

Environment Protection and Biodiversity Conservation Amendment
(Save the Koala) Bill 2020: Senate Environment and Communications
Legislation Committee Inquiry Submission

8 April 2021

Dear Committee Secretariat,

Thank you for the opportunity to make a submission to the inquiry into the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020 (the 'Bill'). I am happy for this submission to be made public at the Committee's website, and would be available to attend an Inquiry hearing if requested.

I ('the writer') am an Australian citizen (born and lived in NSW for some decades) who has observed marked change in the natural environment in the half-century since my family moved from Sydney to Bathurst on my 7th birthday in 1968. For most of my life I have resided outside Australia's major cities and have come to love the rural and natural landscapes of Eastern Australia's forested areas. However I am saddened by the ongoing degradation of those same landscapes through the unthinking neglect and sometimes deliberate depredation inflicted by we Australians.

I moved to Queensland's Wide Bay region in 2002 where I was first compelled to become involved in environmental advocacy by the destructive stupidity of the proposal to dam the Mary River at Traveston Crossing.

This submission is made on my own behalf only.

Summary

If passed into law, this Bill would remediate breaches, absences and failings under State Government regulation if any with regard to responsible stewardship of public lands on which native flora and fauna is available for exploitation.

Given

1. The strong overlap between known koala habitat and areas in which Regional Forestry Agreements apply, and
2. the failure of regulatory oversight of Regional Forestry Agreements according to the findings of the in Federal Court *Friends of Leadbeater's Possum Inc v VicForests* case

this Bill should therefore be accepted in its entirety and passed into law.

Detailed Discussion

Logging of native forests on public land is permitted under agreements between State and Federal governments called Regional Forest Agreements (RFAs). RFAs have several aims relevant to the environment, including:

1. [Providing] for the ecologically sustainable management (ESFM) and use of forested areas in the regions;
2. [Having] regard to studies and projects carried out in relation to environmental values, including old growth, wilderness, endangered species, National Estate

values and World Heritage values.

RFAs apply in native forests in all States other than South Australia and Queensland; South Australia does not have a native forestry industry, and Queensland has its own Comprehensive Regional Assessment scheme, which, while not involving agreement with the Commonwealth, is understood to be equivalent to an RFA for the purposes of the Act.

RFA's have not been without their critics.

In 2016 NSW's National Parks Association and Conservation Council jointly released a detailed report stating that "Regional Forest Agreements have failed to protect the environment" ¹. This report concludes with particular reference to koalas as follows:

"Koalas

"Koalas were not listed under the federal Environment Protection and Biodiversity Conservation Act (EPBC Act) during the signing of the RFAs. In 2012, koala populations in NSW, Queensland and ACT were listed under the EPBC Act after having being assessed as having undergone a population decline of 33% between 1990 and 2010 ². Despite knowing that many koala populations have been declining for decades³, and awareness of policy issues preventing effective action ⁴, recent research shows continued alarming declines in most koala populations in NSW ⁵. Our favourite animal is at risk of extinction, and logging is a big part of the problem. In March 2016 the NSW government declared 12,000ha of 'flora reserves' between the Bega and Bermagui rivers to protect the remaining koalas on the far south coast of NSW. This is an admission that logging and koalas don't go together. We need to protect all of our koalas by ending native forest logging across NSW."

ANU's Prof David Lindenmayer makes further authoritative criticism. In "Flawed forest policy: flawed Regional Forest Agreements", *Australasian Journal of Environmental Management*, (2018), 25:3, 258-266, DOI: 10.1080/14486563.2018.1466372 ⁶, Professor Lindenmayer argues that the objectives of RFAs have not been met with five key areas being unsuccessful. RFAs have:

¹ https://npansw.org.au/wp-content/uploads/2016/10/npa_regional-forest-agreements-have-failed-to-protect-the-environment.pdf, accessed on 5 April 2021.

² Woinarski, J. C. Z., Burbidge, A. A. & Harrison, P. L. The action plan for Australian Mammals 2012. (CSIRO, 2014).

³ Phillips, S. S. Population Trends and the Koala Conservation Debate. *Conservation Biology* 14, 650-659, doi:10.1046/j.1523-1739.2000.99387.x (2000).

⁴ Clark, T. W., Mazur, N., Cork, S. J., Dovers, S. & Harding, R. Koala Conservation Policy Process: Appraisal and Recommendations. *Conservation Biology* 14, 681-690, doi:10.1046/j.1523-1739.2000.99390.x (2000).

