties to bring proceedings to remedy breaches of that Act and breaches of other environmental legislation resulting from unlawful forestry activities.

Recommendation 3

That section 38 the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) be removed or amended so that forestry operations undertaken in accordance with an RFA require approval under that Act where those forestry operations will have an impact on a matter of national significance.

Recommendation 4

That Forests NSW review its procedures and implement changes to ensure that no logging or other forestry activities are commenced before mark up of a Compartment is completed as required by the TS Licences. A culture of due diligence must be built into Forests NSW's mark up procedures and penalties must be applied and enforced for breaching this condition.

Recommendation 5

That Forests NSW review its procedures and implement changes to ensure that logging contractors are adequately briefed of the regulatory requirements under the applicable IFOA and licences, informed that they are subject to these requirements, and adequately supervised during logging operations. An on-site briefing on day one of a logging operation to assist with interpretation of the harvest plan on-the-ground would be best practice. A culture of due diligence must be built into Forests NSW's procedures for supervising contractors.

Recommendation 6

That Forests NSW review its compliance budget to assess where this money is being spent, whether the budget allocated is adequate, and/or whether the current procedures are flawed.

Recommendation 7

That the Office of Environment and Heritage and the Department of Primary Industries (Fisheries) review their procedures for policing Forest NSW's compliance with forestry regulations.

Recommendation 8

That the Office of Environment and Heritage brings more enforcement actions to redress systemic breaches of licence requirements.

APPENDIX 1

South East Forest Rescue

Summary of Reported Breaches of Forestry Regulations

Breach	Description	Date
Badja 2084	<p>Southern IFOA- EPL Schedule 4 81(b); failure to avoid significant rutting on snig tracks.</p> <p>Southern IFOA- TSL cl 5.6.g.ii; failure to adequately protect retained trees; failure to correctly retain habitat and recruitment trees and dead standing trees.</p> <p>Southern IFOA- TSL cl 5.11; failure to identify and protect rocky outcrops.</p>	26/04/2011
Tallaganda 2240	Trees felled to block access road, failure to comply with harvest plan and Southern IFOA-TSL road maintenance prescriptions.	26/04/2011
Tallaganda 2422	Vacant Crown Land included in harvest area. Failure to protect crown land.	21/04/2011
Bodalla 3043	Southern IFOA-TSL cl 5.2; failure to adequately mark up habitat and recruitment trees.	18/04/2011
Bodalla 3043	<p>Failure to comply with Environmental Protection Licence conditions governing snig track drainage. This resulted in erosion and the destruction of a 'cross-bank'.</p> <p>Southern IFOA-TSL, cl 5.6; failure to adequately retain habitat and recruitment trees.</p> <p>Southern IFOA-TSL, cl 5.6; Failure to remove debris from the base of a marked habitat tree.</p> <p>Southern IFOA-TSL, cl 5.6; Destruction of Casuarina trees.</p> <p>Southern IFOA-TSL, cl 5.6; Hollows in felled crowns.</p> <p>Southern IFOA-TSL, cl 5.6; Failure to adequately mark habitat trees in breach of the Threatened Species Licence.</p> <p>Failure to conduct operation in accordance with IFOA requirements.</p>	18/04/2011
Badja 2029/1	<p>Southern IFOA-TSL 5.11 Rocky Outcrops and Cliffs; logging within areas of rocky outcrops and cliffs.</p> <p>Southern IFOA-EPL; collapse of bridge.</p> <p>Southern IFOA-EPL Schedule 4 cl 81(b); Significant rutting was observed.</p>	11/03/2011
Bodalla 3043	<p>Southern IFOA-TSL, cl 5.6; failure to adequately retain habitat and recruitment trees by felling of hollow-bearing trees.</p> <p>Southern IFOA-TSL, cl 5.6; failure to adequately retain habitat and recruitment trees by inadequate marking of habitat and recruitment trees.</p> <p>Southern IFOA-EPL Schedule 4 cl 72; Soil erosion due to snig tracks leading to failure of a cross-bank.</p>	14/02/2011

