



Submission to Private Native Forestry Review 2018

prepared by

EDO NSW

24 January 2019

About EDO NSW

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

Successful environmental outcomes using the law. With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

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

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

EDO NSW is part of a national network of centres that help to protect the environment through law in their states.

Submitted to:

Private Native Forestry Review
Locked Bag 6013
ORANGE NSW 2800
pnf.info@lfs.nsw.gov.au

For further information on this submission, please contact:

Cerin Loane
Senior Policy and Law Reform Solicitor
EDO NSW
T: 02 9262 6989
E: cerin.loane[at]edonsw.org.au

Rachel Walmsley
Policy and Law Reform Director
EDO NSW
T: 02 9262 6989
E: rachel.walmsley[at]edonsw.org.au

EDO NSW

ABN 72 002 880 864
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
E: edonsw@edonsw.org.au
W: www.edonsw.org.au
T: + 61 2 9262 6989
F: + 61 2 9264 2412

Introduction

EDO NSW welcomes the opportunity to provide input into the Private Native Forestry Review (**PNF Review**). We understand that public submissions are being sought in line with the objectives and scope set out in the PNF Review Terms of Reference (**TORs**),¹ and that there will be a further opportunity to provide input on draft Codes of Practice for Private Native Forestry that will be released for public comment later this year.

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

The PNF Review follows the 2014 recommendation of the Independent Biodiversity Legislation Review Panel (Recommendation 7)² to:

“Review regulatory arrangements for timber harvesting on private land as part of a separate process that:

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

The majority of the Independent Panel’s other recommendations were addressed through the Biodiversity Legislation Review that culminated in the repeal of the *Native Vegetation Act 2003*, *Threatened Species Conservation Act 1995*, *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974*, and introduction of the *Biodiversity Conservation Act 2016* and new provisions in the *Local Land Services Act 2013*.

PNF had been regulated under Part 5 of the *Native Vegetation Regulation 2013*, and on repeal of that Regulation a new Part 5C (which commenced on 25 August 2017) was inserted into the *Forestry Act 2012* to regulate PNF.

Subsequently further changes were made to PNF regulation prior to this PNF Review:

- On 30 April 2018, the Local Land Services (**LLS**) assumed responsibility for approvals and advisory services for PNF. The NSW Environment Protection Authority (**EPA**) maintains responsibility for compliance and enforcement of PNF.
- On 9 November 2018, new provisions relating to PNF commenced under Part 5B of the *Local Land Services Act 2013* (**LLS Act 2013**) and Part 5C of the *Forestry Act 2012* was repealed.

¹ Available at www.lls.nsw.gov.au/sustainable-land-management/pnforestry/private-native-forestry-review-2018

² See Byron N. et. al (2014) Independent Biodiversity Legislation Review Panel, [A review of biodiversity legislation in NSW, Final Report](#), Recommendation 7

The most notable changes to PNF since the repeal of the *Native Vegetation Regulation 2013* include:

- Transfer of responsibility for PNF management from the Minister for the Environment to the Minister for Lands and Forestry³ (noting that the EPA maintains a compliance and enforcement role);
- The introduction of specific objects for PNF, including the carrying out of PNF in accordance with the principles of ecologically sustainable forest management (**ESFM**);
- More detailed requirements relating to the making of PNF Codes of Practice, including the requirement to have regards to specific objects and principles of ESFM, and requirements for public consultation on draft Codes; and
- Increased penalties for causing significant harm to the environment (e.g. breaches of PNF provisions), in line with other environmental legislation.

It is disappointing that such substantial changes were made prior to this overarching review of PNF recommended by the Independent Panel. In our view, recent changes to PNF, including those outlined above, should not limit the scope of this current PNF Review or any potential recommendations for improving PNF practices, including further legislative amendments.

EDO NSW has previously made submissions addressing PNF regulation, including most recently a submission to the NSW Parliamentary Standing Committee for State Development who considered the *Forestry Legislation Amendment Bill 2018* before it was debated in the Parliament.⁴ Many of our comments remain relevant and should be considered as part of this PNF Review.

