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Submission on Draft Renewable Energy (Electricity) Amendment Regulation 2011

South East Forest Rescue takes a firm stand on environmental protection of the native forest estate and expresses deep alarm at the welfare of forest-dependent threatened species and the cumulative impacts of industrial degradation of native forests that are exacerbating extinction rates and destroying soil, water, and carbon capacity.

We welcome the opportunity to provide comment on the Exposure Draft of the Renewable Energy (Electricity) Amendment Regulation 2011 ("REEA Regulation") and the Commentary on Exposure Draft Regulations to be Made Under the *Renewable Energy (Electricity) Act 2000*.

We support the amendments to exclude native forest from the meaning of the word 'waste' from reg.8 of the Draft REEA Regulation.

We do not support the 8 year transitional arrangements provided for in reg.4 and would state that, upon enactment of the REEA Regulation, native forest usage by any power station should become unlawful. To support this proposition we make the following points:

Forests are being destroyed at an alarming rate.[1] The UN State of World Forests Report provides:[2]

> The area of primary forests decreased in all Asia and Pacific subregions in the last decade, despite

[1] Streck C, 'Protecting Forests to Mitigate Global Climate Change' (2007) Climate Focus, Rotterdam; Joint Statement, *Can a Legally Binding Agreement for Forests Make a Difference?* FERN UK, Forest Peoples Programme UK, The Rainforest Foundation, UK, Forest Action Network of Kenya, O Le Siosiomaga Society Inc Samoa, WATCH Nepal, Zhou Bin PR of China, Pacific Environment Beijing Office China, Both ENDS the Netherlands, Forest Monitor UK, British Russian Eco-cultural Network UK, International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, Pacific Indigneous Peoples Environment Coalition Aoteaora, Worldforests Scotland, World Rainforest Movement Uruguay, WALHI/ Friends of the Earth Indonesia, Urgewald Germany, Friends of the Earth Norway/ Norges Naturvernforbond, Union of Ecoforestry Finland, Friends of the Siberian Forests, Rainforest Foundation Norway, Friends of the Earth International, Global Forest Coalition, Fundacion para la Promocion del Conocimiento Indigena, Peaceful Parks Canada, Forest Action Network Canada, September 2004; ELM/2010/Geneva/Doc 3.2 Technical Background For A Ministerial Decision On Negotiating A Legally Binding Agreement On Forests In Europe, Compilation of the technical results of the Working Groups (2008 – 2010).

[2] See *State of the World's Forests*, UN Food and Agricultural Organization, Rome, FAO, 2011, (online) <http://www.fao.org/docrep/013/i2000e/i2000e.pdf>, viewed 19/05/2011; in countries where deforestation rates have fallen this outcome has mainly been achieved because there are no forests left.

> the fact that the area designated for conservation of biodiversity increased in the same period.[3]

In describing the situation in Australia the Report provides that:

> Oceania also experienced a negative trend … since 2000 and caused it to register the largest annual loss of any country in the region between 2000 and 2010.

It has emerged through strong scientific evidence that there are clear links between climate change, deforestation and forest degradation.[4] Biomass will double the industrys ecological footprint.[5] Therefore native forest in any form should not be included as an eligible source of renewable energy because of the significant environmental impacts of logging activities on our forests and biodiversity.

The Senate Environment, Communications, Information Technology and the Arts Reference Committee reviewed the Renewable Energy (Electricity) Bill 2000 and the Renewable Energy (Electricity) (Charge) Bill 2000 and recommended that:

> Non plantation native forest wood products and wood wastes be specifically excluded from the list of eligible renewable energy sources.

Sustainable

Renewable energy producers must demonstrate that their operations are ecologically sustainable. The native forest logging industry has increasingly been overcutting to meet wood supply agreements and has not undertaken legislated reviews of sustainable yield. Forests NSW has hidden real data by amalgamating plantation and native forest volume figures.[6]

As a requirement Forests NSW must undertake a review of Sustainable Yield every five years using Forest Resource and Management Evaluation Systems ("FRAMES") and information bases. Results of which would inform the annual volume which could be logged from the Southern region 'being mindful of achieving long-term Sustainable Yield and optimising sustainable use objectives consistent with this Agreement'.[7]

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[3] See *State of the World's Forests*, above n 2; the words 'native forests' are used here to mean natural non-plantation native ecosystems, biodiversity, habitat, in other words all that is contained within these systems; the term is used in this outline for ease of reference.