⁵ McAlpine, C. et al. Conserving koalas: A review of the contrasting regional trends, outlooks and policy challenges. *Biological Conservation* 192, 226-236, doi:http://dx.doi.org/10.1016/j.biocon.2015.09.020 (2015).

⁶ <https://www.tandfonline.com/doi/full/10.1080/14486563.2018.1466372>, accessed on 18 March 2021.

- (i) failed to protect biodiversity and maintain ecosystem processes;
- (ii) been characterised by poor governance and watered down forest protection;
- (iii) overseen a demonstrable lack of profitability of, and declining employment in, native forest logging industries;
- (iv) led to the over commitment of forest resources to wood production and
- (v) failed to account for other forest values that are often much greater than wood production.

Koalas are forest-dwelling animals widely distributed in regions of native forest in Queensland, New South Wales, Victoria and South Australia. Their estimated distribution is shown in Figure 1 ⁷.

Native forest subject to Regional Forestry Agreements is shown in Figure 2 ⁸; crucially, there is a notable overlap between habitat in which koalas are known to be present (Figure 1), and regions of Victoria, New South Wales and Queensland in which either Regional Forestry Agreements or (in Queensland) Comprehensive Regional Assessment apply.

By definition, forestry operations typically occur in relatively remote locations where monitoring and oversight may be costly or logistically difficult. In essence, this requires that the community must trust that logging operations comply with their regulatory obligations.

At its website, the respondent in the Federal Court action, VicForests, is described as “a State-owned business with an independent Board of Directors, and accountable to the Victorian Government through the Minister for Agriculture and Regional Development and the Treasurer” ⁹.

It is these Agreements (Assessment) that are relied upon to exempt forestry operations from provisions of the EPBC Act; a reliance on which, in the Federal Court *Friends of Leadbeater’s Possum Inc v VicForests* case, is demonstrated to be fallacious.

That is, the State Government of Victoria has a direct pecuniary interest in there being as few interruptions to VicForest’s operations as possible - and yet the same State Government is the regulator that has been found unable to ensure compliance with the Code in the logging operations by VicForest that were the subjects of the *Friends of Leadbeater’s Possum Inc v VicForests* case.

Figure 1: Koala Habitat Distribution map, Commonwealth Department of Environment.

⁷ Koala Habitat Distribution map, Commonwealth Department of Environment, <https://www.environment.gov.au/system/files/pages/187f297d-db69-4aab-b994-cec0bf27c716/files/phascolarctos-cinereus-distribution-map.pdf>, accessed 8 April 2021.

⁸ Map of Regional Forest Agreement and related regions in Australia, Commonwealth Department of Agriculture, <https://www.agriculture.gov.au/forestry/policies/rfa/regions/map>, accessed 8 April 2021.

⁹ <https://www.vicforests.com.au/about-vicforests/organisational-structure>; accessed on 17 March 2021.