We also note that significant reforms to public native forestry were finalised at the end of 2018, including the renewal of Regional Forestry Agreements between the Commonwealth and NSW on 30 November 2018, and the commencement of the new NSW Coastal Integrated Forestry Operations Approval on 16 November 2016. Our submissions to these reform processes are also available.⁵

This submission to the PNF Review addresses the following key issues:

1. Terms of Reference and PNF Review Process
2. Regulatory settings for PNF
3. PNF Codes of Practice

³ It is noted that the Minister for the Environment had carriage of the *Native Vegetation Act 2003* and *Native Vegetation Regulation 2013*, and Part 5C of the *Forestry Act 2012* up until 29 April 2018. The Minister for Lands and Forestry obtained carriage of Part 5C of the *Forestry Act 2012* on 30 April 2018 and currently has carriage of Part 5B of the *Local Land Services Act 2013*.

⁴ See EDO NSW, [Submission to Legislative Council Inquiry into the Forestry Legislation Amendment Bill 2018 \(NSW\)](#), May 2018; see also EDO NSW, [Submission on the proposed changes to Private Native forestry in NSW](#), August 2012

⁵ See EDO NSW, [Submission on A Report of Progress with Implementation of NSW Regional Forest Agreements: Second & Third five-yearly reviews July 2004 – June 2014](#) (Progress Report), February 2018; EDO NSW, [Draft Submission to the New South Wales and Commonwealth Governments on their proposal to renew the NSW Regional Forest Agreements \(RFAs\)](#), March 2018; EDO NSW, [Submission on the Draft Coastal Integrated Forestry Operations Approval](#), July 2018

Key recommendations

We make a number of key recommendations for improving PNF regulation, compliance and enforcement:

Recommendation 1: Make all public submissions in response to the PNF TORs publically available, prior to the next round of consultation.

Recommendation 2: Provide a public statement of how public submissions have been taken into consideration.

Recommendation 3: In addition to conducting public consultation on draft PNF Codes, provide the opportunity for public comment on any additional proposed changes to the PNF regulatory framework, including proposed legislative changes.

Recommendation 4: The Minister for the Environment should be responsible for PNF, or at the very least have primary responsibility for making PNF Codes of Practice and approving PNF plans.

Recommendation 5: Require PNF Codes to be consistent with the objects for PNF.

Recommendation 6: Require consideration to be given to whether PNF plans are consistent with the PNF objects before plans are approved.

Recommendation 7: Require the PNF objects to protect biodiversity and water quality and soil quality; and define biodiversity.

Recommendation 8: Add an additional PNF object “to ensure the contribution of native forests to sustainable global carbon cycles”.

Recommendation 9: Exclude PNF from all environmentally sensitive land (for example all threatened ecological communities, and category 2-sensitive and category 2-vulnerable land).

Recommendation 10: Extend the public consultation period on draft PNF codes to a minimum of three months.

Recommendation 11: Require the Minister to make all submissions made on the draft code publically available.

Recommendation 12: Require further public consultation on substantial changes to draft Codes following initial public consultation.

Recommendation 13: Remove provisions specifying that failure to comply with the requirements for public consultation on draft codes does not prevent codes from being made or invalidate the code once made.

Recommendation 14: Require draft PNF Codes to be informed by a peer review by eminent ecologists to ensure biodiversity, water quality, threatened species, soil and carbon stores are protected, and make the peer review publically available.

Recommendation 15: Require public consultation on draft PNF plans prior to approval.

Recommendation 16: Require all approved PNF plans to be contained in a public register.

Recommendation 17: Formalise a process for monitoring PNF operations, including an assessment of the cumulative impacts of PNF on environmental assets over time.

Recommendation 18: Formalise reporting processes in legislation and require reports to be made public.

Recommendation 19: PNF codes must provide clear, robust standards based on the best-available science, and protect all environmentally sensitive land from logging.

Recommendation 20: Maintain approval requirements for all scales of PNF.

Recommendation 21: Ensure ecological prescriptions are comprehensive and include all relevant threatened species.

Recommendation 22: Consider including habitat-based prescriptions in the codes.

Recommendation 23: Require site threatened species and habit surveys to be carried out by an accredited ecologist before logging operations can occur.

Recommendation 24: If retained, minor variation provisions must include additional requirements that improve transparency and accountability, for example a publically available statement of reasons for allowing the variation.

Recommendation 25: PNF codes should address and provide adequate protections for koala habitat, and unmapped drainage lines, and against Bell Miner Associated Dieback and commercial firewood collection.