[4] Stern N, The Stern Review on the Economics of Climate Change: Emissions from the Land-use Change and Forestry Sector, Cambridge University Press, 2006 (online), <http://webarchive.nationalarchives.gov.uk/+/http:/www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm>; see *The Critical Decade: Climate science, Risks and Responses*, (Climate Commission Secretariat, Department of Climate Change and Energy Efficiency, 2011) (the Garnaut Report) (online) <http://www.garnautreview.org.au/update-2011/update-papers/up4-transforming-rural-land-use.pdf>.

[5] Greenpeace, *Fuelling the Biomess: Why Burning Trees For Will Harm People, the Climate and Forests*, 2011 (online) <www.greanpeace.ca>.

[6] NSW Auditor-Generals Report to Parliament, vol 1, 2009, (online) < http://www.audit.nsw.gov.au/publications/reports/financial/2009/vol1/pdfs/31_0173_forestry_commission_of_new_south_wales.pdf >.

[7] *Regional Forest Agreement for the Southern Region of NSW 2001* cl 8; like all reviews legislated for forestry operations either undertaken four or five years late or not undertaken at all, this review has not been undertaken.

However the five year late review report on RFA 'progress' stated:

> It is somewhat concerning that…the requirement (i.e. it is not optional) to produce annual reports of progress on meeting regional ESFM targets in ESFM Plans has not been delivered. This is surely central to accountability under the RFAs.[8]

It was made known by the NSW Auditor-General that:

> Forests NSW does not routinely compare harvesting results to it's yield estimates.

These reviews are necessary to test the validity of Forests NSW estimates.[9] No tangible efforts have been made to ensure sustainability or to produce any reporting showing that efforts are being made. Forests NSW are operating in the gloom of uncertainty. For the Upper and Lower North East region the Auditor-General stated:

> To meet wood supply commitments, the native forest managed by Forests NSW on the north coast is being cut faster than it is growing back.[10]

In our view this may be true for the Southern region, if ever real data becomes available. The report for Southern was not completed by June 2009. 'It may not be ready until mid 2010' and 'the report will be ready by June 2010'. The report was still not available as of July 2010, and still not ready in time for the deadline of this submission:

> It is my understanding that the review of the sustainable yield for the Southern Region was expected to be completed by June 2009 but is still being done. Forests have indicated it will take time to check the review and are unlikely to publish the results and methods of calculating the sustainable yield (covered by Milestone 54 in the RFA review report) before mid-2010.[11]

Court documents obtained this week confirm that Forests NSW are unable to meet timber commitments and are having to pay out for logs that never existed. The court documents show timber giant Boral initiated proceedings in the NSW Supreme Court against Forests NSW in 2010 claiming Forests NSW have been unable to supply them with contracted timber volumes since 2002. The court documents show that Forests NSW were forced to pay Boral $500 000 in 2006 for undersupply. Since then supply has been declining and Forests NSW now owe Boral almost twice as much again. Bizarrely new wood supply agreements were enacted in 2004.

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[8] *Final Report on Progress with Implementation of NSW Regional Forest Agreements: Report of Independent Assessor*, November 2009, (online) <http://www.daffa.gov.au/__data/assets/pdf_file/0007/1546711/assessors-report.pdf >.

[9] Performance Audit In Brief, NSW Auditor-Generals Report to Parliament, April 2009, 2.

[10] Performance Audit 'Sustaining Native Forest Operations,' NSW Auditor-General's Report, 2009; it was also stated "reviews of yield estimates for the southern region, due in 2004 for Eden and 2006 for Tumut and the south coast, have not been completed."

[11] Michael Davies, Department of Environment and Climate Change, Environment Protection and Regulation Group, Crown Forestry Policy and Regulation Section (ex-Resource and Conservation Unit) 14/7/09.

These contracts provided that State Forests must make logs available to purchasers and conversely purchasers must take and pay for the logs.