Glenbog 2360	<p>No.1</p> <p>Eden IFOA-TSL, cl 5.1(h) and 5.2; failure to adequately mark threatened and protected species.</p> <p>Eden IFOA-TSL, cl 5.6(k) and (i); failure to minimise damage to retained trees to the greatest extent practicable.</p> <p>Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove logging debris from around habitat and recruitment trees.</p> <p>Eden IFOA-TSL, cl 5.6(f)(iv); failure to identify hollow-bearing trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(f)(i), 5.6(g)(i) and 5.6(k)(iii); failure to mark the correct number of retained trees.</p> <p>Eden IFOA-TSL, cl 5.17; failure to protect ground habitat from forestry activities.</p> <p>Eden IFOA-TSL, cl 6.13; failure to mark Yellow-bellied Glider habitat.</p> <p>Eden IFOA-TSL, cl 5.6(i); failure to mark the correct amount of stags.</p> <p>No2.</p> <p>Eden IFOA-TSL, cl 5.2; conducting logging operations in a forest compartment that has not been marked up.</p> <p>Failure to identify species including Yellow-bellied Gliders, Squirrel Gliders, Flame Robins and Rufous Fantails in the harvest plan.</p> <p>Placement of dump C too close to a rocky outcrop.</p>	21/02/2011
		23/02/2011
Cathcart 1376, 1377	Eden IFOA-TSL, cl 8.8.1 and 8.8.12; failure to conduct an adequate koala survey.	20/02/2011
Bago State Forest	Southern IFOA-EPL Schedule 4 and 5 and Tumut Subregion TSL cl 5.6(g); failure to protect Endangered Ecological Communities and minimise water pollution.	01/12/2010
Yambulla 446-450	Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.	4/11/2010
Mogo 160	<p>No.1</p> <p>Southern IFOA-TSL, cl 5.6; failure to adequately retain habitat and recruitment trees.</p> <p>Destruction of hollow-bearing trees.</p> <p>Damage to H and R trees by burning.</p> <p>Destruction of H and R trees by logging.</p> <p>Southern IFOA-TSL, cl 5.11; removal of greater than 50% of canopy.</p> <p>Minimum basal area not retained.</p> <p>No.2</p> <p>Logging of an unmapped drainage line.</p> <p>Southern IFOA-TSL, cl 5.7.1; incursions into streams.</p> <p>Southern IFOA-TSL, cl 5.6; failure to prevent damage to recruitment and habitat trees.</p>	21/10/2010
		22/10/2010
Yambulla 557	Damage to mapped Old-growth.	19/10/2010

Glenbog 2363	<p>Eden IFOA-TSL 5.11; failure to correctly identify and protect rocky outcrop.</p> <p>Eden IFOA-TSL 5.7 and Eden IFOA-EPL Schedule 4 D 17 and 18; failure to correctly mark and protect filter strips.</p> <p>Eden IFOA-TSL 5.6; failure to adequately retain and protect habitat and recruitment trees.</p>	06/10/2010
Mogo 195	<p>Failure to identify a sufficient amount of habitat and recruitment trees.</p> <p>Southern IFOA-TSL, cl 5.6; failure to prevent damage to recruitment and habitat trees.</p>	01/10/2010
Dampier 3111	<p>Southern IFOA- TSL, cl 5.6(g)(i) and 5.6(g)(ii); failure to prevent damage to habitat and recruitment trees; failure to remove debris from around habitat and recruitment trees.</p> <p>Southern IFOA- TSL, cl 5.6(f); failure to prevent damage to Glossy-black Cockatoo feed tree.</p>	27/09/2010
Dampier 3127	<p>Southern IFOA-EPL, Litter Schedule cl 4A. 1.165; failure to remove waste from the forest.</p> <p>Southern IFOA-TSL, cl 5.4; failure to identify a rainforest exclusion zone; logging in a rainforest exclusion zone.</p> <p>Southern IFOA- TSL, cl 5.6(g)(i) and 5.6(g)(ii); failure to prevent damage to habitat and recruitment trees; failure to remove debris from around habitat and recruitment trees.</p>	27/09/2010
Tantawangalo 2432	<p>Eden IFOA-TSL: 5.10. Heath and Scrub(a) Specified forestry activities are prohibited from all areas of heath and scrub greater than 0.2 hectares</p> <p>(approx. 45 metres x 45 metres) surface area.</p> <p>b) Exclusion zones of at least 10 metres wide must be implemented around all heath and scrub of more than 0.2 hectares surface area.</p> <p>c) The area of heath and scrub, and exclusion zones around heath and scrub, must be measured from the outer edge of areas of heath and scrub.</p> <p>Failure to identify and protect environmentally sensitive land.</p>	22/09/2010
Tantawangalo 2432 and 2434	<p>No.2</p> <p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.11(b); Failure to mark exclusion zones around rocky outcrops and cliffs.</p>	20/09/2010
Tantawangalo 2432	<p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.11(b); failure to mark exclusion zones around rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.6(g)(iv); failure to mark retained recruitment trees that meet the requirements under the clause.</p>	15/09/2010

	Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove debris from the base of R and H trees.	
Tantawangalo 2434	Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs. Eden IFOA-TSL, cl 5.11(b); Failure to mark exclusion zones around rocky outcrops and cliffs. Eden IFOA-TSL, Schedule 4; failure to remove waste generated during forestry activities.	14/09/2010
Yurammie 963/964/965	Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct a koala survey.	08/09/2010
Murrah 2032	Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct a koala survey.	08/09/2010
IFOA Monthly Report	Southern IFOA cl 29; failure to report advance notice of forestry operations; failure to report correct information.	30/08/2010
IFOA Annual Report	Southern IFOA cl 31; failure to provide correct information on annual report.	28/08/2010
Badja 2020	Southern TSL, cl 8.8.1(d); failure to conduct pre-logging surveys of forest compartments.	28/08/2010
Mogo 195	Southern IFOA-TSL, cl 5.2(a), 5.2(c), 5.6(g)(iii); failure to mark habitat and recruitment trees.	28/08/2010
Plan of Operations for Southern	Southern IFOA cl 27 (1) (b); failure to provide correct information during reporting. Southern IFOA-TSL, cl 4.2 (a)(ii); failure to have register up-to-date.	01/07/2010
Boyne 102	Southern IFOA-TSL, cl 5 and 20; logging in excess of the maximum hectares specified under the agreement. Southern IFOA-TSL, cl 5.6; failure to adequately retain hollow-bearing trees; logging of hollow-bearing trees. Failure to select habitat trees that meet the requirements of the TSL.	13/06/2010
Wandera 584/585	Southern IFOA-TSL, cl 5.6(c); selection of habitat and recruitment trees that do not meet the requirements under the clause. Southern IFOA-TSL, cl 5.6(g)(ii); failure to remove logging debris from the base of a habitat tree. Southern IFOA-TSL, cl 5.4(e); conducting logging activities in a rainforest exclusion zone. EPL breach.	30/05/2010
Murrah 2051/2052 and Mumbulla 2133	Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct a koala survey.	27/05/2010
Mumbulla 2133	Eden IFOA-TSL 5.11; failure to correctly identify and protect rocky outcrop.	26/05/2010