1. Terms of Reference and PNF Review Process

Terms of Reference (**TORs**) have been released to support the PNF Review. The TORs outline the objectives and scope for the PNF Review. We are concerned that the TORs are framed more towards prioritising harvesting and expanding the forestry industry while only considering (as opposed to actually protecting) the environment. Protection of the environment must be a key priority for the PNF Review, particularly as the principles of ESFM have a significant focus on the protection of biodiversity and health of native forests. The PNF Review must adequately consider the impacts of PNF operations on the environment and ensure that the regulatory framework for PNF includes robust, mandatory and enforceable provisions for protecting the environment.

The TORs also set out the process for the Review, which includes:

- Targeted consultation with key PNF users and stakeholder groups to inform the review
- Public submissions on the PNF Review Terms of Reference for a period of 10 weeks
- Public submissions on the draft Codes of Practice for a period of 8 weeks

It is unclear whether public submissions will be made publically available and within a reasonable time, whether decision makers will provide reasons for decisions or whether any proposed changes to the PNF Regulatory framework outside of the PNF Codes of Practice will be subject to further public consultation.

We make the following recommendations for improving the transparency of the PNF Review:

Recommendation 1: Make all public submissions in response to the PNF TORs publically available, prior to the next round of consultation.

Recommendation 2: Provide a public statement of how public submissions have been taken into consideration.

Recommendation 3: In addition to conducting public consultation on draft PNF Codes, provide the opportunity for public comment on any additional proposed changes to the PNF regulatory framework, including proposed legislative changes.

We also recommend undertaking a peer review of draft PNF codes (see Recommendation 14 below).

2. Regulatory settings for PNF

Our comments below are given in the context of the current PNF framework set out in Part 5B of the LLS Act but also having regard to the way PNF has previously been managed. We address key issues for the efficient and effective regulation of PNF and ensuring environmental values are recognised and appropriately managed during PNF operations, namely:

- A. Oversight of PNF
- B. Objects for PNF
- C. Application of PNF
- D. Making PNF codes
- E. Approving PNF plans
- F. Monitoring and reporting requirements
- G. Investigation and enforcement

A. Oversight of PNF

We are concerned that responsibility for PNF has shifted from the Minister for the Environment and Office of Environment and Heritage (who had previous carriage of PNF) to the Minister for Lands and Forestry and the LLS.

Forestry operations can have significant, detrimental impacts on the environment and biodiversity, including threatened plants and animals, water and soil quality, and carbon emissions. The principles of ecologically sustainable forest management and the current objects set out in Part 5B of the LLS Act are predominantly focused on the protection of biodiversity and health of native forests. While the Minister for Lands and Forestry may have some role in managing PNF, it would be more appropriate for the Minister for the Environment to have the primary responsibility for setting key parameters, including in the PNF Codes of Practice, and approving PNF plans. We raised similar concerns when the management of native vegetation was transferred to the Minister for Primary Industries and LLS.

Watering down the role of the Minister for the Environment, particularly when the Minister for Lands and Forestry may be conflicted by obligations to meet wood supply demands, will lead to reduced oversight and less priority given to environmental considerations. The Minister for the Environment must have primary responsibility for activities that are likely to have significant environmental impacts, such as PNF, including the making PNF Codes of Practice and approving PNF plans.

Recommendation 4: The Minister for the Environment should be responsible for PNF, or at the very least have primary responsibility for making PNF Codes of Practice and approving PNF plans.

B. Objects for PNF

We generally support the current objects of Part 5B of the LLS Act (**PNF objects**), including the object that PNF be carried out in accordance with the principles of ESFM, which are defined in section 60ZQ of the LLS Act. However we make a number of suggestions to improve PNF objects and the definition of the principles of ESFM in line with best practice and to ensure that PNF objects are actually achieved in practice.