As shown tere is abundant evidence that Forests NSWs estimates were grossly overstated and unreliable from the beginning. Further, the documents provide that FNSW was to supply the north coast with 5,000m3 of timber from our south coast native forests every year from 2008. This is robbing Peter to pay Paul. However the court documents show that FNSW have failed to meet that commitment also.

Boral claim FNSW has knowingly, intentionally and recklessly breached the Agreement in that since at least February 2005 FNSW were made aware that they were breaching the Agreement. Further Boral say FNSW has supplied timber to third-parties in excess of FNSW contractual obligations to that purchaser and/or where it was not contractually obliged to do so.

To try to meet shortfalls Forests NSW have had to buy back timber commitments from other sawmillers, they have been over-logging, logging stream buffers, logging trees and areas required to be retained for threatened species and buying timber from private properties.

The rate of native forest logging has exceeded levels which can be permanently sustained. It is not enough to merely say native forestry is sustainable, it must be backed up with rigorous scientific data which Forests NSW has failed to provide. It is obvious that there is no long-term future for an industry that isn't sustainable or lawful, destroys the ecological integrity of the forests and contributes significantly to the catastrophic effects of climate change.

The State government lied to the Australian public and the people of NSW when they said in 2003 that there was no cost to the taxpayer, coming from the native forest logging sector. The native forest logging sector is unsustainable and only propped up by political will and public subsidies.

Choosing to ignore conservationist's analysis has already cost taxpayers a fortune and it is obvious the native forest logging industry is now haemorrhaging money.

FNSW were running at a $14M loss in 2008/09, $16M in 2009/10 and $232M before tax loss in 2010/11.

Renewable

The purpose of renewable technologies in Australia and internationally is to produce a renewable source of energy that can be used to offset fossil fuels thereby reducing the potential impacts of global climate change.

However the burning of wood, whether domestically or overseas, is not a clean technology, it still releases CO_2 and particulate pollution, the removal of trees is the removal of a carbon sink, and further the logging of native forest provides an economic incentive to produce more wood waste, rather than encouraging energy efficiency.

Action on climate change is required for the global environment. It is important to achieve mitigation in a manner that is sustainable and does not degrade the local environment such that human health and enjoyment, or environmental/ecological health is negatively impacted or compromised.

On the south coast logging operations in mixed-age, mixed-species forest removes approximately 50% to 90% of existing crown cover.[12] In addition to this, road construction and post-logging burning is resulting in extensive accumulated damage to the environment and the atmosphere.[13] There is little evidence of regeneration after Forests NSW logging.[14] Forests NSW do not replant native forest.

Forests NSW burn forests both pre and post-logging. In 2005-06 only seven percent of State forest was burned in wildfire however 38,008 hectares were burned as 'hazard reduction' for a total expenditure of over eight and a half million dollars.[15] In 2006–2007, Forests NSW had planned for pre-logging and post-logging burns to be carried out on about 60 100 ha of State forest across the four forest agreement regions. Pre-logging and post-logging burns then took place over approximately 27 220 ha (45% of the planned area). A further 3350 ha of plantation land was subject to 'area-establishment' burns. In addition, 1530 ha of land was subject to pre-logging burns. Much of the area burned was in the UNE and Southern regions.

In 2007–2008, Forests NSW had planned for pre-logging and post-logging burns to be carried out on about 42 186 ha of State forest across the four forest agreement regions. Pre-logging and post-logging burns then took place over approximately 31 349 ha (74% of the planned area), while the pre-logging burns represented 57% of this figure. A further 7029 ha of plantation land was subject to 'area establishment' burns. In addition 2525 ha of land was subject to pre-logging burns. In 2008–2009, Forests NSW planned for pre-logging and post-logging burns to be carried out on about 49 132 hectares. Pre-logging and post-logging burns then took place over approximately 42 408 ha. Pre-logging burns represented 42% of this figure. A further 3111 ha of plantation land was subject to 'area establishment' burns and in addition 2414 ha was subject to pre-logging

