



PERFORMANCE AUDIT

22 JUNE 2023

Regulation of public native forestry

NEW SOUTH WALES AUDITOR-GENERAL'S REPORT



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As well as financial and performance audits, the Auditor-General carries out special reviews, compliance engagements and audits requested under section 27B(3) of the *Government Sector Audit Act 1983*, and section 421E of the *Local Government Act 1993*.

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In accordance with section 38EC of the *Government Sector Audit Act 1983*, I present a report titled '**Regulation of public native forestry**'.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford PSM
Auditor-General for New South Wales
22 June 2023



RECONCILIATION COMMITMENT STATEMENT

The Audit Office of New South Wales pay our respect and recognise Aboriginal people as the traditional custodians of the land in NSW.

We recognise that Aboriginal people, as custodians, have a spiritual, social and cultural connection with their lands and waters, and have made and continue to make a rich, unique and lasting contribution to the State. We are committed to continue learning about Aboriginal and Torres Strait Islander peoples' history and culture.

We honour and thank the traditional owners of the land on which our office is located, the Gadigal people of the Eora nation, and the traditional owners of the lands on which our staff live and work. We pay our respects to their Elders past and present, and to the next generation of leaders.

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Section one

Regulation of public native
forestry

Executive summary

The Forestry Corporation of NSW (FCNSW) is a state-owned corporation that supplies timber to sawmills in New South Wales, including timber harvested from public native forests. FCNSW is responsible for the management of around two million hectares of public native forests and plantations. Around half the area of native forests is permanently set aside for conservation.

Public native forestry is regulated through the *Forestry Act 2012*, *Biodiversity Conservation Act 2016*, *Protection of the Environment Operations Act 1997* and associated regulations. Under the *Forestry Act 2012*, the objectives of FCNSW include, where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*. This involves the integration of social, economic and environmental considerations in decision-making processes.

In undertaking its native forestry operations, FCNSW must comply with Integrated Forestry Operations Approvals (IFOA), issued jointly by the Minister for the Environment and the Minister for Agriculture, which set out rules to protect species and ecosystems where timber harvesting is occurring, and aim to ensure forests are managed in an ecologically sustainable way. FCNSW must also ensure that its contractors undertake forestry operations in line with IFOAs. The Coastal IFOA, developed in 2018, consolidated the four IFOAs for the Eden, Southern, Upper and Lower North East coastal regions of New South Wales into a single IFOA. The other three current IFOAs are Brigalow Nandewar, South Western Cypress and Riverina Redgum (the Western IFOAs).

The NSW Environment Protection Authority (EPA) is responsible for regulating native forestry in New South Wales. Under the *Protection of the Environment Administration Act 1991*, one of the objectives of the EPA is to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development. This includes monitoring FCNSW's compliance with IFOA conditions, including by maintaining and enforcing a compliance program.

The Coastal IFOA also introduced a new structure and regulatory approach for IFOAs, establishing outcomes, conditions and protocols. The conditions set mandatory actions and controls intended to protect threatened plants, animals, habitats, soils and water. The protocols, referenced in the conditions, set out additional enforceable actions and controls intended to support the effective implementation of the conditions.

Public native forestry is the largest component of hardwood supply in New South Wales. The 2019–20 bushfires had a major impact on regional communities, and large areas of native forest. This heightened environmental risks and challenges in public native forestry. Five million hectares of New South Wales was impacted, including more than 890,000 hectares of native State Forests. This is over 40% of the coastal and tablelands native State Forests in New South Wales.

In addition to effective compliance activities, the success of the regulatory approach to public native forestry operations depends on how wood supply yields are modelled, and ensuring that harvested volumes do not exceed these yields. This is of particular importance in areas where forests have been severely damaged by fire. This audit did not consider sustainable yields. Recent reviews of this include an independent review of the FCNSW sustainable yield model and a Natural Resources Commission review in 2021.

This audit assessed how effectively Forestry Corporation of NSW manages its public native forestry activities to ensure compliance, and how effectively the Environment Protection Authority regulates these activities.

Conclusion

Forestry Corporation of NSW (FCNSW) clearly articulates its compliance obligations at the corporate level and for each harvest site. However, there are deficiencies in FCNSW's compliance approach. While FCNSW undertakes monitoring of its contractors in a number of ways, it does not consistently monitor compliance across its contractors and does not target its monitoring activities on a risk basis. This increases the risk that non-compliant practices will not be identified, potentially leading to environmental harm.

FCNSW has a compliance strategy and program that sets out its compliance obligations and how they will be managed. FCNSW's Compliance Policy outlines compliance requirements, actions to ensure compliance, and responsibilities for staff, supervisors, senior management and board members. FCNSW also has a compliance monitoring system manual that outlines its monitoring program, and its risk assessment and incident reporting procedures. These corporate documents set out FCNSW's overall approach to managing compliance.

Harvesting in State Forests is undertaken by contractors or sub-contractors. FCNSW provides training to its staff and contractors and undertakes monitoring to identify contractor compliance with relevant requirements through a variety of means, including its quality assurance assessment (QAA) program. FCNSW also communicates compliance obligations to contractors in harvest plans.

FCNSW is not undertaking its monitoring activities on a risk basis. The frequency of contractor supervision is inconsistent and is not tied to the contractor's past performance, meaning that monitoring resources are not necessarily being targeted at the areas of highest risk.

FCNSW also does not target its QAAs on a risk basis. FCNSW does not have procedures for how QAAs should occur outside the North Coast region. QAAs are conducted inconsistently, with some reviews occurring in only part of the harvest site while others cover the whole harvest site. In addition, some QAAs do not meet FCNSW's minimum standards. FCNSW's record keeping of QAAs is also inconsistent, making it difficult to determine true levels of compliance and the cause of identified potential non-compliances.

In addition, FCNSW does not collate and analyse the results of its compliance monitoring to target its compliance audits. Undertaking these audits on a risk basis would allow FCNSW to apply its resources to the highest risk harvest sites and contractors.

The EPA identifies native forestry as a high priority regulatory activity and undertakes proactive inspections of Coastal IFOA harvest sites on a risk basis. However, the EPA does not assess the risk at Western IFOA harvest sites, leaving a significant gap in its inspection regime. This means that the EPA may not be inspecting all high-risk harvest sites to ensure compliance with regulations across those sites. The EPA has started to train more of its staff in conducting forestry inspections, but it currently has a limited number of trained and experienced staff to undertake this work.

The EPA has developed a Regulatory and Compliance Priorities Statement 2022–23 which identifies native forestry as a key risk. This statement identifies that forestry is a priority area for its compliance activities because of the increased environmental risk and sensitivity in forests following the 2019–20 bushfires. A divisional plan for its regulatory operations contains specific actions for forestry, including ensuring that the EPA has a consistent approach to recording regulatory actions undertaken and identifying priority areas for assurance over State Forests.

As part of its compliance activities, the EPA responds to complaints received, or reports of non-compliance, across all four IFOA areas and also carries out proactive inspections in the Coastal IFOA area. To guide these inspections, the EPA determines the level of risk posed by each harvest site in the Coastal IFOA area using information it gathers from FCNSW. The EPA prioritises inspections of sites rated as high and medium-risk, but the EPA has not undertaken risk assessments for the three Western IFOAs. By not determining the risks in these areas, the EPA does not have assurance that it is checking FCNSW compliance with regulations across all high-risk sites.

Most EPA staff have basic training in forestry matters, but few staff have the more advanced training required to effectively undertake forestry inspections. In addition, not all EPA officers have access to the technology required to undertake forestry inspections, such as internet-enabled tablets and specialised tapes for measuring tree diameter. This limits the EPA's ability to determine the level of compliance with regulations and respond effectively to instances of environmental harm in relation to public native forestry.

The Coastal IFOA does not contain provisions which allow the EPA to unilaterally restrict forestry activities in the aftermath of a catastrophic event such as the 2019–20 bushfires. Following the bushfires, FCNSW approached the EPA and asked for additional site-specific operating conditions (SSOC) at some locations to assist it in maintaining compliance. The SSOCs were issued by the EPA and FCNSW was required to carry out forestry operations in accordance with the SSOCs at relevant harvest sites. These SSOCs were in place for 12 months. After a year, FCNSW decided not to renew this approach with the EPA, but implemented its own voluntary measures during harvesting operations. Unlike the SSOCs, the EPA was unable to undertake enforcement activities for breaches of voluntary measures.

1. Key findings

FCNSW's compliance obligations are set out in its compliance policy and procedures, and reflected in management plans and harvest plans

FCNSW's Compliance Policy outlines compliance requirements, actions to ensure compliance, and responsibilities for staff, supervisors, senior management and board members. FCNSW has also created a compliance register setting out its compliance obligations and overall areas of responsibility. Its compliance monitoring system manual outlines its key elements of compliance monitoring and includes risk assessment and reporting procedures for a range of incident severities. The procedures outline what needs to be reported and where, who is responsible and required actions to be taken.

FCNSW has developed Forestry Management Plans for coastal forests and western forests which set out the legal framework and other compliance obligations. These are in turn supported by its Forestry Management System and a range of associated plans and procedures.

Compliance obligations are also set out in harvest plans, which are intended to guide each harvesting operation, including relevant extracts from regulations with which contractors must comply, as well as additional regulations that are relevant to each harvest site. This demonstrates that compliance obligations are expressed at a corporate level and at an operational level.

FCNSW has largely fulfilled mandatory Coastal IFOA training requirements

The Coastal IFOA requires that all individuals involved in carrying out forestry operations must have ongoing training about their responsibilities under the Coastal IFOA. In addition, the Coastal IFOA outlines some mandatory training requirements for staff performing various roles.

FCNSW has developed training packages in line with these requirements. FCNSW has delivered this training to over 90% of staff who require it, with the remainder being experienced staff or new staff awaiting training. The exception is the soil assessor course. The EPA did not approve the course in line with the Coastal IFOA until March 2023 and as such FCNSW's staff are yet to undertake this training course.

In addition to providing training to staff, FCNSW inducts staff and contractors into harvest sites to ensure that they are aware of the specific needs of each harvest plan and the relevant compliance requirements of each site.

FCNSW sets out compliance requirements for harvesting contractors

FCNSW has contracts with each harvesting contractor outlining both parties' responsibilities. FCNSW has two primary types of harvesting contracts: harvesting agreements and stumpage contracts. Harvesting agreements make up around 70% of harvesting contracts. With a harvesting agreement, the contractor is responsible for harvesting the timber at the site, then FCNSW will engage another contractor to haul it to the sawmill. For stumpage contracts, FCNSW engages directly with the sawmill, which then becomes responsible for harvesting and hauling the timber through sub-contractors.

FCNSW's harvesting agreements are comprehensive in their requirements. Each agreement requires the contractor to comply with the *Forestry Act 2012* and associated instruments, which includes the IFOAs. Contractors must notify FCNSW of any breach of these conditions. Contractors are required to have appropriately trained and accredited staff. The contracts also set out FCNSW's process for reviewing contractors' performance, including the use of quarterly reviews, as well as FCNSW's right to conduct audits and inspections for the purpose of compliance monitoring.

FCNSW's requirements for stumpage contractors are expressed in two documents: a contract and a harvesting licence issued by FCNSW under the *Forestry Act 2012*. Among other things, the contracts require the contractor to comply with the *Forestry Act 2012* and associated instruments, which includes the IFOAs. Across the stumpage contracts and licences, FCNSW has clearly stated its requirements for its stumpage contractors and has established sufficient requirements to ensure that FCNSW is able to review performance.