For example:

- The requirement for the Minister to ‘have regard to’ the objects of Part 5B when making the PNF codes could be strengthened by requiring the PNF codes to ‘be consistent with’ the objects. (Note - there could also be a similar requirement to ensure that PNF plans are consistent with PNF objects – see below).
- In order for PNF objects to be consistent with the principles of ESFM, there should be a specific reference to soil quality⁶.
- “Biodiversity”, which is used at section 60ZR(1)(b), should be defined (for example, with reference to the *Biodiversity Conservation Act 2016*).
- It is unclear why the current definition of ‘*principles of ecologically sustainable forest management*’ refers to the contribution of native forests to global geochemical cycles, rather than global carbon cycles as outlined in the Montreal Criteria⁷. However we expect ‘carbon cycles’ would be captured within the term geochemical cycle.
- Additionally, given the urgent need to reduce carbon emissions, the PNF objects themselves should make specific reference to global carbon cycles. We note that Western Australia specifies the overall goals in developing forest management plans as being the conservation of biodiversity, sustained health, vitality and productive capacity of ecosystems, protection of soil and water resources and sustained contribution to global carbon cycles.⁸

Recommendation 5: Require PNF Codes to be consistent with the objects for PNF.

Recommendation 6: Require consideration to be given to whether PNF plans are consistent with the PNF objects before plans are approved.

Recommendation 7: Require the PNF objects to protect biodiversity and water quality and soil quality; and define biodiversity.

Recommendation 8: Add an additional PNF object “to ensure the contribution of native forests to sustainable global carbon cycles”.

⁶ For example, section 60ZR(b) of the LLS Act should read “to protect biodiversity and water quality and soil quality” consistent with the definition of *principles of ecologically sustainable forest management* at section 60ZQ

⁷ The Montréal Process, Criteria and Indicators for the Conservation and Sustainable Management of Temperate and Boreal Forests, Fifth Edition, September 2015 outlines seven criterion for the sustainable management of forests, namely

Criterion 1: Conservation of biological diversity

Criterion 2: Maintenance of productive capacity of forest ecosystems

Criterion 3: Maintenance of forest ecosystem health and vitality

Criterion 4: Conservation and maintenance of soil and water resources

Criterion 5: Maintenance of forest contribution to global carbon cycles

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

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

⁸ See www.dpaw.wa.gov.au/management/forests/managing-our-forests/168-what-is-ecologically-sustainable-forest-management

C. Application of PNF

PNF applies to any area of the State, other than those identified in section 60ZS of the LLS Act.⁹ Currently, PNF is not explicitly excluded in environmentally sensitive areas such as threatened ecological communities, koala habitat or Ramsar wetlands. Exclusions must be expanded to prohibit PNF in all environmentally sensitive areas. One way of doing this could be to exclude PNF from 'category 2-sensitive' and 'category 2 – vulnerable' lands identified under the LLS Act, as well as all threatened ecological communities.¹⁰

Recommendation 9: Exclude PNF from all environmentally sensitive land (for example all threatened ecological communities, and category 2-sensitive and category 2-vulnerable land).

D. Making PNF codes

Part 5B, Division 2 of the LLS Act outlines the process for making PNF codes that apply to PNF operations. While the provisions relating to the making of PNF codes were improved when Part 5B of the LLS Act was introduced, we recommend a number of additional measures to improve environmental outcomes, and transparency and accountability in line with best-practice public participation:

- Extend the public consultation period on draft PNF codes to a minimum of three months.¹¹
- Require the Minister to make all submissions on the draft code publically available (unless marked confidential).¹²
- Require further public consultation on substantial changes to draft codes following initial public consultation.¹³
- Remove provisions specifying that failure to comply with the requirements for public consultation on draft codes does not prevent codes from being made or invalidate the codes once made.¹⁴
- Give the Environment Minister the primary responsibility for making PNF codes of Practice (see Recommendation 4 above).

⁹ Areas currently off-limits to PNF include:

- (a) a State forest or other Crown-timber land within the meaning of the Forestry Act 2012,
- (b) a plantation within the meaning of the Plantations and Reafforestation Act 1999,
- (c) national park estate and other conservation areas referred to in section 60A (b),
- (d) land that is declared as a marine park or an aquatic reserve under the Marine Estate Management Act 2014,
- (e) land that is subject to a private land conservation agreement under the Biodiversity Conservation Act 2016,
- (f) land that is subject to be set aside under a requirement made in accordance with a land management (native vegetation) code under Part 5A,
- (g) land that is or was subject to a requirement to take remedial action to restore or protect the biodiversity values of the land under Part 5A or under the Biodiversity Conservation Act 2016, the Native Vegetation Act 2003 or the National Parks and Wildlife Act 1974,
- (h) land that is subject to an approved conservation measure that was the basis for other land being biodiversity certified under Part 8 of the Biodiversity Conservation Act 2016 or under any Act repealed by that Act,
- (i) land that is an offset under a property vegetation plan made under the Native Vegetation Act 2003 that remains in force or is a set aside area under a Ministerial order under Division 3 of Part 6 of the Native Vegetation Regulation 2013 that remains in force,
- (j) any area in which forestry operations cannot be carried out because of the requirements of any other Act or statutory instrument or any agreement or court order.