[12] Often residual crown cover is approximately 10% or less, particularly in the Eden region; this is illegal under the Sthn Region IFOAs which state contractors must leave 55% of net basal area under Single Tree Selection; see FNSW Harvest Plan Compartment 186: Mogo, Batemans Bay.
[13] Driscoll D, Lindenmayer D B, Bennett A, Bode M, Bradstock R, Cary G, Clarke M F, Dexter N, Fensham R, Friend G, Gill M, James S, Kay G, Keith D A, MacGregor C, Russell-Smith J, Salt D, Watson J, Williams R J, York A, 'Fire Management for Biodiversity Conservation: Key Research Questions and our Capacity to Answer Them' (2010) 143 *Biological Conservation* 1928; for photographic evidence see Google Earth Yambulla, Gnupa, Nullica.
[14] Gibbons P, Lindenmayer D B, Barry S C, Tanton M T, 'The Effects of Slash Burning on the Mortality and Collapse of Trees Retained on Logged Sites in South-Eastern Australia' (2000) 139 *Forest Ecology and Management* 51.
[15] Forests NSW Seeing Report 2005-06, 28.

burns

The vascular floristics about a decade after harvesting operations differed significantly from the floristics of similarly aged forest regenerating after wildfire. In clear-felled areas, weed and sedge species occurred more frequently than on wildfire sites and *Acacia dealbata* was much more abundant, whereas resprouting shrubs, tree ferns and most ground-fern species were more abundant in wildfire regeneration sites. The low survival rate of resprouting species reported in an increasing number of studies suggests that soil disturbance is likely to be a major contributor to differences.[16]

Regeneration has not been successful in the Southern region, where the effective regeneration rate fell from 54% to 43% since 2002/2003.[17] However the data is next to non-existent therefore it is difficult to make an accurate analysis. Forests NSW performed 12 regeneration surveys in 2006–2007 over an area of 620 ha of State forest. No regeneration surveys were conducted in the Southern region.[18]

The remaining multi-age forests resource is coming to an end in the next two to three years.
(Ian Barnes, Regional Manager FNSW, The Eden Magnet Thursday, March 11, 2010)

Accounting for CO_2e

Absorbing the carbon released into the atmosphere from burning forest for power could take decades. A study released in June for the Massachusetts state government concluded that burning forest biomass releases more carbon than burning coal, oil or natural gas. Even accounting for the regrowth of the harvested forest, making up that 'carbon debt' could take up to 90 years. The EPA in the United States has recently disaccredited the theory of carbon neutrality, stating that in fact burning wood is not carbon neutral.[19] In the US a group of 90 scientists have called on both houses of the US government to correctly account for CO_2e in relation to biomass.[20] The letter states:

> Replacement of fossil fuels with bioenergy does not directly stop carbon dioxide emissions from tailpipes or smokestacks. Although fossil fuel emissions are reduced or eliminated, the combustion of biomass replaces fossil emissions with its own emissions (which may even be higher per unit of energy because of the lower energy to carbon ratio of biomass).

[16] Ough K, 'Regeneration of Wet Forest Flora a Decade After Clear-Felling or Wildfire - Is There a Difference?' 49(5) *Australian Journal of Botany* 645, (online) <http://www.publish.csiro.au/paper/BT99053.htm>.
[17] NSW Forest Agreements Implementation Report 2003/2004: Upper North East, Lower North East, Eden and Southern regions.
[18] NSW Forest Agreements Implementation Report 2006/2007: Upper North East, Lower North East, Eden and Southern regions.
[19] US EPA (online) <http://www.epa.gov/air/caa/ >; Greene N, 'Magically Carbon Neutral Biomass, Evil EPA Rules and Other Myths' (online) <http://switchboard.nrdc.org/blogs/ngreene/news_flash_pollution_from_biom.html >; US EPA Office of Air and Radiation, Letter to Weyerhaeuser Corporation, 6 June 2010 (online) <http://switchboard.nrdc.org/blogs/dlashof/Weyerhaeuser%20letter%20060210.pdf >.
[20] William H Schlesinger et al, Letter to the Honorable Nancy Pelosi, Speaker, US House of Representatives and The Honorable Harry Reid, United States Senate, 17 May 2010, (online) <http://216.250.243.12/90scientistsletter.pdf >.

