

**NSW Government Remake of the Coastal Integrated  
Forestry Operations Approvals  
Discussion Paper February 2014**

**EDO NSW Preliminary Briefing Note and Key Issues Paper**

This briefing note outlines the proposed changes in the NSW Government's discussion paper, *Remake of the Coastal Integrated Forestry Operations Approvals* (February 2014) (**Discussion Paper**),<sup>1</sup> and gives a preliminary EDO NSW perspective on key issues.

We are continuing to analyse the discussion paper and will publicly release our recommendations and a detailed full submission at the end of the public consultation period.

EDO NSW's comments are based on our extensive experience as an independent, not-for-profit community legal centre specialising in public interest environmental law. Our thinking will be shaped by further research, understanding and engagement during the consultation period. EDO NSW will continue to engage throughout the reform process.

- 1. Background**
- 2. Overview of the Proposed Changes**
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<sup>1</sup> See <http://www.epa.nsw.gov.au/forestagreements/140209IFOAremakeweb.htm>

## 1. **Background**

In May 2012 the NSW Government announced plans to remake the Integrated Forestry Operations Approvals (**IFOAs**) for the Eden, Southern, Upper North East and Lower North East coastal regions of NSW. A single IFOA will replace the current four coastal IFOAs.<sup>2</sup>

IFOAs authorise and regulate forestry operations in State forests or other Crown timber lands, and incorporate a range of licence requirements, including licences to:<sup>3</sup>

- pollute;<sup>4</sup>
- harm or kill threatened species (or their habitat);<sup>5</sup> and
- harm or kill a threatened species of fish (or their habitat).<sup>6</sup>

IFOAs also include a number of conditions that are not connected to these licences.

The Government released its IFOA Discussion Paper on 24 February 2014 for six weeks public consultation. The Discussion Paper presents key concepts and components being considered for the new IFOA and seeks community feedback before the draft IFOA is prepared. Along with the IFOA remake, the Government also proposes to make changes to the legislation regulating forestry in NSW.

The Discussion Paper will be on exhibition until **Sunday 6 April 2014**. Comments can be sent to:

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## 2. **Overview of the Proposed Changes**

The changes to the IFOAs are focussed on 'reducing the costs of implementation and compliance and improving the clarity and enforceability of IFOA conditions'.<sup>7</sup>

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<sup>2</sup> State of NSW and Environment Protection Authority, *Remake of the Coastal Integrated Forestry Operations Approvals* (February 2014), page 4.

<sup>3</sup> *Forestry Act 2012* (NSW), s. 69T(1).

<sup>4</sup> issued under the *Protection of the Environment (Operations) Act 1997* (NSW).

<sup>5</sup> Issued under the *Threatened Species Conservation Act 1995* (NSW).

<sup>6</sup> Issued under the *Fisheries Management Act 1994* (NSW).

<sup>7</sup> State of NSW and Environment Protection Authority, *Remake of the Coastal Integrated Forestry Operations Approvals* (February 2014), page 4.

The Discussion Paper states that ‘the NSW Government has committed to delivering these objectives with no net change to wood supply and maintenance of environmental values’.<sup>8</sup> Key changes include:

- Replacing the four current coastal IFOAs with a single IFOA (p 11)
- Replacing detailed and prescriptive rules with high-level, broadly-stated principles (p 12)
- Reducing the number and complexity of conditions (p 11)
- Emphasising landscape-based measures and reducing surveys to locate threatened species in most cases, (p 13) and replacing targeted surveys for threatened species with a landscape-scale approach and multiple spatial scales (although some site- or species- specific provisions will be retained) (p 20-26)
- Introducing enforceable protocols to streamline licences and support licence conditions, supplemented by unenforceable guidance materials (p 13)
- Giving the Forestry Corporation of NSW (**FCNSW**) the flexibility to determine how outcomes specified in the IFOA and licence conditions will be met (p 13)
- Streamlining licence conditions, grouping them by environmental outcome rather than licence type (p 14)
- Introducing offence and penalty provisions for non-compliance with non-licence terms (these are currently unenforceable), and allowing the EPA to bring enforcement proceedings (currently only the Minister can bring proceedings) (p 15)
- Enabling environment protection licences (licences to pollute) to be ‘switched on’ during all logging operations (currently, FCNSW can choose not to ‘switch on’ the environment protection licence) (p 15)
- Introducing legislation setting out ‘minimum competencies’ for contractors of FCNSW to address liability issues and create incentives for regulatory requirements to be met (p 16)
- Revising penalties and sanctions for operations on Crown-timber lands (p 16)
- Increasing access to information about IFOAs online (p 16)
- Removing specifications about allowable silvicultural practices (including tree thinning). Tree retention requirements will be included in the IFOA (p 18)
- Restricting the IFOA’s application to the removal of forest products from areas that are actively being or have recently been logged (currently IFOAs apply to all forest products operations) (p 18)
- Removing provisions relating to heritage, including Aboriginal culture and heritage, bee-keeping, grazing, weed and pest control from the IFOA (legislative requirements under other Acts will still apply) (p 19)
- Clarifying licence conditions to remove ambiguous language (p 29)

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<sup>8</sup> State of NSW and Environment Protection Authority, *Remake of the Coastal Integrated Forestry Operations Approvals* (February 2014), page 4.