Batemans Bay Regional office inspection	<p>Southern IFOA-TSL cl 4.1(f); failure to keep non-compliance register up-to-date.</p> <p>Southern IFOA cl 63; failure to have monthly reports available.</p> <p>Southern IFOA cl 29; failure to give advance notice of logging operation.</p> <p>Eden IFOA-TSL cl 4.2; failure to provide information upon request.</p>	20/05/2010
Mumbulla 2135	<p>Eden IFOA-TSL 5.11; failure to correctly identify and protect rocky outcrop.</p> <p>Eden IFOA-EPL Schedule 4 cl 6, 17, and 18; failure to identify and protect drainage feature and filter strip.</p>	10/05/2010
Habitat Quality Maps	Eden IFOA-TSL, cl 5.6; failure to adequately map habitat quality in operational maps.	06/05/2010
Mumbulla 2135 and part 2133	Eden IFOA cl 15 and 16; failure to identify the Aboriginal Place and put in place protective measures.	05/05/2010
Mumbulla 2133	<p>No.1</p> <p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p> <p>failure to adequately conduct a koala survey.</p> <p>No.2</p> <p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p>	<p>02/05/2010</p> <p>10/05/2010</p>
Mumbulla 2133	Eden IFOA-TSL, cl 8.8.1 and 8.8.12; failure to do proper koala surveys before logging.	29/04/2010
Mumbulla 2133 and 2135	<p>2135 - failure to cease operations when directed.</p> <p>2133 - Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct koala surveys.</p> <p>Eden IFOA cl 40; failure to prepare a road fire trail management plan.</p>	29/04/2010
Mumbulla 2135 Milledge	Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct koala surveys. Independent ecologist report confirms non-compliance.	27/04/2010
Tantawangalo 2433	<p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.11(b); failure to mark exclusion zones around rocky outcrops and cliffs.</p>	25/04/2010
Mumbulla 2135	<p>Koala breaches</p> <p>Eden IFOA-TSL, cl 8.3, 8.8.2 and 8.8.12; failure to adequately conduct koala surveys.</p> <p>Consultation</p> <p>Eden IFOA-TSL, cl 8.8.12; failure to consult with neighbours, conservation groups and animal welfare groups.</p>	<p>23/04/2010</p> <p>06/04/2010</p>

	<p>Aboriginal places</p> <p>Failure to adhere to the law governing Aboriginal places.</p> <p>Rock Outcrops</p> <p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p>	27/04/2010
Glenbog 2367	<p>Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove logging debris from around habitat and recruitment trees.</p> <p>Eden IFOA-TSL, cl 5.6.(g)(iv); failure to identify recruitment trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6.(f)(i) and 5.6.(f)(ii); failure to select hollow-bearing trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(i)(i); failure to retain the minimum amount of stags.</p>	18/04/2010
Mumbulla 2135	Eden IFOA-TSL, cl 5.6 h(i) and 5.6 k(iii); failure to identify and mark adequate habitat and recruitment trees.	12/04/2010
Mumbulla 2135	Eden IFOA-TSL, cl 8.8.12; failure to adequately conduct koala surveys.	09/04/2010
Mumbulla 2135	Eden IFOA-TSL, cl 8.8.12; failure to do proper community consultation.	06/04/2010
Mumbulla 2135	Eden IFOA-TSL, cl 8.8.12; failure to do pre-logging surveys before roading commenced.	31/03/2010
Mumbulla 2133, 2135, and 2163	Eden IFOA-TSL, cl 8.3, 8.8.2 and 8.8.12; failure to adequately conduct koala surveys.	29/03/2010
Mumbulla 2135	Eden IFOA-TSL, cl 8.3, 8.8.2 and 8.8.12; failure to adequately conduct koala surveys.	25/03/2010
South Brooman 62	<p>Logging within a rainforest exclusion zone.</p> <p>Logging within drainage line exclusion zones.</p> <p>Southern IFOA- TSL, cl 5.6 Failure to adequately mark H and R trees.</p> <p>Southern IFOA- TSL, cl 5.6(g)(i) and 5.6(g)(ii); Use of H and R trees as bumpers.</p>	14/07/2009
Mogo 184/186 and Buckenboursa 516	Southern IFOA- TSL, cl 5.6(g)(i) and 5.6(g)(ii); Damage to habitat and recruitment trees; failure to remove logging debris from around habitat and recruitment trees.	27/02/2009
Bermagui 2004/2005	<p>Eden IFOA-TSL, cl 5.4(b); failure to correctly mark a rainforest exclusion zone.</p> <p>Eden IFOA-TSL, cl 5.4(d); logging within a rainforest exclusion zone.</p> <p>Eden IFOA-TSL, cl 5.6; failure to mark hollow-bearing and recruitment trees the meet the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(j)(i); destruction of Glossy Black-Cockatoo feed tree.</p> <p>Eden IFOA-TSL 5.6(k)(ii); failure to remove logging debris from the base of retained trees; failure to minimise damage to ground and</p>	22/01/2009