Internationally it has been recognised that the current accounting methods for native forest logging severely weaken greenhouse gas reduction goals and are a veritable time-bomb for the effects of climate change.[21] It has been scientifically verified that this logging causes large releases of carbon. This is despite international protocols against logging of native forests.[22]

At issue is the Forests NSW methodology that CO_2 released during logging equals that taken up during growth and the basing of all GHG calculations on this erroneous theory. Eucalypt forests recovery for removal of CO_2 from the atmosphere can take more than a 100 years.[23] On average the recovery rate is 53 years for 75% carrying capacity and 152 years for 90% carrying capacity.[24] Currently logging rotations are sometimes barely five years.[25] FNSW themselves state:

> Harvesting cycles vary between native forest types with a typical cycle of 5-30 years for native forest.[26]

As stated Forests NSW do not replant after logging native forest and have only 23,000 hectares available for sequestration.[27] If the forest regrew and was not logged with such frequency then the carbon neutral theory might hold, and perhaps holds in EU countries where this system was developed, and where the main source of wood is from plantations.[28] The data we have received is cursory to say the least, and the little amount of forest that has been surveyed does not equal one hundred percent regenerated. From the period 2001 to 2006 the number of surveys for the Southern region was twenty one, covering a total of 2,176 hectares.[29] Therefore the assumption that there are near-equilibrium conditions (synchrony) in native forest logged by Forests NSW is erroneous.[30]

> For Forest Land, synchrony is unlikely if significant woody biomass is killed (i.e., losses represent several years of growth and C accumulation), and the net emissions should be reported. Examples

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[21] Bird N, Pena N, and Zanchi J, 'The Upfront Carbon Debt of Bioenergy' Graz, Joanneum Research, June 2010, (online) <http://www.birdlife.org/eu /EU_policy/Biofuels/carbon_bomb.html>; Fargione J, Hill J, Tilman D, Polasky S, Hawthorne P, 'Land Clearing and the Biofuel Carbon Debt' (2008) 319 *Science* 1235.

[22] Mackey B, Keith H, Lindenmayer D, and Berry S, 'Green Carbon: The Role of Natural Forests in Carbon Storage, Part 1, A Green Carbon Account of Australia's South-Eastern Eucalypt Forest, and Policy Implications' (ANU E Press, 2008) (online) < http://epress.anu.edu.au/green_carbon_citation.html>; 'For every hectare of natural forest that is logged or degraded, there is a net loss of carbon from the terrestrial carbon reservoir and a net increase of carbon in the atmospheric carbon reservoir, the resulting increase in atmospheric carbon dioxide exacerbates climate change.'

[23] Roxburgh S H, Wood S W, Mackey B G, Woldendorp G, and Gibbons P, 'Assessing the Carbon Sequestration Potential of Managed Forests: a Case Study from Temperate Australia,' (2006) 43 *Journal of Applied Ecology* 1149.

[24] Dean C, Roxburgh S, Mackey B, 'Growth Modelling of *Eucalyptus regnans* for Carbon Accounting at Landscape Scale' in Amaro A, Reed D, and Soares P, (eds) *Modelling Forest Systems*, (CAB International, 2003).

[25] For example Compartment 62 (Sth Brooman) logged in 1972, 1973, 1978, 1982, 1990, 2002, 2009.

[26] Forests NSW Consolidated Annual Financial Report, Year ended 30 June 2007, 18-19.

[27] See the aptly titled Sustain Greenhouse Gas Consultation Paper Submission, Forests NSW, Nick Cameron, 1/5/2008.

[28] In Germany and throughout most of Europe Foresters are employed to count and measure at dboh every tree in the plantation plot.

[29] Southern IFOA Clause 52 Assessment of Regeneration Report 20/6/07, FNSW Batemans Bay, this 'report' is a thin five line by five column table which states there had been four surveys conducted but there was no documentation, pers com to author from Danial Tuan, FNSW Batemans Bay 2008.