¹⁰ Sensitive lands include critically endangered plants and ecological communities, core koala habitat and Ramsar-listed wetlands. Vulnerable lands include steep slopes, highly erodible soils and protected riparian areas. It is also noted that 'category 2-sensitive' land would only capture critically endangered ecological communities, so provisions must explicitly exclude PNF from all threatened ecological communities.

¹¹ It is noted that the PNF TORs indicate there will be a public consultation period of 8 weeks

¹² Current provisions provide that the Minister may (but need not) make publically available the submissions made on the proposed code (or a summary of or report on any such submission).

¹³ Currently further public consultation is at the discretion of the Minister (LLS Act, section 60ZU(4)).

¹⁴ Currently a failure to comply with a requirement under this section in relation to a proposed code of practice does not prevent the code being made, or invalidate the code once made (LLS Act, section 60ZU(5)).

- Require PNF codes to be consistent with the PNF objects (see Recommendation 5 above).
- Require draft PNF codes to be informed by a peer review by eminent ecologists to ensure biodiversity, water quality, threatened species, soil and carbon stores are protected.¹⁵

Recommendation 10: Extend the public consultation period on draft PNF codes to a minimum of three months.

Recommendation 11: Require the Minister to make all submissions made on the draft code publically available.

Recommendation 12: Require further public consultation on substantial changes to draft Codes following initial public consultation.

Recommendation 13: Remove provisions specifying that failure to comply with the requirements for public consultation on draft codes does not prevent codes from being made or invalidate the code once made.

Recommendation 14: Require draft PNF Codes to be informed by a peer review by eminent ecologists to ensure biodiversity, water quality, threatened species, soil and carbon stores are protected, and make the peer review publically available.

E. Approving PNF plans

Part 5B, Division 3 of the LLS Act outlines the process for submitting and approving PNF plans that would authorise forestry operations. We recommend a number of measures to improve environmental outcomes, and transparency and accountability in line with best-practice public participation transparency:

- Require public consultation on draft PNF plans prior to approval, and require all approved PNFs to be contained in a public register.¹⁶ This would be consistent with the principles of ESFM, namely ‘ensuring public participation, provisions of information, accountability and transparency in relation to the carrying out of forestry operations’.
- Clarify and strengthen mandatory considerations for approving PNF plans, including a requirement to consider whether PNF Plans are consistent with the objects (see Recommendation 6 above)

Recommendation 15: Require public consultation on draft PNF plans prior to approval.

Recommendation 16: Require all approved PNF plans to be contained in a public register.

F. Monitoring and reporting requirements

Current legislative requirements for monitoring are limited. Current provisions simply state that the EPA has the function of monitoring the carrying out of forestry operations.¹⁷ Consideration should be given to formalising a process for monitoring PNF operations. This should include an assessment of the cumulative impacts of PNF on environmental assets over time. Current PNF codes do require landowners to report on forestry operations, including the volume of timber harvested. This process should be formalised in legislation and reports should be required to be made public.

¹⁵ For example amend s60ZT of the LLS Act to require public consultation before codes can be made

¹⁶ Previous Private Native Vegetation Property Plans, including those relating to PNF, were included on a public register.

Approvals for NSW Forest Agreements and Integrated Forestry Operations Approvals approved under the Forestry Act 2012 are published online.

¹⁷ Section 60ZZB of the LLS Act

Recommendation 17: Formalise a process for monitoring PNF operations, including an assessment of the cumulative impacts of PNF on environmental assets over time.

Recommendation 18: Formalise reporting processes in legislation and require reports to be made public.