	<p>understory; use of habitat and recruitment trees as bumper trees.</p> <p>Eden IFOA-TSL, cl 6.14(c); failure to mark retained Yellow-bellied Glider feed trees that comply with the requirements under the clause; failure to mark an adequate amount of Yellow-bellied Glider feed trees; destruction of a Yellow-bellied Glider feed tree.</p> <p>Eden IFOA-EPL, Schedule 4; felling trees in filter strips.</p> <p>Eden IFOA-TSL, cl 5.6(h)(i); insufficient amount of hollow-bearing and recruitment trees marked.</p>	
Glenbog 2314/2315	<p>Eden IFOA-TSL, cl 5.11(a); conducting forestry activities in areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.6(f)(iv); failure to identify hollow-bearing trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(g)(iv); failure to identify recruitment trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove logging debris from around habitat and recruitment trees.</p> <p>Eden IFOA-TSL, cl 5.6(f)(i); failure to retain adequate number of habitat trees.</p> <p>Eden IFOA-TSL, cl 6.3; failure to identify the minimum amount of recruitment trees required for owl habitat under the clause.</p>	03/11/2008
Glenbog 2314/2315	<p>Eden IFOA-TSL, cl 5.11(a); logging within areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.11(b); failure to mark exclusion zones around rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.6(k)(ii); failure to remove logging debris from around habitat and recruitment trees.</p> <p>Eden IFOA-TSL, cl 5.6(g)(iv); failure to identify recruitment trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6 and 6.3; failure to identify the minimum amount of recruitment trees required under the clause.</p>	08/10/2008
South Coast pulp volumes	Southern RFA cl 80; failure to keep pulp volumes at sustainable level of supply.	25/09/2008
Sustainable Yield volumes	Eden RFA cl 73, Eden FA cl 3.1, Eden IFOA cl 5(2)(a); failure to supply timber volumes within sustainable limits.	08/09/2008
Nullica 734	Eden IFOA-TSL, cl 5.6; failure to correctly mark and protect retained trees.	22/08/2008
Nullica 711	<p>Eden IFOA-TSL, cl 5.11(a); conducting forestry activities in areas of rocky outcrops and cliffs.</p> <p>Eden IFOA-TSL, cl 5.6(f)(iv); failure to identify hollow-bearing trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(g)(iv); failure to identify recruitment trees that comply with the requirements under the clause.</p> <p>Eden IFOA-TSL, cl 5.6(k)(i); failure to minimise damage to retained trees to the greatest extent practicable.</p>	22/08/2008

Nullica 713	Eden IFOA-TSL, cl 5.6; failure to correctly mark and protect retained trees.	21/01/2008
Nullica 729	Eden IFOA-TSL, cl 5.6; failure to correctly mark and protect retained trees. Eden IFOA-TSL, cl 5.17; failure to protect ground habitat.	14/01/2008
Batemans Bay Office Inspection	Southern IFOA-EPL 37.1(g); failure to have documents available upon request.	26/11/2007
Batemans Bay Office Inspection	Southern IFOA cl 63(1)(i), (u); failure to have documents available upon request.	20/11/2007
Eden Annual Reports	Eden IFOA-EPL cl 23; failure to report correctly.	12/12/2006
Publicly available documents	Southern IFOA-TSL, 4.1(f); failure to have documents available upon request.	12/12/2006
Southern IFOA Annual Reports	Southern IFOA cl 31; failure to supply correct information in annual report.	14/11/2006
Publicly available documents	Eden IFOA, cl 48 (1)(m) and cl 38; failure to make available TSL compliance register and regeneration assessment reports.	13/11/2006
Tallaganda 2230/2234	Southern IFOA cl 22; failure to ensure that principle purpose of harvesting operations is for HQL supply.	16/10/2006
Eden IFOA Annual Reports	Eden IFOA cl 24; failure to supply correct information in annual reports.	28/08/2006
Southern IFOA Annual Reports	Southern IFOA cl 31(1)(a),(b), and (e); failure to supply correct information in annual report.	28/08/2006
Eden Office Inspection	Eden IFOA-TSL 4.2; Availability of Data. Eden IFOA-EPL 37.1; Documents to be available for inspection.	22/08/2006
Wandella 3284	Southern IFOA- TSL cl 5.1, 5.2, and 5.6; failure to mark-up prior to logging, failure to retain adequate habitat and recruitment trees.	05/09/2005
Wandella and Bodalla SF Owl Landscape Prescriptions	Southern IFOA- TSL cl 6.4.2; failure to provide correct application of habitat prescriptions for large forest owl protection.	05/09/2005
Wandella 3284	Southern IFOA- TSL cl 5.6(d)(ii) failure to select retained trees compliant with prescriptions.	27/06/2005
Yambulla 579	Eden IFOA-EPL; failure to ensure post-harvest burn does not enter filter strips.	11/06/2005
Dampier 3199	Southern IFOA-EPL Schedule 4(C) Seasonality Restrictions. Failure to adhere to seasonal restrictions on logging in certain areas.	07/02/2005
Bodalla 3046	Southern IFOA- TSL 8.8.5 Nocturnal Call Playback failure to do adequate and proper fauna survey.	23/08/2004
Clyde 207	Southern IFOA- TSL, cl 5.6(d)(ii) failure to select retained trees compliant with prescriptions.	23/08/2004