FCNSW monitors the harvesting activities of its contractors, although its compliance monitoring could be improved

Operational compliance monitoring is one of the three aspects of FCNSW's compliance monitoring system. FCNSW marks up harvest sites to make compliance requirements clear to harvest contractors. FCNSW monitors contractor compliance against this mark-up, including by monitoring contractor machine movements and through staff visits to harvest sites.

The frequency with which staff visit each site to check in with contractors and understand any site-specific issues, including non-compliances, is inconsistent across sites. Some sites are visited multiple times each week while others are visited once per week at most, and sometimes less frequently than that. FCNSW does not provide guidance to staff on how frequently each site should be visited.

FCNSW staff are advised to increase the amount of supervision for new or less experienced contractors, higher-risk sites, and contractors who have previously had poor quality assurance assessment (QAA) results. There is no evidence that FCNSW conducts a risk assessment to inform this. Rating the level of risk posed by each site and contractor would allow FCNSW to better utilise its resources to monitor compliance by targeting staff time at those sites which may require additional monitoring.

FCNSW does not have consistent processes in place for undertaking quality assurance assessments and does not target these on a risk basis

As part of its compliance monitoring system, FCNSW undertakes QAAs of its contractors. As part of the process, FCNSW carries out QAAs to check whether contractors have met a range of compliance requirements across each of its harvest sites, for example by checking a selection of trees that were supposed to be retained. QAAs then form part of the quarterly monitoring of contractor performance. FCNSW's Compliance Monitoring System Manual allows each region to determine its own requirements for QAAs.

FCNSW has developed procedures for its North Coast operations that require QAAs to be completed on a quarterly basis for each harvesting contractor. FCNSW does not have a procedure for QAAs on the South Coast or the Western region, however QAAs are still undertaken in these areas.

While FCNSW does not have procedures for undertaking QAAs outside the North Coast, the Compliance Monitoring System Manual states that the frequency of QAAs is to be based on risk. There is no evidence that FCNSW undertakes risk assessments in line with the Compliance Monitoring System Manual across any of the IFOA regions, and does not target its QAAs on the basis of risk.

In addition, QAAs are undertaken inconsistently. Across some harvest sites, QAAs were undertaken in part of the harvest site rather than providing coverage across the whole site. In addition, QAAs did not always fulfil FCNSW's minimum requirements for the number of trees or the length of boundaries inspected.

Contractor compliance appears to be improving, however FCNSW's recording of potential non-compliances is inconsistently or inaccurately documented

As part of FCNSW's QAAs, any retained tree examined on a harvesting site is marked as either passing or failing the check. Retained trees will generally fail a check due to damage or a debris build up around the base. Contractor compliance appears to be improving as the proportion of trees that were recorded as passing a QAA inspection increased from 92.4% in 2019 to 97.7% in 2022. Available data also indicates that other areas of QAAs have improved performance.

In some circumstances, staff will record the reason for trees failing checks, but in others the reason for failure is not recorded. In 2022, 23.3% of failures had no comment or reason recorded. The audit identified other weaknesses with QAA record keeping. For example, FCNSW does not consistently record whether the failures it identifies have been addressed. This makes it difficult to determine whether failures have resulted in a potential non-compliance or if they have been addressed in the field.

FCNSW undertakes audits of harvest sites but is not targeting these on a risk basis

FCNSW's Compliance Assurance Team performs part of the independent audit role of the compliance monitoring system. The team undertakes assessments of individual harvest operations or thematic areas where it believes there may be concerns. It carried out compliance assessments on its North Coast harvest sites each month throughout 2022 but conducted no audits of sites in the South Coast until September 2022.

The compliance assessments of individual forestry operations cover a whole operation or just a function of an operation such as planning, roading or harvesting. The results for assessments undertaken in 2022 and early 2023 are mixed with some operations receiving a good result (including some that were 100% compliant) and some receiving a poor result (less than 95%). FCNSW indicated the vast majority of potential non-compliances identified are recorded as being fixed.

The compliance monitoring system manual advises that the planning for the independent audit function should be based on risk, including taking into account the number and severity of non-conformance incidents for work teams and contractors. FCNSW has not provided evidence of risk-assessments to support a risk-based approach.

FCNSW's QAAs allow it to monitor compliance at each site, with the limitations noted above. If consistently recorded, this information could be compiled to provide a sense of state-wide performance and to identify areas with persistent issues, however FCNSW does not currently compile this information. This could allow for better risk targeting of the compliance audits.

FCNSW has set a target of zero non-compliances but is not measuring its overall compliance to determine how it is tracking against this target

FCNSW has set itself a key target of zero non-compliances with legal environmental regulations. FCNSW has identified that this target will be difficult to achieve in the complex regulatory environment, as even a single accidentally damaged tree or accidental incursion by machinery into a disallowed area may mean that this target is not achieved.

While FCNSW has a target of zero non-compliance, it is not measuring its performance against this target. FCNSW is collecting information which may be useful for understanding its performance, such as the results of QAAs, compliance assessments, and EPA regulatory activity, however it is not compiling this information to gain an overall understanding of its performance over time.

The EPA targets its proactive Coastal IFOA inspections on a risk basis but does not proactively inspect any Western IFOA harvest sites

The EPA collects information from FCNSW across Coastal IFOA harvest sites, which it uses to determine the risk rating of each harvest site, and then targets its proactive inspections at the highest risk sites.

The EPA's inspections were targeted towards high and medium-risk sites in 2020–21 and 2021–22 while also ensuring some coverage of low-risk sites. If there are complaints for areas rated as low or medium-risk, the EPA may inspect sites in relation to those complaints, meaning that there will be a degree of coverage of lower-priority harvest sites.

The EPA does not conduct risk assessments for harvesting operations undertaken in the Western IFOA regions. The EPA advised that it considers all harvesting operations undertaken in the Western IFOA regions to be low-risk, but it has not formally assessed and documented this. This means that the EPA has not determined whether there are any high-risk sites in the Western IFOA regions. As a result, the EPA has not conducted any proactive inspections of the Western IFOAs in recent years, although it does respond to complaints it receives in these areas.

Most EPA compliance staff have basic training in the regulation of forestry, but few have more advanced training

In 2020, the EPA changed its approach to regulating forestry operations. Previously it had a separate forestry branch that conducted inspections and responded to complaints, but this branch was abolished and forestry matters are now dealt with as part of its general compliance operations. As part of this re-alignment, the EPA developed additional training for its compliance staff.

As of October 2022, 84.7% of relevant EPA compliance staff had completed an Introduction to Native Forestry Regulation training course. The remaining staff had either not completed any of the course or had completed only the first of two modules.

The number of staff that have completed a more advanced Forestry Skills and Capability Program is limited. Thirty EPA staff attended the course in 2022 and the EPA advised that further sessions of the course are planned throughout 2023. The low numbers of staff undertaking the program limits the number of staff who are capable of undertaking forestry inspections. The EPA is able to supplement this number with staff who were part of the former forestry branch, though not all of these staff are still in compliance positions.

In all cases examined in the audit, inspections were led by appropriately trained or experienced staff, or these staff were part of the inspection team.

Some EPA offices do not have the necessary equipment to undertake forestry inspections

It is vital for the EPA to ensure that field staff have the appropriate equipment available to enable them to undertake inspections of native forestry sites. Not all staff have access to the specialist equipment required for forestry inspections. For example, in order to access FCNSW's MapApp data, EPA staff require access to an internet-enabled tablet with the correct program installed. Some offices do not have a tablet available to staff for this purpose, meaning that staff may have to bring their own tablets from home to access this information. Similarly, not all regional field staff in areas with forestry operations have access to other forestry specific equipment such as specialised tapes for measuring tree diameter, range finders, dendrometers and snake bite kits.

The EPA and FCNSW are not implementing all elements of a Memorandum of Understanding that aims to promote a cooperative relationship between the agencies

In December 2019, the then chief executives of FCNSW and the EPA signed a Memorandum of Understanding (MoU) setting out how the two organisations would establish and maintain an open and cooperative relationship, including regarding the achievement of principles of ecologically sustainable forest management. The MoU sets out the governance arrangements that the EPA and FCNSW will put in place to ensure this cooperation. This includes establishing a senior officers group that meets at least quarterly.

As set out in the MoU, the role of the senior officers group includes consulting on the effectiveness and efficiency of IFOA settings, including Conditions, Protocols and supporting Guidance (including any matters of interpretation that may arise). While the senior officers group does meet monthly and discusses a wide range of topics that fall into the above areas, it only rarely discusses the interpretation of the IFOA settings.

In addition to the senior officers group, the MoU also commits FCNSW and the EPA to establish regionally focussed operational groups to consider compliance trends, operational implementation and regional issues of an operational nature. These groups, which are yet to be formed, could provide a useful avenue for regionally specific issues to be raised and addressed or escalated as appropriate.

2. Recommendations

By June 2024, Forestry Corporation of NSW should:

1. ensure all staff have completed relevant training in regulatory requirements to support their work, including the requirements of Integrated Forestry Operations Approvals
2. ensure consistent data capture of quality assurance assessments, including consistently recording the reason for a 'fail' and confirming whether it has been addressed
3. improve the consistency of its quality assurance assessment process by developing guidance for the southern and Western regions and monitoring the implementation of guidance by staff across all regions
4. more effectively target its compliance and monitoring activities by:
 - targeting compliance activities on the basis of highest risk
 - collating quality assurance assessment data to identify potential sources of risk and focussing on these activities as part of compliance and monitoring activities
5. measure its overall rates of compliance to determine if it is meeting its target of 100% compliance.

By December 2023, the NSW Environment Protection Authority should:

6. ensure that it is targeting all high-risk sites across the state by conducting risk assessments across the three Western Integrated Forestry Operations Approval areas and proactively inspecting sites rated as high-risk
7. increase the number of staff available to conduct inspections by increasing completion rates for the Forestry Skills Capability Program
8. ensure that its operational staff have the necessary equipment to undertake forestry inspections.

By December 2023, Forestry Corporation of NSW and the NSW Environment Protection Authority should:

9. fully implement the signed Memorandum of Understanding setting out the approach both agencies will take to developing a cooperative relationship.

1. Introduction

1.1 The Forestry Corporation of NSW

The Forestry Corporation of NSW (FCNSW) is a state-owned corporation that supplies timber to sawmills in New South Wales, including timber harvested from public native forests. FCNSW is responsible for the management of around two million hectares of public native forests and plantations. Around half the area of native forests is permanently set aside for conservation.

Public native forestry is regulated through the *Forestry Act 2012*, *Biodiversity Conservation Act 2016*, *Protection of the Environment Operations Act 1997* and associated regulations. Under the *Forestry Act 2012*, the objectives of FCNSW include, where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6(2) of the *Protection of the Environment Administration Act 1991*. This involves a balance of economic, social and environmental considerations.

In undertaking its operations, FCNSW must comply with Integrated Forestry Operations Approvals (IFOA), issued jointly by the Minister for the Environment and the Minister for Agriculture, which set out rules to protect species and ecosystems where timber harvesting is occurring, and aim to ensure forests are managed in an ecologically sustainable way. FCNSW must also ensure that its contractors undertake forestry operations in line with IFOAs.

1.2 The Environment Protection Authority

The NSW Environment Protection Authority (EPA) is responsible for regulating native forestry in New South Wales. Under the *Protection of the Environment Administration Act 1991*, one of the objectives of the EPA is to protect, restore and enhance the quality of the environment in New South Wales, having regard to the need to maintain ecologically sustainable development. This includes monitoring FCNSW's compliance with IFOA conditions and protocols, and maintaining and enforcing a compliance program.