- Reducing the number of licence conditions and duplication between licences (p 30)
- Replacing prescriptive conditions for water flow along roads with flexible outcomes-based conditions (p 30)
- Standardising road, stream and wetland protection conditions (p 30)
- Introducing a steep slope harvesting trial (currently timber extraction is limited to slopes less than 30 degrees) (p 31)
- Replacing current maps with LiDAR and GeoNet technologies (p 32-34)
- Adopting a new stream classification system (p 36)
- Replacing the requirement to physically mark boundaries (e.g. rainforest, old growth, threatened species habitat) with a requirement that all boundaries are determined by either physical identification and markings or GPS and other technologies (p 37)
- Introducing a strategic environmental monitoring framework (p 38)
- Increasing the flexibility of the IFOA to respond to negative impacts established by monitoring (p 38)

### **3. Preliminary Comments on key issues**

#### **a. Potential improvements**

EDO NSW supports the clarification of the responsibilities of FCNSW, its contractors, and regulators under the IFOA. Potential benefits include increased compliance and prevention of breaches. The removal of ambiguous language and clarification of IFOA conditions also has the potential to result in increased and more effective enforcement action.

EDO NSW supports the strengthening of penalties for offences on Crown-timber lands to reflect regulatory best-practice. However, it is important that these penalties are imposed when breaches are identified - prosecutions for breaches of the existing IFOA licences are extremely rare.<sup>9</sup>

The introduction of minimum competencies for contractors has the potential to result in increased awareness of requirements and responsibilities under the IFOA, and therefore greater compliance with IFOA conditions. There is anecdotal evidence that contractors are often unaware of their responsibilities under the current IFOAs, and FCNSW has not emphasised the importance of compliance. This places pressure on

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<sup>9</sup> Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia, p 28: [http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728w\\_hen\\_a\\_tree\\_falls.pdf?1380667654](http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728w_hen_a_tree_falls.pdf?1380667654)

contractors who may not know of the specific requirements of the IFOAs and licences.<sup>10</sup>

Making breaches of non-licence terms enforceable and delegating enforcement authority to the EPA, along with the introduction of investigation powers, has the potential to result in increased enforcement of breaches relating to forestry operations that are not covered by the IFOA pollution, threatened species, and fisheries licence conditions. Pollution licences should always be 'switched on', and FCNSW should not have the option of failing to do so lawfully.

The removal of specifications relating to silvicultural practices may be of little consequence because these requirements are currently unenforceable. The proposed inclusion of tree retention requirements in the IFOA is vital, and these requirements must be worded in a way that ensures they are enforceable.

The publication of materials online will increase the community's access to information related to forestry operations, encouraging transparency and accountability and increasing confidence in Government processes relating to forestry.

The employment of new technologies such as LiDAR and GeoNet, and a new stream classification system has the potential to result in increased knowledge about forest features including waterways and slopes. However, provisions will need to be made to ensure that the replacement of physical marking of protected areas of environmental significance with digital mapping does not result in confusion or uncertainty on the ground (e.g. all contractors will need to have access to the technology at all times), as this has the potential to result in the loss of environmental and heritage values which are supposed to be protected.

## **b. Areas of concern**

The IFOA should include ecologically sustainable forest management (ESFM) as its principal underlying objective. ESFM is defined as 'managing forests so that they are sustained in perpetuity for the benefit of society by ensuring that the values of forests are not lost or degraded for current and future generations',<sup>11</sup> and has been promoted as an underlying principle for forest management by both national and State governments. Australia's *National Forest Policy Statement*<sup>12</sup> has ESFM as its

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<sup>10</sup> Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia, p 27: [http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728w\\_hen\\_a\\_tree\\_falls.pdf?1380667654](http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728w_hen_a_tree_falls.pdf?1380667654)

<sup>11</sup> <http://www.epa.nsw.gov.au/forestagreements/questions.htm>

<sup>12</sup> <http://www.daff.gov.au/forestry/policies/statement>

underlying theme, and the *Forestry Act 2012* requires Forest Agreements to promote ESFM and reports on ESFM to be tabled in Parliament annually.<sup>13</sup>

More information is needed about how the balance between ‘no net change to wood supply’ and ‘maintenance of environmental values’ will be achieved.<sup>14</sup> Rather than simply maintaining environmental values, the aim should be to *improve or maintain* environmental values as this is the standard required to be met by activities impacting the environment such as the assessment of developments involving broadscale clearing,<sup>15</sup> the conferral of biodiversity certification,<sup>16</sup> and the establishment of BioBanking agreements<sup>17</sup>. It is arguable that environmental values are not even being maintained under the current system, with 70% of native forests in Australia having been degraded by unsustainable logging.<sup>18</sup>

As a landscape-based approach focuses on protection of forest features for habitat, such as trees with hollows, there is a risk that this approach overlooks whether actual threatened species are observed in those forest features. More information is needed about the extent to which the proposed landscape-scale approach will replace targeted surveys for threatened species, and how the species and sites deemed to require targeted surveys will be selected. Provisions will need to be made to encourage local communities to share their knowledge with regulators to ensure that known populations are identified and protected. The proposed outcomes-based approach will result in the removal of many prescriptive conditions. The wording of outcomes will need to be such that the failure to meet outcomes will amount to an enforceable breach.

