



National Association of
Forest Industries

SUBMISSION

Senate Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act (1999)*

September 2008

Introduction

NAFI appreciates the opportunity to provide comment to the Senate Standing Committee on Environment, Communications and the Arts regarding the *Inquiry into the operation of the Environment Protection and Biodiversity Act 1999*.

The ‘terms of reference’ for this inquiry make particular reference to ‘the effectiveness of Regional Forest Agreements (RFAs), in protecting forest species and forest habitats where the EPBC Act does not directly apply.’

As such, NAFI’s submission deals specifically with this issue, outlining the comprehensive and effective framework employed under the RFAs to ensure the protection of ecological values. It also provides justification on why forests subject to environmental management under the RFAs are not also subject to the requirements of the EPBC Act.

Regional Forest Agreements

The RFA process was developed as part of the *National Forest Policy Statement (1992)*. RFAs are 20 year agreements between the Commonwealth and the relevant State Governments that determine the conservation and sustainable management of native forests.

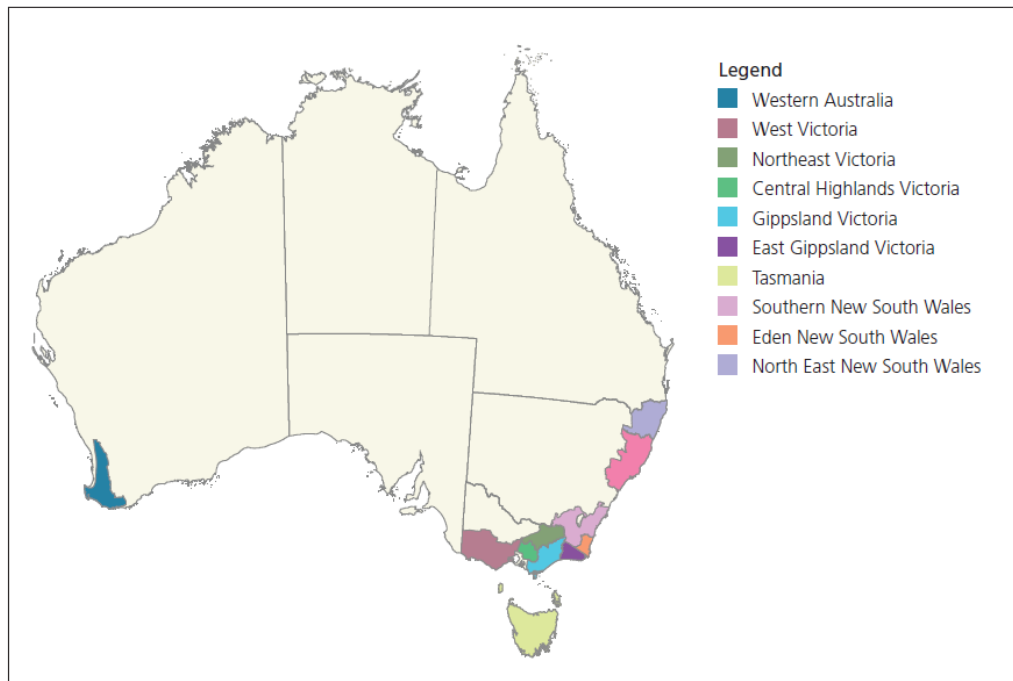
RFAs are intended to provide certainty and security for forest industries and communities which depend on forest resources. They use a science-based methodology to determine forest allocation for different uses and forest management strategies, and are the result of substantial scientific study, consultation and negotiation covering a diverse range of interests.¹

A total of 10 RFAs have been completed in Australia, covering the major forestry regions in New South Wales, Victoria, Tasmania and Western Australia (see Figure 1

¹ Bureau of Rural Sciences (2008). Australia’s State of the Forests Report 2008.

below). Queensland did not sign an RFA, rather it completed a comprehensive regional assessment for southeast Queensland.

Figure 1: Australia's RFA areas²



Australia's RFAs have determined and prescribed:

- a comprehensive, adequate and representative (CAR) forest reserve system;
- sustainable harvest cycles and volumes for specific regions and their forest types; and
- sustainable forest management processes for protecting and maintaining forest ecology, biodiversity and social and economic benefits.

The RFAs provide a targeted forest management framework to ensure that a 'one size fits all' approach is not applied across Australia's diverse forest ecosystems. In order to prevent this, the RFAs provide for state based governance and regionally specific management of forests as this is more conducive to sustainable forest management than centralised, broadly prescriptive, commonwealth based forest management policy.

The comprehensive assessments undertaken as part of the RFA process mean that RFAs are regarded as providing at least an equivalent level of protection to that provided under the EPBC Act. Therefore, forestry operations undertaken in RFA areas do not require approval under the Act.³

The protection provided by Australia's RFAs is given legal status through the *Regional Forest Agreements Act 2002*.

² Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

³ Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

Comprehensive Regional Assessments (CRAs)

The RFAs are underpinned by extensive information and data collected for the specific purpose of determining environmental sustainability thresholds for the forests to which they apply. These comprehensive regional assessments (CRAs) were conducted over several years and are the most detailed and comprehensive assessments of forests ever conducted in Australia. They sought to investigate and set agendas for management of forest values, including:

- biodiversity;
- cultural heritage;
- wood resources; and
- soil and water values.

In relation to the CRAs, the Department of Agriculture, Fisheries and Forestry (DAFF) states:

- *CRAs provided the framework for RFAs. CRAs evaluated the economic, social, environmental and heritage values of forest regions and involved the full range of stakeholder and community groups.*
- *The \$115 million CRA process added volumes to Australia's knowledge of the country's forest uses and values - from complex ecosystems to mineral deposits, heritage values and importance to tourism and recreation.*
- *Each RFA involved at least 50 assessment projects in disciplines ranging from biology and zoology to economics and sociology.*
- *The CRAs provided governments with the information needed to make long-term decisions about forest use and sustainable development.*⁴

These CRAs, and their application as the supporting and underpinning framework for the RFAs, negate the need for the EPBC Act effectively avoiding unnecessary duplication through assessment and policy frameworks. Environmental, social and economic factors were all taken into account as part of the CRA process and forest management under the RFAs now already reflects the biodiversity and ecological conservation sentiments expressed through the CRAs and EPBC Act.

Comprehensive, Adequate and Representative (CAR) reserves

One of the key outcomes of the RFA process was the development of Australia's comprehensive, adequate and representative (CAR) forest reserve system. This system was developed to ensure that:

- there is comprehensive inclusion of flora and fauna species and ecological communities;

⁴ DAFF website. www.daff.gov.au/rfa/publications/cra-state

- there is adequate spatial coverage to ensure the maintenance of ecological communities including species diversity, viability, interaction and evolution; and
- the reserve system is representative of Australia's ecology to ensure sustainable diversity and species viability.

The overall aim of the CAR reserve system was to place in conservation reserves 15% of the pre-1750 distribution of each forest type, 60% of the existing distribution of each forest type if vulnerable, 60% of existing old-growth forest, 90% or more of high-quality wilderness forests, and all remaining occurrences of rare and endangered forest ecosystems (including rare old growth forests).⁵

There is particular attention given to the conservation needs of rare, vulnerable and/or endangered species or communities under the CAR reserve system. The motives for this, and the consequential outcomes, are reflected through the EPBC Act and the areas to which this applies. This eliminates the need for additional regulation and the associated compliance costs that would result if the EPBC Act were also imposed.

Sustainable forest management

Sustainable forest management (SFM), as practised in Australia, is distinctly different from land clearing and it is important that the Senate Standing Committee, in conducting this inquiry, recognises this distinction.

Specifically, land clearing is the removal of forest cover from the landscape, or land use change – usually converting the land for agricultural or urban development. SFM on the other hand involves the dynamic management of forests, incorporating harvesting and regeneration cycles – but as distinct to land clearing, the forest cover is maintained in the longer term.

The RFAs are part of the continual improvement of Australia's sustainability credentials for forest management. Australia now has one of the most sustainably managed production native forest estates in the world. The RFAs have ensured that suitable areas have been allocated into the CAR reserve system, as well as determining stringent environmental controls for the remaining production forest estate.

Each RFA takes into account the regionally specific environmental and ecological conditions, including species composition, forest lifecycles and ecological processes, and prescribes production management accordingly. In these production areas, the RFAs prescribe management to ensure:

- the ecological processes within forests are maintained;
- the biodiversity, species composition and interactions are protected and maintained; and
- additional environmental, social and economic benefits of forests are protected and maintained with minimal impact upon each other.

⁵ Bureau of Rural Sciences (2008). Australia's State of the Forests Report 2008.

The RFAs that apply to these forests, manage for similar environmental values to the EPBC Act, with the additional complexities of recognising these areas as multiple-use forests. That is, the biodiversity and ecological conditions represented in the EPBC Act must be met, while management of these forests also ensures that supplementary social and economic benefits are realised.

Codes of practice

Codes of practice are very important operationally specific instruments which underpin Australia's regulatory system for SFM and the RFAs. These codes cover the full range specific forestry activities, including planning, harvesting, forest establishment, roading, and pest, weed and fire management.

Codes of practice are generally state based and are constantly reviewed (usually every 5 to 7 years) by forest managers and agencies to ensure appropriate scientific and technical input.