The EPA developed and implemented an organisational realignment between December 2019 and April 2020. Rather than having specialised areas, such as waste management, hazardous materials, chemicals, radiation, contaminated sites and the forestry branch, the EPA moved towards a functional model which put people with like functions together such as operational staff or regulatory practice staff. The intended purpose of the realignment was to provide more consistency in its regulation, be more responsive to incidents and emergencies, and have better access to technical expertise, data and systems.

The EPA introduced a range of initiatives to support the transition from a specialised forestry branch including:

- new operational procedures and technical guidance
- a new risk assessment tool for the identification of high-risk forestry operations
- new applications to support inspection planning and fieldwork
- steps to centralise and improve forestry regulation reporting
- development of new training programs.

1.3 Integrated Forestry Operations Approvals

IFOAs set environmental rules for how forestry operations must be carried out in State Forests in New South Wales. They include rules to protect native plants, animals, important habitat and ecosystems, soils, and water from the impacts of native forestry operations on public land.

Under the *Forestry Act 2012*, the purpose of IFOAs is to:

- authorise the carrying out of those forestry operations in accordance with principles of ecologically sustainable forest management, and
- integrate the regulatory regimes for environmental planning and assessment, for the protection of the environment and for threatened species conservation, including threatened species, populations and ecological communities under Part 7A of the *Fisheries Management Act 1994*.

The Coastal IFOA, developed in 2018, consolidated the four IFOAs for the Eden, Southern, Upper and Lower North East coastal regions of New South Wales, into a single IFOA. The other three current IFOAs are Brigalow Nandewar, South Western Cypress and Riverina Redgum (the Western IFOAs). The Brigalow Nandewar IFOA commenced in 2010 and the other two Western IFOAs commenced in 2011.

The Coastal IFOA also introduced a new structure and regulatory approach compared to the four previous coastal IFOAs, establishing outcomes, conditions and protocols. The conditions set mandatory actions and controls intended to protect threatened plants, animals, habitats, soils and water. The protocols, referenced in the conditions, set out additional enforceable actions and controls intended to support the effective implementation of the conditions. The EPA is able to make and amend protocols, provided those protocols align with the conditions. The Coastal IFOA contains a broad range of outcome statements including:

- Environment features, habitat and risks are identified and site-specific protections and management practices are developed to mitigate the impact of forestry operations.
- Important trees are retained and protected for shelter and food resources for native species, and to support their persistence.
- Vegetation adjacent to drainage features and wetlands is protected, and groundcover is retained, to maintain water quality, stream stability, riparian habitat and contribute to habitat connectivity.
- Water quality, aquatic habitat and native fish movement are maintained through the implementation of best management practices for tracks and track crossings.

1.4 Impact of the 2019–20 bushfires on wood supply

Public native forestry is the largest component of hardwood supply in New South Wales. The bushfires in 2019–20 had a major impact on regional communities, and the local forestry industry, and heightened environmental risks and challenges in public native forests. Five million hectares of New South Wales was burned, including more than 890,000 hectares of native State Forests. This is over 40% of the coastal and tablelands native State Forests in New South Wales.

In the immediate aftermath of the 2019–20 bushfires FCNSW suspended harvesting operations in burned forests and sought Site-Specific Operating Conditions (SSOC) from the EPA for any harvesting in these forests, while further assessments were carried out to determine the type and scale of harvesting that would be undertaken.

In 2020–21, FCNSW harvested approximately 574,000 cubic metres of hardwood and cypress from native forests and hardwood plantations. This was a reduction from recent years due to the impact of the 2019–20 bushfires (978,000 cubic metres in 2018–19 and 711,000 in 2019–20). The impacts were greatest on the south coast. About 80% of the forests in the region covering Eden, south coast and Tumbarumba were impacted by fire and, as a result, long-term timber supply on the south coast is modelled to reduce by around 30%.

1.5 Wood supply and yield estimates

The success of ecologically sustainable forest management depends not just on effective compliance activities, but also on how wood supply yields are modelled, and the volumes of wood extracted relative to those yields. This is of particular importance in areas where forests have been impacted by fire. This audit did not consider sustainable yields. Recent reviews of this include an independent review of the FCNSW sustainable yield model and a Natural Resources Commission review in 2021.

FCNSW reports publicly on the amount of harvesting conducted compared to the modelled sustainable yield, as shown in Exhibit 1. The reporting shows that volumes are below the modelled sustainable yield. Exhibit 1 also demonstrates that there is much more timber harvested in the Coastal IFOA State Forests than the Western IFOA forests.

Exhibit 1: Modelled hardwood yield and harvested volumes per year (000s cubic metres)

Region		2018–19	2019–20	2020–21	2021–22
Coastal IFOA total	Modelled yield	1,094	981	1,022	1,022
	Harvested	769	443	253	475
Western IFOAs total	Modelled yield	126	126	126	126
	Harvested	91	84	82	80

Note: Figures exclude volumes from hardwood plantations on the North Coast.

Source: FCNSW data.

1.6 About this audit

This audit assessed how effectively Forestry Corporation of NSW manages its public native forestry activities to ensure compliance, and how effectively the Environment Protection Authority regulates these activities. The audit assessed this objective with the following lines of inquiry:

- FCNSW ensures that public native forestry operations comply with the relevant regulatory requirements
- the EPA effectively regulates public native forestry activities.

The audit focused on public native forestry operations and excluded plantation and private native forestry operations. It examined:

- FCNSW's management of harvesting contractors, including subcontracted harvesters
- the EPA's development and communication of IFOA protocols
- the EPA's compliance activities in relation to all IFOAs and related legislation
- details of the EPA's compliance and enforcement activities for public native forestry
- mapping and GPS data in relation to harvest planning and forestry operations.

The audit did not examine:

- FCNSW's management of contractors other than harvesting activities
- the EPA regulatory activities outside of public native forestry operations
- compliance with WHS obligations
- development of IFOA conditions for the Coastal IFOA
- development of the three Western IFOAs
- sustainable yield modelling.

2. FCNSW compliance activities

2.1 FCNSW strategy and compliance program

FCNSW has a compliance strategy and program that set out its compliance obligations and how they will be managed

FCNSW's 'Strategy 2025' states that it will measure environmental compliance. There are other references to related matters in this strategy, such as FCNSW's aim to protect and enhance the health and productivity of its forests. FCNSW also has an 'Environmental Compliance Strategy', dated June 2021, which sits within its Forestry Management System. The strategy sets out its approach at a corporate level with key objectives and action areas to guide its interactions with the EPA over the next two years, with respect to the Coastal IFOA.

FCNSW's Compliance Policy outlines compliance requirements, actions to ensure compliance, and responsibilities for staff, supervisors, senior management and board members. FCNSW has also created a compliance register setting out its compliance obligations and overall areas of responsibility. In addition to setting out its corporate approach, FCNSW has made compliance obligations clear in role descriptions and has assigned key tasks to staff members.

FCNSW's compliance monitoring system manual sets out three elements that FCNSW will use to measure and monitor its compliance systems:

- Operational compliance monitoring – This is undertaken by field supervisors who monitor the operations they supervise. This involves checking for compliance with operational plans and IFOAs.
- Quality assurance assessment (QAA) – This is the periodic assessment by FCNSW staff of operational performance against conditions and work standards. QAAs are discussed in detail below.
- Independent audit – Independent audits are conducted periodically by staff not directly involved in the forestry operation. The compliance monitoring system manual advises that these can be focused on areas of interest or perceived areas of high-risk.

The manual also includes risk assessment and reporting procedures for a range of incident severities, as well as responsibilities for each of the above three aspects of the monitoring system.

Compliance obligations are reflected in management plans, harvest plans and other key documents

FCNSW's 'Forest Management Policy' commits FCNSW to maintaining systems that monitor and comply with all relevant laws, standards and practices. In line with this, FCNSW has created Forestry Management Plans for coastal forests and western forests which set out the legal framework and other compliance obligations. As required by the *Forestry Act 2012*, both plans include a strategy for ecologically sustainable forestry management, which outlines key principles and objectives. These are in turn supported by a Forestry Management System manual and a range of associated plans and procedures.

Responsibilities for compliance during harvesting operations are also set out in a North Coast harvesting procedures document. FCNSW did not provide procedures for other regions. Compliance obligations are also set out in harvest plans, which are intended to guide each harvesting operation, including relevant extracts from regulations with which contractors must comply, as well as additional regulations that are relevant to each harvest site. Harvest plans, discussed in more detail below, include the required protection for retained trees, riparian zones¹ and ecologically significant areas (ESA). This documentation demonstrates that compliance obligations are expressed at a corporate level and at an operational level.

2.2 FCNSW staff and contractor qualifications and training for meeting regulatory requirements

FCNSW has largely fulfilled mandatory Coastal IFOA training requirements, but has not yet trained other staff who would benefit from the Coastal IFOA training

The Coastal IFOA requires that all individuals involved in carrying out forestry operations must have ongoing training about their responsibilities under the Coastal IFOA. In addition, the Coastal IFOA outlines some mandatory training requirements for staff performing various roles, in particular:

- Soil assessor training (for soil assessment and dispersible soil identification and management)
- Broad area habitat search (BAHS) training (to identify and retain hollow-bearing trees, giant-trees and various nest, den, roost trees and nectar or feed trees)
- Koala presence training (for checking for Koalas immediately prior to harvesting)
- Targeted survey training (for targeted flora or fauna surveys).

FCNSW has developed training packages in line with these requirements, outlined in Exhibit 2. As shown in Exhibit 2, FCNSW has delivered these training courses to over 90% of staff who require it, with the remainder being experienced staff who did not require the training or new staff awaiting training. The exception is the soil assessor course. The EPA did not approve the course in line with the Coastal IFOA until March 2023 and FCNSW staff are yet to undertake that training course.

Exhibit 2: Proportion of staff completing Coastal IFOA specific training

Coastal IFOA training course	Staff trained where training is required	Staff trained where training is beneficial
Coastal IFOA Markup and Supervision	92%	50%
Coastal IFOA Field Ecology	96%	17%
Broad Area Habitat Search	100%	N/A

Source: FCNSW data.

In addition to this training covering mandatory Coastal IFOA components, FCNSW has developed a course on the Coastal IFOA's requirements for forest road management. This training is not specifically required under the Coastal IFOA, but would fulfil the requirement that staff receive ongoing training about their responsibilities under the Coastal IFOA. FCNSW advised that it has scheduled this course for delivery from May 2023.

FCNSW has identified roles that do not require specific types of training under the Coastal IFOA, but which would benefit from undertaking the training. For example, field ecologists do not need to be trained in the Coastal IFOA Markup and Supervision course, however they may benefit from understanding the way that environmental features and habitats are managed during forestry operations. As shown in Exhibit 2, FCNSW has not trained all staff who would benefit from the Markup and Supervision or Field Ecology courses.

¹ A riparian zone is the area of land adjacent to a water course, estuary or wetland.

In relation to Western IFOAs, FCNSW staff have completed training courses relevant to the requirements outlined in the IFOAs, including training in sediment control and prevention of water pollution and soil erosion. FCNSW also advised that its contractors have completed many of these courses, although FCNSW was not able to provide evidence of this.

In addition to training FCNSW provides to staff to perform their roles, FCNSW inducts staff and contractors into harvest sites to ensure that they are aware of the specific needs of each harvest plan and the relevant compliance requirements of each site. It has developed a standard operating procedure for these inductions, but its record keeping of inductions could be improved. Inductions are currently documented as notes that can be accessed by other FCNSW staff, but induction attendance is not captured centrally to ensure all relevant staff have been inducted.

