



## CORPORATE POLICY STATEMENT NO. 11

### REGULATION OF THE FOREST PRODUCTS INDUSTRY

August 2015

#### 1. OBJECTIVE

To establish a regulatory system for the forest products industry in Western Australia that:

- facilitates achievement of ecologically sustainable forest management (ESFM) outcomes;
- achieves compliance with mandatory standards;
- minimises compliance costs;
- enhances effectiveness of compliance and improves the efficiency of the compliance regime over time; and
- enhances community confidence in the management of public forests for a range of values.

#### 2. SCOPE

This policy applies to the regulation of the establishment, growing and harvesting of forest products from native forests and plantations on State forest and timber reserves, and freehold land held in the name of the Conservation and Land Management Executive Body, within the geographic area of the Swan, South West, Warren, Wheatbelt and South Coast regions of the Department of Parks and Wildlife (the department).

The *Forest Products Act 2000* (FP Act) describes the functions of the Forest Products Commission (FPC), which include the harvesting and sale of the allowable harvest of forest products from these land categories. In the context of this policy, the FPC and its contractors represent the forest products industry.

The policy does not cover other commercial activities such as wildflower picking, beekeeping and seed collection carried out on these land categories. Sandalwood harvesting in the State's rangelands occurs largely outside the geographic scope of this policy and is governed by the *Sandalwood Act 1929*. It is also excluded.

#### 3. CONTEXT

Management plans under the *Conservation and Land Management Act 1984* (CALM Act) set out various goals and activities that are proposed to achieve those goals. Approved management plans for areas of State forest and timber reserves provide for an allowable harvest of various products from native forests, and outline the conditions applicable to timber harvesting from native forests and plantations, so that forest products are produced in a manner that also protects other forest values and uses. The main management plan in regard to the forest products industry is the forest management plan (FMP).

While the success of a regulation system should ultimately be judged on the achievement of desired outcomes, there are certain operating procedures that must be followed and standards that must be met. In these cases, the regulatory system must not only ensure that compliance is achieved, but also demonstrate that it has been achieved.

One of the purposes of timber harvesting stated in the FMP is to achieve economic and social goals from the use of forest products. Regulation is a cost of timber production and regulation that is inefficient or does not achieve its objective lessens the economic and social return that the State achieves from that use of the forest.

A regulatory system that encourages improvements in workplace capability will help to ensure that there is continuous improvement in work practices. The more skilled and knowledgeable forest planners, operators and supervisors are, the greater is the likelihood of achieving desired environmental and other outcomes, and the faster that improvements in practices can occur. These improvements are likely to be more meaningful if measured by outcomes, rather than if assessed predominantly in terms of how strictly a particular process is followed.

The department, as regulator of the forest products industry in publicly owned forests, represents the community and as such, must be able to give the community assurance that its interests in the social, economic and environmental outcomes from the harvesting of forest products, are recognised and realised. The development and publication of this policy fulfils one aspect of maintaining public confidence. It is also appropriate that the results of monitoring of performance are made available to the public.

A regulatory system or approach can comprise several elements that are prescription-based, performance-based or process-based (refer to the glossary, Appendix 1). Although the emphasis on different elements may differ depending on the circumstances, as noted above, ultimately it is important to focus on achievement of desired outcomes.

Further information relevant the context of this policy is at Appendix 2.

#### **4. LEGISLATION**

The key legislation relevant to this policy includes:

- *Conservation and Land Management Act 1984*
- *Wildlife Conservation Act 1950*
- *Forest Products Act 2000*

#### **5. POLICY**

For its regulatory management framework for the forest products industry, the department will:

##### **5.1 Adopt the 'cooperative compliance' model of regulation**

The department will cooperate and consult with the FPC (who will represent the interests of its contractors) on the development and implementation of regulation strategies. A cooperative approach allows the department and the FPC to use

resources more effectively by freeing more staff time to focus on improving performance. A cooperative approach requires the department and the FPC to:

- commit to build a positive professional relationship;
- recognise that building understanding does not preclude different views or disagreement on compliance matters;
- commit to working together to design solutions to resolving the underlying causes of compliance problems; and
- cooperate to verify and demonstrate to the community the extent to which expectations of compliance and the desired outcomes are being met.

## **5.2 Give emphasis to achievement of outcomes**

For each potential point in the forest products management cycle where regulation may be applied, a range of options can be considered. These include whether regulation is prescriptive, performance or process-based, or may include as appropriate self-regulation or co-regulation. The action or mix of actions judged by the department that generates the best net benefit for the community will be adopted. In many cases, the emphasis will be on achievement of desired outcomes, supported as necessary by reference to adherence to required standards.

## **5.3 Adopt monitoring and regulatory actions that are proportional to the potential risks posed by the operation**

The monitoring and regulatory actions adopted by the department will be commensurate with the department's assessment of the potential risks operations might pose to environmental values. Flexibility in approach to regulatory actions will enable the department and the FPC to respond to changes in environmental conditions and/or the technology involved in the key operational activities.