G. Investigation and enforcement

We generally support the ongoing role of the NSW Environment Protection Authority (**EPA**) in investigating and enforcing forestry breaches. That said, we have acted for a number of community groups who have raised significant concerns with forestry breaches, flawed investigations and lack of enforcement. We strongly recommend that the EPA have the necessary executive support and resourcing to effectively carry out this important role.

We support the current penalties relating to PNF including the penalties for causing significant harm to the environment.¹⁸ We also support the open standing provisions that allow third parties to enforce breaches of PNF provisions¹⁹ (and have consistently argued that open standing should be extended to breaches of forestry rules on public land²⁰).

3. PNF Codes of Practice

The PNF Codes of Practice are being reviewed in the context of recent changes to forestry and land management, including:

- *Forestry Legislation Amendment Act 2018* and subsequent amendments to the LLS Act and Regulation (including objects of the new Part 5B)
- NSW Forestry Industry Roadmap
- Recommendations of the Independent Biodiversity Legislation Review Panel
- National Forest Policy Statement
- Regional Forest Agreements
- *Land Management (Native Vegetation) Code 2018* and Land Management Framework

We understand that there will be a further opportunity to provide input on draft codes later in the year. At this stage we provide overarching comments outlining general concerns with the way the codes have operated to date and matters that should be considered as part of the review, including:

- A. Environmental standard for PNF Codes
- B. Options for regulating sustainable forestry operations
- C. Ecological Prescriptions
- D. Variations to codes
- E. Additional environmental considerations
- F. Peer review
- G. Interaction between PNF Codes of Practice and the *Land Management (Native Vegetation) Code 2018*

We note there are currently four codes in operation, for the following areas: Northern NSW; Southern NSW; River red gum forests; and Cypress and western hardwood forests.

¹⁸ See section 60ZZA of the LLS Act

¹⁹ See section 13.14 of the *Biodiversity Conservation Act 2016*

²⁰ See, for example, EDO NSW, [Submission to Legislative Council Inquiry into the Forestry Legislation Amendment Bill 2018 \(NSW\)](#), May 2018

A. Environmental standard for PNF Codes

Current codes were developed under the previous native vegetation framework and were developed in order to meet the requirement in the *Native Vegetation Act 2003* that clearing improves or maintains environmental outcomes.

We have previously raised concerns that removing the ‘improve or maintain’ threshold (and failing to replace it with an equally stringent requirement) lowers the bar on environmental protection and puts biodiversity at risk.²¹

New codes will be developed under the LLS Act, and as outlined above there are currently specific objects relating to PNF, including that PNF be carried out in accordance with the principles of ESFM and that the Minister must have regard to the PNF objects when making the Codes.

Given that the PNF Codes will provide the substantial requirements for private native forestry operations it is important that the codes meet best-practice environmental standards, including the principles of ESFM. The recommendations that we have made above (Recommendations 5-8) in improving the PNF objects and their application will help to achieve this.

Similarly we have made a number of recommendations for ensuring the process for making the codes is rigorous and transparent and in line with best-practice public participation (Recommendations 10-14).

We would not support changes to the codes that would reduce environmental protections or open up more environmentally sensitive land to logging.

B. Options for regulating sustainable forestry operations

The Independent Panel recommended that a review of PNF should look at “options for regulating sustainable forestry operations based on their scale and intensity rather than tenure, including options for permitting low-intensity operations on private land without the need for approval and a focus on outcomes rather than process”.²²

Again, we would not support changes to the codes that would reduce environmental protections or open up more environmentally sensitive land to logging, which is a risk if codes permit low-intensity operations without approval and shift from clear objective standards to subjective standards. Codes must provide clear, robust standards based on the best-available science, and protect all environmentally sensitive land from logging.

In particular, we would not support removing approval requirements for low-intensity forestry operations. We are concerned that the PNF Review will consider a tiered approach to regulating PNF, similar to the current land management framework in Part 5 of the LLS Act, where assessment and approval requirements are reduced for some categories of land clearing. In that context, EDO NSW has consistently raised concerns with self-assessable codes, including that reduced oversight and inadequate environmental assessment will lead to poor environmental outcomes²³. For those same reasons, we would not support removing assessment and approval requirements from the PNF framework. Further, all commercial forestry operations warrant robust assessment and approval requirements as they can clearly be distinguished from genuine low-impact routine agricultural activities.

