

## **Senate Environment, Communications and the Arts Committee – Inquiry into the operation of the EPBC Act**

### **DAFF response to Committee questions of 30 March 2009**

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#### **Preamble**

The Commonwealth and participating states signed the Regional Forest Agreements (RFAs) following a Comprehensive Regional Assessment process. The agreements substantially revised existing uses of these forests.

The RFAs established a framework for ecologically sustainable forest management, which is implemented by the relevant state agencies. Commercial forest management in all states is conducted under their own forest practices codes and regulatory frameworks.

#### **Responses to questions**

##### **Question 1.**

*Can the Department provide some examples of instances, since RFAs have been signed, where planned forestry activities (including coupe logging) have been modified to take account of new information about threatened species or ecological communities in areas subject to RFAs, where those modifications did not result from complaints about breaches of RFAs (i.e. where the changes were initiated by forest managers or government agencies before any problems were reported)?*

Examples are provided from Western Australia, where a number of practices or variations have been introduced since the RFA that provide for improved protection of threatened species and communities. Examples include:

- Refinement and application of Fauna Distribution Information System in coupe planning and prescribed fire planning. The tactics that follow through this systematic approach have on occasions led to variations in coupe shape, timing of access or felling operations (e.g. to minimize disturbance to adjacent quokka populations in the unharvested informal reserves).
- The introduction of fauna habitat zones in State forest (a WA Forest Management Plan initiative). One of the criteria used in the finalization of boundaries is to incorporate known occurrences of threatened or vulnerable fauna within these zones. To date the location of 42 zones have been finalized.
- Specific Fire Management Guidelines have been developed to guide the application of fire for specific ecosystems (granite outcrops, tingle forest) and species (Noisy scrub bird, quokka, tammar, western ringtail possum, honey possum, mallee fowl, geocrinia frogs, sunset frog).

##### **Question 2.**

*In your submission you indicated that "complaints about alleged breaches of RFAs are investigated by relevant Australian Government agencies working co-operatively with state authorities". Can you provide to the committee a brief summary of how many such investigations have been conducted in relation to each RFA, and how many have resulted in a change in forestry practices, remediation action, or prosecution (whether civil or criminal) respectively, in regard to each RFA?*

Complaints received by Australian Government agencies including complaints received by the Department of Environment, Water, Heritage and the Arts via the EPBC Act compliance and audit mechanisms, are investigated by the Department of Agriculture, Fisheries and Forestry. Under the RFAs, the information used to investigate complaints is largely obtained from the relevant States.

It is important to note that complaints are usually also made to relevant State authorities, who may have taken action prior to Commonwealth raising an issue.

#### Tasmanian RFA

Since 2007 ten complaints have been raised directly with Australian Government agencies about the Tasmanian RFA. Of those, five have been finalised and five are currently being investigated.

- In the case of the five finalised matters, forestry operations were found to have management prescriptions in place that were in accordance with the RFA. These matters did not require changes to forestry practices, remediation action or prosecution.

The Australian Government has also written to the Tasmanian Government seeking advice on the management of one species, the swift parrot, under the RFA. The Department is currently assessing the advice received.

#### NSW RFAs

Since 2007 two complaints have been raised directly with Commonwealth agencies regarding the NSW North East RFA. Of those, one has been finalised and one is currently being investigated.

- For the finalised matter, it was found that management prescriptions in place were in accordance with the RFA and the NSW Integrated Forestry Operations Approvals and Forest Practices Code for Native Timber Harvesting. This matter did not require changes to forestry practices, remediation action or prosecution.

#### Victorian RFAs

Since 2007 two complaints have been raised directly with Australian Government agencies relating to the Victorian Central Highlands RFA.

- One matter revealed that the activities of interest were not a forestry operation as defined under the Central Highlands RFA and the responsible state agency then consulted with the Australian Department of Environment and Water Resources to ensure that the activities were undertaken in compliance with the EPBC Act.
- The other case involved forestry operations that were conducted under management in accordance with the RFA and the State *Code Practice for Timber Production* and other relevant state legislation. No changes in forestry practices, remediation action, or prosecution were required.