	Southern IFOA- TSL, cl 5.6(g) failure to remove debris around base of retained tree.	
Yambulla 583	Eden IFOA-TSL cl 5.6; failure to correctly mark and protect retained trees. Eden IFOA-TSL cl 6.13; failure to correctly identify mapped fauna feature and retain adequate number of feed trees. Eden IFOA-TSL cl 5.1; failure to correctly mark retained trees.	22/07/2004
Yambulla 584	Eden IFOA-TSL cl 5.6; failure to correctly mark and protect retained trees.	07/07/2004
Yambulla 579	Eden IFOA-TSL cl 5.6 and 5.7; failure to ensure retained trees and filter strips protected from post-harvest burn.	29/06/2004
Yambulla 579	Protection of the Environment Operations Act 1997 s120; failure to ensure drainage lines not burnt in post-logging burn. Failure to install adequate drainage structures.	28/06/2004
Benandarah 114/116	Southern IFOA- TSL, cl 5.6(g) failure to remove debris around base of retained tree. Southern IFOA- TSL, cl 5.6(c) inadequate number of retained trees.	21/06/2004
Bodalla 3028	Southern IFOA- TSL, cl 5.6(g) failure to remove debris around base of retained tree.	27/10/2003
Bodalla 3022	Southern IFOA- TSL, cl 5.4 Rainforest: Logging within a rainforest exclusion zone. Southern IFOA- TSL, cl 5.6(g); failure to remove debris around base of retained tree. Southern IFOA- TSL, cl 5.6(c); failure to select an adequate number of retained trees.	29/11/2002 and follow-up on 17/3/2003

APPENDIX 2 – MAXIMUM PENALTIES UNDER KEY STATE AND FEDERAL ENVIRONMENTAL STATUTES

National Parks and Wildlife Act 1974	Section 175 creates an offence for any person breaching a condition of a licence contained in the Integrated Forestry Approval.	The maximum penalty for an offence against this section is \$22,000 in the case of an individual, directors or managers of a corporation (Section 175A) or a corporation (Section 175B).
National Parks and Wildlife Act 1974 (NSW)	Subsection 118A(1) provides that a person must not harm any animal that is a part of, a threatened species, an endangered population or an endangered ecological community or use any substance, animal, firearm, explosive, net, trap, device or instruments for the purposes of harming any animal.	The maximum penalty for an offence under 118A(1) is (a) \$220,000 or imprisonment for 2 years or both, and where any animal is presumed extinct, any critically endangered species or any endangered species, population or community is harmed, an additional \$11,000 is imposed for each animal harmed, and (b) the maximum fine is \$55,000 , 1 year imprisonment or both for vulnerable species, and in a case where an animal of any vulnerable species is harmed, an additional \$5,500 for each animal that is harmed.
National Parks and Wildlife Act 1974 (NSW)	Subsection 118A(2) makes it an offence for the picking of plants of threatened species, an endangered population or an endangered ecological community which are listed as “endangered” in Part 1 of Schedule 1 of the <i>Threatened Species Conservation Act 1995</i> .	The maximum penalty for an offence under 118A(2) is \$220,000 or imprisonment for 2 years or both, and an additional \$11,000 for each plant that was affected by or concerned in the action that constituted the offence. Paragraph (b) provides that the maximum penalty is \$55,000 or imprisonment for 1 year or both, and an additional \$5,500 for each plant that is a vulnerable species and was affected by the offence.