[30] Performance Audit 'Sustaining Native Forest Operations,' Auditor-General's Report, 2009: "reviews of yield estimates for the southern region, due in 2004 for Eden and 2006 for Tumut and the south coast, have not been completed".

include: clearing of native forest.[31]

GHG Emissions

Forests NSW erroneously claim that emissions from actual logging operations are separate and the responsibility of the contractors and therefore Forests NSW have no liability to count them. This is contrary to international treaties:

> Carbon accounts for industrialized forests must include the carbon emissions associated with land use and associated management, transportation and processing activities.[32]

Forests NSW also claim there is a lack of full scientific data on land use change and this makes it difficult to calculate GHG emissions. Although it seems widely acknowledged that Land Use Change and Forestry accounting is difficult and uncertain, given the great deal of data, including LandSat images and records kept in ArcView, GIS, ESRI and FNSW own office records on past compartments logged, it would seem this argument is *alio intuitu*.[33] Article 3 of the *Kyoto Protocol* states at (3) that:

> Greenhouse gas emissions by sources and removals by sinks associated with those activities shall be reported in a transparent and verifiable manner[34]

In NSW Forest degradation in 2006 created over seventeen percent of NSWs greenhouse gas emissions.[35] The total CO_2 emissions caused by native forest logging on the South Coast for 2006/07 have been computed to be over 26 million tonnes.[36] This includes a back of the beer coaster figure for East Gippsland.[37] The Stern Review states in Annex 7f:[38]

> Deforestation is the single largest source of land-use change emissions, responsible for over 8 GtCO2/yr in 2000. Deforestation leads to emissions through the following processes:
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> > The carbon stored within the trees or vegetation is released into the atmosphere as carbon dioxide, either directly if vegetation is burnt (i.e. slash and burn) or more slowly as the unburned organic

[31] 2006 IPCC Guidelines for National Greenhouse Gas Inventories, Vol 4: Agriculture, Forestry and Other Land Use, Chapter 2: Generic Methodologies Applicable to Multiple Land-Use Categories, 2.4; the figures used for boreal forests in the IPCC document are from research published in 1998 which has now been superceded by more current data (online) <www.ipcc-nggip.iges.or.jp>.
[32] Mackey et al, 'Green Carbon', above n 22.
[33] For example FNSW has logged over 200 000 hectares of native forests in the south east alone since 1990; it is possible to compare Google Earth images with past LandSat images.
[34] The introduction of the amendments to the *Lacey Act* in America has already had a significant impact on the import of woodchips in that country, importers are now required to declare species, country of origin, value and volume of the plant or plant products see *Amendments to the Lacey Act from H.R.2419 2008* (US), Sec. 8204, *The Lacey Act*, Chapter 53 of Title 16, United States Code, ss3371 - 3378.
[35] *Australia's National Greenhouse Accounts 2006: State and Territory Greenhouse Gas Emissions*, Department of Climate Change (2008), p17; the figure is 17.2%.
[36] Data is from FNSW Implementation Report 2004/05 and 2006/07, 2006/07 FNSW Harvest Plans; ESRI data; Digwood FOI info 2009; if one was to believe the FNSW data it seems one vehicle uses 110L of fuel per year; the figure calculated was 26 383 239tCO_2e.
[37] 'The laws of nature that account for the global carbon cycle operate irrespective of political boundaries. Therefore, a unit of carbon emitted due to deforestation and forest degradation in Australia, the United States, Canada or Russia has exactly the same impact on atmospheric greenhouse gas levels as a unit of carbon emitted from deforestation and degradation of forests in Indonesia, Papua New Guinea, the Congo Basin or Brazil,' Mackey et al, above n 22.
[38] See Stern N, above n 4; see also Stern N, Emissions from the Land-use Change and Forestry Sector.

> matter decays. Between 1850 and 1990, live vegetation is estimated to have seen a net loss of 400 GtCO2 (almost 20% of the total stored in vegetation in 1850).[39] Around 20% of this remains stored in forest products (for example, wood) and slash, but 80% was released into the atmosphere. The removal of vegetation and subsequent change in land-use also disturbs the soil, causing it to release its stored carbon into the atmosphere.[40] Between 1850 and 1990, there was a net release of around 130 GtCO2 from soils.

Given the evidence on the loss of ecological integrity and the pollutants the pre and post-logging burning has, the principles of intergenerational equity and ESD are seemingly being breached.[41] Further given the urgent need to reduce GHG emissions in the short-term, that is the next 10 years, only energy sources that deliver positive GHG gains should be allowed.