²¹ See, for example, EDO NSW, [A legal assessment of NSW biodiversity legislation A report prepared for the Independent Biodiversity Legislation Review Panel](#), September 2014

²² Byron N. et al, above no. 2, Recommendation 7(b)

²³ EDO NSW, above no.21

Recommendation 19: PNF codes must provide clear, robust standards based on the best-available science, and protect all environmentally sensitive land from logging.

Recommendation 20: Maintain approval requirements for all scales of PNF.

C. Ecological Prescriptions

We have a number of concerns with the current ‘ecological prescriptions’ approach used in the Codes, for example:

- The Codes do not include prescriptions for all relevant listed threatened species. Prescriptions must be comprehensive.
- The ecological prescriptions do not include habitat-based prescriptions for keys species groups that play a key role in maintaining ecosystem function and resilience. Including habitat based prescriptions (in addition to single species prescriptions) is likely to have broad biodiversity benefits.
- The ecological prescriptions are only triggered if threatened species are identified in existing records, or there is site evidence of a species. There are a number of problems with this approach:
 - For the purpose of the PNF codes, a known record is a sighting or record of the species in the NSW Wildlife Atlas, which should not be relied on as being sufficiently accurate for the purpose of determining whether species are presently on site.
 - There is no requirement to conduct current site surveys to look for site evidence

We recommend that on-ground threatened species and habit surveys must be conducted by an accredited ecologist before logging operations can occur.

Recommendation 21: Ensure ecological prescriptions are comprehensive and include all relevant threatened species.

Recommendation 22: Consider including habitat-based prescriptions in the codes.

Recommendation 23: Require site threatened species and habit surveys to be carried out by an accredited ecologist before logging operations can occur.

D. Variations to codes

Codes currently contain provisions that allow modifications to environmental prescriptions in the codes. We do not necessarily support the minor variation provision, which effectively allows clearing that would otherwise not be permitted. If minor variation provisions remain in PNF codes there must be additional requirements that improve transparency and accountability, for example a publically available statement of reasons for allowing the variation.

Recommendation 24: If retained, minor variation provisions must include additional requirements that improve transparency and accountability, for example a publically available statement of reasons for allowing the variation.

E. Additional environmental considerations

The PNF codes should also address the following concerns identified by EDO NSW and our clients:

- Koala habitat: The current approach of relying on SEPP 44 'core koala habitat' is inadequate as Koala Plans of Management are not in place in all relevant areas, and it excludes potential koala habitat. PNF codes must include explicit and robust protections for koalas and their habitats
- Bell Miner Associated Dieback: PNF codes must address the risk of ongoing spread of Bell Miner Associated Dieback²⁴, for example, by including an enforceable requirement for weed control post-logging.
- Unmapped drainage lines: The PNF codes do not provide adequate protection for unmapped drainage lines.
- Commercial firewood collection: The removal of deadwood and dead tress is a key threatening process. The PNF codes should address commercial firewood collection.

Recommendation 25: PNF codes should address and provide adequate protections for koala habitat, and unmapped drainage lines, and against Bell Miner Associated Dieback and commercial firewood collection.

F. Peer review

As outlined above, we recommend that the draft PNF Codes be informed by a peer review by eminent ecologists to ensure biodiversity, water quality, threatened species, soil and carbon stores are protected (see Recommendation 14 above).

G. Interaction between PNF Codes of Practice and the *Land Management (Native Vegetation) Code 2018*

Consideration should be given to any possible negative outcomes from the interaction between the PNF Codes of Practice and the *Land Management (Native Vegetation) Code 2018*, particularly now that both land clearing and PNF are regulated under the LLS Act. For example, do land holders understand the key differences and understand their responsibilities for each regime, and is there risk of provisions being misused to clear or harvest land contrary to legal requirements.

Conclusion

Thank you for considering our submission and recommendations. Please do not hesitate to contact Cerin Loane, Senior Policy and Law Reform Solicitor, on (02) 9262 6989 should you require any further information.

²⁴ Bell Miner Associated Dieback is a key threatening process, and there are links between invasion of lantana post logging and Bell Miners *Manorina melanophrys*. See further NSW Scientific Committee Final Determination - *Forest eucalypt dieback associated with over-abundant psyllids and Bell Miners*, www.environment.nsw.gov.au/determinations/bellminerfd.htm