## **5.4 Promote self-regulation where appropriate**

Within the regulation framework, consideration will be given to placing the emphasis on capacity building, accreditation and self-regulation to achieve FMP outcomes, as deemed appropriate by the department. Self-regulation will help improve the capacity and effectiveness of staff of the department and the FPC by eliminating unnecessary duplication of effort.

## **5.5 Provide effective guidance to ensure the intent of the regulatory action and expected compliance requirements are clear**

The regulatory framework and its components will be documented to provide regulated parties and regulators with a common understanding of the objective of the regulatory action and the expected compliance, checking and reporting requirements.

## **5.6 Be transparent with regulatory design, actions and outcomes**

Relevant features of the design of and implementation process for the regulatory framework will be made publicly available.

## **5.7 Periodically review the regulatory policy, framework and actions**

The regulatory framework will be subject to periodic review by the department to ensure regulatory actions and instruments remain appropriate, relevant and are

improved as a consequence of experience. The department will also consider the need to exercise its regulatory functions (also see Policy Statements 6 and 57), and if required, seek to modify its powers for enforcement under applicable legislation.

## **6. STANDARDS**

Standards for the planning and operational requirements that apply to this policy are derived from the content of relevant legislation and policies, and are detailed in various guidelines, manuals, codes of practice and other key documents of the department, and relevant FPC documents endorsed by the department. Many are identified in the FMP.

## **7. POLICY IMPLEMENTATION STRATEGIES**

This policy will be read and understood by those staff of the department, the FPC and its contractors, who have responsibilities in the planning, supervision, regulation, checking, monitoring and auditing of the management of these activities and the harvesting and transport of forest products.

The following strategies will be adopted to implement the policy, aspects of which will be further detailed in formalised interagency working arrangements, which will supplement the interagency memorandum of understanding (MOU).

### **7.1 Regulatory documentation**

Documentation of a regulatory action will identify its objective, the nature of the action, criteria for success, reporting requirements and include identification of roles, responsibilities and authorities.

### **7.2 Key elements of an environmental management system (EMS) will be shared with the FPC**

For a cooperative approach to be effective, the features of an EMS that are important for the department and the FPC to have in common or share include:

- the risk identification and rating of elements of the forest products management cycle;
- shared access to policy and controlled guidance documents that are mutually recognised;
- use of a common incident management and corrective action system;
- coordinated monitoring and audit programs; and
- shared participation in the review and improvement process.

### **7.3 Regulation through phased planning, certification of the adequacy of planning and phased certification of the operation as completed**

A requirement for appropriate planning puts the onus on the regulated body to understand the nature of the risk and, through management, reduce it to an acceptable level. Planning will be certified as adequate prior to commencement of the operation and completed operations will be certified complete. At the discretion of the department, officers responsible for the certification may be employed by either the department or the FPC and will be appropriately trained and formally accredited by the department.

#### **7.4 Approval by Parks and Wildlife to access land for timber harvesting**

It is the department's responsibility to define the conditions and ultimately approve access to areas for timber harvesting and associated activities. The FPC has a right to access areas for approved operations, consistent with the conditions of access, which will be based on the environmental risk posed by the operation, as assessed by the department. Where operational performance has not met required standards, the department will seek from FPC demonstration of actions taken to both remediate any unacceptable impacts and to reduce the likelihood of future occurrences. The department will also consider past performance in considering approvals for access for subsequent operations.

#### **7.5 An integrated position will be sought with the FPC on the suite of existing Parks and Wildlife and FPC standards/guidance documents**

Guidance documents are required that provide clarity on compliance requirements and do not overlap or cause confusion about requirements, thus promoting the achievement of the required outcomes, and are accessible by staff of the FPC and the department from a single controlled source.

#### **7.6 A monitoring strategy based on risk and resources and a mechanism that allows all monitoring officers to take appropriate action on an operation that is causing unacceptable outcomes**

Monitoring is most effective when it is directed at the activities with the highest risk of unacceptable outcomes and action can be taken immediately to correct an unacceptable situation from continuing.

#### **7.7 Continuous improvement**

The department and the FPC will foster a culture where incidents are reported and investigated in a timely and open fashion, and lessons are incorporated into training and practices as soon as practicable, to minimise the potential for recurrence.

#### **7.8 An independent arbitration system to resolve disputes**

It is important for a cooperative system that where agreement cannot be reached, there is a mechanism that enables a decision to be made and accepted by both parties.

### **8. CUSTODIAN**

Director Forest and Ecosystem Management.

### **9. PUBLICATION**

This policy will be made available on the department's website and intranet.

### **10. KEY WORDS**

Regulation, forest products industry, cooperative compliance, timber harvesting.

### **11. REVIEW**

This policy will be reviewed no later than 30 June 2017.

**12. DIRECTOR GENERAL APPROVAL**

Approved by

A handwritten signature in blue ink, appearing to read "J Sharp", with a stylized flourish at the end.