Climate Change and Native Forest Logging

There is much uncertainty on the effects of climate change but one of the certainties is that deforestation is one of the biggest causes. The loss of native forests around the world contributes more to global emissions each year than the transport sector.[42] Approximately 35 per cent of greenhouse gases in the atmosphere are due to past deforestation, and an estimated 18 per cent of annual global emissions are the result of continuing deforestation.[43] In accordance with the *Rio Declaration,* the *Montreal Process* and the *Intergovernmental Agreement on the Environment 1992,* the *Heads of Agreement on Commonwealth and State Responsibilities for the Environment 1997* stated:[44]

> The Commonwealth has a responsibility and an interest in relation to meeting the obligations under the United Nations Framework Convention on Climate Change, in co-operation with the States, through specific programmes and the development and implementation of national strategies to reduce emissions of greenhouse gases, and to protect and enhance greenhouse sinks.[45]

These industrial logging practices contribute significant and continuing emissions of carbon dioxide into the

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[39] Baumert, Herzog and Pershing, 'Navigating the Numbers: Greenhouse Gas Data and International Climate Policy' Washington, DC: World Resources Institute, 2005; see also Houghton, 'Revised Estimates of the Annual Flux of Carbon to the Atmosphere from Changes in Land Use and Land Management 1850-2000' (2003) 55 *Tellus B* 378.

[40] Houghton J T, 'Tropical Deforestation as a Source of Greenhouse Gas Emissions', (2005) in *Tropical Deforestation and Climate Change*, Moutinho and Schwartzman (eds); see also Intergovernmental Panel on Climate Change, *Climate change 2001: the Scientific Basis. Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change* Houghton JT, Ding Y, Griggs DJ, et al (eds), (Cambridge University Press, 2001); see also Food and Agriculture Organization of the United Nations (2005) *State of the World's Forests*, Washington, DC: United Nations.

[41] *Telstra v Hornsby Shire Council* [2006] 146 LGERA 10; see Horn L, 'Climate Change Litigation Actions for Future Generations' (2008) 25 *Environment and Planning Law Journal* 115.

[42] Stern N, above n 4.

[43] Stern N, above n 4; Houghton J T, above n 32; see also Intergovernmental Panel on Climate Change, above n 40.

[44] The Rio Declaration, *Convention on Biological Diversity,* Rio de Janeiro, 5 June 1992, entry into force for Australia: 29 December 1993, Australian Treaty Series 1993 No 32; the *Intergovernmental Working Group in Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests (Montreal Process).*

[45] Council of Australian Governments, November 1997, 'Matters of National Environmental Significance' Attachment 1 Part II (8) (online) <http://www.environment.gov.au/epbc/publications/coag-agreement/index.html>.

atmosphere which reduce the stock of carbon stored in the ecosystem.[46]

The unlawfulness and unsustainability is systemic across NSW anywhere there is a Regional Forest Agreement in place. This RFA experiment that has been going on for the last 13 years has failed dismally and been of benefit to only a select few and certainly is not in the public interest.

Public Benefit

The Tourism industry on the south coast employs 58 463 people which is a higher than average proportion of the workforce.[47] This when compared to native forest logging financial and employment figures shows the importance of preserving and promoting our native forests.

South Coast Native Forest Logging Employment Figures[48]

Place of Employment	**Employees**
Blue Ridge	55
Boral Nowra	55
Boral Batemans Bay	17
Boral Narooma	20
Nippon South East Fibre Exports	75
Eden logging workers	28
Southernlogging workers	27
East Gippsland crew x 2	8
Tasmanian crew	5
Truck drivers (Gipp+SE)	53
Total	**347**

State forests are public lands, owned by NSW citizens, but held in trust by the government for the common benefit and use of the public generally and managed in the public interest.[49] The government cannot alienate public property unless the public benefit from this alienation would more than compensate for the loss of the previous public uses of the area.[50]

[46] Mackey B, et al, above n 22; Stern N, Summary of Conclusions, *The Stern Review on the Economics of Climate Change*, (online) <http://webarchive.nationalarchives.gov.uk/+/http:/www.hmtreasury.gov.uk/independent_reviews/stern_review_economics_climate_change/stern_review_report.cfm>.