FCNSW provides relevant training to its contractors

In addition to inducting contractors to harvest sites, FCNSW provides training to contractors. This includes training relating to specific requirements of the Coastal IFOA, how to use its mapping system program, MapApp, for marking harvest sites and recording harvesting operations. It also includes training in response to identified non-compliances or persistent issues at a harvest site. However, there is room for FCNSW to improve its record keeping about this training as this information is not consistently recorded across harvest sites.

In addition, FCNSW is in the process of providing Coastal IFOA training to contractors and assessing the competency of its contractors to operate under the Coastal IFOA. As at June 2022, FCNSW had assessed 132 out of 198 (66.7%) of its contractors to ensure that they have the required skills.

Other forms of training may be conducted at each site. These can be related to corrective actions or educational actions following potential issues being identified during an inspection of a harvest site, questions and clarification regarding the interpretation of relevant IFOA conditions, or ecology training like spotting for specific species in the field. However, FCNSW does not centrally document this training in its records.

2.3 FCNSW coordination and monitoring of forestry operations and contractors to ensure compliance

FCNSW sets out compliance requirements for harvest contractors

FCNSW has contracts with each harvest contractor outlining both parties' responsibilities. FCNSW has two primary types of contracts for harvesting: harvesting agreements and stumpage contracts. Harvesting agreements make up around 70% of timber contracts. With a harvesting agreement, the contractor is responsible for harvesting the timber at the site, then FCNSW will engage another contractor to haul it to the sawmill. For stumpage contracts, FCNSW engages directly with the sawmill, which then becomes responsible for harvesting and hauling the timber through sub-contractors.

FCNSW's harvesting agreements are comprehensive in their requirements. Each agreement requires the contractor to comply with the *Forestry Act 2012* and associated instruments, which includes the IFOAs. Contractors must notify FCNSW of any breach of these conditions. Contractors are required to have appropriately trained and accredited staff. The contracts also set out FCNSW's process for reviewing those contractors' performance, including the use of quarterly reviews of performance, as well as FCNSW's right to conduct audits and inspections for the purpose of compliance monitoring.

FCNSW's requirements on stumpage contractors are expressed in two documents: a contract and a harvesting licence issued by FCNSW under the *Forestry Act 2012*. Among other things, the contracts require the contractor to comply with the *Forestry Act 2012* and associated instruments, which includes the IFOAs. The stumpage contracts are inconsistent in their other requirements. Only one of the stumpage contracts examined required the contractor to ensure that all its personnel were properly trained and accredited. This same contract was also the only one to define FCNSW's right to conduct audits and inspections of the contractor's harvesting operations to ensure compliance with environmental standards. While the contracts were inconsistent in these requirements, the licences that FCNSW issues to its stumpage contractors all require that staff be properly trained, that the contractor notify FCNSW of any potential non-compliances, and establish FCNSW's authority to inspect the sites.

FCNSW uses QAAs to assess ongoing contractor performance on the North Coast. It monitors contractor performance on a quarterly basis and uses this to establish the effectiveness of its contractors. Overall, the environmental performance of these contractors had improved, although the performance of one contractor declined significantly between 2020 and 2022.

FCNSW makes each site's compliance requirements clear to harvest contractors

In addition to requiring compliance with the *Forestry Act 2012* in its contracts, FCNSW also sets out the particular compliance requirements at each site in a detailed harvest plan. These harvest plans identify harvestable areas and a range of key conditions in place for each site, including areas which are to be excluded from the harvest. They also make clear the applicable regulatory requirements for FCNSW staff and contractors. In addition to outlining compliance obligations in the harvest plans, FCNSW also conducts a detailed mark-up of each harvest site.

FCNSW uses its MapApp software to mark-up the location of compliance obligations for every harvest site. This includes marking the GPS co-ordinates of trees which should not be harvested, as well as exclusion zones around features such as drainage channels, rocky outcrops and threatened species habitat where forestry operations should not be undertaken and where forestry machinery should not enter. This information is made available to harvest contractors on the ground, including through tablets positioned near the driver's seat of harvest machines.

In addition, FCNSW conducts physical mark-up at its harvest sites with paint on retained trees and tape to mark off exclusion zones, although it is unclear the extent to which this occurs across all sites. FCNSW has highlighted instances where physical markup is difficult due to the density of vegetation. The physical mark-up of most features at harvest sites is not required under the Coastal IFOA.

FCNSW monitors the harvesting activities of its contractors, although its compliance monitoring could be improved

Operational compliance monitoring is one of the three aspects of FCNSW's compliance monitoring system. The audit examined a sample of harvest sites to gauge the extent of FCNSW's site markup and monitoring of contractors at each site. The review indicated that:

- all sites had been extensively marked up for retained trees and exclusion zones
- the BAHS required under the Coastal IFOA usually covered the whole site, although the BAHS did not cover the whole harvest area at two of the sites. This may be because harvesting had not yet been scheduled in those areas
- contractor machine movements had been monitored via GPS tracking
- notes left by FCNSW and harvest contractors were available to explain certain decisions or to describe the site in more detail, though these were inconsistent in their level of detail across sites.

The frequency with which staff visit each site to check in with contractors and understand any site-specific issues, including non-compliances, is inconsistent across sites. Some sites are visited multiple times each week while others are visited once per week at most, and sometimes less frequently than that. FCNSW does not provide guidance to staff on how frequently each site should be visited, either for low or high-risk sites.

FCNSW staff are advised to increase the amount of supervision for new or less experienced contractors, higher-risk sites, and contractors who have previously had poor QAA results. As noted above, however, there is no evidence that FCNSW conducts a risk assessment to inform this. FCNSW indicated it uses past environmental performance when deciding whether to contract with harvesting crews but does not assign a risk rating to contractors. Rating the level of risk posed by each site and contractor would allow FCNSW to better utilise its resources to monitor compliance by targeting staff time at those sites which may require additional monitoring.

FCNSW does not have consistent processes in place for undertaking quality assurance assessments and does not target these on a risk basis

As part of its compliance monitoring system, FCNSW undertakes QAAs of its contractors. These QAAs include checks on whether contractors have met a range of compliance requirements across each of its harvest sites, for example by checking a selection of trees that were supposed to be retained. QAAs then form part of the quarterly monitoring of contractor performance. FCNSW's Compliance Monitoring System Manual allows each region to determine its own requirements for QAAs.

FCNSW has developed procedures for its North Coast operations that require QAAs to be completed on a quarterly basis for each harvesting contractor. This is consistent with the harvest agreements that FCNSW has with contractors on the North Coast which allow for a quarterly evaluation of contractor performance. QAAs provide an input into that process.

FCNSW does not have a procedure for QAAs on the South Coast even though QAAs have been carried out across South Coast operations. Conducting inspections without guidance can lead to inconsistent assessments. FCNSW advised that it is developing QAA procedures for the South Coast.

FCNSW has advised that Western Region maintains a two-stage internal compliance auditing procedure for harvesting operations. Operation Inspection Reports are conducted by the supervising FCNSW officer, while QAAs are performed by staff at arm's length from the operation. FCNSW does not have procedures supporting this overall approach, although it did provide a template for its Operation Inspection Report process.

While FCNSW does not have procedures for undertaking QAAs outside the North Coast, the Compliance Monitoring System Manual states that the frequency of QAAs is to be based on risk after considering:

- aspects of activities listed in the risk registers
- results of the previous year's monitoring and auditing program, including the number and severity of non-conformance incidents and complaints for the various work teams and contractors
- operation-specific and site-specific environmental, social and economic risks
- results of management reviews
- available resources.

This makes it clear that QAAs are to be undertaken on a risk basis. There is no evidence that FCNSW undertakes risk assessments in line with the Compliance Monitoring System Manual across any of the IFOA regions. FCNSW does not target QAAs on the basis of risk, for example by undertaking more frequent QAAs for contractors who have a history of incidents.

FCNSW's quality assurance assessments are undertaken inconsistently

The audit also reviewed QAAs undertaken at a sample of harvest sites. All sample sites were subject to QAAs although they varied in coverage with some sites not having all harvest compartments inspected or QAAs occurring in only part of the harvest site, rather than providing coverage across the whole site. This means that QAAs had been inconsistently undertaken. The QAA procedures allow harvest supervisors to target their inspections based on the risk posed in each harvest site but as noted above, this risk assessment was not undertaken.

FCNSW provides guidance to staff in the North Coast and South Coast on how many trees must be inspected as part of each QAA per contracting crew per quarter (at least 180 trees) and the distance of boundaries staff must inspect in order to observe whether incursions into exclusion zones have occurred (at least 1,000 metres of boundaries for ESAs). Not all QAAs reach these minimum requirements. For example, of the 37 crews listed as operating in the fourth quarter of 2022, at least ten crews did not have the required number of trees checked and the required distance of boundaries inspected. FCNSW has indicated that that this was due to a focus on hardwood plantation harvesting on the North Coast and wet weather stopping work on the South Coast during that quarter. This means that not all crews had done sufficient native forestry work to enable FCNSW to meet the QAA inspection requirements.

FCNSW's recording of potential non-compliances is inconsistently or inaccurately documented

When conducting an inspection as part of a QAA, FCNSW staff can mark trees, snig crossings², snig drainage³, and log dumps⁴ as either passing or failing. In addition to marking these, FCNSW staff are able to record the reason for failure. There are a number of pre-defined reasons that these inspected items may fail, and there is also a free text entry box for some types of items that are inspected in the QAA process, in which staff can leave comments explaining the reason for failure. Recording the reason for failure allows for further data analysis to understand trends. It also allows failures to be more easily checked by FCNSW staff to ensure they are corrected to avoid the risk of non-compliances.

Exhibit 3 presents the percentage of trees checked in each year that are listed as failing the QAA inspection, but do not have a reason listed or a comment left. This demonstrates that there are record keeping inconsistencies in terms of not recording the reasons for failures, and these have been persistent each year from 2018 to 2022.

Exhibit 3: QAA results for trees checked

	2018	2019	2020	2021	2022
Number of failing trees	1,089	929	336	1,289	523
Failing trees with no reason documented	23.6%	26.7%	23.8%	27.7%	23.3%

Source: Audit Office analysis of FCNSW data.

There are other inconsistencies and inaccuracies with FCNSW's data capture of QAAs. For example, in 2022, FCNSW did not record whether a boundary incursion was accidental in 20% of cases and did not report whether the incursion had been reported by the contractor in 21% of cases.

² A snig track is a track along which logs are dragged, usually from felling point to a nearby log dump. A snig crossing is where a snig track crosses a drainage feature.

³ Snig drainage relates to drainage requirements for snig tracks.

⁴ An area within an operational area where timber and other forest products are collected for processing and sorting prior to loading onto a truck.

For log dump sites, many sites from 2017 to 2021 were listed as passing an inspection but still had a reason for failing listed. This means that either the sites should have been listed as failing the inspection or have incorrectly been listed as having a reason to fail that inspection. In 2018 alone, 285 sites out of 609 log dump sites marked as passing their inspection were also listed as being in the wrong location, which should be a reason for the log site to have failed the inspection. It is unclear why this rate was so high, but it is unlikely that all of these sites were in the wrong location. Data quality on the location of log dump sites has improved since 2018.

A small number of cases were identified where inspections were marked as passing but had failure reasons listed across inspections of trees, snig crossings and snig drainage. Sites being marked as passing but also having a failure reason listed makes it difficult to determine the true status of those sites and can make it difficult to determine overall rates of compliance.

From available data, contractor compliance appears to be improving

While there are limitations with the QAA data capture, as noted above, it still provides insight into the performance of contractors at a detailed level. Overall, the available data indicates that contractor compliance is improving and has remained high across a number of areas.