While codes of practice vary in legal status between state and territory jurisdictions, they are an extremely important in ensuring the integrity of SFM at the operational level.

Forest certification

Further to the direct influences that the RFAs have played in regards to meeting biodiversity and ecological conservation needs, they have also paved the way for voluntary third party forest certification in Australia, through the development of the Australian Forest Certification Scheme (AFCS).

The AFCS and its underpinning standard for forest management, the Australian Forestry Standard (AFS), represent the extensive efforts of Australia's forestry sector to further enhance its sustainability credentials beyond the mandatory regulatory framework.

The AFS has achieved recognition through Australia's national conformity assessment framework, and as such is registered as a full Australian Standard (AS4708) by Standards Australia. The AFS was developed following a rigorous 3 year process whereby community, industry, expert scientists and government representatives came together to draft the standard

The AFS is based on internationally recognised frameworks, such as ISO 14000 environmental management standards and the criteria of the 'Montreal Process' for SFM. It has also achieved international recognition through its membership of the Program for Endorsement of Forest Certification (PEFC) schemes, the world's largest forest certification network.

Currently 95% of Australia's certified production forest estate is certified under the AFS, including nearly all public native forests (with the exception of WA which is in the process of attaining AFS certification for its forests). This ensures that the forest products being produced from Australian forests meet the highest international forest

management standards for environmental, biodiversity and ecological protection and conservation.

Forest certification is a voluntary mechanism which Australia's forestry sector has embraced in order to demonstrate world-class environmental sustainability which transforms into the market place through certified sustainably produced wood products.

Essentially, certification through the AFS ensures the protection of the environmental and ecological values for forests and is complementary to Australia's extensive regulatory framework for forest management, including the RFAs.

Wielangta case

Following legal action brought about by Senator Bob Brown, Justice Marshall of the Federal Court, in 2006, rejected the claim against the legitimacy of the Tasmanian RFA. He did, however, find that forestry operations in the Wielangta State Forest could have significant impacts on three listed threatened species.

Forestry Tasmania appealed against the ruling. In November 2007 this appeal was upheld by the Full Bench of the Federal Court and the original decision was overturned. The Bench ruled that the Tasmanian RFA did in fact provide adequate protection of forest biodiversity and ecological values as it was applied in its original form.

The Full Bench's finding in the Wielangta case clarifies the meaning of the word 'protect' in relation to the RFAs and the EPBC Act. The finding also confirms that the RFAs provide adequate protection for forest species and habitats in accordance with the sentiments of the EPBC Act, even where the Act does not directly apply.

Consequences of coverage under the EPBC Act

If the EPBC Act were to apply in addition to the RFAs, a situation of conflicting and resource intensive policy and regulatory duplication would arise. The EPBC Act guidelines would lead to the impost of added and unnecessary regulation without any additional environmental benefit.

The added burden would significantly effect the operations of the forestry sector, which is already dealing with high compliance costs resulting from more and stricter regulations over time. Increased compliance costs associated with meeting duplicative regulations would decrease the competitiveness of the sector and would undermine the integrity and effectiveness of the RFAs.

As the price of sustainably produced Australian native timber increases, international markets (including Australia's) will favour forest products from less regulated and suspect sources (which can be traded a far lower price).

Therefore, the subjection of RFA areas under the EPBC Act framework could lead to the perverse outcome, indirectly or otherwise, whereby there would be a reduction in

supply of sustainably produced Australia wood products in favour of wood from countries with weak governance structures for forest management.

Conclusion and Recommendations

NAFI contends that the RFAs provide effective protection of forest species and forest habitats in accordance with the sentiments of the EPBC Act. Consequently, there is no need for the EPBC Act to also be applied to forests covered under RFAs, as doing so would result in unnecessary policy and regulatory duplication.

While the EPBC Act does not directly apply to forest management in areas covered by an RFA, the requirements and objectives of the Act are comprehensively being met through:

- Australia's comprehensive policy and regulatory system for SFM, including the RFAs;
- the CRAs, including their development, application and review;
- the CAR forest reserve system;
- codes of practice for specific forestry activities; and
- independent forest certification, through the AFS.

NAFI strongly recommends that the integrity and effectiveness of this framework is maintained by not unduly subjecting forest areas covered under RFAs to the EPBC Act. The future competitiveness and viability of Australia's native forest industry is highly dependent on this being the case.

NAFI appreciates the opportunity to provide comment on this inquiry and looks forward to further collaboration with the Senate Standing Committee. As such, NAFI would appreciate the opportunity to provide comment at any upcoming hearings as part of this inquiry.

If there are any queries in relation to this submission, please contact NAFI's Senior Forest Policy Analyst, David de Jongh on (02) 6285 3833 or david.dejongh@nafi.com.au.