National Parks and Wildlife Act 1974 (NSW)	Subsection 118B makes it an offence for any person to buy, sell or have in their possession or control any animal or plant that is of or part of a threatened species or an endangered population.	The maximum penalty under this subsection is \$220,000 or imprisonment for 2 years or both, for any offence (a) toward any species presumed extinct, any critically endangered species or any endangered species or endangered population; and (b) \$55,000 or imprisonment for 1 year or both for any offence against a vulnerable species.
National Parks and Wildlife Act 1974 (NSW)	Subsection 118C creates an offence for any person that damages any critical habitat	Section 118C(1) provides the maximum penalty for any damage to critical habitat to be \$220,000, 2 years imprisonment or both
National Parks and Wildlife Act 1974 (NSW)	Subsection 118D makes it an offence to knowingly damage any habitat of a threatened species, endangered population or an endangered ecological community.	Paragraph 118D(1) provides the maximum penalty for any damage to the habitat of a threatened species, endangered population or an endangered community to be \$110,000 , imprisonment for 1 year or both.
Environmental Planning and Assessment Act 1979 (EPAA) (NSW)	Section 125 creates an offence where someone does an act prohibited by the EPAA or does not do an act required by the EPAA.	<p>Section 126(1) provides that a person guilty under this Act shall, for every such offence, be liable to a penalty not exceeding \$1,100,000 and to a further daily penalty not exceeding \$110,000.</p> <p>Section 126 (2) provides that a person under the EPA Regulations is, for every such offence, liable to up to \$110,000.</p> <p>Section 126(iii) also provides that where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court may substitute for any pecuniary penalty imposed direct that person, (a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth, and (b) to provide security for the performance of that obligation.</p>
Native Vegetation Act 2003 (NSW)	Section 12 makes it an offence to clear native vegetation except in accordance with a development consent granted or a property vegetation plan.	Anyone who carries out or authorizes the carrying out of clearing is liable for the maximum penalty provided under Section 126 of the Environmental Planning and Assessment Act 1979 which provides that a person is liable up to \$1,100,000 and to a further daily penalty of up to \$110,000 .

Protection of the Environment Operations Act 1997 (NSW)	Section 120 prohibits the pollution of any waters. The pollution of waters is a result offence where the proscribed result directly undermines the object of the <i>Protection of the Environment Operations Act 1997</i> and is a strict liability offence.	<p>Under Section 123 the maximum penalty for a corporation is \$1,000,000 and \$250,000 for an individual.</p> <p>In the case of a continuing offence, the maximum penalty is \$120,000 for a corporation and \$60,000 for an individual for each day the offence continues.</p>
Threatened Species Conservation Act 1995 (NSW)	Section 141O provides that a person who fails to comply with an order under this Act is guilty of an offence	<p>Under Section 141O the maximum penalty for a corporation is \$121,000 for each day of the offence and in the case of an individual \$60,500.</p> <p>Section 141K provides that if the prosecution is successful costs such as (a) the prevention, control, abatement or mitigation of any harm caused by the offence or any resulting damage can be recoverable by the public authority or (b) by any person who suffered loss of or damage to property or has incurred costs in preventing or mitigating any such loss or damage – are recoverable from the offender.</p> <p>Section 141M (1) allows the court to order the offender to pay an additional penalty of an amount represents the monetary benefit acquired by the offender.</p>
Environmental Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC)	Subsections 15A (1) and (2) create an offence when a person's actions result or will likely to have a significant impact on the World Heritage values of a declared World Heritage property.	<p>Subsection 15A (3) provides that the maximum fine is \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 15A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
Environmental Protection and Biodiversity Conservation Act 1999 (Cth)	Sections 15C provides for ten different strict liability offences where a corporation, individual or agency takes an action that results or will likely result in a significant impact on the heritage values of a place that is a National Heritage place.	<p>Subsection 15C(13) provides that each offence is punishable by a maximum of up to \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 15C allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>

<p>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</p>	<p>Section 17B creates an offence when a person's actions results, will result or will likely to have a significant impact on a wetland that is a declared Ramsar wetland.</p>	<p>Subsection 17B(3) provides that any offence under Section 17B is punishable by a maximum fine of \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 17B allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
<p>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</p>	<p>Section 18A creates an offence when a person's actions results, will result or will likely to have a significant impact on a threatened species or an ecological community and that threatened species or ecological community is listed as threatened.</p>	<p>Subsection 18A(3) provides that the maximum fine for any offence under Section 18A is \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 18A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
<p>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</p>	<p>Section 20A creates an offence when a person's actions results, will result or will likely to have a significant impact on a species and that species is a listed migratory species</p>	<p>Section 20A provides that the maximum fine for any offence under section 20A is \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 20A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
<p>Environmental Protection and Biodiversity Conservation Act 1999 (Cth)</p>	<p>Section 22A creates an offence when a person, constitutional corporation, or Commonwealth Agency pursues a nuclear action and that action is results in a significant impact on the environment or that individual, constitutional corporation or Commonwealth Agency is reckless and the nuclear action is likely to result in a significant impact on the environment.</p>	<p>Section 22A(7) provides that any offence under subsections 22Ais punishable by a maximum fine of \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 22A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>

