



South East Region Conservation Alliance

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Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012

Submission from the South East Region Conservation Alliance Inc

The process under discussion in the Council of Australian Governments for streamlining environmental protections would theoretically maintain standards through Commonwealth/State bilateral agreements and compatible State legislation.

The South East Region Conservation Alliance (SERCA) draws the attention of the Senate to the one major test of this proposition currently in place – the exemption of native forestry operations controlled by State forestry agencies from the provisions of the Environment Protection and Biodiversity Conservation (EPBC) Act, under bilateral Commonwealth/NSW Regional Forest Agreements. In SERCA's view this experience shows why the Commonwealth's devolution of responsibility is disastrous for environmental goals espoused by the Commonwealth.

The Commonwealth appears to believe that it is possible to streamline and devolve responsibility and still maintain high environmental standards. We contest this view given the current state of inter-governmental relationships, economic pressures on governments, and particularly given the new challenges posed by climate change.

Successive State of the Environment Reports have pointed to Australia's deteriorating record in species protection – a clear pointer to the inadequacy of the EPBC Act and current State legislation to function as effective safeguards of Australia's natural environments and their biodiversity.

SERCA argues that:

- Australia could, if governments had the will, put a brake on much species loss and ecological community damage by completing the shift of the forestry industry out of native forests and using plantations for virtually all its wood needs immediately, and strengthening measures for forest environment remediation and protection. Currently this shift is readily achieved at modest cost, and is highly desirable economically as well as environmentally.
- Because they are so biologically complex, native forests are particularly vulnerable to species loss and ecological structural change from industrialised logging.
- Devolution of responsibility through the RFA process has worsened the ecological state of Australia's native forests, and the RFA process should be replaced with new forest protection measures.

- Additionally the failure of the Commonwealth properly to integrate forests and their carbon and water and biodiversity values into climate change policies – especially the Commonwealth’s deeming of logging and biomass burning to be carbon neutral when research has shown they are not– has encouraged native forest logging and industry plans for native forest biomass burning that are environmentally unsound.
- Deeming needs to be rejected immediately. Maintaining deeming gives the green light for industry to operate contrary to aims of species and ecological communities protection.
- Australia needs improved legislative protections of the environment under the EPBC Act and State environmental laws to deal with cumulative impacts, to provide for adaptability over time in response to climate change, and to monitor and enforce compliance.
- Protecting current habitats is not enough: recovering populations of species at risk (whether formally recognised as threatened or not) need to be able to expand into additional areas, and climate change will also require capacity to adapt in new habitats.
- State Governments have already moved or signalled their intentions to weaken their own current environmental protections, and there is no indication that their plans have been assessed against existing agreements with the Commonwealth, or of the Commonwealth being consulted on the changes, or indeed expecting to have any involvement.
- State Governments do not and cannot be expected to take the national interest into account. Commonwealth intervention as a last resort when bad decisions have been made is a minimum requirement. A far more proactive role is desirable, and ways around constitutional constraints need to be explored.
- Further transfers of Commonwealth responsibilities to the States in regard to world heritage and other key areas of national significance would be foolish in the extreme, and wipe out three to four decades of gains in environmental protection.

SERCA’s direct experience with a streamlined, devolved process is in its application to the forestry industry in SE NSW. Our comments focus on the deficiencies in this area resulting from devolution of responsibilities to the NSW Government and its forestry agency, Forests NSW (FNSW), recently converted into the Forestry Corporation of NSW.

SERCA considers that lessons learned from our RFA experience highlight the likely problems if further devolution is implemented in other areas of Commonwealth responsibility.

SERCA notes that the Hawke review of the EPBC Act recommended that the RFA mechanisms should be retained but that retention was conditional on better, more independent systems of performance assessment, compliance and enforcement; if this was not done then the full protections of the EPBC Act should apply to forest activities.

This proposal and one for a greenhouse trigger were rejected by the Government when it released the Hawke report.

SERCA considers that the Hawke recommendation on the RFAs does not go to the heart of the problems with the RFAs. These problems cannot be solved simply by better compliance and enforcement:

- There are inherent contradictions in aims of both environmental and industry protection.
- The RFA process allows the forestry industry to create problems for other industries and social goals, and there is no requirement for consideration to be given to these aspects.
- It provides a comparatively rigid solution to circumstances that are better regarded as comparatively fluid: it sets areas of forests for protection, areas for logging, and makes prescriptions accordingly.
- Thus the RFA approach cuts right across what is needed to respond more effectively to other national issues of environmental significance – especially climate change and water supply and quality problems - in two ways: by blocking new forest policies that could give large, early greenhouse gas emissions reductions and improved regional water supply and quality; and by blocking geographical shift of species needing to expand to survive or to move to adapt to a changing climate.
- Nor is it possible simply to include climate change as another matter for writing prescriptions into the States' Integrated Forestry Operations Approvals (IFOAs). Effective responses to climate change require recognition of the importance of all forests in the climate and water cycles – not just the forests that are or should be protected in national parks, but all forests for their current and potential carbon, water and biodiversity values.
- There are thus good reasons to call for large policy changes rather than trying to patch up the RFA process to improve compliance, which is only part of the problem.

