



Australian Government

Australian Government response to the Senate
Environment and Communications Legislation
Committee report:

Environment Protection and Biodiversity Conservation
Amendment (Regional Forest Agreements) Bill 2020

MAY 2024

Introduction

On 13 May 2021, the Environment and Communications Legislation Committee (the Committee) provided their report and recommendations on the Environment Protection and Biodiversity Conservation Amendment (Regional Forest Agreements) Bill 2020 (the Bill). The report included dissenting reports and recommendations from the Australian Greens and the Australian Labor Party.

The Bill was a private senator's bill that was introduced by Senator the Hon Bridget McKenzie on 9 December 2020. The Bill sought to amend the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and the *Regional Forest Agreements Act 2002* (RFA Act) to provide that all forestry operations that are within a Regional Forest Agreement (RFA) region are exempt from the requirements for environmental approvals under the EPBC Act.

The Explanatory Memorandum of the Bill stated that the 'Bill will affirm and clarify the Commonwealth's intent regarding RFAs to make it explicitly clear that forestry operations in a RFA region are exempt from Part 3 of the EPBC Act, and that compliance matters are to be dealt with through the state regulatory framework'.

Friends of Leaderbeater' Possum Inc Litigation History

The Bill was introduced in response to the decision of the Federal Court in *Friends of Leadbeater's Possum Inc v VicForests (No 4)* that certain VicForests forestry operations were not conducted "in accordance with" an RFA, and therefore were no longer exempt from provisions in the EPBC Act. VicForests appealed this decision to the Full Federal Court.

The Full Federal Court appeal judgment in *VicForests v FOLP* was handed down on 10 May 2021. The Full Court unanimously found in favour of VicForests, allowing their appeal and setting aside the substantive orders made by Justice Mortimer on 21 August 2020.

Nature Positive Plan: better for the environment, better for business

In October 2020, Professor Graeme Samuel's Independent Review of the EPBC Act (the Review) was published.

The Review included a recommendation that state forest management systems – which form the basis of the RFAs - be consistent with national environmental standards, and called on the Commonwealth to make this one of the new requirements. The Review also recommended that the EPBC Act be amended to remove existing exemptions applying to forestry within RFA areas.

The Australian Government responded to the review in December 2022, releasing the *Nature Positive Plan: Better for the environment, better for business*. In this response, the government agreed to establish national environmental standards that will set out the environmental outcomes underpinning environmental law reforms. The government committed to working with stakeholders and RFA states towards applying the new standards to RFAs. This will support the ongoing operation of RFAs in those States that choose to continue native forest harvesting, with stronger environmental protections.

Response to the recommendations of the report

Recommendation 1

The committee recommends that the Australian Government expedite the necessary changes to the Regional Forest Agreements (RFA) framework to ensure that that the framework delivers operational certainty for the native forestry industry.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

The committee recommends that the Australian Government expedite amendments to the Environment Protection and Biodiversity Conservation Act 1999 and the Regional Forest Agreements Act 2002 which introduce a test of judgment—similar to the test which applies to company directors under the Corporations Act 2001—in order to appropriately balance environmental protection with the operational realities of the field-based operations of the native forestry industry.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

In the event that the Federal Court decision of 10 May 2021—in relation to VicForests’ appeal to the decision in *Friends of Leadbeater’s Possum Inc v VicForests (No. 4)* [2020] FCA 704—is appealed and at that time the Australian Government has not legislated the outcome required by Recommendation 1, the committee recommends that the Senate pass the bill.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Response to Dissenting Recommendations – Australian Greens

Recommendation 1

That the bill not be passed.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 2

That the Australian Government implement the recommendation of the Independent Review of the EPBC Act, to increase the level of environmental protection afforded in Regional Forest Agreements.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 3

That the Australian Government abandon attempts to delegate environmental protection to state governments.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.

Recommendation 4

That the Australian Government take urgent action to end native forest logging, and protect Australia's precious native forests, and to complete the transition of the wood products industry in Australia to be 100 per cent plantation based.

The Australian Government **notes** this recommendation.

However, given the passage of time since this report was tabled, a substantive Government response is no longer appropriate.