Environmental Protection and Biodiversity Conservation Act 1999 (Cth)	Sections 24A provides for strict liability offences where a person's action results or will result in a significant impact on the environment in an area that is a Commonwealth Marine Area	<p>Section 24A(7) provides that any offence under subsections 24A is punishable by a maximum fine of \$46,200, imprisonment of up to 7 years or both.</p> <p>Subsection 24A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
Environmental Protection and Biodiversity Conservation Act 1999 (Cth)	Sections 27A provides for strict liability offences where a person's actions results or will result in a significant impact on the environment in an area that is a Commonwealth land	<p>Section 27A(5) provides that any offence under subsections 27A is punishable by a maximum fine of \$13,200, imprisonment of up to 2 years or both.</p> <p>Subsection 27A allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
Environmental Protection and Biodiversity Conservation Act 1999 (Cth)	Sections 27C provides for strict liability offences where a person takes an action and that act results or will result in a significant impact on the environment in an area that is a Commonwealth Heritage place and is outside the Australian jurisdiction	<p>Section 27A(3) provides that any offence under subsections 27A is punishable by a maximum fine of \$13,200, imprisonment of up to 2 years or both.</p> <p>Subsection 27C allows Subsection 4B(3) of the Crimes Act 1914 (Cth) to apply and grants discretion to a court to fine a corporation up to 5 times the maximum amount or \$231,000.</p>
Pesticides Act 1999	Section 101 provides that any person who fails to comply with an order under this Division (except an order under Section 95 (Costs recoverable for the prevention, control and abatement of the pesticides at the time of offence proved), Section 96 (costs recoverable for the prevention, control and abatement of the pesticides after the offence proved, Section 97 (costs with regard to investigation the offence) or Section 100) is guilty of an offence	<p>Section 101 provides that the maximum penalty in the case of a corporation is \$120,000 for each day the offence continues, or in the case of an individual \$60,000 for each day the offence continues.</p> <p>Additionally, any person can recover costs for the mitigation, control or abatement of the pesticides while it was release and thereafter for any property damage or loss and for any costs associated with the investigation of the offence</p>

ENDNOTES

- ¹ Climate Commission (2011) *The Critical Decade: Climate Science, Risks and Responses*, Commonwealth of Australia, pp.57-8.
- ² Department of Environment, *Climate Change and Water v Forestry Commission of NSW*, Justice R A Pepper, NSW Land and Environment Court, 8 June 2011
- ³ Kingsford et al. "Major Conservation Policy Issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.
- ⁴ Forests NSW *Forests NSW Facts and Figures 2009-10* at 3.
- ⁵ Forests NSW *Forests NSW Facts and Figures 2009-10* at 10.
- ⁶ Forests NSW *Forests NSW Facts and Figures 2009-10* at 3.
- ⁷ A Jay, D Thompson, J Macgregor-Skinner and J Vanclay for Forest & Wood Products Australia, *Review of the Draft Code of Practice for Private Native Forestry in NSW* (June 2007) at 4; available from www.fwpa.com.au (accessed 20 March 2011).
- ⁸ Department of Primary Industries (NSW) website: <www.dpi.nsw.gov.au>.
- ⁹ SoE Report, Chapter 7 at 7.2 Native Fauna and Flora: <www.environment.nsw.gov.au/soe/soe2009/chapter7/>.
- ¹⁰ *Ibid*
- ¹¹ SoE Report, Chapter 7 at 7.2 Native Fauna and Flora, Pressures: <www.environment.nsw.gov.au/soe/soe2009/chapter7/>.
- ¹² *Ibid*.
- ¹³ Australian Government, Bureau of Rural Sciences *Australia's forests-at-a-glance 2009* at 45-46.
- ¹⁴ Kingsford et al. "Major Conservation Policy Issues for Biodiversity in Oceania" (2009) 23; 4 *Conservation Biology* 834.
- ¹⁵ *Ibid*.
- ¹⁶ Cornish, PM & Vertessy RA "Forest age-induced changes in evapotranspiration and water yield in eucalypt forest" (2001) 242(1-2) *Journal of Hydrology* 43 and Roberts S, Vertessy RA & Grayson R "Transpiration from Eucalyptus sieberi forests of different age" (2001) 143 (1-3) *Forest Ecology and Management* 153.
- ¹⁷ Personal communication, Dailan Pugh, 4 July 2011.
- ¹⁸ EPBC Act (Cth), s 38; Part 3 of the Act requires environmental approvals for certain activities impacting on matters of national environmental significance. There is a similar provision in the *Regional Forest Agreements Act 2002* (Cth), s 6(4).
- ¹⁹ See *Nationally Agreed Criteria for the Establishment of a Comprehensive, Adequate and Representative System for Forests in Australia* Report by the Joint ANZECC/MCFFA National Forest Policy Statement Implementation Sub-committee (Commonwealth of Australia, 1997).
- ²⁰ Australian Government and NSW Government *Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements* (May 2009) at 2.
- ²¹ See discussion in Environmental Defenders Office *Submission to the NSW Department of Environment and Climate Change and Water (DECCW) on the Draft Report on Progress with Implementation of the New South Wales Regional Forest Agreements* (15 September 2009), available at: <www.edo.org.au/edonsw> (accessed 20 April 2011).
- ²² The *Forestry Act 1916* (NSW) was once the foremost piece of legislation regulating forestry in NSW, however, it has been largely superseded by the introduction of the FNPE Act. Note that the *Forestry Act 1916* (NSW) still regulates forestry activities in forests where there is no Forestry Agreement under the FNPE Act in place in respect of those forests.
- ²³ *Forestry and National Park Estate Act 1998*, s 14(4).
- ²⁴ DECCW website, NSW Forest Agreement and IFOAs: <http://www.environment.nsw.gov.au/forestagreements/agreementsIFOAs.htm> (accessed on 3 April 2011).
- ²⁵ Forests NSW is the registered business name of the Forestry Commission of New South Wales, which is constituted under the *Forestry Act 1916* and is subject to the direction of the responsible Minister: see *Forestry Act 1916* (NSW), s 7.
- ²⁶ See paragraph 1.7 of the Upper North East, Lower North East and Eden Forest Agreements, and paragraph 1.8 of the Southern Forest Agreement.
- ²⁷ *Forestry and National Park Estate Act 1998*, Part 4.
- ²⁸ *Forestry and National Park Estate Act 1998*, s 26(2), 28(1).
- ²⁹ *Forestry and National Park Estate Act 1998*, s 25(b). See also DECCW, NSW Forest Agreement and IFOAs <http://www.environment.nsw.gov.au/forestagreements/agreementsIFOAs.htm> (accessed 3 April 2011).
- ³⁰ *Forestry and National Park Estate Act 1998*, s 36.
- ³¹ *Forestry and National Park Estate Act 1998*, s 29.
- ³² *Forestry and National Park Estate Act 1998*, s 30.
- ³³ *Forestry and National Park Estate Act 1998*, s 31.
- ³⁴ The IFOAs are available on the Office of Environment and Heritage website at: www.environment.nsw.gov.au/forestagreements/agreementsIFOAs.htm (accessed 20 April 2011).
- ³⁵ *Forestry and National Park Estate Act 1998*, s 34(2), 40.
- ³⁶ *Forestry and National Park Estate Act 1998*, s 35.
- ³⁷ *Forestry and National Park Estate Act 1998*, s 35(2).
- ³⁸ *Forestry and National Park Estate Act 1998*, s 36.
- ³⁹ *Forestry and National Park Estate Act 1998*, s 40.
- ⁴⁰ *Forestry and National Park Estate Act 1998*, s 36(1).
- ⁴¹ *Forestry and National Park Estate Act 1998*, s 36(2).
- ⁴² *Forestry and National Park Estate Act 1998*, s 36(2).
- ⁴³ *Forestry and National Park Estate Act 1998*, s 36(2A).
- ⁴⁴ *Forestry and National Park Estate Act 1998*, s 37.
- ⁴⁵ *Forestry and National Park Estate Act 1998*, s 40.
- ⁴⁶ *Forestry and National Park Estate Act 1998*, s 35.
- ⁴⁷ *Forestry and National Park Estate Act 1998*, s 40(2)(b).
- ⁴⁸ *National Parks and Wildlife Act 1974*, ss 133(4), 175(1)(a).
- ⁴⁹ *Forestry and National Park Estate Act 1998*, s 26(2).
- ⁵⁰ See, for example, Eden IFOA, clause 43(1).
- ⁵¹ *Upper North East Region IFOA, Annexure B: TS Licence*, condition 2.1(f).
- ⁵² Dailan Pugh *Preliminary Audit of Doubleduke State Forest Compartments 144, 145 and 146* (June 2010) at 4.