SERCA also suggests that the assumptions underpinning the RFA legislation is out of step with current economic and social circumstances, in the industry and in society more generally.

The forestry industry has undergone fundamental structural change, with a shift out of native forests into plantations for around 80% of most products. The native forest sector operates now in markets very different from markets when the RFA regime was put in place. Plantation based processing is where the economic and employment future lies.

The native forest sector has long since ceased to be the mainstay of regional economies in NSW. Public and political perceptions, however, have not caught up with the reality and over-rate the importance of the native forestry industry for the economy and regional employment. These perceptions have allowed the industry to continue, with government subsidies, when fuller structural reform would have provided better employment opportunities and much improved environmental protections.

Under the RFAs covering forestry operations in NSW, there has not been the will to protect endangered species or ecological communities at either the Commonwealth or the State level.

Under its own legislation NSW denies third party legal rights to seek enforcement of the regulations on endangered species (s.69ZA of the Forestry Act 2012).

NSW Governments of both persuasions have largely allowed FNSW to operate with disregard for the regulations for species protection. In the view of Justice R A Pepper, NSW Land and Environment Court, 8 June 2011, “the number of convictions [of Forests NSW] suggests either a pattern of continuing disobedience in respect of environmental laws generally or, at the very least, a cavalier attitude to compliance with such laws” (quoted in Environment Defenders Office report for the Nature Conservation Council of NSW, *If a Tree Falls: Compliance Failures in the Public Forests of NSW* (See also Attachment A for the effect of the NSW industry’s management tool, Integrated Forestry Operations Approvals (IFOAs).

The Commonwealth treats these breaches as a NSW management issue, not a Commonwealth responsibility, despite the Commonwealth being a joint signatory of the RFAs. If the Commonwealth takes no responsibility for the outcomes of its bilateral agreements with the States, how can it ensure that its responsibilities to protect the environment are being discharged?

There have been many hundreds of breaches of regulations reported by community members to NSW forestry and environmental agencies since the RFA regime was put in place in NSW.

For specific examples of failure to protect endangered species in SE NSW see the following submissions to the Senate's Inquiry into threatened species: Harriett Swift’s submission and addendum (Attachments B and C to these comments), the SERCA submission, no 164, and South East Forest Rescue’s submission, no 62, at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=c_ctte/threatened_species/index.htm.

Forests NSW has also by its logging methods overseen siltation of waterways, forest soil degradation and loss, and the replacement of mixed-age, mixed-species forest by simplified forest, predominantly the silver-top ash preferred by the Eden export chipmill, with a casuarina and wattle understorey – i.e. far drier, far more vulnerable to drought and a warming climate, far more fire-prone, and a danger to neighbouring regional communities.

Analysis on the Victorian Black Saturday fires and recent Tasmanian fires by Melbourne University academic Chris Taylor shows that the fires were more concentrated and more destructive in “production” forests than in unlogged forests. In some cases the old forest slowed down or even stopped the progress of fires.

<http://www.crikey.com.au/2010/08/03/tracking-the-black-saturday-bushfires-at-the-source-of-ignition>; <http://www.wilderness.org.au/files/2009-black-saturday-fires-report-taylor.pdf>.

Similar cautions would apply to communities close to areas logged by FNSW.

Example:

Forests NSW logged the Bermagui State Forest to the boundary fences of residents in Bermagui township.

There needs to be adaptability to take account of cumulative effects of forestry operations and to respond to natural occurrences/disasters (fires, droughts, floods), and to climate change. This is particularly important in the case of forestry operations, which can result in loss of large areas of ecological communities as well as species. For example:

- FNSW made no adjustments to its logging and burning plans through the recent nearly decade long drought that caused many trees to die and animals to lose their habitats.

Long-term, fixed volume wood supply agreements are incompatible with this need for adaptability, and over-logging to meet wood supply commitments has taken logging in NSW State Forests beyond sustainability levels. The State Government is locked in unless it makes compensation payments. Both the previous (ALP) and the current NSW Government have been unwilling to make these payments (Former NSW Environment Minister Sartor discussions with SERCA representatives).

Examples:

- FNSW has been unable to supply contracted volumes of sawlogs to Boral in the north east, and has been sued on two separate occasions.
- FNSW has over-logged in the south east to the point where it is nearly out of large high quality sawlogs.

Notwithstanding this situation, the forestry industry is seeking rolling evergreen extensions of existing contracts for an additional 20 years.

Not everything can be foreseen in legislation or agreements. Climate change, floods and fires will alter conditions for survival of endangered species, and change can be large-scale, quick and unexpected.