Exhibit 4 shows that the proportion of trees that are recorded as passing a QAA inspection has increased from 92.4% in 2019 to 97.7% in 2022. A small number of trees are marked as passing the inspection but have a reason for failing listed. For this reason, it is possible that the actual number of trees failing is higher than is being captured in this table, however the audit team's analysis indicates that this error is likely to be small.

Exhibit 4: QAA results for trees checked

	2018	2019	2020	2021	2022
Number of trees checked	14,610	12,746	8,756	46,617	23,612
Trees passing the QAA inspection	92.4%	92.4%	96.0%	97.2%	97.7%

Source: Audit Office analysis of FCNSW data.

Exhibit 5 shows the results for other QAA inspection areas including boundary incursions,⁵ snig crossings and snig drainage. The data demonstrates that the proportion of these areas passing QAA inspections across the State has remained consistently high from 2018 to present. Note that boundary incursions are allowable under the Coastal IFOA in certain circumstances and as such not all boundary incursions are non-compliances.

It is important to note that these figures do not represent non-compliances but issues identified during the QAA process that could result in a non-compliance if they are not investigated or rectified. However, FCNSW does not consistently record the reason for a failure or a boundary incursion and does not consistently record whether the issue has been investigated and addressed, making it difficult to determine actual rates of non-compliance.

Exhibit 5: QAA results for other parts of inspections

Area of QAA focus	2018	2019	2020	2021	2022
Number of boundary incursions	191	346	102	89	56
Proportion of snig crossings inspected that passed	97.3%	100%	91.8%	100%	97%
Proportion of snig drainage inspected that passed	96.2%	95.9%	94.5%	96.7%	97.7%

Note: We have not included the proportion of log dumps that passed due to the data limitations noted above.

Source: Audit Office analysis of FCNSW data.

⁵ A boundary incursion is the entry of machinery into an area outside the operational area available for harvesting, such as into an exclusion zone or ESA.

FCNSW undertakes audits of harvest sites but is not targeting these on a risk basis

In April 2021, FCNSW introduced a new Compliance Assurance Team which oversees compliance across FCNSW. It performs part of the independent audit role of the compliance monitoring system. The team undertakes assessments of individual harvest operations or thematic areas where it believes there may be concerns. It carried out compliance assessments on its North Coast harvest sites each month throughout 2022 but conducted no audits of sites in the South Coast until September 2022.

The compliance assessments of individual forestry operations cover a whole operation or just a function of an operation such as planning, roading or harvesting. The results for assessments undertaken in 2022 and early 2023 are mixed with some operations receiving a good result (including some that were 100% compliant) and some receiving a poor result (less than 95%). FCNSW indicated the vast majority of potential non-compliances identified are recorded as being fixed.

FCNSW advised that the purpose of its compliance audits was to obtain a state-wide view of FCNSW's compliance and to reduce the number of non-compliances through independent review of the functional components of a forestry operation. However, to date it has only focused its compliance efforts on areas covered by the Coastal IFOA.

The compliance monitoring system manual advises that the planning for the independent audit function should be based on risk, including taking into account the number and severity of non-conformance incidents for work teams and contractors. FCNSW has indicated it does some compliance assessments from current active operations on a random basis and some assessments on higher risk operations, based on the inexperience of contractors or staff involved, or on past poor performance. However, it has not provided evidence of risk-assessments to support this risk-based approach and it is unclear whether these assessments are sufficient to obtain a state-wide view of compliance.

FCNSW's QAAs allow it to monitor compliance at each site, with the limitations noted above. If consistently recorded, this information could be compiled to provide a sense of state-wide performance and to identify areas with persistent issues, however FCNSW does not currently compile this information. This could also allow for better risk targeting of the compliance audits.

FCNSW also undertake a series of targeted compliance assessments aimed at specific thematic areas across the North and South Coast operational areas where FCNSW believe there are concerns. In 2022 these themes included: wet weather management, WHS trees⁶, drainage, retained trees and tree retention clumps, and impenetrable understory. These thematic audits all resulted in specific recommendations that FCNSW has implemented or is in the process of implementing.

FCNSW has stated its intention is to expand the role of the Compliance Assurance Team to the Western region and softwood plantations with three new roles advertised in 2023.

⁶ Relates to the felling, pushing or removing trees to comply with the *Work Health and Safety Act 2011*.

2.4 FCNSW's response to non-compliance

FCNSW has developed procedures and systems for reporting incidents of non-compliance

FCNSW has procedures that aim to ensure a consistent approach to addressing instances of non-compliance. FCNSW's Compliance Monitoring System Manual outlines risk assessment and reporting requirements and procedures for a range of incident severities. The procedures outline what needs to be reported and to whom, and roles and responsibilities for addressing the incident.

FCNSW's system for capturing, actioning and reviewing hazards, incidents and non-compliances is called 'RiskWare'. According to the procedures, incidents that have a consequence rating higher than 'insignificant' must be reported in RiskWare regardless of whether they were addressed within 24 hours.

FCNSW listed 46 incidents of non-compliance in its RiskWare database from January 2020 to November 2022. There was a large increase in incidents recorded in 2022 with 35 incidents compared to only five in 2021, six in 2020 and four in 2019. FCNSW attributes the increase in recorded incidents in 2022 to the work of the Compliance Assurance Team, which it says has championed the use of RiskWare for recording and actioning compliance incidents. The most serious incidents primarily relate to machinery incursions into ESAs and other exclusion zones.

We examined FCNSW's response to a sample of incidents which FCNSW had classed as having a major potential consequence rating. Five of the six incidents involved an incursion into an exclusion zone. All incident reports contained a description of what occurred. All but one recorded the events that led to the incident, and an action plan outlining corrective action. The remaining incident was recorded as still being open with no investigation or action plan yet recorded despite the incident occurring in June 2022, although the record did indicate some corrective action had occurred.

FCNSW advises that where incidents of non-compliance with the Coastal IFOA are identified in a QAA that cannot be rectified and remain non-compliant they are noted in the Coastal IFOA compliance register. Condition 29.1 of the Coastal IFOA requires FCNSW to keep and maintain a register of every incident of non-compliance with the conditions of the Coastal IFOA. Although FCNSW's compliance register contains the condition that has been breached against each non-compliance it has limited information on the nature of the non-compliance and the reason for the non-compliance in accordance with requirements of the Coastal IFOA.

In some instances, the corrective action for a non-compliance has included regulatory action by FCNSW against the contractor. This can take the form of official warnings and penalty infringement notices issued to contractors for environmental compliance matters. FCNSW provided a list of regulatory actions against contractors in recent years. For example, it took regulatory action against two contractors on the south coast for environmental non-compliance in 2022.

There is a high threshold for reporting incidents to the EPA under the Coastal IFOA

According to FCNSW, there have been no incidents that have required notification to the EPA under the Coastal IFOA, (that is, incidents of reportable harm to a threatened species or threatened ecological community, or material harm to the environment arising from a pollution incident) since it was introduced in 2018.

Nevertheless, FCNSW has voluntarily advised the EPA of some incidents. FCNSW provided two examples of notifications it made to the EPA in 2022 – a natural mass movement incident observed within a Class 1 drainage line in Currowan State Forest and a native animal being found in an active harvesting area in Cooperook State Forest and requiring assistance. According to FCNSW, neither of these was a breach of the Coastal IFOA. Prior to 2022, the incidents reported to the EPA were made by local FCNSW managers to local EPA managers and FCNSW did not collate this information.

In addition to reporting incidents to the EPA, FCNSW is required to provide a statement of compliance with the conditions of the Coastal IFOA and a complaints summary in an annual return to the EPA. FCNSW has provided annual returns to the EPA with this information for 2018–19, 2019–20 and 2020–21, however it is yet to provide an annual return for 2021–22. According to the EPA, this was scheduled to be provided in February 2023.

All three Western IFOAs also require FCNSW to lodge annual returns with the EPA. FCNSW must include in each annual return a statement of compliance, an operations and complaints summary, and also a compliance summary if the statement of compliance indicates there have been any breaches. FCNSW is yet to provide annual returns for the three Western IFOAs for 2020–21 and 2021–22.

2.5 FCNSW's measuring and reporting on its compliance with IFOAs and other regulatory requirements

FCNSW has set a target of zero non-compliance but is not measuring its overall compliance to determine how it is tracking against this target

FCNSW has objectives for public native forestry in its hardwood forest management plans, including maintaining or enhancing the health and productivity of forests. A key target FCNSW has set itself is the goal of zero non-compliance with legal environmental regulations. FCNSW has identified that this target will be difficult to achieve in the complex regulatory environment, as even a single accidentally damaged tree or accidental incursion by machinery into a disallowed area may mean that this target is not achieved.

The difficulty with achieving this target is demonstrated with the results of the QAA process, as FCNSW's monitoring systems identified issues which could have led to non-compliances in all of the harvesting operations we examined for 2021 and 2022. Good practice for setting performance indicators is that performance indicators should be achievable, otherwise staff may not see their value.

While FCNSW has a target of zero non-compliance, it is not measuring its performance against this target. FCNSW is collecting information which may be useful for understanding its performance, such as the results of QAAs, incidents recorded in RiskWare and compliance assessments, however it is not compiling this information to gain an overall understanding of its performance against this target over time.

FCNSW does provide compliance reports to its senior management, but these are primarily focused on the EPA's regulatory activity rather than the results demonstrating its own compliance monitoring and improvement efforts. Given that FCNSW is not collating this information about its performance, it is also not reporting the results of efforts to improve its compliance publicly, though other information about environmental indicators is reported on its website annually.

3. EPA regulation of public native forestry activities

3.1 EPA's compliance strategy and program for public native forestry activities

The EPA rates native forestry as a high priority regulatory activity and has identified strategic priorities to reflect this

The EPA takes a structured approach to its strategic planning which cascades from its broad strategic plan to more detailed divisional plans. It has developed a strategic plan for 2021–24. This sets out the broad focus areas for the EPA and the outcomes the organisation is trying to achieve.

The EPA has developed a Regulatory and Compliance Priorities Statement 2022–23 which sets out the six major risks that the EPA is prioritising in 2022–23. One of the major risks identified in this document is native forestry, because of the increased environmental risk and sensitivity in forests following the 2019–20 bushfires. While some of the other priorities in this statement list particular actions or focus areas, there is only one action relating to forestry which is to continue its compliance efforts. There are no other specific actions or focus areas identified.

A divisional plan for the regulatory operations division supports these plans. This divisional plan contains some specific actions for forestry, including ensuring that the EPA has a consistent approach to recording regulatory actions undertaken and identifying priority areas for assurance over State Forests. These actions are linked to the outcomes in the strategic plan, allowing for a clear identification of how strategic planning cascades from the compliance priorities of the EPA.

The EPA is unable to unilaterally put in place additional requirements to ensure environmental protections for catastrophic events

The Coastal IFOA does not contain provisions which allow the EPA to unilaterally restrict forestry activities in the aftermath of a catastrophic event such as the 2019–20 bushfires. Following the bushfires, FCNSW approached the EPA and asked for additional SSOCs at some locations to assist it in maintaining compliance. These requirements included the retention of lightly burned and unburned forest in fire affected areas to provide ongoing refuge for animals, and increased protections for landscape features, hollow-bearing trees and feed trees. The SSOCs were issued by the EPA and FCNSW was required to carry out forestry operations in accordance with the SSOCs in relevant harvest sites. These SSOCs were in place for 12 months.

After a year, FCNSW decided not to renew this approach with the EPA, but implemented its own voluntary measures during harvesting operations. These conditions included an additional ten metre buffer on all mapped exclusion zones and all riparian zones, the use of selective harvesting only, and additional operational surveys. Unlike operations carried out under the SSOCs, the EPA was unable to undertake enforcement activities for breaches of voluntary measures.