Jim Sharp  
DIRECTOR GENERAL

Effective date: 20 August 2015

**GLOSSARY of TERMS as relevant to this policy**

Allowable harvest	The maximum volume, as specified in the forest management plan (FMP), of a particular native forest log type that can be harvested during the period of the FMP.
Compliance	Certification or confirmation that the doer of an action meets the requirements of accepted practices, legislation, prescribed rules and regulations, specified standards, or the terms of a contract.
Enforcement	Actions undertaken to exercise powers and promote adherence to rules. Also see the department's Corporate Policy Statement No. 57 - Enforcement and Prosecutions.
Forest products	As defined in the <i>Forest Products Act 2000</i> : viz. trees or parts of trees; timber, sawdust or chips; charcoal, gum, resin, kino or sap; and firewood, located on public land (but in the context of this policy, not public firewood collection).
Forest products industry	'Upstream' in-forest operations of the FPC and its contractors, including timber harvesting and log haulage, which supply logs to the wood processing industry.
Performance-based regulation	To regulate by focusing on defining the outcome standards that are to be achieved and leaving it to the regulated body to decide on the means employed to achieve the standard.
Prescription-based regulation	To regulate by focusing on prescribing input standards and the precise specification of the actions the regulated body needs to undertake to achieve compliance.
Process-based regulation	To regulate by requiring the regulated body have management processes that meet certain quality assured standards.
Regulation	The principle or rule (with or without the coercive power of law) employed in controlling, directing or managing an activity, organisation or system. The process of regulating.
Regulate	To govern or direct according to principles and rules.
Regulatory agency	Body formed or mandated under the terms of a legislative act (statute) to ensure compliance with the provisions of the act, and in carrying out its purpose.

## **FURTHER INFORMATION relevant to the CONTEXT of this policy**

### **Roles of Department of Parks and Wildlife and the Forest Products Commission (FPC) and the relationship between the agencies**

The *Conservation and Land Management Act 1984* (CALM Act) prescribes the management of State forest and timber reserves as a function of the department. As the land manager, the department has prime responsibility for ensuring that the social, economic and environmental outcomes sought in management plans (including the forest management plan (FMP)) are achieved, and one of the mechanisms it employs in this regard is to regulate the activities of the forest products industry. To a large extent, regulation of the forest products industry involves regulation of the activities of the FPC and its timber harvesting contractors.

The ideal situation for a regulator is when it has clear and objectively stated responsibilities, is independent of the body being regulated and has adequate enforcement powers; however, the relationship between the department and the FPC does not fully reflect this ideal. The CALM Act contains various provisions that are relevant to activities carried out by the FPC and its contractors on department-managed lands, although they are not specific to these activities.

Further, the department and the FPC are government agencies and through their respective Acts, they have different responsibilities within the forest products management cycle, but similar objectives in that both are required to apply the principles of ecologically sustainable forest management (ESFM) in undertaking their activities. The FPC is also directly involved in the implementation of the FMP, as the FMP gives it responsibility, both solely and jointly with the department, for activities that seek to facilitate various environmental, social and economic outcomes. In addition, various sections of the department provide services to the FPC to enable it to fulfil its forest products management role. A memorandum of understanding exists between the two agencies that seeks to clarify roles and responsibilities.

Given the regulatory roles of the FPC (regulatee) and the department (regulator), the particular nature of their respective legislation and their overlapping involvement in the achievement of ESFM outcomes, which require the two organisations to work in a cooperative manner, a different regulatory approach is required than if the organisations were fully independent from each other.

### **Meaning of regulation**

In the context of the department's regulation of the forest products industry, regulation refers to the principles employed, and the diverse range of instruments used, to influence or control the way the FPC and the department manage the forest products industry, in seeking to achieve various social, economic and environmental goals. Regulation includes the laws and rules that govern the behaviour of individuals and organisations, and the working arrangements between the department and the FPC that prescribe how various aspects of the process of forest management and harvesting and associated activities, including regeneration (native forests) and replanting (plantations), will be carried out.

### **Policy focus and approach – cooperative compliance**

The focus of this policy is on how best to achieve the social, economic and environmental outcomes with the most efficient use of the State's resources. Given the overlapping roles of the department and the FPC, as outlined above, the policy adopts the 'cooperative compliance' model of regulation<sup>1</sup>.

Cooperative compliance is where the regulator (the department) works with the organisations being regulated (the FPC and their contractors), using a range of techniques to enable them to work in a manner and to a standard that seeks to achieve the desired outcomes. The key to the 'cooperative compliance' model is that there is voluntary participation by the regulated bodies in the construction, operation and review of the regulatory regime. In this way, cooperative compliance aims to openly encourage the regulated bodies to know their obligations and accept responsibility for regulating their activities (in part).

Notwithstanding the approach described above, Policy Statement 6 (Management of Complaints) and Policy Statement 57 (Enforcement and Prosecution) remain relevant and may be applied as circumstances require. Department staff undertake monitoring of FPC activities to check if requirements are met, and in cases of non-compliance, there is a formal system to require corrective action from the FPC through the issuing of an incident report, works improvement notice or a management letter.

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<sup>1</sup> for an explanation of regulation theory, see Ayres, I. and Braithwaite, J., 1992, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford Univ. Press, New York.