More information is needed about how the four current coastal IFOAs will be replaced with one single IFOA. Standardising the IFOAs into a single document is likely to have implications for sensitive environmental and heritage assets, particularly when there is so much variation between the forests covered. Provisions will need to be made to ensure that important environmental and heritage features are protected, and that local communities are given the opportunity to contribute knowledge about the existence of places that need to be protected.

The reduction of the number and complexity of IFOA conditions has the potential to result in the watering-down of current protections. Enforceable protocols that are proposed to be developed by the NSW Government to sit under the IFOAs will need

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<sup>13</sup> *Forestry Act 2012* (NSW), s 69C, 69H.

<sup>14</sup> State of NSW and Environment Protection Authority, *Remake of the Coastal Integrated Forestry Operations Approvals* (February 2014), page 4.

<sup>15</sup> *Native Vegetation Act 2003* (NSW), s 14.

<sup>16</sup> *Threatened Species Conservation Act 1995* (NSW), s 126O.

<sup>17</sup> *Threatened Species Conservation Act 1995* (NSW), Part 7A.

<sup>18</sup> Kingsford et al “Major Conservation Policy Issues for Biodiversity in Oceania” (2009) 23; 4 Conservation Biology 834.; Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender’s Office (NSW) Ltd, Sydney, Australia, p 8:

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to include enough detail to ensure that breaches are actually enforceable. The guidance material which are proposed to be developed by FCNSW in consultation with EPA and DPI to sit under these protocols will be unenforceable, so it is important that any detail required to ensure the availability of enforcement action is not included in these guidelines, but in the protocols. The objective of the IFOA remake to reduce the costs associated with implementation and compliance should not compromise effective implementation and enforcement. Self-regulation is not an adequate replacement for regulation by the Government, and the proposed strategic monitoring framework must align with key principles of ecologically sustainable forest management.

The steep slope harvesting trial<sup>19</sup> has the potential to cause environmental degradation including soil erosion, and water pollution, particularly following large rainfall events. EDO NSW does not support this trial. The protection of slopes with a gradient steeper than 30 degrees has been in place since the establishment of the existing IFOAs.<sup>20</sup> The introduction of steep slope harvesting is a radical change to current practices, and is contrary to the underpinning principle of ecologically sustainable forest management. Before any trial is contemplated, a peer review should be undertaken, measures employed to mitigate environmental impacts, and independent assessments undertaken and made available to the public.

If changes are being made to the legislation regulating forestry in NSW, the inclusion of third-party enforcement action should be included. The *Forestry Act 2012* currently does not allow members of the public to bring enforcement action for breaches of the law,<sup>21</sup> but relies on the Minister taking action. This has resulted in a very low prosecution rate despite regular and often serious breaches by FCNSW and its contractors.<sup>22</sup>

The removal from the IFOA of references to legal obligations under other laws (e.g. the protection of Aboriginal culture and heritage values under the *National Parks and Wildlife Act 1974*) has the potential to result in decreased compliance with these obligations and exposes FCNSW and its contractors to increased risk of compliance action. If these references are to be removed, a system must be in place to ensure FCNSW and its contractors are made aware that these requirements and responsibilities still exist.

#### **4. Next Steps**

The NSW Government has indicated that a draft IFOA will be released for public consultation for six weeks in mid-2014. EDO NSW will draft a submission at this

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<sup>19</sup> <http://www.epa.nsw.gov.au/forestagreements/coastIFOAsHarvestingTrial.htm>

<sup>20</sup> <http://www.epa.nsw.gov.au/forestagreements/coastIFOAsHarvestingTrial.htm>

<sup>21</sup> *Forestry Act 2012* (NSW), s. 69ZA.

<sup>22</sup> Hammond-Deakin, N. and Higginson, S. (2011) *If a tree falls: Compliance failures in the public forests of New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia, p 28: [http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728when\\_a\\_tree\\_falls.pdf?1380667654](http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/284/attachments/original/1380667654/110728when_a_tree_falls.pdf?1380667654)

stage of the remake, and will hold a series of community workshops to assist the community to engage in the consultation process. Contact us at [education@edonsw.org.au](mailto:education@edonsw.org.au) or on (02) 9262 6989 to express your interest in hosting or attending a community workshop.

*EDO NSW will be making a detailed submission on the proposed changes at this stage and at subsequent stages of the remake which will be publicly available on our website*

**For further information, please contact Policy & Law Reform Director Rachel Walmsley on [rachel.walmsley@edonsw.org.au](mailto:rachel.walmsley@edonsw.org.au) or (02) 9262 6989.**