The EPA targets its proactive Coastal IFOA inspections on a risk basis

One of the conditions of the Coastal IFOA requires FCNSW to provide the operational plan for each forestry operation carried out under the Coastal IFOA to the public and the EPA at least two business days prior to the commencement of the forestry operation. The EPA uses this and other information to identify the risk rating of each harvest site in the Coastal IFOA region and then targets its proactive inspections at the highest risk sites.

Prior to July 2020, the EPA undertook manual analysis of the risk of each harvest site using the information provided by FCNSW. Since July 2020, the EPA has used its Environmental Risk Assessment Tool (ERAT) for public native forestry undertaken under the Coastal IFOA. Once the EPA receives this information from FCNSW, the ERAT automatically analyses the information and determines the risk rating of the harvest site.

The ERAT uses a range of inputs from the operational plan, including:

- whether koala prescriptions from the Coastal IFOA apply
- the number of exclusion zones
- whether there is a requirement to retain nectar trees
- the number of different types of ESAs, such as old growth forest or rainforest.

In addition to targeting its inspection program on a risk basis, the EPA has identified three key areas of focus for its regulatory activities. These are:

- management of exclusion zones
- protection of threatened species
- protection of all necessary retained trees.

The inspections examined in this audit focus on these target areas, with the most commonly inspected aspects being tree retention and exclusion zones, including around habitats. The EPA also inspected other things, such as drainage lines on roads, and road crossings. The EPA has not set out its approach to reviewing these areas of focus.

The EPA does not conduct risk assessments on the Western IFOA harvest sites and does not proactively inspect these harvest sites

The EPA does not conduct risk assessments for harvesting operations undertaken in the Western IFOA regions. This has been the case since at least 2016. The EPA advised that it considers all harvesting operations undertaken in the Western IFOA regions to be low-risk and this is part of the reason that it does not conduct individual risk assessments for these sites. The EPA has not documented the reason for this low-risk rating.

As outlined above, the EPA targets its proactive inspections at higher-risk sites. Given that the EPA has not assessed the Western IFOA harvest sites for their level of risk, it has not determined whether there are any high-risk sites in the Western IFOA regions. As a result, the EPA has not conducted any proactive inspections of the Western IFOAs in recent years, although it does respond to complaints in these areas.

Where the Coastal IFOA requires FCNSW to provide the harvest plan and relevant spatial data sets to the EPA for each harvest site, there is no equivalent condition in the Western IFOAs. The EPA advised that this is a reason that it does not conduct risk assessments in the Western IFOA regions. While the EPA does not receive the harvest plan from FCNSW, FCNSW is still required to send the EPA a variety of information that could inform a risk assessment. For example, the Western IFOAs require FCNSW to send an operational map for each harvest site to the EPA. While this does not contain the full information from the harvest plan, and while it may not enable automation of a risk assessment through the ERAT, the operational map still contains information that would be useful such as the extent of threatened species habitat. The EPA could use this information to inform a risk assessment. Similarly, the EPA could also use information from previous regulatory actions undertaken in the Western IFOAs to determine key risk factors.

3.2 EPA staff qualifications, guidance and training

The EPA developed additional training as part of its realignment

The EPA developed and implemented an organisational realignment between December 2019 and April 2020. Rather than having specialised areas, such as waste management, hazardous materials, chemicals, radiation, contaminated sites and the forestry branch, the EPA moved towards a functional model which put people with like functions together such as operational staff or regulatory practice staff. As part of the realignment, the EPA undertook to train all relevant compliance staff in how to undertake forestry inspections. The EPA recognised that incomplete guidance, support or training could result in the inconsistent application of its forestry inspection framework.

In response to this need, the EPA has developed training programs covering forestry. The first is the 'Introduction to Native Forestry Regulation in NSW' course, available to staff members as five online modules. These modules cover:

- An overview of the EPA's role in forestry
- Determining regulatory responsibility for native forestry operations
- Responding to complaints about forestry
- Preparing for a native forestry inspection
- Conducting a native forestry inspection.

This course acts as an introduction to both private and public native forestry for officers. The course sets out the regulatory framework but does not go into detail about the requirements of the IFOAs. The modules on preparing and conducting inspections set out the steps that must be taken, but do not go into detail about the way that inspections are undertaken in practice.

In addition to this course, the EPA runs a range of training for its inspection staff. This includes the authorised officer training, which covers information relevant to all the EPA inspections such as evidence collection, an overview of key data sources, and how to decide on an appropriate regulatory response. Having this training encourages a consistent understanding of how to conduct the EPA's regulatory activities and provides a baseline level of knowledge for compliance staff.

To supplement these introductory courses, the EPA has also developed a 'Forestry Skills and Capability Program'. This is a multiple-day, in-person training course that includes visits to a State Forest and explanations of how to undertake some forestry inspection activities. It covers several key risk areas, such as exclusion zones, road and track drainage, and retained trees. This training also covers how to use some key technology, such as graphical information system data. The course is taught by EPA personnel who were part of the former forestry branch. In this way, the Forestry Skills and Capability Program serves to supplement the introductory material of the Introduction to Native Forestry Regulation in NSW and the authorised officer introductory course.

Most EPA compliance staff have introductory training in the regulation of forestry, but few have more advanced training

As noted above, the EPA undertook to train all relevant compliance staff in forestry compliance. The EPA did not provide this additional training to staff who were part of the former forestry branch as they were deemed to not require the training. As of October 2022, 84.7% of relevant EPA compliance staff who were not part of the former forestry branch had completed the Introduction to Native Forestry Regulation training course. The remaining staff had either not completed any of the course or had completed only the first module. While some of the staff who have not completed the training are in the Metropolitan or Western regions, where proactive forestry operations are not as common, other staff are in regions where proactive and reactive forestry inspections are part of the normal regulatory workload.

The number of staff that have completed the Forestry Skills and Capability Program is limited. It is run in-person and is a multi-day training course. Thirty EPA staff attended the course in 2022, primarily staff from the South and West of the state. The former forestry branch was based in the North of the state and as such there are more suitably qualified or experienced staff in that area. The EPA advised that further sessions of the course are planned throughout 2023, also targeting staff in the South and West of the state.

The low numbers of staff undertaking the Forestry Skills and Capability Program limits the number of staff who are capable of undertaking forestry inspections. The EPA is able to supplement this number with staff who were part of the former forestry branch, though not all of these staff are still in compliance positions. Increasing its staff completion rates for this training would help the EPA to ensure that its staff have a consistent understanding of the regulation of public native forestry. In addition, increasing the number of staff who undertake the Forestry Skills and Capability Program would increase the number of staff that have appropriate skills to undertake field inspections.

All EPA inspections examined were carried out by appropriately trained or experienced staff

The audit examined information relating to a number of EPA inspections to determine who had carried out those inspections and whether these staff had appropriate training or were experienced in undertaking forestry inspections. In all cases examined in the audit, inspections were led by appropriately trained or experienced staff, or these staff were part of the inspection team.

A significant number of inspections were led by staff members who are former members of the forestry branch. It is reasonable to expect these staff to be sufficiently experienced to carry out the inspections. Most other inspections examined in this audit were led by staff who had completed the Forestry Skills and Capability Program training course.

The audit identified a small number of instances of staff members leading inspections who had not completed the Forestry Skills and Capability Program and who did not have experience leading inspections of forestry sites. EPA inspections have more than one officer present. In all examined cases where the lead officer was not appropriately trained or experienced, there was another EPA officer present who had completed the Forestry Skills and Capability Program or who was a former member of the forestry branch. This means that appropriate officers were available at the site of the inspection in all examined cases.

The EPA has developed guidance material for staff covering the Coastal IFOA requirements

In order to effectively regulate the technical aspects of native forestry, it is important for the EPA to develop guidance material for staff that set out what the requirements are and how to check whether they are being complied with. The EPA has developed guidance for staff to advise them on how to undertake specific aspects of forestry inspections under the Coastal IFOA. In addition to forestry-specific guidance, the EPA has developed a range of guidance for undertaking inspections in general, which encourage behaviours like consistent record keeping.

Examples of the guidance developed by the EPA include guidance on determining whether tree retention, rocky outcrops and road crossings meet Coastal IFOA requirements. Each piece of guidance material the EPA has developed includes the relevant requirements of the Coastal IFOA, how to prepare for an inspection, the procedures for assessing sites against the Coastal IFOA requirements, and the steps to take after an inspection. This ensures the tools assist with promoting consistency across the EPA's forestry inspections under the Coastal IFOA.

While the EPA has developed guidance for regulating operations covered by the Coastal IFOA, it has not developed guidance material covering the Western IFOAs. This lack of guidance could result in an inconsistent understanding of the requirements of the three Western IFOAs, which may lead to inconsistent regulatory outcomes. The EPA has advised that, while the Coastal IFOA identifies where guidance is required, the Western IFOAs already incorporate this prescriptive detail reducing the need for additional guidance.

In addition to the written guidance, EPA officers can request information from specialist branches, as well as external experts, which provide technical advice on all matters that the EPA regulates, including forestry.

3.3 EPA collection and use of information to inform its public native forestry compliance activities and program

The EPA collects the information it needs from FCNSW to conduct inspections

The EPA collects the information it needs to undertake its public native forestry inspections. At the planning stage of an inspection, the EPA will collect harvest plans and other public-facing information from FCNSW. Under the Coastal IFOA, FCNSW is required to upload relevant plans to its public-facing portal at least two days prior to harvesting. The EPA utilises these harvest plans and related information such as maps to inform its inspection plans.

The EPA also uses a range of other data to inform its inspections, including GPS data. It utilises its Forestry Operations Viewer, which is an application that displays key geographical information, including the mark-up that FCNSW had undertaken prior to harvest, in areas covered by the Coastal IFOA. This information can then be cross-referenced with what EPA staff identify in the field. Where relevant, EPA staff also use public complaints to inform the inspection plan to help ensure they follow-up on the issues raised in the complaint.

If the EPA identifies potential non-compliances during an inspection, it most commonly issues FCNSW with either a 'Notice to Provide Information and Records' or a 'Show Cause' letter. A statutory 'Notice to Provide Information and Records', with which FCNSW must comply, will require FCNSW to provide information and/or records to the EPA. A 'Show Cause' letter will invite FCNSW to explain why the EPA should not take regulatory action in response to a matter that has come to the EPA's attention. FCNSW consistently complies with notices and responds to 'Show Cause' letters.

The EPA prioritises inspections of high and medium-risk sites

The EPA has undertaken the number of inspections shown in Exhibit 6 over the past three financial years. As can be seen, the EPA's inspections were targeted towards high and medium-risk sites in 2020–21 and 2021–22 while also ensuring some coverage of low-risk sites. If there are complaints about areas rated as low or medium-risk, the EPA may inspect the areas relating to those complaints, meaning that there will be a degree of coverage of lower-priority harvest sites.

Exhibit 6: EPA inspection numbers and prioritisation

	2019–20	2020–21	2021–22
Number of inspections	71	84	52
High risk sites	8*	38	23
Medium risk sites	24*	20	17
Low risk sites	0*	14	11

* Note that the ERAT was introduced mid-way through this financial year, so data is incomplete.

Source: EPA inspection data. Low, medium and high-risk sites may be less than number of inspections as some inspections will be in places not covered by the ERAT, such as the Western IFOAs.

The EPA has not inspected every site identified as high-risk in the last three years. There are reasons that inspections may not be taking place. For example, it may be that harvesting has been suspended at a particular site or harvesting has not sufficiently progressed to warrant an inspection. While not every site is inspected, it is clear that the EPA is prioritising the inspection of high-risk sites and some medium-risk sites based on the results of the ERAT.