#### WA RFA

No complaints have been received by the Australian Government.

### **Question 3**

*Is there any legally enforceable obligation on forest managers to ensure, or provide for, the protection of species or ecological communities that were listed under the EPBC Act after the signing of an RFA covering the geographical area in which the listed species or community occurs? What is the mechanism for such enforcement? If the answer differs for each RFA, can an answer be provided with respect to each completed RFA?*

- a. *For example, in the case of Tasmania: under the Tasmanian RFA, s. 68 of the agreement sets out a regime for protection of rare and threatened fauna and flora species and forest communities, while section 96 concerns changes in relation to Priority Species in Attachment 2 to the RFA. Can DAFF advise whether species or ecological communities listed under the EPBC Act after the signing of the RFA are added to the list in Attachment 2 of the RFA or are in any way afforded the protection given by the RFA to species listed in Attachment 2? Is there any other mechanism by which forest managers are obliged to provide protection to such species reflecting their new status under the EPBC Act?*

With the exception of the Tasmanian RFA, there are no obligations within the RFAs imposing a legally enforceable obligation upon the states to ensure the protection of species or ecological communities listed in the EPBC Act. However, in all the RFAs, the parties agree that specified State and Commonwealth legislation and other measures, such as the establishment of CAR reserves, will provide for the protection of rare or threatened flora and fauna species and ecological communities.

In Tasmania, under section 96 (as amended) of the Tasmanian RFA, Tasmania agrees that any new or altered management prescriptions developed over the terms of the Agreement for the Priority Species as listed in Attachment 2, as amended from time to time, will provide for the maintenance of the species. Section 96 is located within the legally enforceable part of the agreement. In the event of a dispute between the parties, there are dispute resolution procedures built into the RFAs. The agreements may also be terminated by either party if the dispute resolution process fails to resolve issues which are not of a minor nature.

The Tasmanian Government has advised that all species listed under the EPBC Act are listed under the Tasmanian *Threatened Species Protection Act 1995* and the Forest Practices Code requires that threatened species listed under these acts are taken into account in the preparation of forest practices plans.

#### **Question 4**

*If new information becomes available to the Commonwealth Minister in relation to the impact on a matter of national environmental significance of forestry operations within an area covered by a Regional Forest Agreement, what powers does the minister have to alter the conditions governing those forestry operations?*

The Minister for Agriculture, Fisheries and Forestry can consult with the State and, with the State's agreement, vary the agreement to address any new information. The agreements recognise the need to continue consulting about priorities in the light of new information. In the event the State fails to agree, there is no mechanism under the RFA for the Minister to take the matter forward.

#### **Question 5**

*Under the EPBC Act, third parties have standing to pursue actions in relation to alleged breaches of parts of the EPBC Act. Do equivalent standing provisions allow such parties to pursue alleged breaches of an RFA in each state for which one or more RFAs exist?*

There are no provisions within the RFA Act or the RFAs allowing third parties to enforce the obligations in them. The rights and obligations under an RFA are rights and obligations of the parties to the agreement. No other person can enforce these rights or obligations. However,

should it be determined that that actions have not been in accordance with the RFA, third party enforcement is potentially available under the EPBC Act.

**Question 6**

*What would be the consequences for the Tasmanian and Commonwealth governments, were a listed threatened species (such as the swift parrot) to become extinct as a result of habitat destruction permitted under the RFA?*

If a forestry operation is permitted by a State, meets all relevant regulatory and legislative requirements, and is undertaken in accordance with an RFA, there would be no legal consequences for the Commonwealth or the State. However, the provisions of the RFAs and the State forest management arrangements are designed to identify any problems and for the States to put in place management arrangements that minimise the risks to species.

**Question 7**

*If neither the Commonwealth nor the state is required to protect a threatened species under the terms of an RFA, how does the Commonwealth discharge its responsibilities under the UN Convention on Biological Diversity?*

In all RFAs the parties agree that specified State and Commonwealth legislation and other measures will provide for the protection of threatened species.