Example:

- After the Victorian bushfires the federally listed endangered migratory swift parrots diverted into coastal NSW forests, and were in Bermagui Forest compartments when logging was about to begin. Alerted to their presence, FNSW without any scientific backing said there would be plenty of food for the parrots, and went ahead with logging. The Commonwealth was notified, and took no action.

Surveys to prepare harvest plans are conducted by Forests NSW foresters not independent experts. Forests NSW has scant incentive to find endangered animals or plants, especially now that past over-logging has made it more difficult for it to fulfil its contracts. The public is asked to advise on locations, but is mistrustful as there is a view that to do so will ensure loss of what is notified.

Example:

- SEFR notifications of rocky outcrops were ignored and rocks were broken.

Surveys are inadequate. Large areas are covered quickly, conducted only in daytime.

Example:

- Early surveys in SE in areas now protected were on too coarse a grid to find koalas.
- More recently koalas in Tanja forest were not found in the initial survey.

Surveys and monitoring are expensive, which may go some way to explaining why they are not conducted more rigorously by forestry agencies that for many years have conducted their native forest operations at a loss.

There is no follow up monitoring to assess the impact of logging on endangered species or ecological communities. It is only through the efforts of community groups like South East Forest Rescue that assessments of impacts of logging are made. Many breach notifications are considered in isolation from other breach reports, dismissed as insufficiently significant, or receive token fines. RFA reviews have been submitted years after the due date, and more than ten years after the first RFA was put in place. We are still waiting for the Commonwealth response to the first lot of five-yearly reviews.

Protecting existing habitat is not enough –recovering populations of endangered species need room for expansion and for movement, especially under climate change. Corridors are essential, but are not included in harvest plans.

Moreover, the price for improved protection of some areas can be more environmental damage nearby.

Example:

- Protection for koalas in Murrumbidgee/Murrumbidgee: Biodiversity Fund proposal from Forests NSW and Office of Environment and Heritage and accepted by the Commonwealth for funding of \$1.9 million protects areas where koalas were found, but did not provide for expansion or for corridors between the four identified areas or to other suitable habitat areas; and a condition of the protection is that Forests NSW is allowed to log more intensively all around the protected areas. Forests NSW has attempted to do just that in nearby Tanja Forest, where koalas were found in recent surveys. Logging is currently on hold after a lot of local protest about the logging plans.

Welcome though the protected areas are, the conditions for long term species survival and expansion are a long way from satisfactory.

The NSW Government is now reducing its own protections. There is no indication that the Commonwealth has been consulted, has approved, or has intervened in the changes.

Examples:

NSW approvals for non-forestry activities in State forests and national parks that can jeopardise threatened species include shooting, cattle grazing; trial thinning in national parks when there was the option to conduct trials in State forests before applying to national parks.

Forests NSW has essentially gone about business as usual, and when environmental damage has been caused has referred to its requirement to supply wood in accordance with its wood supply agreements.

Over-committed wood supplies within a rigid long-term commercial framework have been shown not to be compatible with principles of ecologically sustainable development.

- NSW Auditor-General's report 2008 identified over-logging and over-commitment;
- FNSW CEO Nick Roberts's evidence to NSW Public Lands Inquiry 2012 indicates overlogging in the north east until expiry of contracts in 2023, after which there will have to be a dramatic drop in supplies and the hope that the forests will recover over time.

Both levels of government have been guilty of greenwash in telling the public that they are compatible.

Legislation and detailed prescriptions are important but not enough without implementation and compliance. There needs to be the political will at all levels of government to plan for future stresses on the environment, and to develop measures better suited to current challenges.

In SERCA's view devolution of responsibilities on the RFA model has been a disaster, and we urgently need new policies, not a band-aid approach.

18 January 2013

Attachment A

Effect of Integrated Forestry Operations Arrangements (IFOAs) source: Environment Defenders Office Report for Nature Conservation Council of NSW, *If a Tree Falls*, p.14

The principal effect of an IFOA is to exempt the forestry operation it covers from the provisions of the Environmental Planning and Assessment Act 1979.38 and to shield it from civil enforcement by the public.³⁹

In particular, once an IFOA is in place, it has the following effect:

- □ Part 5 of the EPA Act ceases to apply to the forestry operations, (i.e. an environmental impact statement cannot be required for the operation);⁴⁰
- □ forestry operations cannot be prohibited or restricted under a local environmental plan or state environmental planning policy;⁴¹
- □ development consent cannot be required for the operation;⁴²
- □ Part 3A of the EPA Act ceases to apply, so that the operation cannot be declared to be a “major project”;⁴³
- □ stop work orders and interim protection orders to protect threatened species and native flora and fauna cannot be used to stop forestry operations;⁴⁴ and
- □ the public cannot bring civil enforcement proceedings to restrain a breach of the IFOA.⁴⁵