Some EPA offices do not have the necessary equipment to undertake forestry inspections

To ensure that they have the capacity to undertake inspections of native forestry sites, it is vital for the EPA to ensure that staff have the appropriate equipment available to field staff. Not all staff have access to the specialist equipment required for forestry inspections. For example, in order to access FCNSW's MapApp data, EPA staff require access to an internet-enabled tablet with the correct program installed. Some offices do not have a tablet available to staff for this purpose, meaning that staff may have to bring their own tablets from home to access this information. Data provided by the EPA highlighted the limited availability of tablets at some relevant regional offices.

Similarly, not all regional field staff in areas with forestry operations have access to other forestry specific equipment such as specialised tapes for measuring tree diameter, range finders, dendrometers and snake bite kits.

The EPA largely maintains consistent records of its forestry inspections and responses to complaints

This audit examined a sample of inspections and responses to complaints. The EPA largely maintained consistent records of these across the examined sample. The EPA was able to locate all requested information on its systems, except for one inspection from 2021 which was unable to be located. Maintaining consistent and accessible records is important to ensure that information about decisions is available to review.

The EPA utilises templates for inspection planning and reporting which were used in most examined instances. These templates are filled out by staff prior to, or following, an inspection as appropriate. Some inspection plans and reports contain more detailed information, which is useful for determining what was examined as part of any given inspection. In addition, if regulatory actions are required, the EPA maintains templates for these as well to ensure consistency of language across the organisation.

The EPA conducts inspections in response to forestry complaints where warranted, but does not always do so in a timely way

The audit examined a sample of complaints to the EPA about forestry operations to determine the EPA's response to those complaints. The EPA conducted inspections in response to most of these complaints and resolved the remaining complaints in other ways, such as through an information request from FCNSW or through a desktop assessment. After conducting its initial inspection, in some circumstances the EPA conducted multiple follow-up inspections or sought further information from FCNSW. The EPA often communicated with the complainant directly to receive further information or to inform them of the outcome of the inspection, but in some cases the EPA had not yet communicated the outcome to the original complainant.

The EPA's inspections in response to complaints are not always undertaken in a timely manner, noting it has not established expected timeframes for such a response. It is important to conduct inspections shortly after complaints are received in a forestry context, as the natural environment may change and compromise potential evidence. For the complaints examined as part of this audit, the time from the EPA receiving a complaint to conducting an inspection ranged from eight days to approximately 40 days. The EPA may undertake a number of actions prior to inspecting a site, so these figures should not be interpreted as the EPA making no progress. In addition, the timeliness of the EPA's response must be understood in the context of the EPA's overall complaint handling, which requires them to respond to complaints across a wide range of areas each year.

The EPA utilises a range of regulatory interventions in response to identified non-compliances

The EPA has available to it a variety of possible regulatory responses to any identified non-compliances. These range from conducting education programs about a non-compliance with FCNSW and contractors, through to issuing a penalty or undertaking court action against FCNSW. The EPA has set out its approach to using these regulatory interventions in its Regulatory Strategy, Regulatory Policy and Prosecution Guidelines. Exhibit 7 shows the number of regulatory responses of each type undertaken by the EPA.

Exhibit 7: Number of regulatory interventions per year

Notice type	2018–19	2019–20	2020–21	2021–22
Advisory letter	6	3	6	2
Voluntary action request	--	--	3	--
'Show Cause' letter	7	8	7	7
Formal warning letter	6	1	1	2
Official caution	3	2	7	1
Clean up action	1	7	--	--
Stop work order	--	--	1	--
Penalty notice	2	3	7	4

Source: EPA data.

In many cases, the same harvest site could be the subject of several regulatory responses, for example a 'Show Cause' letter may be issued as part of an initial inspection and then, after the FCNSW response is received, a penalty notice may be issued. Similarly, multiple penalty notices may be issued for a single site.

The time between conducting an inspection and undertaking regulatory actions can be lengthy. Often, the EPA undertakes regulatory actions six months or more after an inspection occurs. In one case examined for this audit, the EPA finalised its regulatory action two years after identifying non-compliances. Throughout much of this period, the EPA was seeking information from FCNSW, however there was a nine-month gap between FCNSW responding to the EPA's last letter and the EPA's decision to issue official cautions. While it is appropriate for the EPA to take time to consider information provided, these long response periods can lead to uncertainty for FCNSW and the public about regulatory actions.

When it comes to court action, the EPA has up to one or two years following the identification of non-compliances to commence court proceedings, depending on the legislation allegedly breached. If the period required for court action is included, this means that some incidents are not resolved until three to four years after the non-compliance is identified.

3.4 EPA guidance to assist FCNSW staff and contactors in meeting regulatory requirements

The EPA has released guidance on a selection of topics to clarify parts of the Coastal IFOA

As part of its regulatory approach, the EPA will sometimes release further guidance notes for FCNSW to clarify aspects of the regulations. Most guidance provided by the EPA is required under the Coastal IFOA. These guidance documents are intended to assist decision-making for those conducting and regulating forestry operations under the Coastal IFOA conditions and protocols.

As part of the Coastal IFOA, the EPA is required to release guidance on the identification of hollow-bearing trees and the spacing for road and track drainage. The hollow-bearing trees guidance note goes into extensive detail about the definition of a hollow-bearing tree and how hollows may be identified. The spacing for road and track drainage guidance provides tables setting out the maximum spacings for road and track drainage. These guidance notes are not intended to replace or modify the Coastal IFOA conditions or protocols.

The EPA has also released guidance on measuring stump diameter and has draft guidance about the identification of a native species of fauna. These guidance notes are not required under the Coastal IFOA. The EPA has provided the additional information beyond what is stated in the Coastal IFOA to assist with the implementation of the Coastal IFOA conditions.

In addition to releasing guidance notes, the EPA may prepare protocols for adoption in the Coastal IFOA. These protocols support the Coastal IFOA Conditions, which may only be altered by the agreement of both the Minister for Agriculture and the Minister for the Environment. The EPA has only updated the protocols twice since they were published, once in November 2019 and once in March 2020. The November 2019 changes were made to address some drafting errors and inefficiencies, as well as some changes to the transitional arrangements relating to moving from the former IFOAs to the Coastal IFOA. The March 2020 change clarified the meaning of 'koala intermediate use areas' and further updated transitional arrangements.

The EPA and FCNSW are not implementing all elements of a Memorandum of Understanding that aims to promote a cooperative relationship between the agencies

In December 2019, the then chief executives of FCNSW and the EPA signed a Memorandum of Understanding (MoU) setting out how the two organisations would develop a cooperative relationship, especially regarding the achievement of principles of ecologically sustainable forest management. The MoU sets out the governance arrangements that the EPA and FCNSW will put in place to ensure this cooperation. This includes establishing a senior officers group that meets at least quarterly.

As set out in the MoU, the role of the senior officers group is to consult on:

- the effectiveness and efficiency of IFOA settings, including Conditions, Protocols and supporting guidance (including any matters of interpretation that may arise)
- strategic issues arising from regulatory or operational practices or functions
- strategic issues of a scientific nature
- areas of co-operative research and joint initiatives
- training initiatives.

The senior officers group's role in consulting on guidance provides an avenue for the EPA and FCNSW to identify and potentially address areas of differing interpretation. While the senior officers group does meet monthly and discusses a wide range of topics that fall into the above areas, it only rarely discusses the interpretation of the IFOA settings. The audit team was advised that the senior officers group had formed a technical working group to fulfil this purpose in late 2022 but evidence was not provided about the scope of the technical group's purpose or discussions.

While there are some areas where the EPA has released more detailed guidance about its interpretation of the Coastal IFOA protocols, there remain areas where the EPA and FCNSW disagree or are uncertain about the interpretation of some conditions and protocols. As such, it is important for both agencies to have an avenue to discuss matters of interpretation and to work collaboratively to identify where guidance may be required. While it may not always be appropriate to resolve this matter through the use of the senior officers group or another mechanism set out in the MoU, fully implementing the MoU may allow for some matters to be more easily identified and resolved.

In addition to the senior officers group, the MoU also commits FCNSW and the EPA to establishing regionally focussed operational groups. The role of these operational groups is to consider compliance trends, operational implementation and regional issues of an operational nature. There is no evidence that these groups have been formed or are meeting. These groups could provide a useful avenue for regionally specific issues to be raised and addressed or escalated as appropriate.

3.5 EPA measurement and reporting on the effectiveness of its regulatory activities

The EPA reported that it achieved its output target in three of the last five years

Prior to the 2022–23 financial year, the EPA was using one performance indicator for its public native forestry activities. The EPA’s target for forestry activities was to assess 95% of high-risk native forestry operations for compliance. For the purpose of this indicator, the EPA combined private and public native forestry compliance activities.

As demonstrated in Exhibit 8, the EPA reported that it achieved its forestry target in three of the last five years. However, as noted above, the EPA does not assess sites covered by the Western IFOAs for risk. If the EPA cannot demonstrate that it is identifying all high-risk sites, then it is not possible to determine whether 95% of high-risk native forestry operations have been assessed for compliance.

Exhibit 8: EPA’s reported performance against its forestry target of assessing 95% of high-risk native forestry operations for compliance – 2017–18 to 2021–22

Year	Result against performance indicator
2017–18	82%
2018–19	98%
2019–20	100%
2020–21	90.9%
2021–22	100%

Source: EPA annual report 2021–22. Figures not audited.

A key limitation of this performance indicator is that it is only a measurement of outputs. Output indicators are useful for measuring the amount of work undertaken, but they do not allow for the measurement of how effectively an organisation is using those resources. Outcome indicators measure an activity’s impact on an organisation’s objectives. In the case of the EPA’s native forestry activities, this may include the extent to which regulatory activities are leading to an improvement in a regulated entity’s performance.

The EPA has developed a new set of performance indicators, but there are some limitations and risks with these new indicators

The EPA has developed new performance indicators for the 2022–23 financial year for its forestry compliance activities. The EPA has developed separate indicators for private and public native forestry, which allow for a more detailed understanding of performance in the organisation. The EPA has developed the following three performance indicators for public native forestry:

- 95% of high-risk Crown Forestry⁷ operations are assessed as having no major non-compliances with the relevant IFOA
- 100% of Crown Forestry operations are assessed
- 95% of high-risk Crown Forestry operations are inspected.

The first of these targets may allow the EPA to determine the effectiveness of its regulatory operations by measuring and observing trends over time. However, there is a potential perverse incentive to this performance indicator as the presence of the indicator could discourage officers from identifying and recording major non-compliances, or could lead to re-categorising major non-compliances as minor non-compliances. The audit did not identify any instances of this occurring, however the EPA needs to ensure that this risk is monitored and appropriately controlled.

⁷ Note that EPA refers to public forestry as ‘Crown Forestry’.

These performance indicators have the same limitation as was noted above for the former performance indicators. If the EPA does not assess the Western IFOAs to determine whether they are high-risk, it is not possible to determine whether the EPA is achieving its targets that relate to high-risk sites.

The EPA collects information to allow the measurement of these performance indicators. The EPA maintains dashboards that shows all key information required to measure these performance indicators and allows for customisation that could be used to assess performance against these indicators. The EPA reports on these indicators on a quarterly basis.

As the indicators outlined above are new for the 2022–23 financial year, it was not possible to assess the EPA's performance against these targets at the time of this audit.