⁵³ *Ibid* at 3.

⁵⁴ *Ibid*.

⁵⁵ Dailan Pugh *Preliminary Audit of Girard State Forest Compartments 44, 45, 46, 54, 55 and 56* (August 2010) at 4.

⁵⁶ *Ibid*.

⁵⁷ See *Table of SEFR Breach Reports*, attachment 3 to this report. SEFR's breach reports are available on its website at <www.lisaandtony.com.au>.

⁵⁸ Dailan Pugh *Preliminary Audit of Girard State Forest Compartments 44, 45, 46, 54, 55 and 56* (August 2010) at 4-5.

⁵⁹ See SEFR breach reports for Yurrammie SF, Compartments 763, 964, 965 dated 8 September 2010; Murrah SF, Compartment 2032 dated 8 September 2010; Murrah SF, Compartments 2051 and 2052, dated 27 May 2010; Mumbulla SF, Compartment 2135, dated 23 April 2010. These are summarised in the *Table of SEFR Breach Reports*, attachment 3 to this report, and available on the SEFR website at <www.lisaandtony.com.au>.

⁶⁰ See *Table of SEFR Breach Reports*, attachment 3 to this report, and available on the SEFR website at <www.lisaandtony.com.au>.

⁶¹ Dailan Pugh *Preliminary Audit of Doubleduke State Forest Compartments 144, 145 and 146* (June 2010) at 3-5.

⁶² Dailan Pugh *Preliminary Audit of Girard State Forest Compartments 44, 45, 46, 54, 55 and 56* (August 2010) at 5.

⁶³ *Ibid*.

⁶⁴ Dailan Pugh *Preliminary Audit of Girard State Forest Compartments 44, 45, 46, 54, 55 and 56* (August 2010) at 6-8.

⁶⁵ Dailan Pugh *Preliminary Audit of Doubleduke State Forest Compartments 144, 145 and 146* (June 2010) at 4.

⁶⁶ *Final Report on Progress with Implementation of NSW Regional Forest Agreements: Report of Independent Assessor* (November 2009), available on the Department of Agriculture, Fisheries and Forestry website: <www.daff.gov.au/rfa/publications/annual-reports/nsw> (accessed 20 April 2011).

⁶⁷ Forests NSW *Forests NSW Facts and Figures 2009-10* at 10.

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