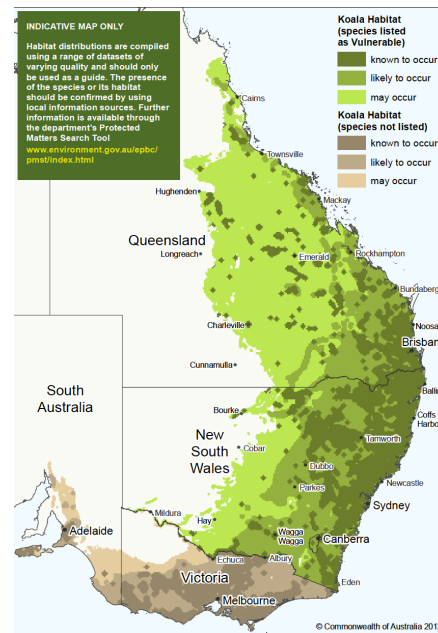
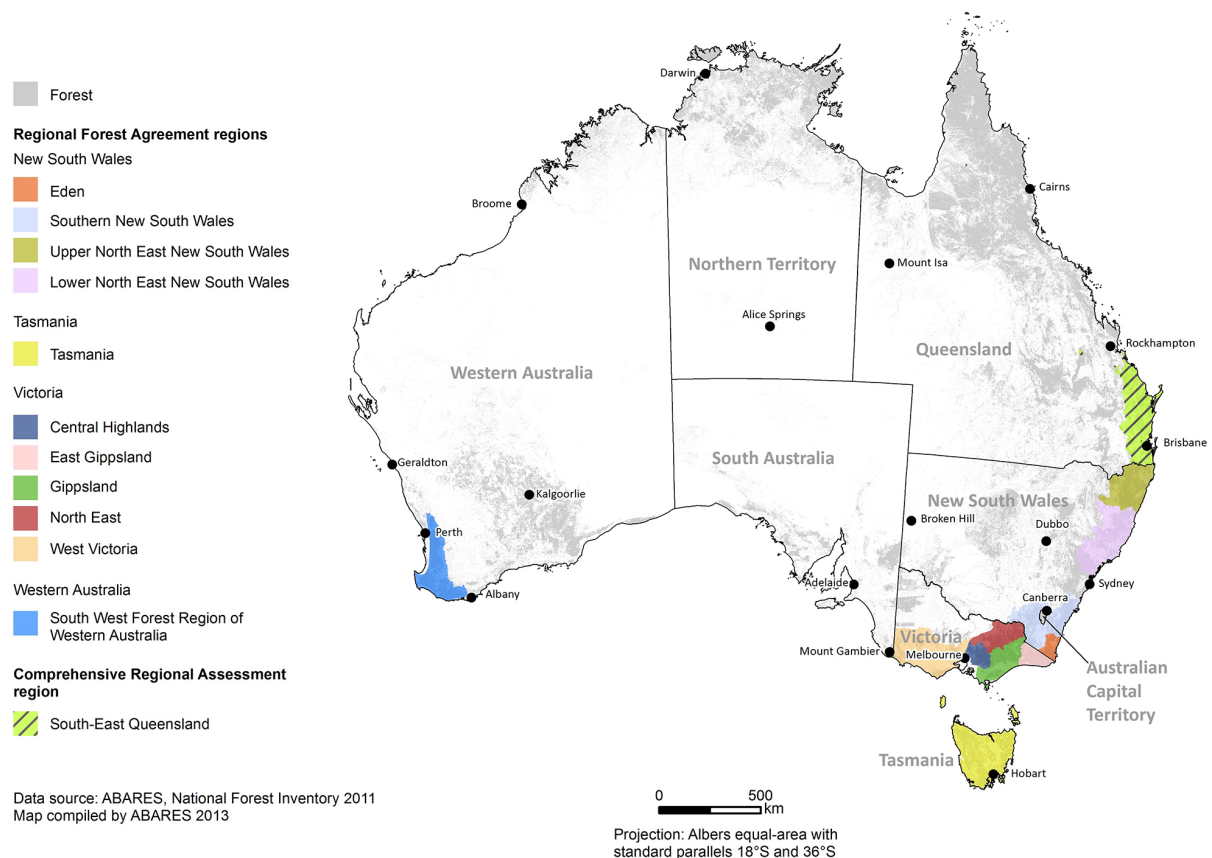


Figure 2: Map of Regional Forest Agreement and related regions in Australia.



In the case, in which it was found that although Regional Forestry Agreements ('RFA's) are ostensibly exempt from provisions of the EPBC Act because they are subject to oversight by State Government legislation, any forestry operations that are demonstrably not being conducted in accord with the precautionary principle are consequently in breach of clause 2.2.2.2 of the *Code of Practice for Timber*

Production 2014 (the ‘Code’), which provides the framework for regulation of commercial timber harvesting operations on both public and private land in Victoria¹⁰. As a result, any such forestry operations do not benefit from the exemption extended by s 38(1) of the EPBC Act and, not having been assessed or approved under part 3 of the EPBC Act, are unlawful.

It is understood that although the Federal Court case was launched through concern for the Leadbeater’s Possum and Greater Glider, the factual findings on which the judgement was based is equally applicable to forest-dwelling flora and fauna throughout Australia; most notably, the factual findings apply to the koala.

The Federal Court judgement is both welcome and unsurprising given the second of the five unsuccessful objectives identified by Professor Lindenmayer (*RFA’s have been characterised by poor governance and watered down forest protection*).

It is this writer’s view that the above considerations show that, given the nature of the forestry industry, that Regional Forestry Agreements *cannot* provide the necessary oversight of forestry operations that might justify any exemption of RFA’s from the provisions of the EPBC Act.

As such, the Bill should be accepted in its entirety, and passed into law.

Thank you for considering my submission.

Yours sincerely,

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¹⁰ https://www.forestsandreserves.vic.gov.au/_data/assets/pdf_file/0016/29311/Code-of-Practice-for-Timber-Production-2014.pdf, accessed on 18 March 2021.