Section two

Appendices

Appendix one – Responses from agencies

Response from Forestry Corporation of NSW



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13/06/2023
Ref No.: F22/216

Margaret Crawford PSM
Auditor-General for NSW
GOP Box 12
Sydney NSW 2001
E: mail@audit.nsw.gov.au

Dear Ms Crawford

Thank you for your correspondence of 16 May 2023 regarding the final report of the Performance Audit on native forest regulation.

Forestry Corporation has significantly increased its efforts in compliance over the past three years through investment in additional resources, training and technology, and is confident its Forest Management System, which is independently audited on a regular basis, is a solid base for the appropriate procedures and practices to ensure ongoing compliance with the Integrated Forestry Operations Approvals.

Forestry Corporation monitors compliance at multiple levels through on-ground monitoring; quality assurance assessments; and independent thematic and end-to-end internal audits.

The Forest Management System is predicated on continuous improvement and Forestry Corporation will carefully consider the findings and recommendations to pursue any opportunities to improve the compliance framework. Please see overleaf for our responses to the recommendations (Attachment 1).

I would like to thank the team from the Audit Office of NSW for their professionalism and collaborative approach during this audit. The Corporation appreciated the opportunity to meet regularly with your staff during the audit and provide feedback and clarification as required.

If you have any further queries please contact Dr Ross Dickson, General Manager of Governance and Assurance at _____ or via phone at _____

Yours sincerely

A handwritten signature in blue ink, appearing to read "Anshul Chaudhary".

Anshul Chaudhary
CEO

Attachment 1 – Forestry Corporation response to recommendations 13 June 2023

Recommendation	Comment
Ensure all staff have completed relevant training in regulatory requirements to support their work, including the requirements of Integrated Forestry Operations Approvals	As the report noted, the vast majority of relevant staff have been trained as required under the IFOAs. Training programs are run regularly and Forestry Corporation is finalising its training program for future years. Forestry Corporation expects to complete any outstanding training for existing staff performing tasks under the CIFOA over the coming year. Forestry Corporation also has a training module for all staff focused on its Forest Management System.
Ensure consistent data capture of quality assurance assessments, including consistently recording the reason for a 'fail' and confirming whether it has been addressed	Forestry Corporation recognises the opportunity for improvement in the consistency of data capture and will address this through a review of the relevant Standard Operating Procedures.
Improve the consistency of its quality assurance assessment process by developing guidance for the southern and Western regions and monitoring the implementation of guidance by staff across all regions	Forestry Corporation recognises this opportunity for improvement. The Standard Operating Procedure concerning Quality Assurance Audits (QAAs) developed for the north coast is currently being reviewed for application to the south coast and western regions.
More effectively target its compliance and monitoring activities by: <ul style="list-style-type: none"> • targeting compliance activities on the basis of highest risk • collating quality assurance assessment data to identify potential sources of risk and focussing on these activities as part of compliance and monitoring activities 	<p>Forestry Corporation does consider the risks in targeting its compliance and monitoring activities at native forest harvest sites and will work to document these processes and decisions more clearly.</p> <p>The compliance monitoring framework for native forests includes multiple tiers of assurance. QAAs are just one tier and are primarily intended to identify and ensure rectification of any potential compliance issues as well as monitor other aspects of contractual arrangements like safety and commercial performance.</p> <p>Forestry Corporation will consider how compliance monitoring data can feed into the risk assessment process.</p>
Measure its overall rates of compliance to determine if it is meeting its target of 100% compliance.	Forestry Corporation will consider what metrics it could use to better report against compliance targets.
Fully implement the signed Memorandum of Understanding setting out the approach both agencies will take to developing a cooperative relationship	Forestry Corporation and the EPA have already commenced discussions on implementation of the MOU more fully and Forestry Corporation is committed to pursuing these opportunities for a cooperative relationship.

Response from NSW Environment Protection Authority



Your ref: D2307862
Our ref: DOC23/414827

Margaret Crawford PSM
Auditor General for New South Wales
Audit Office of NSW
Level 19, Darling Park Tower 2,
201 Sussex Street, Sydney NSW 2000

13 June 2023

By email: mail@audit.nsw.gov.au

Dear Ms Crawford

Thank you for your correspondence on 16 May 2023 regarding the final Report of the Performance Audit on Regulation of Public Native Forestry. I am grateful for the opportunity to respond to this final Report on this important matter.

Having reviewed the Report in detail, I am pleased to advise that the NSW Environment Protection Authority (EPA) accepts each of the recommendations in the Report pertaining to the EPA, as well as the one recommendation applying to both Forestry Corporation of NSW (FCNSW) and the EPA.

In relation to recommendation 6, concerning risk assessments of Western Integrated Forestry Operations Approval (IFOA) areas, the EPA will document its decision-making process for assessing the risk ratings of the Western IFOAs.

In relation to recommendation 7, relating to the number of staff available to conduct forestry inspections, the EPA will continue to conduct the Forestry Skills Development Program, which will increase the number of staff trained to a high degree.

In relation to recommendation 8, relating to ensuring that the EPA's operational staff have the equipment necessary to undertake forestry operations, we will undertake an audit of all forestry equipment to ensure all officers have access to all necessary equipment.

In relation to the joint recommendation that FCNSW and the EPA fully implement the signed Memorandum of Understanding setting out the approach both agencies will take to develop a cooperative relationship, we will continue to discuss further with FCNSW.

Lastly, I would like to thank you for the collaborative approach your office has taken by engaging with us through various stages of the audit process. I would like to acknowledge that the interactions with your team have been collegiate and professional, and I'd like to commend the Audit Office staff on their transparent and cooperative approach.

Yours sincerely

A handwritten signature in black ink that reads 'Tony Chappel'.

TONY CHAPPEL
Chief Executive Officer

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Appendix two – About the audit

Audit objective

This audit assessed how effectively Forestry Corporation of NSW manages its public native forestry activities to ensure compliance, and how effectively the Environment Protection Authority regulates these activities.

Audit criteria

We addressed the audit objective by examining the following lines of inquiry and criteria:

1. FCNSW ensures that public native forestry operations comply with the relevant regulatory requirements.
 - FCNSW has a compliance strategy and program setting out its obligations and how they will be managed, and these are reflected in management plans and other key documents.
 - FCNSW ensures that its staff and contractors have appropriate qualifications and training to enable them to meet regulatory requirements.
 - FCNSW coordinates and monitors forestry operations and contractors to ensure compliance with the IFOAs, operational plans and relevant regulatory requirements.
 - FCNSW effectively responds to potential instances of non-compliance (identified by it, the EPA and others) and takes steps to avoid repeat issues.
 - FCNSW measures and reports on its compliance with IFOAs and other regulatory requirements.
2. The EPA effectively regulates public native forestry activities.
 - EPA is implementing an effective compliance strategy and program for public native forestry activities.
 - EPA ensures that its staff have appropriate qualifications, guidance and training to carry out their public native forestry compliance activities effectively.
 - EPA collects and uses the necessary information to inform its public native forestry compliance activities and program.
 - EPA provides guidance, where appropriate, to assist FCNSW staff and contractors in meeting IFOA conditions and other regulatory requirements.
 - EPA measures and reports on the effectiveness of its regulatory activities.

Audit scope and focus

This audit focused on FCNSW's management of public native forestry operations across all four IFOA regions and the EPA's regulation of those operations.

The audit examined:

- FCNSW's management of harvesting contractors, including subcontracted harvesters
- EPA's compliance activities in relation to all IFOAs and related legislation
- details of the EPA's compliance and enforcement activities for public native forestry
- mapping and GPS data in relation to harvest planning and forestry operations.

Audit exclusions

The audit did not examine:

- private native forestry operations
- plantation forestry operations
- FCNSW's management of contractors other than harvesting activities
- EPA regulatory activities outside of public native forestry operations
- compliance with WHS obligations
- development of IFOA conditions for the Coastal IFOA
- development of the three Western IFOAs
- sustainable yield modelling.

Audit approach

Our procedures included:

1. Interviewing key staff at FCNSW and the EPA, including:
 - staff responsible for developing and implementing compliance strategies and programs
 - staff responsible for developing harvest plans
 - staff responsible for training development
 - staff responsible for conducting inspections and compliance monitoring
 - staff responsible for performance measurement.
2. Examining documentation, including:
 - compliance strategies and programs
 - staff training records and courses
 - a sample of harvest plans
 - a sample of compliance data from harvest sites
 - a sample of FCNSW agreements with contractors
 - a sample of complaints handled by the EPA
 - a sample of EPA inspections.
3. Analysing data sourced from FCNSW and the EPA.
4. Fieldwork visits to a selection of State Forests.

The audit approach was complemented by quality assurance processes within the Audit Office to ensure compliance with professional standards.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standard ASAE 3500 Performance Engagements and other professional standards. The standards require the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with requirements specified in the *Government Sector Audit Act 1983* and the *Local Government Act 1993*.

Acknowledgements

We gratefully acknowledge the cooperation and assistance provided by Forestry Corporation of NSW and the NSW Environment Protection Authority.

Audit cost

The estimated cost of the audit is \$424,000.

Appendix three – Performance auditing

What are performance audits?

Performance audits determine whether State or local government entities carry out their activities effectively and do so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of an audited entity, or more than one entity. They can also consider particular issues which affect the whole public sector and/or the whole local government sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in section 38B of the *Government Sector Audit Act 1983* for State government entities, and in section 421B of the *Local Government Act 1993* for local government entities.

Why do we conduct performance audits?

Performance audits provide independent assurance to the NSW Parliament and the public.

Through their recommendations, performance audits seek to improve the value for money the community receives from government services.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, State and local government entities, other interested stakeholders and Audit Office research.

How are performance audits selected?

When selecting and scoping topics, we aim to choose topics that reflect the interests of parliament in holding the government to account. Performance audits are selected at the discretion of the Auditor-General based on our own research, suggestions from the public, and consultation with parliamentarians, agency heads and key government stakeholders. Our three-year performance audit program is published on the website and is reviewed annually to ensure it continues to address significant issues of interest to parliament, aligns with government priorities, and reflects contemporary thinking on public sector management. Our program is sufficiently flexible to allow us to respond readily to any emerging issues.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing.

During the planning phase, the audit team develops an understanding of the audit topic and responsible entities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the audited entity, program or activities are assessed. Criteria may be based on relevant legislation, internal policies and procedures, industry standards, best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork, the audit team meets with management representatives to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with management representatives to check that facts presented in the draft report are accurate and to seek input in developing practical recommendations on areas of improvement.

A final report is then provided to the head of the audited entity who is invited to formally respond to the report. The report presented to the NSW Parliament includes any response from the head of the audited entity. The relevant minister and the Treasurer are also provided with a copy of the final report. In performance audits that involve multiple entities, there may be responses from more than one audited entity or from a nominated coordinating entity.

Who checks to see if recommendations have been implemented?

After the report is presented to the NSW Parliament, it is usual for the entity's Audit and Risk Committee/Audit Risk and Improvement Committee to monitor progress with the implementation of recommendations.

In addition, it is the practice of NSW Parliament's Public Accounts Committee to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report received by the NSW Parliament. These reports are available on the NSW Parliament website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian standards.

The Public Accounts Committee appoints an independent reviewer to report on compliance with auditing practices and standards every four years. The reviewer's report is presented to the NSW Parliament and available on its website.

Periodic peer reviews by other Audit Offices test our activities against relevant standards and better practice.

Each audit is subject to internal review prior to its release.

Who pays for performance audits?

No fee is charged to entities for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

OUR VISION

Our insights inform and challenge government to improve outcomes for citizens.

OUR PURPOSE

To help Parliament hold government accountable for its use of public resources.

OUR VALUES

Pride in purpose
Curious and open-minded
Valuing people
Contagious integrity
Courage (even when it's uncomfortable)

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