[47] Tourism NSW, Travel to South Coast NSW Region, Year ended March 2009, (online) <http://corporate.tourism.nsw.gov.au/Sites/SiteID6/objLib18/South%20Coast%20NSW%20TOTAL%20REGION%20YE%20Mar%2009.pdf >; O'Neill J, *Review Into Tourism in NSW: Final Report for the Premier of NSW 2008*, (online) <http://www.atec.net.au/review_into_tourism_in_nsw___john_o_neill_ao.pdf >.

[48] SEFR Sawmill Survey: pers com by companies to author, however on occular evidence there is never more than ten or eleven cars parked in the car parks of the sawmills; truck driver figures are in total for East Gippsland and NSW; these figures do not account for the public service workers from Forests NSW who can be relocated easily.

[49] See Bonyhady T, 'A Usable Past: The Public Trust in Australia' (1995) 12 *Environment and Planning Law Journal* 329; see also Sax J L, *Defending the Environment: A Strategy for Citizen Action,* (Vintage Books, 1972), 165; see *Willoughby CC v Minister* (1992) 78 LGERA 19; see also Preston B, 'The Role of the Judiciary in Promoting Sustainable Development; the Experience of Asia and the Pacific' (2005) 9 *Asia Pacific Journal of Environmental Law* 109; see *Davis v The Queen* (1869) 6 WW & a'B 106 (E).

[50] See Bonyhady T, 'above n 49; see also Sax JL, above n 49; see *Willoughby CC v Minister* (1992) 78 LGERA 19.

The *Forestry Act 1916* (NSW) states at s11(1)(a) that as part of the powers and duties of FNSW they shall:

> have the control and management of State forests, timber reserves and flora reserves and shall control and manage them in such manner as best serves the public interest.

In *Re Sydney Harbour Collieries Co* (1895) it was held that:

> It is the duty of the Government not only to take the greatest care to protect both present and contingent public interests, but to also obtain the best consideration for the temporary alienation of frontages which, if the Crown could be in law a trustee, it holds in trust for the health, recreation, and enjoyment of an enormous and ever-increasing population.[51]

RECOMMENDATIONS

• Prohibition of sourcing from native forests- whether commercial, non-commercial, burned or diseased, native forests should not be used for energy;
• Suspend the approval of new bioenergy proposals and conduct a review of existing projects, their wood allocations, and their impacts on communities, climate and forests;
• Prohibit and exclude native forest from what is currently defined as 'biomass';
• Abandon the illusion of carbon-neutrality, perform full and independent life cycle analyses of forest bioenergy projects to avoid underestimating carbon output and track carbon emissions every year to take into account the 'carbon payback time' of bioenergy projects;
• Given the limited potential role for bioenergy, scale up energy alternatives like wind and solar energy;
• Ban any cellulosic biofuel production coming directly from native forest biomass;
• No concessional excise arrangements for native forest usage;
• No direct support for native forest usage under the Second Generation Biofuels Program or any other funding initiative;
• No support from market-based mechanisms for native forest usage.
• Directly disallow use of native forest by current power stations.

In our view only specific sources of biomass can be beneficial for the environment and only if following strong environmental guidelines.[52]

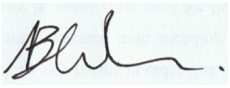
The time has come to follow New Zealand's lead, honour Australia's international obligations and end native forest logging altogether. The protection of our native forests is of urgent national and international importance in these times of global climate chaos. It's time to prove that intelligence is not extinct and put an end to native

[51] *Re Sydney Harbour Collieries Co* (1895) 5 Land Appeal Court Reports 243, [251].
[52] See Global Forest Coalition, *Wood-Based Bioenergy: the Green Lie- The Impact of Wood-Based Bio-Energy on Forests and Forest Dependent People*, May 2011.

forest logging, for us and the future of unborn generations.[53]

Kind Regards,

L Stone



S. Daines

[53] *Re Minors Oposa v Secretary of the Department of Environment and Natural Resources* (1994) 33 ILM 174.