

Coalition Senators' Dissenting Report

Introduction

1.1 Coalition Senators oppose the majority report's recommendation (1.106), which effectively represents the abandonment of more than a decade of bipartisan support for the Regional Forest Agreement (RFA) process and the forest industry.

1.2 If enacted, this recommendation of the majority report would cast uncertainty over the forest sector and put at risk thousands of jobs and millions of dollars of investment. This is bad enough at the best of times, but unthinkable in today's economic climate.

1.3 Coalition Senators are extremely surprised and disappointed that Labor Senators would make such a recommendation with such consequences.

1.4 Coalition Senators are also highly critical of the apparent attempt not only to pre-empt the findings of an Independent Review of the EPBC Act already underway, but also, through this recommendation in apparent collaboration with the Minister for the Environment, now attempt to make directions in relation to the manner and scope of recommendations for reform this Independent Review will make.

1.5 Further, while Coalition Senators broadly agree with the first two thirds of the majority report, we cannot support the last third, which places undue weight on the Wielangta Case.

1.6 The majority has effectively chosen to disregard the fact that the finding was overturned on appeal,¹ with leave to further appeal to the High Court refused.² In addition, the majority has not adequately considered or placed in context the significant conservation outcomes achieved as a result of RFAs.

1.7 The majority's recommendation is inconsistent with a view of ensuring the stability of Australia's RFAs, which have been an important source of security for many communities reliant upon a forest industry with long term resource security.

RFA Conservation Outcomes

1.8 Coalition Senators wish to highlight some of the substantial conservation outcomes of Australia's RFAs that are recorded and can be found in *Australia's State*

¹ Forestry Tasmania v Brown [2007] FCAFC 186.

² High Court of Australia, Brown v Forestry Tasmania [2008] HCATrans 202, <http://www.austlii.edu.au/au/other/HCATrans/2008/202.html> (accessed 28 April 2009).

of the *Forests Report 2008*³ but which have been largely ignored by the majority in its report.

1.9 Almost all of the increase in forest in Australia's conservation reserves since 1998 has been achieved by reducing the area of multiple-use forests through the Regional Forest Agreement process and other state processes.⁴

1.10 The RFA process has resulted in the transfer of more than 2 million hectares of forest from the broad tenure category of multiple-use public forest to nature conservation reserves.⁵

1.11 There are now 23 million hectares (or 16%) of Australia's native forests in formal nature conservation reserves.⁶

1.12 One of the key objectives of the RFA process was to use a set of nationally agreed criteria for the establishment of a Comprehensive, Adequate and Representative (CAR) reserve system in Australia based on the JANIS criteria⁷ to protect, in nature conservation reserves:

- 15% of the pre-1750 distribution of each forest type;
- 60% of the existing distribution of each forest type if vulnerable;
- 90% or more of high-quality wilderness forests; and
- All remaining occurrences of rare and endangered forest ecosystems (including rare, old-growth forests).

1.13 Comprehensive Regional Assessments (CRAs) and a very extensive consultation program provided the state and commonwealth governments with the best possible information for decision making on the use of Australia's forests.

1.14 In layman's words, what the RFA process achieved was the protection of vast tracts of Australian forest, forest habitat and the species therein in a way which Comprehensively, Adequately and Representatively protected important Australian flora and fauna, while at the same time setting aside areas of forest for ongoing, sustainable harvesting.

³ *Australia's State of the Forests Report 2008*, Bureau of Rural Sciences, Canberra.

⁴ *Australia's State of the Forests Report 2008*, Bureau of Rural Sciences, Canberra, p. 20.

⁵ *Australia's State of the Forests Report 2008*, Bureau of Rural Sciences, Canberra, p. 21.

⁶ *Australia's State of the Forests Report 2008*, Bureau of Rural Sciences, Canberra, p. 1.

⁷ Joint ANZECC (Australian and New Zealand Environment Conservation Council)/MCFFA (Ministerial Council on Forestry, Fisheries and Aquaculture) NFPS (National Forest Policy Statement) Implementation Sub-committee 1997.

The Wielangta cases

1.15 Coalition Senators do not support the heavy reliance on the Judgment of Justice Marshall in the first Federal Court case of *Senator Bob Brown v Forestry Tasmania*. Notwithstanding that Justice Marshall's judgment was overturned by the Full Court,⁸ his judgment was also criticised for examining the agreed issues in extensive detail.

“... many far-ranging issues were, in our view, wastefully explored.”⁹

1.16 The Full Court did not re-examine Justice Marshall's findings of fact, because they were viewed as irrelevant.

“... a great deal of time and much expense has been devoted to investigating matters that have turned out not to be determinative of any relevant issues.”¹⁰

1.17 While Justice Marshall's findings represent the view of one judge, other reviews whether judicial, parliamentary or otherwise may (and indeed did) reach different conclusions.

1.18 Coalition Senators believe the majority's recommendation to risk the stability of RFAs and the associated thousands of jobs because of a single judgment – overturned by the Full Court – is, at best, ill-considered.

1.19 Coalition Senators also note the heavy reliance of the majority report on the evidence of Mr Tom Baxter, and also the failure to disclose that he is a member of the management committee of both the Environmental Defender's Office and the National Parks Association.

RFA reviews

1.20 Coalition Senators question the usefulness of current and ongoing reviews into RFAs, given that they have only a 20-year life span. In the case of the Tasmanian RFA, expiry is set to occur in 2017.

1.21 Further, Coalition Senators note that only the Tasmanian RFA has undergone the required five-yearly reviews, and understand that a lack of reviews in other RFA areas is due to a lack of will or cooperation from state government agencies. This must be corrected and should be a priority for signatories to RFAs.

Confidence in RFAs

1.22 There was no evidence presented to the committee to suggest a widespread lack of public confidence in RFAs.

⁸ *Forestry Tasmania v Brown* [2007] FCAFC 186.

⁹ *Forestry Tasmania v Brown* [2007] FCAFC 186, p. 36.

¹⁰ *Forestry Tasmania v Brown* [2007] FCAFC 186, p. 36.

1.23 Coalition Senators do not expect that criticism from conservation groups and passionate individuals would cease regardless of any changes to RFAs or forest management practices.

1.24 Given the success of the RFAs to date, Coalition Senators would not support any move to undermine them through the application of the EPBC Act or any other duplicating Commonwealth approval over forest operations in RFA areas.

1.25 As was expressed in our additional comments to the first report of this inquiry, Coalition Senators are particularly keen not to see a situation where a duplication of assessments, requirements or enforcements could apply to the forestry industry across both the EPBC Act and RFA Act with potentially costly consequences.

Ensuring access to information

1.26 Given the evidence provided on the robustness of the process to establish an RFA,¹¹ Coalition Senators believe the Government has a duty to ensure information is made available by signatories to the agreements (namely the Australian Government and relevant State Governments) to ensure public awareness of the Comprehensive Regional Assessments, the extent of the CAR reserve system and the wide range of threatening processes, in relation to endangered and other native species, including those processes not related to forestry.

Conclusion

1.27 Coalition Senators strongly oppose the majority's recommendation effectively abandoning bipartisan support for Regional Forest Agreements, and strongly oppose the attempt to exert influence, with an apparent bias towards reforming the RFA process, over an Independent Review of the EPBC Act already underway.

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Senator for South Australia**

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Senator for Victoria**

**Senator Fiona Nash
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¹¹ Department of Agriculture, Fisheries and Forestry, *Submission 86*, pp 5–6.